Explanatory Notes Relating to the Income Tax Act and Other Legislation

Published by

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Preface

These explanatory notes describe proposed amendments to the *Income Tax Act* and other legislation. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe

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Amendments to the *Income Tax Act* (the “Act” or “ITA”)

Clause 2

Labour mobility deduction

ITA
8(1)(t)

Section 8 of the Act sets out a number of rules in respect of amounts that may be deducted from income from an office or employment of a taxpayer.

New paragraph 8(1)(t) introduces the Labour Mobility Deduction (LMD), which provides a tradesperson or apprentice with a deduction for certain transportation, meals and temporary lodging expenses incurred for travelling significant distances to earn income from temporary employment in construction. Subject to additional rules in subsection 8(14), the deduction in relation to a taxpayer’s temporary relocation in the year is limited to 50% of the employment income earned by the taxpayer in the year in respect of the temporary relocation. In addition, the total amount deductible under the LMD, considering all temporary relocations in the year, is limited to $4,000 per year.

This amendment applies to the 2022 and subsequent taxation years.

Labour mobility deduction – interpretation

ITA
8(14)

New subsection 8(14) provides additional rules that are relevant for the application of the Labour Mobility Deduction (LMD) in paragraph 8(1)(t).

Paragraph 8(14)(a) describes an eligible tradesperson in a taxation year for purposes of the LMD as a taxpayer that has income from employment as a tradesperson or apprentice and that performs their duties of employment in construction activities described in subsection 238(1) of the *Income Tax Regulations*. A taxpayer must qualify as an eligible tradesperson to claim the LMD in paragraph 8(1)(t).

Paragraph 8(14)(b) describes a “temporary work location” of a taxpayer for purposes of the LMD as a location in Canada that is:

- outside of the locality where the taxpayer is ordinarily employed or carrying on business; and

- where the taxpayer performs their duties of employment under a temporary employment contract.

A temporary work location is relevant to the determination of an eligible temporary relocation under paragraph 8(14)(c).

Paragraph 8(14)(c) provides a number of conditions that are required for a relocation of a taxpayer to qualify as an “eligible temporary relocation” for purposes of the LMD. To qualify, the taxpayer’s relocation must be a temporary move that is undertaken to enable the taxpayer to perform their duties of employment as an eligible tradesperson at one or more temporary work locations situated in the same locality. Prior to the relocation, the taxpayer must have ordinarily resided at a residence in Canada. The taxpayer must have been required by their employment at the temporary work location to be away from their ordinary residence for at least 36 hours. During this period, the taxpayer must have taken up temporary lodging in Canada. Lastly, the distance between the ordinary residence and each of the taxpayer’s temporary work locations must be at least 150 kilometres greater than the distance between each temporary lodging and each temporary work location.

> *Example : John is a tradesperson that ordinarily works and resides in Toronto. John accepts a 3-week employment contract with a new employer that will require him to work on a construction site in Montreal. The distance between John’s ordinary residence in Toronto and the work location in Montreal is 550 kilometers. John rents a short-term apartment in Montreal that is 10 kilometres away from the work location. John’s ordinary residence in Toronto is more than 150 kilometres further from the work site than the temporary lodging in Montreal is from the work site. On the basis of this distance, the relocation will qualify as an eligible temporary relocation for purposes of the LMD.*

If the taxpayer has more than one temporary lodging during the course of a temporary relocation (for example, the taxpayer stays at two different hotels), the 150 kilometer-test described above will need to be satisfied in respect of each temporary lodging. Similarly, the test will need to be satisfied for each temporary work location, if the taxpayer works at multiple temporary work locations during the temporary relocation.

Subject to paragraph 8(14)(e), paragraph (d) provides that an “eligible temporary relocation expense” is a reasonable expense incurred by the taxpayer during the taxation year, the previous taxation year or prior to February 1 of the following taxation year, that is:

- transportation for one round trip between the ordinary residence and the temporary lodging in respect of each eligible temporary relocation;
- meals consumed by the taxpayer during the round trip described above; and
- temporary lodgings, provided that throughout the eligible temporary relocation, the taxpayer maintains their ordinary residence as their principal place of residence, available for their occupancy and not rented to any other person.

Paragraph 8(14)(e) provides restrictions in relation to an eligible temporary relocation expense described in paragraph 8(14)(d). To be eligible, subparagraph 8(14)(e)(i) requires that the expense must not otherwise be deducted by the taxpayer in any taxation year, other than for purposes of the LMD. For example, this would preclude an expense that has been deducted as a travel expense under paragraph 8(1)(h) or a moving expense under section 62.

The description of an eligible temporary relocation expense at paragraph (d) allows an expense to be claimed in a taxation year if the expense is incurred by the taxpayer in the preceding year, the current year or prior to February 1 of the subsequent year. This is intended to provide flexibility for relocations that span multiple taxation years.

However, subparagraph 8(14)(e)(ii) specifies that an expense incurred in a preceding year is not eligible for deduction in the current year to the extent that it could have been deducted for purposes of the LMD in that preceding year. Accordingly, a taxpayer will need to claim deductions under the LMD in the first taxation year during which those expenses are eligible to be claimed.

There may be situations where a taxpayer incurs eligible temporary relocation expenses that cannot be deducted under paragraph 8(1)(t) in the year because the taxpayer does not have sufficient income from the temporary relocation in the year (see subparagraph (f)(ii)) or because the taxpayer has exceeded the $4,000 annual cap in paragraph 8(1)(t). In those situations, eligible temporary relocation expenses could potentially be claimed in the following taxation year.

> *Example: Sarah begins an eligible temporary relocation on December 28, 2022. She incurs expenses in December for a flight to the temporary work location, as well as expenses for meals during her travel time and temporary housing near the temporary work location. Sarah does not receive any employment income related to the temporary work location until January, 2023. Sarah would not be able to deduct the expenses in 2022 because she has no employment income in 2022 related to the temporary relocation. (The amount computed under paragraph (f)(ii) would be nil, meaning her temporary relocation deduction for 2022 in relation to the temporary relocation would be nil.) She could instead include the 2022 expenses in computing her temporary relocation deduction for 2023, and therefore could deduct the expenses in 2023 (subject to the limits and conditions discussed throughout these notes).*

In addition, subparagraph 8(14)(e)(iii) precludes an expense from being an eligible temporary relocation expense under paragraph (d) to the extent that:

- the taxpayer is entitled to receive a reimbursement, allowance or any form of assistance in respect of the expense; and
- the reimbursement, allowance or assistance is not included in the taxpayer’s income (or, if it is included in the taxpayer’s income, it is deductible in calculating the taxpayer’s income).

Paragraph 8(14)(f) provides for the calculation of a taxpayer's "temporary relocation deduction" for a taxation year for purposes of the LMD under paragraph 8(1)(t). The temporary relocation deduction is calculated in respect of each eligible temporary relocation of the taxpayer, meaning a taxpayer may have multiple temporary relocation deductions for a single taxation year where the taxpayer has multiple temporary relocations in the year.

The rule in paragraph (f) provides that, in respect of an eligible temporary relocation, the deduction equals the total of eligible temporary relocation expenses incurred by the taxpayer in the year, not to exceed 50% of the taxpayer's total income for the year from their employment as an eligible tradesperson at the temporary work locations (calculated before taking into account any deductions available under section 8). Accordingly, for each eligible temporary relocation of a taxpayer, the taxpayer will need to determine the amount of their eligible temporary relocation expenses and employment income that relate to each temporary relocation. The taxpayer will be limited to deducting the lesser of those eligible expenses and half of the taxpayer's employment income related to the relocation. As discussed with respect to paragraph 8(1)(t), there is also a total limit of $4,000 per taxation year that applies across all temporary relocations.

This amendment applies to the 2022 and subsequent taxation years.

Clause 3

Recapture – Class 10.1 Passenger Vehicle

ITA
13(2)

Subsection 13(2) provides that depreciation recapture in respect of a passenger vehicle is not required to be included in income under subsection 13(1) if the vehicle has a cost in excess of $20,000 or such other amount as may be prescribed. The excess amount is deemed to have been included in the taxpayer's income to prevent recapture at a subsequent time of that excess.

Subsection 13(2) is amended, consequential on the introduction of the immediate expensing measure announced in Budget 2021 permitting the immediate depreciation of the cost of a passenger vehicle (among other properties). Subsection 13(2) excludes a passenger vehicle that was, at any time, "designated immediate expensing property" as defined in subsection 1104(3.1) of the Regulations from the exception this provision provides in respect of subsection 13(1). Consequently, unlike a passenger vehicle that has never been "designated immediate expensing property", depreciation recapture in respect of a passenger vehicle that was, at any time, "designated immediate expensing property" will be required to be included in the taxpayer's income for the year. This is consistent with the current recapture rules applicable to zero-emission vehicles, which are also eligible for immediate depreciation.

This amendment applies to taxation years ending on or after April 19, 2021.

ITA
13(7)(i)

Paragraph 13(7)(i) provides rules relating to the capital cost and proceeds of disposition of a taxpayer's depreciable property that is a "zero-emission passenger vehicle", the cost of which exceeds the prescribed amount.

Consequential on the introduction of the immediate expensing measure announced in Budget 2021 permitting the immediate depreciation of the cost of a passenger vehicle (among other properties), paragraph 13(7)(i) is amended so that it also applies these rules (relating to the deemed capital cost and proceeds of disposition) to a passenger vehicle

- with a cost in excess of $20,000 or the prescribed amount; and
- that was, at any time, "designated immediate expensing property" as defined in subsection 1104(3.1) of the Regulations.

This ensures consistent capital cost and proceeds of disposition rules apply to both "zero-emission passenger vehicles" and "passenger vehicles" that were, at any time, "designated immediate expensing property" where the cost of such property exceeds the prescribed amount.

This amendment applies to taxation years ending on or after April 19, 2021.

Clause 4

Social Assistance

ITA
81(1)(h)

Paragraph 81(1)(h) specifically exempts from income social assistance payments made to an individual for the benefit of a foster person (child or adult) under the individual's care where the individual and the foster person reside together in the individual's principal place of residence. To qualify for this exemption, the payments must be made under a program provided for by an Act of Parliament or the law of a province.

Consequential on amendments to the *Children's Special Allowances Act* that recognize Indigenous governing bodies and their laws for the purposes of the Children's Special Allowance, paragraph 81(1)(h) is amended to extend the exemption to include payments made under programs provided for by the laws of an Indigenous governing body (as defined in the *Children's Special Allowances Act*).

This measure applies as of January 1, 2020.

Social Assistance for Informal Care programs

ITA
81(1)(h.1)

Paragraph 81(1)(h.1) specifically exempts from an individual's income social assistance payments received as part of a means, needs or income test under a program of the Government of Canada or a provincial government for the care and upbringing, on a temporary basis, of a child in need of protection (generally known as kinship programs). Paragraph 81(1)(h.1) applies only in respect of payments received by individuals that are parents (or who would be considered parents if they did not receive the payments) under the extended definition in section 252 solely because the child is wholly dependent on that individual and is a child of whom the individual has, in law or in fact, custody and control. This provision does not apply to payments made in respect of a foster person (which are exempt from income under paragraph 81(1)(h)).

