

Notices of Ways  
and Means Motions



## Notice of Ways and Means Motion to Amend the *Income Tax Act* and *Income Tax Regulations*

That it is expedient to amend the *Income Tax Act* and *Income Tax Regulations* to provide among other things:

### Benefits Entitlement – Shared Custody

(1) That, for amounts in respect of the Goods and Services Tax Credit that are deemed to be paid during months after June 2011,

(a) section 122.5 of the Act be amended to add the following after subsection (3):

(3.01) Notwithstanding subsection (3), if an eligible individual is a shared custody parent (within the meaning assigned by section 122.6, but with the words “qualified dependant” in that section having the meaning assigned by subsection (1)) in respect of one or more qualified dependants at the beginning of a month, the amount deemed by subsection (3) to have been paid during a specified month is equal to the amount determined by the formula

$$(A + B) / 2$$

where

A is the amount determined by the formula in subsection (3), calculated without reference to this subsection, and

B is the amount determined by the formula in subsection (3), calculated without reference to this subsection and subparagraph (b)(ii) of the definition “eligible individual” in section 122.6.

and

(b) paragraph 122.5(6)(b) of the Act be replaced by the following:

(b) in the absence of an agreement referred to in paragraph (a), the person is deemed to be, in relation to that month, a qualified dependant of the individuals, if any, who are, at the beginning of that month, eligible individuals (within the meaning assigned by section 122.6, but with the words “qualified dependant” in that section having the meaning assigned by subsection (1)) in respect of that person; and.



(2) That, for overpayments in respect of the Canada Child Tax Benefit that are deemed to arise after June 2011,

(a) paragraph (b) of the definition “eligible individual” in section 122.6 of the Act be replaced by the following:

(b) is a parent of the qualified dependant who

(i) is the parent who primarily fulfils the responsibility for the care and upbringing of the qualified dependant and who is not a shared custody parent in respect of the qualified dependant, or

(ii) is a shared custody parent in respect of the qualified dependant;

(b) section 122.6 of the Act be amended by adding the following definition in alphabetical order:

“shared custody parent” in respect of a qualified dependant at a particular time means, where the presumption referred to in paragraph (f) of the definition “eligible individual” does not apply in respect of the qualified dependant, an individual who is one of the two parents of the qualified dependant who

(a) are not at that time cohabiting spouses or common-law partners of each other,

(b) reside with the qualified dependant on an equal or near equal basis, and

(c) primarily fulfil the responsibility for the care and upbringing of the qualified dependant when residing with the qualified dependant, as determined in consideration of prescribed factors,

and

(c) section 122.61 of the Act be amended by adding the following after subsection (1):

(1.1) Notwithstanding subsection (1), if an eligible individual is a shared custody parent in respect of one or more qualified dependants at the beginning of a month, the overpayment deemed by subsection (1) to have arisen during the month is equal to the amount determined by the formula

$$(A + B) / 2$$

where

A is the amount determined by the formula in subsection (1), calculated without reference to this subsection, and

B is the amount determined by the formula in subsection (1), calculated without reference to this subsection and subparagraph (b)(ii) of the definition “eligible individual” in section 122.6.

### Universal Child Care Benefit for Single Parents

(3) That, for the 2010 and subsequent taxation years, subsection 56(6) of the Act be replaced with the following:

(6) There shall be included in computing the income of a taxpayer for a taxation year the total of all amounts each of which is a benefit paid under section 4 of the *Universal Child Care Benefit Act* that is received in the taxation year by

(a) the taxpayer, if

(i) the taxpayer does not have a cohabiting spouse or common-law partner (within the meaning assigned by section 122.6) at the end of the year and the taxpayer does not make a designation under subsection (6.1) for the taxation year, or

(ii) the income for the taxation year of the person who is the taxpayer’s cohabiting spouse or common-law partner at the end of the taxation year is equal to or greater than the income of the taxpayer for the taxation year;

(b) the taxpayer’s cohabiting spouse or common-law partner at the end of the taxation year, if the income of the cohabiting spouse or common-law partner for the taxation year is greater than the taxpayer’s income for the taxation year; or

(c) an individual who makes a designation under subsection (6.1) in respect of the taxpayer for the taxation year.