Consequential on amendments to the *Children's Special Allowances Act* that recognize Indigenous governing bodies and their laws for the purposes of the Children's Special Allowance, paragraph 81(1)(h.1) is amended to extend the exemption to include payments under a program of an Indigenous governing body (as defined in the *Children's Special Allowances Act*).

This measure applies as of January 1, 2020.

Clause 5

Home Accessibility Tax Credit

ITA
118.041(3)

Subsection 118.041(3) provides a formula for the calculation of the non-refundable Home Accessibility Tax Credit. The credit is determined as the appropriate percentage (as defined in subsection 248(1)), which is currently 15%, of qualifying expenditures to a maximum amount of $10,000.

Paragraph (a) of element B of the formula is amended to increase the maximum amount of qualifying expenditures in respect of an eligible dwelling for a taxation year to $20,000.

This amendment applies to the 2022 and subsequent taxation years.

Limits

ITA

118.041(5)

Subsection 118.041(5) is relevant to the refundable Home Accessibility Tax Credit. This subsection provides that if one or more qualifying individuals or eligible individuals make a claim in respect of an eligible dwelling, the total of all amounts claimed by the qualifying individual(s) and eligible individual(s) for the year in respect of the eligible dwelling must not exceed $10,000.

Consequential on the increase of the maximum amount of qualifying expenditures allowed in respect of an eligible dwelling for a taxation year under subsection (3), subsection (5) is amended to provide that the total eligible expenditures to be shared by the qualifying individual(s) and eligible individual(s) for the year in respect of the eligible dwelling must not exceed $20,000.

This amendment applies to the 2022 and subsequent taxation years.

Clause 6

Credit for mental or physical impairment

ITA
118.3(1)(a.1)

Subsection 118.3(1) provides the disability tax credit, which is a 15% non-refundable tax credit that recognizes the impact of non-itemizable disability-related costs on an individual's ability to pay tax.

To be eligible for the disability tax credit, an individual must have a severe and prolonged impairment in physical or mental functions. The effects of the impairment must be such that, even with appropriate therapy, the individual is:

- markedly restricted in their ability to perform a basic activity of daily living, due to the effects of one or more severe and prolonged impairments in mental or physical functions;
- significantly restricted in their ability to perform more than one basic activity of daily living if the cumulative effect of the restrictions is equivalent to having a single marked restriction in the ability to perform a basic activity of daily living; or
- would be markedly restricted were it not for extensive life sustaining therapy occurring at least three times a week for an average of at least 14 hours per week in total.

The basic activities of daily living are defined as walking; feeding or dressing oneself; mental functions necessary for everyday life; speaking; hearing; and eliminating bodily waste.

Paragraph 118.3(1)(a.1) provides certain conditions related to disability tax credit eligibility. Paragraph (a.1) includes the extension of eligibility for the disability tax credit to individuals who would be markedly restricted in their ability to perform a basic activity of daily living, but for certain therapy. In particular, the therapy must be administered to them at least three times each week, for a total duration averaging not less than 14 hours per week, in order to sustain one of their vital functions.

Paragraph 118.3(1)(a.1) is amended to provide that the requirement that therapy be administered at least three times each week is reduced to at least two times each week. The requirement that therapy be of a duration averaging not less than 14 hours a week remains.

This amendment applies to the 2021 and subsequent taxation years in respect of certificates described in paragraphs 118.3(1)(a.2) or (a.3) of the Act that are filed with the Minister of National Revenue after royal assent to this amendment.

Time spent on therapy

ITA
118.3(1.1)

Subsection 118.3(1.1) is relevant for the purpose of paragraph 118.3(1)(a.1), which, as noted above, extends eligibility for the disability tax credit to individuals who would be markedly restricted in their ability to perform a basic activity of daily living, but for certain therapy.

Subsection 118.3(1.1) defines the activities that will be included in determining time spent by an individual receiving therapy for the purpose of paragraph 118.3(1)(a.1).

Consequential on the amendment to paragraph 118.3(1)(a.1), the reference to the required frequency of therapy is reduced from at least three times each week to at least two times each week. The requirement that therapy be of a duration averaging not less than 14 hours a week remains.

This amendment applies to the 2021 and subsequent taxation years in respect of certificates described in paragraphs 118.3(1)(a.2) or (a.3) of the Act that are filed with the Minister of National Revenue after royal assent to this amendment.

ITA
118.3(1.1)(b), (c) and (d)

Subsection 118.3(1.1) defines the activities that are included in determining time spent receiving therapy for the purpose of paragraph 118.3(1)(a.1). Subsection 118.3(1.1) currently specifies that the time spent on administering therapy

- includes only time dedicated to the therapy — that is, the individual has to take time away from normal, everyday activities in order to receive the therapy,
- includes, in the case of therapy that requires a regular dosage of medication that needs to be adjusted on a daily basis, the activities directly involved in determining the appropriate dosage, but does not include time spent on activities related to dietary or exercise restrictions or regimes (even if these restrictions or regimes are a factor in determining the daily dosage of medication), and
- includes, in the case of a child who is unable to perform the activities related to the therapy as a result of the child's age, the time spent by the child's primary caregivers (usually the parents) in performing or supervising these activities for the child but
- does not include travel time, medical appointments, shopping for medication or recuperation after therapy.

Paragraph 118.3(1.1)(b) is amended to include two new subparagraphs related to the time spent determining certain dosages. Consistent with the language in existing paragraph (b), new subparagraph (b)(i) provides that time spent on administering therapy includes, in the case of therapy that requires a regular dosage of medication that needs to be adjusted on a daily basis, the activities directly involved in determining the appropriate dosage. New subparagraph 118.3(1.1)(b)(ii) relates to therapy that requires the daily consumption of a medical food or medical formula to limit intake of a particular compound to levels required for the proper development or functioning of the body. It is added to provide that time spent on administering such therapy includes the time spent on activities that are directly related to the determination of the amount of the compound that can be safely consumed.

In conjunction with the amendments to paragraph 118.3(1.1)(d) (described below), the existing rule that time spent administering therapy does not include time spent on activities related to a dietary or exercise restrictions or regime (even if these restrictions or regimes are a factor in determining the daily dosage of medication) will no longer be applicable in relation to therapy described in subparagraph (b)(ii).

Paragraph 118.3(1.1)(c) is amended to include two new subparagraphs.

New subparagraph 118.3(1.1)(c)(i) provides that, in the case of a child who is unable to independently perform the activities related to the administration of the therapy as a result of the child’s age, the time spent on administering therapy includes the time spent by another person to perform or supervise those activities for the child.
New subparagraph 118.3(1.1)(c)(ii) is added to provide that time spent on administering therapy, in the case of an individual who is unable to perform the activities related to the administration of the therapy because of the effects of an impairment or impairments in physical or mental functions, includes the time required to be spent by another person to assist the individual in performing those activities.

Paragraph 118.2(1.1)(d) provides a list of exclusions for time spent on certain activities that are not counted as time spent on administering therapy. Paragraph 118.3(1.1)(d) is amended to include five new subparagraphs.

New subparagraph 118.3(1.1)(d)(i) provides that time spent on administering therapy does not generally include time spent on activities related to dietary or exercise restrictions or regimes. This proscription does not extend to time spent on activities related to dietary or exercise restrictions or regimes that are directly related to the determination of the dosage of medication under new subparagraph 118.3(1.1)(b)(i), or the determination of the amount of the compound that can be safely consumed under new subparagraph 118.3(1.1)(b)(ii).

Consistent with the proscription in existing paragraph (d), new subparagraph 118.3(1.1)(d)(ii) provides that time spent on administering therapy does not include travel time.

New subparagraph 118.3(1.1)(d)(iii) provides that time spent on administering therapy does not generally include medical appointments. This proscription does not apply to time spent on medical appointments to receive therapy or to determine the daily dosage of medication, medical food or medical formula.

Consistent with the proscription in existing paragraph (d), new subparagraph 118.3(1.1)(d)(iv) provides that time spent on administering therapy does not include time spent on shopping for medication.

New subparagraph 118.3(1.1)(d)(v) provides that time spent on administering therapy does not generally include recuperation after therapy. This proscription does not apply to medically required recuperation.

The amendments to subsection 118.3(1.1) apply to the 2021 and subsequent taxation years in respect of certificates described in paragraphs 118.3(1)(a.2) or (a.3) of the Act that are filed with the Minister of National Revenue after royal assent to these amendments.

Clause 7

ITA
118.4(1)(c.1)

Nature of Impairment

Section 118.4 sets out circumstances in which an individual is considered to have a severe and prolonged impairment for the purposes of the disability tax credit under 118.3(1).

To be eligible for the disability tax credit, an individual must have a severe and prolonged impairment in physical or mental functions. For more detail, please see the commentary on subsection 118.3(1) above.

For the purpose of determining an individual's eligibility for the disability tax credit, paragraph 118.4(1)(c) provides the meaning of the concept of a "basic activity of daily living" in relation to an individual, including "mental functions necessary for everyday life" at subparagraph (i).

- Paragraph 118.4(1)(c.1) currently provides a list of mental functions necessary for everyday life: memory — which refers to the ability to remember the following: simple instructions; basic personal information such as name and address; or material of importance or interest,
- problem solving, goal-setting and judgement (taken together) — which refers to the ability to solve problems, set and keep goals, and make appropriate decisions and judgements, and
- adaptive functioning — which refers to refers to abilities related to self-care, health and safety, social skills and common, simple transactions.

Paragraph 118.4(1)(c.1) is amended to expand the list of mental functions necessary for everyday life to include

- attention,
- concentration,
- memory,
- judgement,
- perception of reality,
- problem solving,
- goal setting,
- regulation of behaviour and emotions,
- verbal and non-verbal comprehension, and
- adaptive functioning.

This amendment (including the separate consideration of problem solving, goal setting and judgement, which were previously required to be considered together) is intended to ensure that the eligibility criteria for the disability tax credit better articulate the range of functions necessary for everyday life. Consistent with the concept of a basic activity of daily living, the reference to goal setting is intended to capture short-term, daily goals rather than longer term life planning.

This amendment applies to the 2021 and subsequent taxation years in respect of certificates described in paragraphs 118.3(1)(a.2) or (a.3) of the Act that are filed with the Minister of National Revenue after royal assent to this amendment.

Clause 8

COVID-19 – additional deemed payment

ITA
122.5(3.001)

Subsection 122.5(3.001) provides assistance in relation to the COVID-19 pandemic for certain individuals and families through a special top-up payment under the Goods and Services Tax (GST) credit. This subsection is amended to address a technical issue in the provision.

This amendment is deemed to have come into effect on March 25, 2020.

Clause 9

Eligible individual

ITA
122.6

The definition "eligible individual" in section 122.6 describes certain requirements for an individual to be eligible for the Canada Child Benefit.

Paragraph (b) of this definition sets out the requirement that an individual be a parent of a qualified dependant. Paragraph (i) of this definition provides that an individual shall not fail to qualify as a parent solely because of the receipt of a social assistance payment made in respect of a child under a program of the Government of Canada or a government of a province. An individual will still have to meet all other eligibility requirements under section 122.6 in order to be eligible for the Canada Child Benefit.

Consequential on amendments to the *Children's Special Allowances Act* that recognize Indigenous governing bodies and their laws for the purposes of the Children's Special Allowance amounts, paragraph (i) is amended to provide that an individual shall not fail to qualify as a parent solely because of the receipt of a social assistance payment made in respect of a child under a program of an Indigenous governing body (as defined in the *Children's Special Allowances Act*).

This measure applies as of January 1, 2020.

Clause 10

Receipt of social assistance

ITA
122.7(1.2)

The definition “eligible individual” in subsection 122.7(1) is relevant in determining if an individual may claim the Canada Workers Benefit in a taxation year. The definition “eligible dependant” in that subsection is relevant in determining if a single individual may be eligible for the family Canada Workers Benefit amount.

An eligible individual includes an individual resident in Canada who was a parent of a child with whom the individual resides. An eligible dependant must be a child of an individual.

Subsection 122.7(1.2) provides that for the purposes of the definitions “eligible individual” and “eligible dependant” in subsection (1), an individual shall not fail to qualify as a parent solely because of the receipt of a social assistance payment made in respect of another individual under a program of the Government of Canada or a government of a province. This subsection does not apply if the amount is a special allowance under the *Children's Special Allowances Act* received in respect of a foster person.

Consequential on amendments to the *Children’s Special Allowances Act* that recognize Indigenous governing bodies and their laws for the purposes of the Children’s Special Allowance amounts, this subsection is amended to provide that an individual shall not fail to qualify as a parent solely because of the receipt of a social assistance payment made in respect of another individual under a program of an Indigenous governing body (as defined in the *Children’s Special Allowances Act*).

This measure applies as of January 1, 2020.

Clause 11

Climate Action Incentive

ITA
122.8

Section 122.8 provides the Climate Action Incentive (CAI) credit, which is a refundable tax credit for individuals in respect of certain amounts specified by the Minister of Finance for a province for a taxation year.

Section 122.8 is amended to change the delivery of CAI payments from a refundable credit claimed annually on personal income tax returns to quarterly payments made through the benefit system.

Definitions

ITA
122.8(1)

"eligible individual"

Currently, an "eligible individual" is an individual (other than a trust) who can claim the CAI credit in a taxation year under subsection (4) if certain conditions are met at the end of the taxation year.

To support the delivery of CAI payments quarterly through the benefit system, this definition is amended to provide that the determination of an individual's status as an eligible individual in relation to a month specified in subsection (4.2) for a taxation year is to be made before the specified month. This definition is also amended to increase the minimum age requirement under the rule to at least 19 years of age.

This amendment applies to payments made after June, 2022, in respect of the 2021 and subsequent taxation years.

"qualified dependant"

The definition of qualified dependant of an individual for a taxation year is relevant to the descriptions of B, C and D in the CAI credit formula in subsection (4). Status as a qualified dependant for a taxation year is currently determined as of the end of the taxation year.

To support the delivery of CAI payments quarterly through the benefit system, this definition is amended to provide that the determination of a person's status as a qualified dependant in relation to a month specified in subsection (4.2) for a taxation year is to be made at the beginning of the specified month. This definition is also amended to increase the maximum age restriction for qualified dependants to persons under the age of 19 years.

This amendment applies to payments made after June, 2022, in respect of the 2021 and subsequent taxation years.

"qualified relation"

A "qualified relation" of an individual for a taxation year is the person, if any, who, at the end of the taxation year, is the individual's cohabiting spouse or common-law partner. Qualified relations factor into the CAI credit formula in subsection (4) in the description of B.

To support the delivery of CAI payments quarterly through the benefit system, this definition is amended to provide that the determination of a person's status as a qualified relation of an individual in relation to a month specified in subsection (4.2) for a taxation year is to be made at the beginning of the specified month.

This amendment applies to payments made after June, 2022, in respect of the 2021 and subsequent taxation years.

Persons not eligible or qualified

ITA
122.8(2)

Subsection 122.8(2) currently provides that the CAI credit is not available in respect of certain individuals in relation to a taxation year. Subsection (2) is relevant for the definitions of “eligible individual”, “qualified dependant” and “qualified relation” in subsection (1).

To support the delivery of CAI payments quarterly through the benefit system, subsection (2) is amended to provide that the list of precluded individuals will be applied in relation to a month specified in subsection (4.2) for a taxation year. In addition, the rule that precludes a non-resident of Canada from accessing the CAI credit is amended to exclude a cohabiting spouse or common-law partner of a person deemed to be resident in Canada under subsection 250(1) throughout the taxation year that includes the first day of the specified month, if the spouse or partner was resident in Canada at any time before the specified month.

This amendment applies to payments made after June, 2022, in respect of the 2021 and subsequent taxation years.

Deemed payment on account of tax

ITA
122.8(4)

Subsection 122.8(4) currently provides for the calculation of the CAI credit for a taxation year. The amount of an individual's credit is determined by the formula in this subsection.

To support the delivery of CAI payments quarterly through the benefit system, subsection (4) is amended to stipulate that an amount determined under the formula will be deemed to have been paid during a month specified under subsection (4.2) for a taxation year. This subsection is also amended consequential on the changes to the definitions of “eligible individual”, “qualified dependant” and “qualified relation” in subsection (1), and to update the reference to residence in a census metropolitan area, which involve determinations which will also be made in relation to the specified month.

This amendment applies to payments made after June, 2022, in respect of the 2021 and subsequent taxation years.

Shared-custody parent

ITA
122.8(4.1)

Subsection 122.8(4) provides for the calculation of the CAI credit. To improve the distribution of the CAI for parents who share custody of a child, new subsection 122.8(4.1) modifies the calculation of the benefit for shared-custody parents such that both may be entitled to the benefit in the same month with respect to the same qualified dependant.

In this regard, new subsection 122.8(4.1) provides a formula for the computation of the credit if an eligible individual is a “shared-custody parent”, as that term is defined in section 122.6 (but with the words “qualified dependant” in that section having the meaning assigned by subsection 122.8(1)). If an eligible individual is a shared-custody parent of a qualified dependant at the beginning of a month specified under subsection 122.8(4.2), that parent will be entitled to one-half of the CAI credit with respect to that qualified dependant that the parent would have received if the parent were the only eligible individual of that qualified dependant.

Variable A in the formula in new subsection 122.8(4.1) represents the amount that the parent would be entitled to receive if the parent were the only eligible individual with respect to all of the qualified dependants of whom the parent is a shared-custody parent. Subparagraph (b)(ii) of the definition “eligible individual” in section 122.6 provides that a shared-custody parent of a qualified dependant can be an eligible individual in respect of the qualified dependant.

Variable B in the formula in new subsection 122.8(4.1) represents the amount that the parent would be entitled to receive if the parent were not an eligible individual with respect to any of the qualified dependants of whom the parent is a shared-custody parent. By determining the amount in variable B without reference to subparagraph (b)(ii) of the definition “eligible individual” in section 122.6, a shared-custody parent will not meet the definition of eligible individual in section 122.6 in respect of a qualified dependant of whom they are a shared-custody parent and, as a result, will not be an eligible individual in respect of the qualified dependant for the purposes of variable B.

This new subsection applies to payments made after June, 2022, in respect of the 2021 and subsequent taxation years.

Months specified

ITA
122.8(4.2)

New subsection 122.8(4.2) specifies the months in which the CAI credit is paid to an eligible individual for a year. To support the delivery of CAI payments quarterly through the benefit system, new subsection (4.2) stipulates that the months specified for a particular taxation year are April, July and October of the immediately following year, and January of the second following year.

This new subsection applies to payments made after June, 2022, in respect of the 2021 and subsequent taxation years.

Authority to specify amounts

ITA
122.8(5)

Subsection 122.8(5) provides the Minister of Finance with the authority to specify the amounts for a province for an eligible individual, a qualified relation and a qualified dependant.

To support the delivery of CAI payments quarterly through the benefit system, subsection (5) provides that the Minister of Finance may specify amounts for a province in relation to a month specified under subsection (4.2) for a taxation year.

Also, if the Minister of Finance does not specify a particular amount that is relevant for the purposes of this section, that particular amount is deemed to be nil for the purpose of applying this section. Therefore, if the Minister does not specify amounts in relation to a month specified for a taxation year for a particular province, then individuals in that province will not qualify for a CAI credit in respect of that month.

This amendment applies to payments made after June, 2022, in respect of the 2021 and subsequent taxation years.

Deemed rebate in respect of fuel charges

ITA
122.8(6)

Subsection 122.8(6) currently provides that the amount deemed by section 122.8 to have been paid on account of tax payable for a taxation year is deemed to have been paid in the year following the taxation year as a rebate in respect of charges levied under Part 1 of the *Greenhouse Gas Pollution Pricing Act*.

To support the delivery of CAI payments quarterly through the benefit system, subsection 122.8(6) is amended to stipulate that the amount deemed by subsection 122.8(4) to have been paid on account of tax payable during a month specified under subsection (4.2) for a taxation year will be deemed to have been paid during the specified month as a rebate in respect of charges levied under Part 1 of the *Greenhouse Gas Pollution Pricing Act* in respect of the relevant province.

This amendment applies to payments made after June, 2022, in respect of the 2021 and subsequent taxation years.

Only one eligible individual

ITA
122.8(7)

Subsection 122.8(7) provides that, where an individual is a qualified relation of another individual for a taxation year, only one individual may claim the CAI credit in respect of the individual for a taxation year.

Subsection (7) is amended to support the delivery of CAI payments quarterly through the benefit system. Specifically, if an individual is a qualified relation of another individual in relation to a month specified under subsection (4.2) for a taxation year, and both of those individuals would be, but for this subsection, eligible individuals in relation to the specified month, only the individual that the Minister designates is an eligible individual in relation to the specified month. This ensures that an individual and their cohabiting spouse or common-law partner cannot both receive the CAI credit in respect of a specified month.

This amendment applies to payments made after June, 2022, in respect of the 2021 and subsequent taxation years.

Exception — qualified dependant

ITA
122.8(8)

Subsection 122.8(8) stipulates who is eligible to receive the CAI credit in respect of a qualified dependant if more than one person would otherwise be eligible. Paragraph (a) allows those persons to agree as to which of them can receive the credit. If they do not agree, paragraph (b) permits the Minister of National Revenue to designate who is eligible to receive the credit.