### Designation

(6.1) If, at the end of a taxation year, a taxpayer does not have a cohabiting spouse or common-law partner (within the meaning assigned by section 122.6), the taxpayer may designate, in the taxpayer’s return of income for the taxation year, the total of all amounts, each of which is a benefit received in the taxation year by the taxpayer under section 4 of the *Universal Child Care Benefit Act*,



to be income of

(a) if the taxpayer deducts an amount for the taxation year under subsection 118(1) because of paragraph (b) of the description of B in that subsection in respect of an individual, the individual; or

(b) in any other case, a child who is a qualified dependant (as defined in section 2 of the *Universal Child Care Benefit Act*) of the taxpayer.

### **Medical Expense Tax Credit – Purely Cosmetic Procedures**

(4) That, for expenses incurred after March 4, 2010, the description of medical expenses in subsection 118.2(2) of the Act not include amounts paid for medical or dental services, or any related expenses, provided for purely cosmetic purposes, unless the services are necessary for medical or reconstructive purposes.

### **Rollover of RRSP Proceeds to an RDSP**

(5) That, for deaths that occur after March 3, 2010, the special deduction in paragraph 60(l) of the Act, in respect of contributions made to an RRSP or RRIF of an individual out of proceeds received by the individual from an RRSP, RRIF or RPP (each of which is referred to in this paragraph and paragraphs (6) to (8) as a “plan”) as a consequence of the death of the annuitant or member (the “deceased”) of the plan, be extended to contributions made to an RDSP of an individual, if the following conditions are met:

- (a) the individual would have been entitled to a deduction under paragraph 60(l) of the Act had the contribution been made to an RRSP of the individual;
- (b) the individual was a child or grandchild of the deceased and was, at the time of the deceased’s death, financially dependent on the deceased because of mental or physical infirmity;
- (c) the RDSP contribution complies with the conditions in paragraphs 146.4(4)(f) to (h) of the Act;
- (d) the RDSP contribution is not made before July 2011;
- (e) the holder of the RDSP and the individual designate the RDSP contribution in prescribed form at the time the contribution is made; and
- (f) the amount of the RDSP contribution does not exceed the amount of the proceeds that were included in computing the individual’s income.

(6) That, for deaths that occur after 2007 and before 2011, the Minister of National Revenue have the authority to apply the special deduction in paragraph 60(*l*) of the Act, as proposed to be amended by paragraph (5) of this Notice, with such modifications as the circumstances require, to allow a deduction in computing an individual's income, if the following conditions are met:

- (*a*) the individual is the spouse or common-law partner of the deceased or is a person described in subparagraph (5)(*b*);
- (*b*) the conditions in subparagraphs (5)(*c*) to (*f*) are satisfied; and
- (*c*) the contribution is made before 2012 to an RDSP of a person described in subparagraph (5)(*b*).

(7) For the purposes of paragraph (6),

- (*a*) except to the extent that subparagraph (*b*) is applicable, the deduction will apply for the taxation year in which the individual received the proceeds; and
- (*b*) to the extent that the individual previously deducted an amount under paragraph 60(*l*) of the Act in respect of the proceeds from the deceased's plan, and made the RDSP contribution from amounts withdrawn from an RRSP or RRIF of the individual, the deduction will apply for the same taxation year in which the amounts are withdrawn.