Subsection (8) is amended concurrent with changes to the definition of “qualified dependant” in subsection (1) to support the delivery of CAI payments quarterly through the benefit system. Paragraph (a) is updated to allow persons to agree as to which of them can receive the credit in relation to a month specified under subsection (4.2).

Paragraph (b) is amended to provide that two parents may be eligible to collect a credit in respect of a qualified dependant in relation to a specified month if they are both eligible individuals of the qualified dependant at the beginning of the specified month. For the purposes of paragraph (b), eligible individual has the meaning assigned by section 122.6, except that the words “qualified dependant” in that definition have the meaning assigned by subsection 122.8(1). Therefore, two parents will be eligible individuals with respect to the qualified dependant in relation to a month only if both of the individuals are shared-custody parents of the qualified dependant.

In any other case, paragraph (c) permits the Minister of National Revenue to designate who is eligible to receive the credit.

This amendment applies to payments made after June, 2022, in respect of the 2021 and subsequent taxation years.

Notification to Minister

ITA
122.8(8.1)

Concurrent with changes to the definitions in subsection (1) to support the delivery of CAI payments quarterly through the benefit system, new subsection 122.8(8.1) requires that if a person ceases to be an eligible individual, the qualified relation of an eligible individual or an eligible individual’s qualified dependant (otherwise than because of attaining the age of 19 years), the person must notify the Minister of National Revenue of that fact before the end of the month following the month in which the event occurred.

Clause 12

ITA
125.2

New section 125.2 introduces the zero-emission technology manufacturing deduction, which provides a corporate tax rate reduction applicable to zero-emission technology manufacturing profits (as defined in new subsection 125.2(1)) for taxation years that begin after 2021 and before 2032. The low rate is provided in the form of a deduction from tax otherwise payable by the corporation.

Definitions

ITA
125.2(1)

New subsection (1) provides definitions. These defined terms are mostly relevant for computing the zero-emission technology manufacturing profits of a corporation for a taxation year (also defined under this section) and have the same meaning as in Part LII of the Regulations.

“zero-emission technology manufacturing profits”

Subsection (1) defines “zero-emission technology manufacturing profits” of a corporation for a taxation year as the amount determined by the formula:

A x B x C

Element A is the corporation's adjusted business income for the taxation year (which is defined in sections 5202 and 5203 of Part LII of the Regulations as, in general terms, the aggregate net income of the corporation for the year from all active businesses carried on in Canada, subject to a potential adjustment related to "resource profits").

In order to arrive at a corporation's zero-emission technology manufacturing profits for a taxation year, its adjusted business income (element A) is multiplied by element B, which is the proportion of the corporation's total labour and capital costs for the taxation year that is incurred in qualified zero-emission technology manufacturing activities. This proportion is obtained by dividing element D (which is the aggregate of its ZETM cost of capital and ZETM cost of labour (as defined in Part LII of the Regulations)) by element E (which is the total of its cost of capital and cost of labour (as defined in Part LII of the Regulations)).

Element C in effect reverses the proration in the formula if 90% or more of the corporation's total labour and capital costs for a taxation year is used in qualified zero-emission technology manufacturing activities. In this case, the corporation's zero-emission technology manufacturing profits for the taxation year is, in effect, deemed to equal its adjusted business income for the taxation year.

Zero-emission technology manufacturing

ITA
125.2(2)

New subsection (2) provides the formula for determining the amount of a corporation's zero-emission technology manufacturing deduction from tax otherwise payable for a taxation year.

The formula has two main parts. The first, represented by element A multiplied by element B, provides a rate reduction of 7.5 percentage points for zero-emission technology manufacturing profits that would otherwise be taxed at the 15% general corporate rate, reducing the rate by one half. This rate reduction (element A) applies in full for taxation years beginning after 2021 and before 2029. The amount of the rate reduction is gradually phased-out for taxation years after 2028.

Element B determines the amount of income that would otherwise be subject to the general corporate rate eligible for the rate reduction under this section.

This is the least of the amounts determined in paragraphs (a) to (c).

- Paragraph (a) of element B is the corporation's zero-emission technology manufacturing profits for the taxation year (as defined in subsection (1)). This paragraph ensures that the amount of general rate income for the taxation year eligible for the rate reduction does not exceed the amount of the corporation's zero-emission technology manufacturing profits for the taxation year.

- Paragraph (b) computes the maximum amount of general rate income eligible for the rate reduction. This is the amount by which the corporation's income, in excess of losses, from active businesses carried on in Canada for the taxation year, exceeds the amount of income of the corporation for that year that is subject to the small business rate. This net active business income determination is obtained by referencing the corporation's adjusted business income for the taxation year as defined in section 5202 in Part LII of the *Income Tax Regulations*. For the purpose of paragraph (b) only, any resource income-related adjustments under section 5203 of the *Income Tax Regulations* are disregarded when calculating adjusted business income.
- Paragraph (c) ensures that general rate income eligible for this rate reduction does not exceed the corporation's taxable income (incorporating certain carve-outs) for the taxation year. Specifically, taxable income for the taxation year for the purpose of this restriction excludes income for the year that is aggregate investment income, or that is active business income if a foreign tax credit is available in relation to foreign taxes on that income. In addition, if the corporation is a CCPC throughout the taxation year, income for the year subject to the small business deduction rate is also excluded.

The second part of the formula, represented by C multiplied by D, provides for a rate reduction of 4.5 percentage points for zero-emission technology manufacturing profits which would otherwise be taxed at the 9% small business deduction rate, reducing the rate by one-half.

Element C provides the amount of the rate reduction for income of a corporation for a taxation year that is subject to the small business deduction rate. For taxation years beginning after 2021 and before 2029, the reduction is 4.5 percentage points. The amount of this rate reduction is also phased-out for taxation years after 2028.

Element D determines the amount of income of a corporation for a taxation year subject to the small business deduction rate that is eligible for the rate reduction under this section. If the corporation is a Canadian-controlled private corporation throughout that year, this is the lesser of the amount determined in subparagraphs (a)(i) and (ii).

- Subparagraph (i) ensures that the amount of zero-emission technology manufacturing profits for the taxation year eligible for the small business income rate reduction of 4.5% does not exceed the amount of income for the year subject to the small business deduction rate.
- Subparagraph (ii) provides that the amount of income subject to the small business income rate reduction of 4.5% cannot exceed the corporation's zero-emission technology manufacturing profits for the taxation year, reduced to the extent that those profits have already been included in element B for purposes of computing the rate reduction for income otherwise subject to the general rate.

For corporations ineligible for the small business deduction (i.e., corporations that are not Canadian-controlled private corporations throughout the taxation year), paragraph (b) provides that element D is nil.

For the purposes of element D, it is unnecessary to limit the amount of income subject to the small business deduction rate by the corporation's taxable income for the taxation year given such a restriction exists in paragraph 125(1)(b) of the Act.

The combined application of elements B and D result in a corporation's zero-emission technology manufacturing profits for the taxation year being first applied to reduce the rate of a corporation's general rate income and then, to the extent of any remaining amount, being applied to reduce the rate of the corporation's small business rate income for that year. For any given amount of small business deduction claimed, this ordering provides the more advantageous tax result where the taxpayer has a non-ZETM source of active business income that may benefit from the small business deduction.

These amendments come into force on January 1, 2022.

Clause 13

COVID-19 — production commencement time

ITA
125.4 (1.1)

Section 125.4 sets out the rules that apply for the purpose of computing the Canadian film or video production tax credit ("CPTC"). Generally, this tax credit is available at a rate of 25% of qualified labour expenditures incurred by a qualified corporation for a production certified by the Minister of Canadian Heritage to be a Canadian film or video production.

For the purpose of the definition "labour expenditure" in subsection 125.4(1), in order to be eligible for the CPTC, expenditures in respect of a film or video production must be incurred by a qualified corporation after the production commencement time. The definition "production commencement time" describes the time that is the latest of the following:

- The time at which a qualified corporation or its parent company first incurs development labour costs for the development of property of the corporation that is script material on which a Canadian film or video production is based.
- The first time at which the qualified corporation or its parent company acquires a right in respect of the story that is the basis of the final script. Such rights might include a published literary work, play or screenplay.
- Two years before the date on which principal photography of the production begins.

In response to the COVID-19 pandemic, new subsection 125.4(1.1) extends the two-year period that precedes the date on which principal photography of the production begins, in the definition of “production commencement time”, to a three-year period.

This extension applies to corporations in respect of film or video productions that incurred labour expenditure in taxation years ending in 2020 or 2021.

Clause 14

Extension of time by Minister

ITA
125.7(16)

Since the inception of the Canada Emergency Wage Subsidy, Canada Emergency Rent Subsidy and Canada Recovery Hiring Program, applications under these programs have been subject to fixed a deadline. The fixed deadline was instituted in recognition that these subsidies were to provide emergency financial support to businesses in the face of the COVID-19 pandemic.

New subsection 125.7(16) would provide the Canada Revenue Agency with the specific discretion to accept late filed subsidy applications on a case-by-case basis in exceptional circumstances, consistent with the more general existing fairness rules.

These changes will apply retroactively to April 11, 2020, to coincide with the initial commencement date for the Canada Emergency Wage Subsidy (being the first of the three subsidy programs to be introduced).

Clause 15

Earned Income

ITA
146(1)

Section 146 provides rules relating to registered retirement savings plans (RRSPs) and subsection 146(1) defines a number of terms that apply for the purposes of these rules. The definition “earned income” is relevant in determining the maximum tax-deductible contributions that an individual may make to their RRSP for a year (i.e., the individual’s contribution limit).

New paragraph (b.01) is added to the definition “earned income” to allow income received in connection with a program that consists primarily of research and does not lead to a college diploma or university degree (and thus does not qualify for the scholarship exemption) to be treated as earned income. As a result, postdoctoral fellowship income will qualify as earned income for the purpose of determining the amount that an individual may contribute to their RRSP.

This amendment applies to 2021 and subsequent taxation years. For example, postdoctoral fellowship income received in 2021 will be included in earned income for the individual's 2021 taxation year, which will be relevant in the determination of the individual's RRSP contribution limit for 2022.

The amendment also applies to postdoctoral fellowship income received in the 2011 to 2020 taxation years if, before 2026, the individual files an election with the Minister of National Revenue for an adjustment to their "earned income". The additional earned income will increase the individual's RRSP contribution limit after the date that the election is filed.

Clause 16

Definitions

ITA
149.1(1)

Section 149.1 provides the rules that must be met for charities to obtain and keep registered status. Subsection 149.1(1) contains definitions that are relevant for the purposes of sections 149.1 and 149.2 and Part V of the Act.

Subsection 149.1(1) of the Act is amended to add the new definitions "grantee organization" and "qualifying disbursement", with consequential amendments to the definitions "charitable organization" and "charitable purpose".

"charitable organization"

The definition "charitable organization" sets out the conditions that must be met for an organization to be a charitable organization. Paragraph (a.1) of the definition requires that a charitable organization must devote all of its resources to charitable activities carried on by the organization itself. This paragraph is amended to permit a charitable organization to devote resources to the making of disbursements to grantee organizations (i.e. entities or natural persons other than qualified donees) in circumstances which satisfy the conditions outlined in subparagraphs (b)(i) to (iii) of the new definition "qualifying disbursement". This amendment also continues to allow charitable organizations to make gifts to qualifying donees (subject to the limit outlined in subsection 149.1(6.001)), which was previously permitted due to subsection 149.1(6). See the commentary on the amendments to subsection 149.1(6).

"charitable purposes"

The definition “charitable purposes” provides that charitable purposes include the disbursement of funds to qualified donees. The definition is amended to provide that charitable purposes includes making qualifying disbursements. This amendment expands the list of charitable purposes to include disbursements to grantee organizations (i.e. entities and natural persons other than qualified donees) in circumstances which satisfy the conditions outlined in subparagraphs (b)(i) to (iii) of the new definition “qualifying disbursement”.

“grantee organization”

New definition “grantee organization” is a natural person or entity, other than a qualified donee. Registered charities are permitted to make disbursements to grantee organizations in circumstances which satisfy the conditions outlined in subparagraphs (b)(i) to (iii) of the new definition “qualifying disbursement”.

“qualifying disbursement”

Subject to certain restrictions, charities are generally permitted under the Act to make disbursements to qualified donees. New definition “qualifying disbursement” and related amendments permit charities to make disbursements to grantee organizations (i.e. entities and natural persons other than qualified donees) if certain conditions are satisfied.

For the purposes of this definition, any provision of resources of the charity is a disbursement, including by way of gift or otherwise making resources available. This allows charities to provide resources or support to grantee organizations through means other than solely making monetary gifts. For example, a charity may use its employees to support of a grantee organization or provide office space at no charge.

Paragraph (a) of the definition “qualifying disbursement” provides that disbursements to qualified donees are generally qualifying disbursements. Together with new subsection (6.001) (see commentary on that subsection), paragraph (a) of the definition continues the existing treatment of disbursements to qualified donees. Charitable organizations are generally restricted from disbursing more than 50% of their income to qualified donees.

Paragraph (b) of the definition provides that disbursements to a grantee organization are qualifying disbursements if they are in furtherance of a charitable purpose (determined without reference to the definition of charitable purposes in subsection (1)) of the charity, the charity ensures that the disbursements are exclusively used to advance charitable activities in furtherance of a charitable purpose of the charity and the disbursement meets prescribed conditions. (See commentary on new section 3703 of the *Income Tax Regulations.*)

These definitions come into force on Royal Assent.

Revocation of registration of charitable organization

ITA
149.1(2)

Subsection 149.1(2) describes reasons for which the Minister of National Revenue may revoke the registration of a charitable organization.

Paragraph (2)(b) provides that such registration may be revoked where the organization fails to expend in a year an amount equal to its disbursement quota on its charitable activities or gifts to qualified donees. Paragraph (2)(b) is amended, concurrently with the introduction of the definition “qualifying disbursement” in subsection (1) (see commentary in that subsection). When the circumstances outlined in subparagraphs (b)(i) to (iii) of that definition are met, gifts that are qualifying disbursements to grantee organizations (i.e. entities or natural persons other than qualified donees) are included in consideration of a charity’s status in meeting its disbursement quota for the year.
Paragraph (2)(c) provides for the revocation of a charitable organization’s registration if it makes gifts (other than gifts made in the course of its charitable activities) to persons or entities that are not qualified donees. Paragraph (2)(c) is amended to allow charitable organizations to make disbursements to grantee organizations in circumstances which satisfy the conditions outlined in subparagraphs (b)(i) to (iii) of the definition “qualifying disbursement” in subsection (1) (see commentary in that subsection).

These amendments come into force on Royal Assent.

Revocation of registration of public foundation

ITA
149.1(3)

Subsection 149.1(3) describes reasons for which the Minister of National Revenue may revoke the registration of a public foundation.

Paragraph (3)(b) provides that such registration may be revoked where the foundation fails to expend an amount equal to its disbursement quota on charitable activities or gifts to qualified donees. Paragraph (3)(b) is amended, concurrently with the introduction of the definition “qualifying disbursement” in subsection (1) (see commentary in that subsection). When the circumstances outlined in subparagraphs (b)(i) to (iii) of that definition are met, gifts that are qualifying disbursements to grantee organizations (i.e. entities or natural persons other than qualified donees) are included in consideration of a charity’s status in meeting its disbursement quota for the year.
Paragraph (3)(b.1) provides for the revocation of a public foundation’s registration if it makes gifts (other than gifts made in the course of its charitable activities) to persons or entities that are not qualified donees. Paragraph (3)(b.1) is amended to allow public foundations to make disbursements to grantee organizations in circumstances which satisfy the conditions outlined in subparagraphs (b)(i) to (iii) of the definition “qualifying disbursement” in subsection (1) (see commentary in that subsection).

These amendments come into force on Royal Assent.

Revocation of registration of private foundation

ITA
149.1(4)

Subsection 149.1(4) describes reasons for which the Minister of National Revenue may revoke the registration of a private foundation.

Paragraph (4)(b) provides that such registration may be revoked where the foundation fails to expend an amount equal to its disbursement quota on charitable activities or gifts to qualified donees. Paragraph (4)(b) is amended, concurrently with the introduction of the definition “qualifying disbursement” in subsection (1) (see commentary in that subsection). When the circumstances outlined in subparagraphs (b)(i) to (iii) of that definition are met, gifts that are qualifying disbursements to grantee organizations (i.e. entities or natural persons other than qualified donees) are included in consideration of a charity’s status in meeting its disbursement quota for the year.
Paragraph (4)(b.1) provides for the revocation of a private foundation’s registration if it makes gifts (other than gifts made in the course of its charitable activities) to persons or entities that are not qualified donees. Paragraph (4)(b.1) is amended to allow private foundations to make disbursements to grantee organizations in circumstances which satisfy the conditions outlined in subparagraphs (b)(i) to (iii) of the definition “qualifying disbursement” in subsection (1) (see commentary in that subsection).

These amendments come into force on Royal Assent.

Revocation of registration of registered charity

ITA
149.1(4.1)(d)

Subsection 149.1(4.1) allows the Minister of National Revenue to revoke the registration of a registered charity in certain circumstances.

Paragraph 149.1(4.1)(d) may apply where an amount is transferred by way of gift between registered charities who do not deal at arm's length, unless the donor charity has indicated in its annual information return that the gift is a “designated gift”, as defined in subsection 149.1(1). Paragraph (d) provides that the Minister may revoke the recipient charity's registration if it does not spend, in the taxation year in which the gift was received or in the subsequent taxation year, the full amount transferred. That amount must be expended, in addition to the recipient charity's disbursement quota for those two years, on its own charitable activities or by way of gifts to qualified donees with which it deals at arm's length.

Consequential on the introduction of the definition “qualifying disbursement” in subsection (1) and related amendments, paragraph 149.1(4.1)(d) is amended to provide that the amount that must be expended by the recipient charity may be satisfied by making gifts that are qualifying disbursements to recipients with which the charity deals at arm’s length. Qualifying disbursements include disbursements to grantee organizations (i.e. entities or natural persons other than qualified donees) that meet the conditions outlined in subparagraphs (b)(i) to (iii) of the definition “qualifying disbursement” in subsection (1).

This amendment comes into force on Royal Assent.

Devoting resources to charitable activity

ITA
149.1(6)

The definition “charitable organization” in subsection 149.1(1) requires a charitable organization to devote all of its resources to charitable activities carried on by the organization itself. Subsection 149.1(6) provides that to the extent that a charitable organization carries on a related business and, subject to restrictions, make gifts to qualified donees, the charitable organization is considered to be devoting its resources to charitable activities carried on by the organization itself.

Consequential on the introduction of the definition “qualifying disbursement” in subsection (1) and related amendments (including the amendment to the definition of “charitable organization”), subsection (6) is amended to remove reference to the making of gifts to qualified donees. The restriction in relation to gifts to qualified donees is maintained under new subsection (6.001). (See commentary in subsection (6.001).)

This amendment comes into force on Royal Assent.

Qualifying disbursement limit – charitable organizations

ITA
149.1(6.001)

Amendments to introduce the definition “qualifying disbursement” in subsection (1) (see commentary in that subsection) contemplate disbursements to qualified donees and grantee organizations made by a charitable organization, subject to certain restrictions. In conjunction with the introduction of this definition and amendments to subsection (6), new subsection (6.001) is introduced to maintain the existing restriction on gifts from charitable organizations to qualified donees. Disbursements by way of gift to qualified donees are not considered qualifying disbursements if in excess of 50% of a charitable organization’s income. This restriction does not apply to disbursements to associated charities designated by the Minister.

This subsection comes into force on Royal Assent.

Deemed charitable activity

ITA
149.1(10)

The definition “charitable organization” in subsection 149.1(1) requires an organization to devote all its resources to charitable activities carried on by the organization itself. Subsection 149.1(10) provides that when a charitable organization pays an amount that is not out of the organization's income to a qualified donee, the charitable organization will be considered to be devoting its resources to charitable activities carried on by it. Consequential to new definition “qualifying disbursement” and amendments to the definition “charitable organization”, subsection (10) is no longer necessary to permit a charitable organization to pay an amount that is not out of the organization's income to a qualified donee and is repealed.

The repeal of subsection (10) comes into force on Royal Assent.

Rule regarding disbursement excess

ITA
149.1(20)

Subsection 149.1(20) allows a registered charity to expend a disbursement excess (as defined in subsection 149.1(21)) in a year and to include that excess in the computation of amounts expended on charitable activities and as gifts to qualified donees for the immediately preceding and up to five subsequent taxation years.
New definition “qualifying disbursement” in subsection 149.1(1), and related amendments, permit charities to make disbursements to both qualified donees and, if certain conditions are met, grantee organizations (i.e. entities or natural persons other than qualified donees). Consequential to these amendments, and in conjunction with the amendment to subsection (21), subsection (20) is amended to include gifts that are qualifying disbursements of a charity in the computation of amounts expended.

This amendment comes into force on Royal Assent.

Definition of *disbursement excess*

ITA
149.1(21)

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

New definition “qualifying disbursement” in subsection 149.1(1) and related amendments permit charities to make disbursements to both qualified donees and, if certain conditions are met, grantee organizations (i.e. entities or natural persons other than qualified donees). Consequential to these amendments, and in conjunction with the amendment to subsection (20), subsection (21) is amended to include gifts that are qualifying disbursements in the computation of the disbursement excess.

This amendment comes into force on Royal Assent.

Clause 17

Provisions applicable
ITA
152(1.2)(d)

Subsection 152(1.2) generally provides for the application of paragraphs 56(1)(l) and 60(o) and Divisions I and J of Part I of the Act as they relate to assessments and to various determinations and redeterminations made under Part I of the Act. Exceptions are made as to how certain provisions in the Act apply to certain of those determinations and redeterminations.