(8) That, for deaths that occur after 2007 and before 2011, the Minister of National Revenue have the authority to allow a deduction in computing a deceased taxpayer's income for the year in which the taxpayer died, if the following conditions are met:

- (*a*) an amount is included in the income of the taxpayer by reason of subsection 146(8.8) or 146.3(6) of the Act;
- (*b*) an amount is contributed before 2012 to the RDSP of a child or grandchild who was, at the time of the deceased's death, financially dependent on the deceased because of mental or physical infirmity;
- (*c*) the contributor of the amount is a beneficiary of the deceased's estate or is a person who received directly an amount of the deceased's RRSP or RRIF proceeds on the death of the annuitant;



(d) the total of all amounts so contributed does not exceed the amount described in subparagraph (a), minus any amount claimed as an RRSP or RRIF post-death loss under 146(8.92) or 146.3(6.3) of the Act, as the case may be; and

(e) the conditions in subparagraphs (5)(c) to (e) are satisfied.

(9) That, for deaths that occur after 2007 and before 2011, the Minister of National Revenue have the authority to allow a deduction in computing an individual's income for a year, if the following conditions are met:

(a) a lump sum amount was received by the individual from a RPP as a consequence of the death of an individual (the "deceased") and was included in the income of the individual in the year by reason of paragraph 56(1)(a) of the Act;

(b) an amount is contributed before 2012 to the RDSP of a child or grandchild of the deceased who was, at the time of the deceased's death, financially dependent on the deceased because of mental or physical infirmity;

(c) the individual is a beneficiary of the deceased's estate or is a person who received an amount directly from the RPP;

(d) the total of all amounts so contributed does not exceed the amount described in subparagraph (a); and

(e) the conditions in subparagraphs (5)(c) to (e) are satisfied.

(10) That, where paragraph (5), (6), (8) or (9) applies in respect of an RDSP contribution, no amount of the contribution be added to the "non-taxable portion of a disability assistance payment" pursuant to subsection 146.4(7) of the Act.

### **Provincial Payments into RESPs and RDSPs**

(11) That payments made into a registered education savings plan, as defined in section 146.1 of the Act, or into a registered disability savings plan, as defined in section 146.4 of the Act, under a program administered by a province, or under a program funded, directly or indirectly, by a province but administered by a third party, be treated for the purposes of the Act in the same manner as federal grants and bonds paid into these plans.

(12) That, in respect of provincial programs administered by a province, paragraph (11) apply for the 2007 and subsequent taxation years.

(13) That, in respect of programs that are funded, directly or indirectly, by a province but administered by a third party, paragraph (11) apply for the 2009 and subsequent taxation years.

(14) That, for the 2009 and subsequent taxation years, subparagraphs 241(4)(d)(vii.1) and 241(4)(d)(vii.5) of the Act be amended to allow taxpayer information to be disclosed for the purpose of administering or enforcing programs described in paragraph (11).

### **Scholarship Exemption and Education Tax Credit**

(15) That, for the 2010 and subsequent taxation years, the portion of the scholarship exemption in paragraph 56(3)(a) of the Act that applies in respect of a scholarship, fellowship or bursary received in connection with the taxpayer's enrolment in an educational program be limited to an amount equal to the sum of the fees paid to a designated educational institution, as defined in subsection 118.6(1) of the Act, in respect of the taxpayer's tuition and costs incurred for program-related materials, if the taxpayer may deduct an amount by reason of paragraph (b) of the description of B in subsection 118.6(2) of the Act in respect of that educational program.

(16) That, for the 2010 and subsequent taxation years, a scholarship, fellowship or bursary (in this paragraph referred to as an "award") is not, for the purpose of the scholarship exemption in subsection 56(3) of the Act, considered to be received in connection with a taxpayer's enrolment in an educational program except to the extent that it is reasonable to conclude that the award is intended to support the taxpayer's enrolment in the program, having regard to all the circumstances, including

- (a) any terms or conditions that apply in respect of the award,
- (b) the duration of the program, and
- (c) the period for which support is intended to be provided by the award.

(17) That, for the 2010 and subsequent taxation years, a program at a post-secondary school level referred to in the definition "qualifying education program" in subsection 118.6(1) of the Act does not include a program that consists primarily of research, unless the program leads to a diploma from a college or a Collège d'enseignement général et professionnel (CEGEP), or a bachelor, masters or doctoral degree (or an equivalent degree).



## Charities: Disbursement Quota Reform

(18) That, for taxation years of registered charities that end on or after March 4, 2010,

- (a) the definitions “capital gains pool”, “enduring property” and “specified gift” in subsection 149.1(1) of the Act be repealed;
- (b) the formula in the definition “disbursement quota” in subsection 149.1(1) of the Act be replaced by the following:

$$A \times B \times 0.035 / 365$$

where

A is the number of days in the taxation year, and

B is

- (a) the prescribed amount for the year, in respect of all or a portion of a property owned by the charity at any time in the 24 months immediately preceding the taxation year that was not used directly in charitable activities or administration, if that amount is greater than
  - (i) if the registered charity is a charitable organization, \$100,000, and
  - (ii) in any other case, \$25,000, and
- (b) in any other case, nil;
- (c) the following definition be added in alphabetical order in subsection 149.1(1) of the Act:

“designated gift” means that portion of a gift, made in a taxation year by a registered charity, that is designated as a designated gift in its information return for the year.

(19) That, for taxation years of registered charities that end on or after March 4, 2010, the word “specified” in subsection 149.1(1.1) of the Act be replaced with the word “designated”.

(20) That, for taxation years of registered charities that end on or after March 4, 2010, subsection 149.1(4.1) of the Act be amended

- (a) by replacing paragraph 149.1(4.1)(a) with the following:
  - (a) of a registered charity, if it has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or delay unduly the expenditure of amounts on charitable activities;

and

(b) by adding the following after paragraph 149.1(4.1)(c):

(d) of a registered charity, if it has in a taxation year received a gift (other than a designated gift) from another registered charity with which it does not deal at arm's length, and if it has not expended, before the end of the next taxation year, in addition to its disbursement quotas for those taxation years, an amount at least equal to the total amount of the gift, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length.

(21) That, for taxation years of registered charities that end on or after March 4, 2010, subsection 149.1(8) of the Act be replaced by the following:

(8) A registered charity may, with the approval in writing of the Minister, accumulate property for a particular purpose, on terms and conditions, and over such period of time, as the Minister specifies in the approval, and any property accumulated after receipt of and in accordance with that approval, including any income earned in respect of the accumulated property, is not to be included in the amount described in B in the formula in the definition "disbursement quota" in subsection (1) for any taxation year that the Minister specifies.

(22) That, for taxation years of registered charities that end on or after March 4, 2010, subsection 188.1(11) be replaced by the following:

(11) If, in a taxation year, a registered charity has entered into a transaction (including a gift to another registered charity) and it may reasonably be considered that a purpose of the transaction was to avoid or delay unduly the expenditure of amounts on charitable activities, the registered charity is liable to a penalty under this Act for its taxation year equal to 110% of the amount of expenditure avoided or delayed, and in the case of a gift to another registered charity, both charities are jointly and severally, or solidarily, liable to the penalty.



(12) If a registered charity has in a taxation year received a gift of property (other than a designated gift) from another registered charity with which it does not deal at arm's length, and if it has not expended, before the end of the next taxation year, in addition to its disbursement quotas for those taxation years, an amount at least equal the amount of the gift, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length, the registered charity is liable to a penalty under this Act for that subsequent taxation year equal to 110% of the amount of by which the fair market value of the property exceeds the total of such amounts expended.

## **Employee Stock Options**

### ***Stock Option Cash-Outs***

(23) That, for transactions occurring after 4:00 p.m. Eastern Standard Time on March 4, 2010, paragraphs 110(1)(*d*) and (*d.1*) of the Act require, as a condition of eligibility for the deductions provided under those paragraphs (referred to in this paragraph as “the stock option deduction”), that the securities described in an agreement to sell or issue securities referred to in subsection 7(1) of the Act be acquired by the employee, unless

- (*a*) the employer elects in prescribed form in respect of all stock options issued or to be issued after 4:00 p.m. Eastern Standard Time on March 4, 2010 under the agreement, and files such election with the Minister of National Revenue, that neither the employer, nor any person who does not deal at arm's length with the employer, will deduct any amount in respect of a payment, to or for the benefit of the employee, for the employee's disposition of rights under the agreement;
- (*b*) the employer provides the employee with evidence in writing of such election; and
- (*c*) the employee files such evidence with the Minister of National Revenue with his or her return of income for the year in which the stock option deduction is claimed.