Paragraph (d) of this subsection is relevant for purposes of the GST/HST Credit under section 122.5. Paragraph (d) provides that where the Minister determines the amount deemed by subsection 122.5(3) to have been paid by an individual for a taxation year to be nil, the Minister is not required to send the individual a notice of determination unless the individual requests a notice of determination from the Minister.

Paragraph (d) is amended consequential on amendments to section 122.8 of the Act to deliver the Climate Action Incentive through quarterly payments. Consistent with treatment of the GST/HST Credit, where the Minister determines the amount deemed by subsection 122.8(4) to have been paid by an individual for a taxation year to be nil, the Minister is not required to send the individual a notice of determination unless the individual requests a notice of determination from the Minister.

This amendment applies to payments made after June 2022, in respect of the 2021 and subsequent taxation years.

Clause 18

Where excess refunded

ITA
160.1(1)(b)

Subsection 160.1(1) provides for the recovery of an amount refunded to a taxpayer under the Act in excess of the amount to which the taxpayer was entitled.

Paragraph 160.1(1) (b) provides that interest is to be paid by the taxpayer on the excess amount recovered at the rate prescribed for the purposes of subsection 161(1), except that no interest is to be paid on the portion of the excess amount that represents a repayment of the GST/HST Credit (GSTC) under section 122.5 or the Canada Child Benefit (CCB) under section 122.61.

Paragraph 160.1(1)(b) is amended consequential on amendments to section 122.8 of the Act to deliver the Climate Action Incentive through quarterly payments. Consistent with treatment of the GSTC and CCB, paragraph (b) is amended to provide that no interest is charged on any excess portion of a refund that represents a repayment of the Climate Action Incentive paid to a taxpayer under section 122.8.

This amendment applies to payments made after June 2022, in respect of the 2021 and subsequent taxation years.

Liability for refund – Climate Action Incentive

ITA
160.1(1.2)

New subsection 160.1(1.2) provides that, where a person is a qualified relation (that is, a cohabiting spouse or common-law partner) of an individual who is a Climate Action Incentive (CAI) recipient, both the person and the individual are jointly and severally liable for any excess CAI paid or credited to the individual. This subsection is enacted consequential on amendments to section 122.8 to deliver the CAI through quarterly payments, and to treat the CAI consistent with the GST/HST Credit under subsection 160.1(1.1).

New subsection 160.1(1.2) applies to payments made after June 2022, in respect of the 2021 and subsequent taxation years.

Liability under other provisions

ITA
160.1(2)

Subsection 160.1(2) provides that the joint and several or solidary treatment under subsection (1.1) of a person’s GST/HST Credit does not limit the person’s liability under any other provision of the Act. Subsection (2) is amended consequential on amendments to section 122.8 to deliver the Climate Action Incentive (CAI) through quarterly payments and to provide the CAI with treatment consistent with that of the GST/HST Credit under subsection (1.1). Subsection (2) is amended to provide that the joint and several or solidary treatment under subsection (1.2) of a person’s CAI does not limit the person’s liability under any other provision of the Act.

This amendment applies to payments made after June 2022 in respect of the 2021 and subsequent taxation years.

Liability under other provisions

ITA
160.1(3)

Subsection 160.1(3) allows the Minister of National Revenue to assess a taxpayer in respect of excess refunds and overpayments for which the taxpayer is jointly and severally liable under subsection 160.1(1), (1.1), (2.1) or (2.2). Such an assessment is subject to interest, except that no interest is payable to the extent that the excess refund is attributable to the overpayment of a GST/HST Credit (GSTC) or Canada Child Benefit (CCB).

Subsection (3) is amended consequential on amendments to section 122.8 to deliver the Climate Action Incentive through quarterly payments. Consistent with treatment of the GSTC and CCB, subsection (3) is amended by adding a reference to new subsection 160.1(1.2), so that no interest is payable to the extent that the excess refund is attributable to the overpayment of the Climate Action Incentive under section 122.8. This amendment applies to payments made after June 2022 in respect of the 2021 and subsequent taxation years.

Clause 19

False statements or omissions

ITA
163(2)(c.4)

Subsection 163(2) imposes a penalty where a taxpayer knowingly, or in circumstances amounting to gross negligence, participates in or makes a false statement for the purposes of the Act. The penalty is determined by reference to the understatement of tax or the overstatement of amounts deemed to be paid on account of tax. Paragraph 163(2)(c.4) extends the penalty to apply where false statements or omissions are made in respect of the Climate Action Incentive (CAI) in section 122.8. Paragraph (c.4) is amended, consequential on amendments to section 122.8 to deliver the CAI through quarterly payments, to recognize that the CAI is paid in relation to specified months of the year, rather than annually.

This amendment applies to payments made after June 2022 in respect of the 2021 and subsequent taxation years.

Clause 20

Application respecting refunds – Climate Action Incentive

ITA
164(2.21)

Subsection 164(2) provides that, where a taxpayer is liable or about to become liable for other income tax payments, the Minister may apply the amount of an overpayment to the other tax liability rather than make a refund. New subsection 164(2.21) is enacted consequential on amendments to section 122.8 to deliver the Climate Action Incentive (CAI) through quarterly payments, and to provide CAI payments with treatment consistent with that of the GST/HST Credit under subsection (2.1).

Subsection (2.21) provides that where the CAI otherwise payable in respect of a given month specified for that purpose is used in whole or in part to reduce a tax liability, when the applicable return is filed on time, the offset occurs on the day the amount would have been paid to the individual if the offset had not occurred. When the individual's return for the year is not filed on time, the offset occurs on the day the amount is actually applied.

New subsection 164(2.21) applies to payments made after June 2022 in respect of the 2021 and subsequent taxation years.

Interest on refunds and repayments

ITA
164(3)

Subsection 164(3) provides for the payment of interest on tax refunds, other than any portion of a refund that arises in relation to the GST/HST Credit, Canada Child Benefit or COVID-19 emergency subsidies provided under section 125.7. Subsection (3) is amended consequential on amendments to section 122.8 to deliver the Climate Action Incentive (CAI) through quarterly payments. CAI payments are added to the list of amounts in subsection (3) in relation to which the payment of interest will not be made.

This amendment applies to payments made after June 2022 in respect of the 2021 and subsequent taxation years.

Clause 21

Notice of intention to revoke registration

ITA
168(1)(f)

Subsection 168(1) describes the circumstances under which the Minister of National Revenue may give notice of the Minister's intention to revoke the registration of a registered charity, registered Canadian amateur athletic association or registered journalism organization.

To prevent organizations from acting as conduits in the making of a directed gift, paragraph (f) provides that the registration of a registered Canadian amateur athletic association or registered journalism organization may be revoked if it accepts a gift which was expressly or implicitly conditional on making a gift to another person, club, society, association or organization.

Paragraph (f) is amended to extend the application of paragraph (f) to registered charities. Paragraph (f) is also amended to exempt gifts accepted on condition of making a gift to a qualified donee, but not gifts that are accepted on condition of making disbursements to grantee organizations (i.e. entities or natural persons other than qualified donees).

These amendments come into force on Royal Assent.

Clause 22

Winding-up period

ITA
188(1.2)

Subsection 168(3.1) provides for the automatic revocation of the registration of a qualified donee (which includes registered charities) upon it becoming a “listed terrorist entity” (as defined in subsection 149.1(1)).

Subsection 188(1.1) imposes a tax payable in respect of the revocation of the charity's registration.

Subsection 188(1.2) applies for the purpose of calculating the revocation tax under subsection 188(1.1), in respect of certificates issued under the *Charities Registration (Security Information) Act* and notices of intention to revoke the registration of a charity that are issued by the Minister of National Revenue.

Subsection 188(1.2) is amended to also apply in respect of an entity that becomes a “listed terrorist entity”. It is also restructured to improve readability.

This amendment comes into force on June 29, 2021.

Clause 23

Meaning of undue benefits

ITA
188.1(5)(c)

Subsection 188.1(5) provides that an undue benefit conferred on a person includes a disbursement by way of a gift (other than a gift to a qualified donee).

New definition “qualifying disbursement” in subsection 149.1(1), and related amendments, permit charities to make disbursements to both qualified donees and, if certain conditions are met, grantee organizations (i.e. entities or natural persons other than qualified donees). Paragraph 188.1(5)(c) is amended to provide that a gift or benefit that is a qualifying disbursement is not an undue benefit.

This amendment comes into force on Royal Assent.

Gifts not at arm’s length

ITA
188.1(12)

Subsection 188.1(12) applies in situations where an amount is transferred between non-arm's length charities by way of a gift, other than a designated gift (as defined in subsection 149.1(1)). The recipient charity is liable to a penalty if it fails to spend, in the taxation year in which the gift was received or in the subsequent taxation year, the full amount transferred. That amount must be expended, in addition to the recipient charity's disbursement quota for those two years, on its own charitable activities or by way of gifts to qualified donees with which it deals at arm's length.

New definition “qualifying disbursement” in subsection 149.1(1) and related amendments permit charities to make disbursements to both qualified donees and, if certain conditions are met, grantee organizations (i.e. entities or natural persons other than qualified donees). Consequential to these amendments, paragraph 188.1(12) is amended to provide that the amount that must be expended by the recipient charity may be satisfied by making qualifying disbursements to both qualified donees and grantee organizations with which the charity deals at arm’s length.

This amendment comes into force on Royal Assent.

Clause 24

Where taxpayer information may be disclosed

ITA
241(4)(d)(xix)

Subsection 241(4) authorizes the communication of taxpayer information obtained under the Act to specified persons for specific purposes. New subparagraph 241(4)(d)(xix) is added so that taxpayer information may be provided to an official of the CRA solely for the purpose of enabling the official to collect amounts owing to Her Majesty in right of Canada under the Canada Emergency Business Account (CEBA) program established by

Export Development Canada. This amendment will enable the CRA to provide collections services in respect of CEBA amounts owing, consistent with the CRA's involvement in collecting certain other amounts owing to Her Majesty in right of Canada under subparagraph (xviii). This amendment is similar to consequential amendments being made to Part IX of the *Excise Tax Act* (in relation to the Goods and Services Tax/Harmonized Sales Tax) and the *Excise Act, 2001* (in relation to excise duties on tobacco, cannabis and alcohol products).

This amendment comes into force on royal assent.

Amendments to the *Excise Tax Act* ("ETA")

Clause 25

Disclosure of personal information

ETA
295(5)

Subsection 295(5) of the *Excise Tax Act* authorizes the communication of confidential information obtained under the *Excise Tax Act* to specified persons for specific purposes. New subparagraph 295(5)(d)(x) is added so that confidential information may be provided to an official of the CRA solely for the purpose of enabling the official to collect amounts owing to Her Majesty in right of Canada under the Canada Emergency Business Account (CEBA) program established by Export Development Canada. This amendment will enable the CRA to provide collections services in respect of CEBA amounts owing, consistent with the CRA's involvement in collecting certain other amounts owing to Her Majesty in right of Canada under subparagraph 295(5)(d)(ix). This amendment is similar to consequential amendments being made to Part XV of the ITA (in relation to income tax) and the *Excise Act, 2001* (in relation to excise duties on tobacco, cannabis and alcohol products).