(24) That, for dispositions of rights occurring after 4:00 p.m. Eastern Standard Time on March 4, 2010, it be clarified that the rules in subsection 7(1) of the Act apply in circumstances in which an employee (or a person who does not deal at arm's length with the employee) disposes of rights under an agreement to sell or issue securities to a person with whom the employee does not deal at arm's length.

### *Tax Deferral Election and Remittance Requirement*

(25) That, in respect of rights under an agreement to sell or issue securities exercised after 4:00 p.m. Eastern Standard Time on March 4, 2010, subsections 7(8) to (16) of the Act be repealed.

(26) That, in respect of securities acquired by employees after 2010, it be clarified that under section 153 of the Act an amount must be remitted to the Receiver General by the employer in respect of an employment benefit that is taxable under section 7 of the Act (other than an amount to which subsection 7(1.1) of the Act applies), to the same extent as if the amount of the benefit had been paid to the employee in money as a bonus, and, for these purposes, if the requirements of paragraph 110(1)(d) of the Act are met in respect of the employment benefit at the time that the securities are acquired, the amount of the benefit be reduced by one-half.

(27) That, in respect of employment benefits realized from acquisitions of securities after 2010, section 153 of the Act provide that the fact that the benefit arose from the acquisition of securities not be considered a basis on which the Minister of National Revenue may reduce the amount required to be remitted under section 153 of the Act.

(28) That paragraphs (26) and (27) not apply in respect of rights under an agreement to sell or issue securities granted before 2011 if the agreement was entered into in writing before 4:00 pm Eastern Standard Time on March 4, 2010 and included, at that time, a written condition that restricts the employee from disposing of the securities acquired under the agreement for a period of time after exercise.

### *Special Relief for Tax Deferral Elections*

(29) That, where a taxpayer disposes of securities before 2015 and the securities gave rise to an employment benefit in respect of which an election under subsection 7(10) of the Act was made, the taxpayer be permitted to elect, in prescribed form, the following tax treatment for the taxation year in which the securities are disposed of:

- (a) that paragraph 110(1)(d) and 110(1)(d.1) of the Act be read without reference to the phrase “1/2 of” in calculating the amount deductible by the taxpayer in respect of the employment benefit arising under subsection 7(1);
- (b) that one-half of the lesser of
  - i. the amount deductible under subparagraph (a) and
  - ii. the taxpayer’s capital loss from the disposition of the securities



be included as a taxable capital gain in the taxpayer's income for the taxation year in which the deduction in subparagraph (a) is claimed;

(c) that a special tax, equal to the taxpayer's proceeds of disposition of the securities (or 2/3 of the taxpayer's proceeds of disposition, if the taxpayer resides in Québec), be payable under the Act for the taxation year in which the deduction under subparagraph (a) is claimed; and

(d) that the taxable capital gain under subparagraph (b) be disregarded for the purposes of the definition "adjusted income" in subsections 122.5(1), 122.51(1) and 180.2(1), section 122.6, and the definition "adjusted net income" in subsection 122.7(1) of the Act.

(30) That, an election described in paragraph (29) in respect of a taxation year that is outside the normal reassessment period (within the meaning of subsection 152(3.1) of the Act) be considered an application for determination by the Minister of National Revenue under subsection 152(4.2).

(31) That, the deadline for a taxpayer to file the election described in paragraph (29) shall be:

(a) if the taxpayer disposed of the securities before 2010, the taxpayer's filing-due date for 2010, and

(b) if the taxpayer disposes of the securities after 2009, the taxpayer's filing-due date for the year of the disposition.

### **U.S. Social Security Benefits**

(32) That, in computing taxable income for a taxation year that ends after 2009, a taxpayer be allowed to deduct 35 per cent of the total of all benefits received by the taxpayer in the taxation year to which paragraph 5 of Article XVIII of the *Convention between Canada and the United States of America with respect to Taxes on Income and on Capital* as set out in Schedule I to the *Canada-United States Tax Convention Act, 1984*, of the S.C. 1984, c. 20, applies, if

(a) the taxpayer has, continuously during a period that begins before 1996 and that ends in the taxation year, been resident in Canada and received such benefits in each taxation year ending in that period, or

(b) the benefits are payable to the taxpayer in respect of a deceased individual, and

- (i) the deceased individual was, immediately before the deceased individual's death, the taxpayer's spouse or common-law partner and was, in the taxation year in which the deceased individual died, a taxpayer described in paragraph (a), and
- (ii) the taxpayer has, continuously during a period that begins at the time of the death of the deceased individual and that ends in the taxation year, been resident in Canada and received such benefits in each taxation year ending in that period.

### Mineral Exploration Tax Credit

(33) That, for expenses renounced under a flow-through share agreement made after March 2010,

(a) paragraph (a) of the definition "flow-through mining expenditure" in subsection 127(9) of the Act be replaced by the following:

(a) that is a Canadian exploration expense incurred by a corporation after March 2010 and before 2012 (including, for greater certainty, an expense that is deemed by subsection 66(12.66) to be incurred before 2012) in conducting mining exploration activity from or above the surface of the earth for the purpose of determining the existence, location, extent or quality of a mineral resource described in paragraph (a) or (d) of the definition "mineral resource" in subsection 248(1),

and

(b) paragraphs (c) and (d) of the definition "flow-through mining expenditure" in subsection 127(9) of the Act be replaced by the following:

(c) an amount in respect of which is renounced in accordance with subsection 66(12.6) by the corporation to the taxpayer (or a partnership of which the taxpayer is a member) under an agreement described in that subsection and made after March 2010 and before April 2011, and

(d) that is not an expense that was renounced under subsection 66(12.6) to the corporation (or a partnership of which the corporation is a member), unless that renunciation was under an agreement described in that subsection and made after March 2010 and before April 2011.



## **Canadian Renewable and Conservation Expenses – Principal-Business Corporations**

(34) That, in respect of taxation years ending after 2004, the definition “principal-business corporation” in subsection 66(15) of the Act be amended to include a corporation, the principal business of which is producing fuel or generating or distributing energy, using property described in Class 43.1 or 43.2 of Schedule II to the *Income Tax Regulations*.

### **SIFT Conversions and Loss Trading**

(35) That subsection 256(7) of the Act be modified to add a rule similar to that in existing paragraph 256(7)(c) such that where two or more persons dispose of interests in a SIFT trust (as defined in the Act, determined without reference to subsection 122.1(2) of the Act), SIFT partnership (as defined in the Act, determined without reference to subsection 197(8) of the Act) or real estate investment trust in exchange for shares of the capital stock of a corporation, control of that corporation and of each corporation controlled by it immediately before the exchange is deemed to have been acquired at the time of the exchange by a person or group of persons.

(36) That subsection 256(7) of the Act be modified such that where a SIFT wind-up corporation is the only beneficiary of a trust and the trust controls another corporation, on a distribution of the shares of the other corporation that is part of a SIFT trust wind-up event (as defined in the Act), the SIFT wind-up corporation will be deemed not to acquire control of the other corporation because of that distribution.

(37) That the amendments referred to in paragraphs (35) and (36) apply to transactions undertaken after 4:00 p.m. Eastern Standard Time March 4, 2010, other than transactions that the parties are obligated to complete pursuant to the terms of an agreement in writing between the parties entered into before that time. A party shall be considered not to be obligated to complete a transaction if the party may be excused from completing the transaction as a result of amendments to the *Income Tax Act*. If the relevant parties so elect in writing, the amendments referred to in paragraphs (35) and (36) will apply to transactions that were completed or agreed to in writing before 4:00 p.m. Eastern Standard Time March 4, 2010.