This amendment comes into force on royal assent.

Amendments to the *Children's Special Allowances Act* (the "CSA")

Clause 26

Indigenous governing body

CSA
2

The children's special allowance is generally paid to provincial and territorial child protection agencies to assist with the costs of caring for a child under the care of a child protection agency. The current allowance is equivalent to the maximum benefit under the existing Canada Child Benefit.

Section 2 contains definitions that apply for purposes of the CSA.

Section 2 is amended to introduce the definition “Indigenous governing body” as part of the expansion of the scope of the children’s special allowance to cover children under the care of an Indigenous governing body or a child protection agency established under the laws of an Indigenous governing body.

An “Indigenous governing body” is defined, in part, with reference to definitions and concepts in *An Act respecting First Nations, Inuit and Métis children, youth and families*. It means a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the Constitution and that:

- has given notice to the federal government and the government of each province in which the Indigenous group, community or people is located that it intends to exercise its legislative authority in relation to child and family services;
- has requested that the federal government and the government of each province in which the Indigenous group, community or people is located enter into a coordination agreement with it; or
- meets conditions prescribed under the *Children’s Special Allowance Regulations.*

This measure applies as of January 1, 2020.

Clause 27

Monthly special allowance

CSA
3(1)

Subsection 3(1) describes the children in respect of whom a special allowance is paid. Generally, these are children who are maintained by a department or agency of the government of Canada or a province.

Subsection (1) is amended to include children maintained by an Indigenous governing body or department or agency of an Indigenous governing body.

This measure applies as of January 1, 2020.

Clause 28

Application for special allowance

CSA
4(1)(a)

Paragraph 4(1)(a) provides that a children’s special allowance is not payable unless an application in prescribed form has been made by the department, agency or institution that maintains the child.

Paragraph (a) is amended to include an Indigenous governing body within the list of entities that must apply in prescribed form for the children’s special allowance.
This measure applies as of January 1, 2020.

No allowance payable

CSA
4(3)

Subsection 4(3) provides that the children’s special allowance is not payable in respect of a child in the month in which the child commences to be maintained by a department, agency or institution.

Subsection (3) is amended to include an Indigenous governing body within the list of entities for which no children’s special allowance is payable in respect of a child in the first month the child is maintained by the entity.

This measure applies as of January 1, 2020.

When special allowance ceases

CSA
4(4)(a)

Paragraph 4(4)(a) provides that the children’s special allowance in respect of a child is not payable in the month in which the child ceases to be maintained by a department, agency or institution.

Paragraph (a) is amended to include an Indigenous governing body within the list of entities for which no children’s special allowance in respect of a child is payable in the month the child ceases to be maintained by the entity.

This measure applies as of January 1, 2020.

Clause 29

Recipient of special allowance

CSA

5

Section 5 provides that where a children’s special allowance payment has been approved in respect of a child, the payment is to be made to the department, agency or institution that maintains the child or to a foster parent.

Section 5 is amended to include an Indigenous governing body that maintains the child within the list of entities to which a children’s special allowance is to be paid.

This measure applies as of January 1, 2020.

Report to be made

CSA
6

Section 6 provides that where a children’s special allowance in respect of a child has ceased to be payable because the child has ceased to reside with a department, agency or institution, has ceased to be a resident of Canada or has died, the Chief Executive Officer of the respective department, agency or institution that had maintained the child must notify the Canada Revenue Agency in the prescribed form and manner.

Section 6 is amended to include the Chief Executive Officer of an Indigenous governing body that had maintained the child within the list of parties that must notify the Canada Revenue Agency.

This measure applies as of January 1, 2020.

Clause 30

Return of special allowance

CSA
9(1)

Subsection 9(1) provides that where a person, department, agency or institution receives a children’s special allowance payment to which they were not entitled, the respective person, department agency or institution must repay the amount.

Subsection (1) of the English version of the CSA is amended to include an Indigenous governing body within the list of parties that must repay a children’s special allowance payment to which it was not entitled. No corresponding amendment is required in the French version of the CSA because subsection (1) is already sufficiently broad to address this scenario.

This measure applies as of January 1, 2020.

Recovery of amount of payment

CSA
9(2)

Subsection 9(2) provides that where a person, department, agency or institution receives a children’s special allowance payment to which they were not entitled, the amount is a debt due to the Crown.

Subsection (2) of the English version of the CSA is amended to include an Indigenous governing body within the list of parties for which a children’s special allowance payment received to which the party was not entitled becomes a debt due to the Crown. No corresponding amendment is required in the French version of the CSA because subsection (1) is already sufficiently broad to address this scenario.

This measure applies as of January 1, 2020.

Deduction from subsequent special allowance

CSA
9(3)

Subsection 9(3) provides that where a person, department, agency or institution receives a children’s special allowance payment to which they were not entitled, the Crown may offset this amount against any subsequent children’s special allowance payment to which the person, department, agency or institution becomes entitled.

Subsection (3) is amended to include an Indigenous governing body that receives a children’s special allowance payment to which they were not entitled within the list of parties for which an unentitled amount may be offset against any subsequent children’s special allowance payment.

This measure applies as of January 1, 2020.

Clause 31

Agreements for exchange of information

CSA
11

Section 11 provides that the Canada Revenue Agency may enter into an agreement with the government of any province for the purpose of obtaining or providing information in connection with the administration or enforcement of the *Children’s Special Allowances Act* or its regulations. The Canada Revenue Agency may also provide information to the government of a province for the purpose of the administration of a social program, income assistance program or health insurance program in the province.

Section 11 is amended to provide that the Canada Revenue Agency may also enter into an information sharing agreement with, and provide information to, an Indigenous governing body for similar purposes.

This measure applies as of January 1, 2020.

Clause 32

Regulations

CSA
13(a)

Paragraph 13(a) provides that the Governor in Council may make regulations providing for the suspension of payment of a special allowance during any investigation respecting the eligibility of a department, agency or institution to receive the special allowance.

Paragraph (a) of the English version of the CSA is amended to extend this regulatory authority to the Governor in Council during any investigation respecting the eligibility of an Indigenous governing body to receive the special allowance. No corresponding amendment is required in the French version of the CSA because paragraph (a) is already sufficiently broad to address this scenario.

This measure applies as of January 1, 2020.

CSA
13(c)

Paragraph 13(c) provides that the Governor in Council may make regulations providing for the circumstances in which a child shall be considered to be maintained by a department, agency or institution.

Paragraph (c) is amended to extend this regulatory authority to the Governor in Council providing for the circumstances in which a child shall be considered to be maintained by an Indigenous governing body.

This measure applies as of January 1, 2020.

Amendments to the *Excise Act, 2001* ("EA, 2001")

Clause 33

Disclosure of personal information

EA, 2001
211(6)

Subsection 211(6) of the *Excise Act, 2001* authorizes the communication of confidential information obtained under the *Excise Act, 2001* to specified persons for specific purposes. New subparagraph 211(6)(e)(xi) is added so that confidential information may be provided to an official of the CRA solely for the purpose of enabling the official to collect amounts owing to Her Majesty in right of Canada under the Canada Emergency Business Account (CEBA) program established by Export Development Canada. This amendment will enable the CRA to provide collections services in respect of CEBA amounts owing, consistent with the CRA's involvement in collecting certain other amounts owing to Her Majesty in right of Canada under subparagraph 211(6)(e)(ix). This amendment is similar to consequential amendments being made to Part XV of the ITA (in relation to income tax) and Part IX of the *Excise Tax Act* (in relation to the Goods and Services Tax/Harmonized Sales Tax).

This amendment comes into force on royal assent.

Amendments to the *Income Tax Regulations* ("Regulations" or "ITR")

Clause 34

Capital cost allowance

ITR
1100

Capital cost allowance (CCA) is a deduction for income tax purposes that recognizes the depreciation of capital property. The CCA rate for an asset determines the portion of the cost of the asset that can be deducted each year (generally on a declining-balance basis). CCA rates are generally intended to reflect the useful life of capital property. The deduction for CCA is based on the principle that depreciable capital assets are not consumed in the period in which they are acquired, but instead contribute to earnings and depreciate in value over several years. Therefore, the cost of depreciable assets should be allocated over the entire period that the asset contributes to earnings—that is, the asset's useful life.

The government reviews the appropriateness of CCA rates on an ongoing basis to ensure that they reflect the useful life of assets. This helps to ensure that the tax system accurately allocates the cost of depreciable property over the period the property is used to earn income. Accelerated CCA is provided as an explicit exception to the general practice of setting CCA rates based on the useful life of assets. Accelerated CCA provides a financial benefit by deferring taxation.

Section 1100 provides rules relating to the deduction of CCA. Section 1100 is amended to introduce a new temporary accelerated CCA incentive announced in Budget 2021, the immediate expensing incentive. The objective of the immediate expensing incentive is to provide a temporary accelerated deduction to encourage investments by small and medium-sized Canadian businesses and thereby accelerate the economic recovery while supporting productivity growth in the longer term.

The immediate expensing incentive is available for “designated immediate expensing property” acquired by an “eligible person or partnership” on or after one of two dates in 2021 (depending on the nature of the eligible person or partnership) and that becomes available for use before January 1, 2024 (or January 1, 2025 in the case of individuals and Canadian partnerships all the members of which are individuals), up to a maximum amount of $1.5 million per taxation year. If the eligible person or partnership is a Canadian-controlled private corporation, property can qualify as designated immediate expensing property if, among other conditions, it is acquired after April 18, 2021. If the eligible person or partnership is an individual or a Canadian partnership, the property must be acquired after December 31, 2021 to qualify (see commentary on the definition of “immediate expensing property” in subsection 1104(3.1)).

The immediate expensing incentive is available only for the year in which the property becomes available for use. The $1.5 million limit is shared among associated members of a group of eligible persons or partnerships. The limit is prorated for taxation years that are shorter than 365 days. The half-year rule is suspended for property for which the measure is applied. For those eligible persons or partnerships with less than $1.5 million of eligible capital costs, no carry-forward of excess capacity is allowed.

Immediate expensing

ITR
1100(0.1)

New subsection 1100(0.1) is introduced to provide an additional first-year CCA deduction on “designated immediate expensing property” (DIEP) of an “eligible person or partnership” (EPOP). The subsection numbering reflects the ordering of the application of this measure, which applies before regular CCA, as explained below. New subsection 1100(0.1), together with definitions provided in new subsection 1104(3.1), are the main provisions that implement the temporary enhanced CCA rules announced as part of Budget 2021, the immediate expensing incentive.