## Section 116 and Taxable Canadian Property

(41) That, in determining after March 4, 2010 whether a property is taxable Canadian property of a taxpayer, paragraphs (*d*) to (*l*) of the definition “taxable Canadian property” in subsection 248(1) of the Act be replaced by the following:

(*d*) a share of the capital stock of a corporation (other than a mutual fund corporation) that is not listed on a designated stock exchange, an interest in a partnership or an interest in a trust (other than a unit of a mutual fund trust or an income interest in a trust resident in Canada), if, at any particular time during the 60-month period that ends at that time, more than 50% of the fair market value of the share or interest, as the case may be, was derived directly or indirectly from one or any combination of

- (i) real or immovable property situated in Canada,
- (ii) Canadian resource properties,
- (iii) timber resource properties, and
- (iv) options in respect of, or interests in, or for civil law rights in, property described in any of subparagraphs (i) to (iii), whether or not the property exists,

(*e*) a share of the capital stock of a corporation that is listed on a designated stock exchange, a share of the capital stock of a mutual fund corporation or a unit of a mutual fund trust, if, at any particular time during the 60-month period that ends at that time,

(i) 25% or more of the issued shares of any class of the capital stock of the corporation, or 25% or more of the issued units of the trust, as the case may be, were owned by or belonged to one or any combination of

- (A) the taxpayer, and
- (B) persons with whom the taxpayer did not deal at arm’s length, and

(ii) more than 50% of the fair market value of the share or unit, as the case may be, was derived directly or indirectly from one or any combination of properties described under subparagraphs (*d*)(i) to (iv), or

(*f*) an option in respect of, or an interest in, or for civil law a right in, a property described in any of paragraphs (*a*) to (*e*), whether or not the property exists,



(39) That, in determining after March 4, 2010 whether a property is taxable Canadian property of a taxpayer,

(a) paragraph 85(1)(i) of the Act be replaced by the following:

(i) where the property so disposed of is taxable Canadian property of the taxpayer, all of the shares of the capital stock of the Canadian corporation received by the taxpayer as consideration for the property are deemed, at any time that is within 60 months after the disposition, to be taxable Canadian property of the taxpayer.

(b) paragraphs 44.1(2)(c), 51(1)(f), 85.1(1)(a), subsection 85.1(5), paragraph 85.1(8)(b), subsections 87(4) and (5), paragraphs 97(2)(c), 107(2)(d.1), (3.1)(d) and 107.4(3)(f) and subsection 248(25.1) of the Act be amended in a manner similar to the amendment to paragraph 85(1)(i) of the Act.

(40) That, in determining after March 4, 2010 whether a property is taxable Canadian property of a taxpayer, section 128.1 of the Act be amended by adding the following after subsection (6):

(6.1) For the purposes of paragraph (6)(a), a property is deemed to be taxable Canadian property of the individual throughout the period that began at the emigration time and that ends at the particular time if

(a) the emigration time is before March 5, 2010; and

(b) the property was taxable Canadian property of the individual on March 4, 2010.

### **Refunds under Regulation 105 and Section 116**

(41) That, in respect of an application made by a taxpayer after March 4, 2010 for a refund of an overpayment in respect of a taxation year of the taxpayer, subsection 164(1.5) of the Act be amended to permit the Minister of National Revenue to refund the overpayment, to the extent that it relates to an assessment of another person under subsection 227(10) or (10.1) of the Act, if the taxpayer's return of income required to be filed under Part I of the Act for the taxation year is filed on or before the day that is two years after the date of the assessment and if the assessment relates to,

(a) in the case of an amount assessed under subsection 227(10) of the Act, a payment to the taxpayer of a fee, commission or other amount in respect of services rendered in Canada; and

(b) in the case of an amount assessed under subsection 227(10.1) of the Act, an amount payable under subsection 116(5) or (5.3) of the Act in respect of the disposition of taxable Canadian property by the taxpayer.

## Foreign Tax Credit Generators

(42) That, for income or profits tax paid for taxation years of a taxpayer that end after March 4, 2010, section 126 of the Act be amended by adding the following after subsection (4.1):

(4.11) If a taxpayer is a member of a partnership, any income or profits tax paid to the government of a particular country other than Canada — in respect of the income of the partnership for a period during which the taxpayer’s share of the income of the partnership under the income tax laws of any country other than Canada under whose laws the income of the partnership is subject to income taxation, is less than its share thereof for the purposes of the Act — is not included in computing the taxpayer’s business-income tax or non-business-income tax for any taxation year.

(43) That, for income or profits tax paid, and amounts prescribed in respect of a foreign affiliate of a taxpayer to be foreign accrual tax applicable, in respect of amounts included in computing the taxpayer’s income under subsection 91(1) of the Act for taxation years of the taxpayer that end after March 4, 2010, section 91 of the Act be amended by adding the following after subsection (4):

(4.1) For the purposes of the definition “foreign accrual tax” in subsection 95(1), foreign accrual tax applicable to a particular amount included in computing a taxpayer’s income under subsection (1) for a taxation year in respect of a particular foreign affiliate of the taxpayer shall not include any income or profits tax paid, or any amount prescribed in respect of the particular affiliate to be foreign accrual tax applicable, in respect of the particular amount where that particular amount is earned during a period in which

(a) if the taxpayer is a partnership, the share of the income of any member of the partnership that is a person resident in Canada is, under the income tax laws of any country, other than Canada, under whose laws the income of the partnership is subject to income taxation, less than its share thereof for the purposes of the Act, or

(b) in any other case, the taxpayer is considered, under the income tax laws of any country, other than Canada, under whose laws the income of the particular affiliate is subject to income taxation, to own less than all of the shares of the capital stock of the particular affiliate, of another foreign affiliate of the taxpayer in which the particular affiliate has an equity percentage, or of another foreign affiliate of the taxpayer that has an equity percentage in the particular affiliate, that are considered to be owned by the taxpayer for the purposes of the Act.



(44) That, for income or profits tax paid, and amounts referred to in subsections 5907(1.1) and (1.2) of the *Income Tax Regulations*, in respect of the income of a foreign affiliate of a taxpayer for taxation years of the foreign affiliate that end in taxation years of the taxpayer that end after March 4, 2010, section 5907 of the Regulations be amended by adding the following in numerical order:

(1.03) For the purposes of the description of A in the definition “underlying foreign tax” in subsection (1), income or profits tax paid in respect of the taxable earnings of a particular foreign affiliate of a corporation or in respect of a dividend received by the particular affiliate from another foreign affiliate of the corporation, and amounts by which the underlying foreign tax of the particular affiliate, or any other foreign affiliate of the corporation, is required by subsection (1.1) or (1.2) to be increased, shall not include any income or profits tax paid, or amounts by which the underlying foreign tax is otherwise so required to be increased, as the case may be, in respect of income of the particular affiliate that is earned during a period in which

(a) the corporation is considered, under the income tax laws of any country, other than Canada, under whose laws the income of the particular affiliate is subject to income taxation, to own less than all of the shares of the capital stock of the particular affiliate, of another foreign affiliate of the corporation in which the particular affiliate has an equity percentage, or of another foreign affiliate of the corporation that has an equity percentage in the particular affiliate, that are considered to be owned by the corporation for the purposes of the Act, or

(b) the corporation’s share of the income of a partnership that owns, based on the assumptions contained in paragraph 96(1)(c) of the Act, shares of the capital stock of the particular affiliate is, under the income tax laws of any country, other than Canada, under whose laws the income of the partnership is subject to income taxation, less than its share thereof for the purposes of the Act.

### **Foreign Investment Entities and Non-Resident Trusts**

(45) That the provisions of the Act relating to foreign investment entities and non-resident trusts be modified in accordance with the proposals described in the budget documents tabled by the Minister of Finance in the House of Commons on March 4, 2010.