The immediate expensing incentive is available for DIEP acquired by an EPOP on or after one of two dates in 2021 (depending on the nature of the EPOP) and that becomes available for use before January 1, 2024 (or January 1, 2025 in the case of individuals and Canadian partnerships all the members of which are individuals). If the EPOP is a Canadian-controlled private corporation, property can qualify as DIEP if, among other conditions, it is acquired after April 18, 2021. If the EPOP is an individual or a Canadian partnership, the property must be acquired after December 31, 2021 to qualify (see commentary on the definition of “immediate expensing property” in subsection 1104(3.1)).

DIEP generally consists of depreciable property other than property included in CCA classes 1 to 6, 14.1, 17, 47, 49 and 51 (additional conditions and restrictions apply, for example regarding non-arm’s length transfers and used property).

The immediate expensing incentive is only available for the year in which the property becomes available for use (see commentary on the definition of “designated immediate expensing property” in subsection 1104(3.1)) and is limited to the lesser of:

- the undepreciated capital cost (UCC) of the DIEP to the EPOP (before making any CCA deductions for the year);
- the EPOP’s “immediate expensing limit” (IEL) for the year (generally $1.5 million, subject to requirements to allocate among group members); and
- if the EPOP is not a CCPC, the income (computed before making any CCA deductions for the year), if any, earned from the business or property (the source) in which the relevant DIEP is used.

In other words, the immediate expensing incentive allows an EPOP to deduct, in computing income for a taxation year, up to 100% of the UCC of DIEP for the year, not exceeding the lesser of their IEL for the year and, where the EPOP is not a CCPC, their income for the year from the source in which the property is used (calculated before deducting CCA). As a result, the new immediate expensing incentive cannot be used to create or to increase a loss of an individual or a partnership.

New subsections 1104(3.1) to (3.6) contain various rules that are relevant in computing an EPOP’s IEL for a particular taxation year.

EPOPs with a capital cost of “immediate expensing property” in a taxation year that exceeds $1.5 million and immediate expensing property ordinarily included in more than one CCA class can decide to which CCA class the immediate expensing incentive is attributed. Any remaining UCC may be subject to additional capital cost allowance deductions under the existing CCA rules. The availability of other enhanced deductions under existing rules – such as the full expensing for manufacturing and processing machinery and equipment and for clean energy equipment, introduced in the 2018 Fall Economic Statement – does not reduce the maximum amount available under this new measure. In other words, an EPOP (or group) may generally expense up to $1.5 million in addition to all other CCA claims under existing provisions of the Act and Regulations, provided the total CCA deduction does not exceed the capital cost of the property.

The immediate expensing incentive under this new rule does not change the total amount that can be deducted over the life of a property. Since any deduction taken under the new immediate expensing incentive with respect to property of a prescribed class reduces the UCC of the class for all other purposes, the larger deduction taken in the first year in respect of a property would eventually be offset by smaller deductions, if any, in respect of the property in future years. This also ensures that the total CCA deductions taken in relation to property of a class do not exceed their capital cost and that recapture applies appropriately to the extent that property is sold.

Example of immediate expensing incentive

An EPOP (CCPC) invests $3,000,000 in equal amounts to acquire three properties, one falling under CCA Class 7 (15%), one under CCA Class 10 (30%) and the other under CCA Class 50 (55%). All properties become available for use in the year in which they are acquired. The CCPC is not associated with any other EPOP such that its immediate expensing limit is $1.5M for the year (it is assumed that the income derived from the source in which the properties are used exceeds $1.5M for the year and that the CCPC holds no other Class 7, 10 or 50 properties).

Although the CCPC could designate any of the three properties as DIEP, it is expected that it would generally designate, for purposes of the immediate expensing incentive, property that falls under CCA classes that would otherwise offer the lowest CCA deduction.

Under this scenario, the CCPC would be allowed a total first-year deduction of up to $2,550,000 versus $1, 500,000 under the existing rules, as illustrated in the table below. This would represent an additional deduction of $1,050,000 in the year due to the immediate expensing incentive.

CCA Class (rate)	***Cost of Acquisitions***	***Immediate Expensing***	***1st year Allowance on Remainder of Class****	***Total 1st Year Allowance***	***Current 1st Year Allowance****
Class 7 (15%)	*$1,000,000*	*$1,000,000*	*$0*	*$1,000,000*	*$225,000*
Class 10 (30%)	*$1,000,000*	*$500,000*	*$225,000*	*$725,000*	*$450,000*
Class 50 (55%)	*$1,000,000*	*$0*	*$825,000*	*$825,000*	*$825,000*
Total	*$3,000,000*	*$1,500,000*	*$1,050,000*	*$2,550,000*	*$1,500,000*

** Assuming eligible for the triple first-year allowance under the Accelerated Investment Incentive.*

As illustrated in the table above, the amount of the deduction made pursuant to the *immediate expensing incentive immediately affects the UCC of property of the Class in relation to which the deduction is made for all other purposes. In this example:*

- *the UCC of Class 7 property is reduced by $1,000,000 (to nil) such that no additional CCA deduction is available on the Class and any future sale of Class 7 property by the CCPC is likely to give rise to recapture;*
- *the UCC of Class 10 property is reduced by $500,000 (to $500,000). The reduced UCC (of $500,000) then becomes the basis on which all other CCA claims are calculated; and*
- *the UCC of Class 50 property is unaffected (it was not designated as DIEP by the CCPC, but even if it had erroneously been designated by the CCPC, no deduction has been made under the present subsection in relation to Class 50 property such that its UCC would remain unaffected).*

Note that the Act and the Regulations include a series of rules designed to protect the integrity of the CCA regime and the tax system more broadly. These include rules related to limited partners, specified leasing properties, leasing properties, specified energy properties and rental properties. In certain circumstances, these rules can restrict a CCA deduction, or a loss in respect of such a deduction, that would otherwise be available. These integrity rules will also apply to immediate expensing claims.

Undepreciated capital cost - immediate expensing

ITR
1100(0.2)

New subsection 1100(0.2) is introduced, for greater certainty, to clarify that the amount of any deduction made by an “eligible person or partnership” under subsection (0.1) in respect of a “designated immediate expensing property” of a prescribed class shall be deducted from the “undepreciated capital cost” of the particular class to which the property belongs for purposes of the Act and Regulations.

Expenditures excluded from paragraph (0.1)(b)

ITR
1100(0.3)

New subsection 1100(0.3) excludes certain property from access to the immediate expensing incentive unless the conditions in new paragraphs 1100(0.3)(a) to (c) are satisfied. If those conditions are not met, then new subsection 1100(0.3) reclassifies expenditures incurred before April 19, 2021 (if the eligible person or partnership is a Canadian-controlled private corporation) or before 2022 (if the eligible person or partnership is an individual or Canadian partnership) that would otherwise be treated as being in respect of “immediate expensing property” solely as a result of the application of subparagraph (c)(i) of the definition. In general terms, that subparagraph allows certain unused property acquired from a non-arm's length person to qualify as "immediate expensing property".

New subsection 1100(0.3) ensures that any such transfers cannot give rise to an inappropriate amount of enhanced CCA and aligns the CCA treatment of expenditures made before the effective date of the immediate expensing incentive amendments to the rules that existed when the expenditures were incurred. It does so by removing expenditures incurred by Canadian-controlled private corporations before April 19, 2021 or by other (non-Canadian-controlled private corporations) eligible persons or partnerships before 2022, as the case may be, from the UCC of the property to the "eligible person or partnership" under paragraph 1100(0.1)(b) (thus excluding such expenditures from the immediate expensing incentive).

The exception to this reclassification rule, for certain inventory purchases from arm's length persons or partnerships, applies where the conditions in new paragraphs 1100(0.3)(a) to (c) are met.

Specified leasing property – limitation

ITR
1100(1.1)

Subsection 1100(1.1) is part of a set of rules that apply to limit the amount of CCA that may be claimed by a taxpayer for a taxation year with respect to certain "specified leasing property".

Subsection 1100(1.1) is amended by adding a reference to new subsection (0.1) to ensure that the "specified leasing property" rules apply with respect to the new temporary accelerated CCA incentive announced in Budget 2021, the immediate expensing incentive.

Specified leasing property – new property

ITR
1100(1.12)

Subsection 1100(1.12) is part of a set of rules that apply to limit the amount of CCA that may be claimed by a taxpayer for a taxation year with respect to certain "specified leasing property".

Subsection 1100(1.12) is amended by adding references to new subsection (0.1) to ensure that the "specified leasing property" rules apply with respect to the new temporary accelerated CCA incentive announced in Budget 2021, the immediate expensing incentive.

Rental properties

ITR
1100(11)

Subsection 1100(11) limits the amount of CCA that a taxpayer may deduct because of subsection 1100(1). This limit is intended to prevent taxpayers from sheltering other sources of income with losses created by CCA related to a “rental property”.

Subsection 1100(11) is amended by adding references to new subsection (0.1) to ensure that the “rental property” rules apply with respect to the new temporary accelerated CCA incentive announced in Budget 2021, the immediate expensing incentive.

Leasing properties

ITR
1100(15)

Subsection 1100(15) limits the amount of CCA that a taxpayer may deduct because of subsection 1100(1). This limit is intended to prevent taxpayers from sheltering other sources of income with losses created by CCA related to “leasing property”.

Subsection 1100(15) is amended by adding references to new subsection (0.1) to ensure that the *leasing property* rules apply with respect to the new temporary accelerated CCA incentive announced in Budget 2021, the immediate expensing incentive.

Computer tax shelter property

ITR
1100(20.1)

Subsection 1100(20.1) precludes the deduction of capital cost allowance in respect of computer software tax shelter property to the extent the deductions otherwise would result in a loss.

Subsection 1100(20.1) is amended by adding a reference to new subsection (0.1) to ensure that the rule applies with respect to the new temporary accelerated CCA incentive announced in Budget 2021, the immediate expensing incentive.

Film or videotape – deemed cost reduction

ITR
1100(21.1)

Subsection 1100(21.1) requires that the depreciable cost of a taxpayer's interest in certain motion picture film or video tape, or motion picture film or video tape that is a television commercial message, be reduced by the portion of any debt obligation of the taxpayer outstanding at the end of a particular year that is convertible into an interest in the film or tape of the taxpayer.

Subsection 1100(21.1) is amended by adding references to new subsection (0.1) to ensure that the rule applies with respect to the new temporary accelerated CCA incentive announced in Budget 2021, the immediate expensing incentive.

Specified energy property

ITR
1100(24)

Subsection 1100(24) limits the amount of CCA that a taxpayer may deduct because of subsection 1100(1). This limit is intended to prevent taxpayers from sheltering other sources of income with losses created by CCA related to “specified energy property”.

Subsection 1100(24) is amended by adding references to new subsection (0.1) to ensure that the specified energy property rules apply with respect to the new temporary accelerated CCA incentive announced in the Budget 2021, the immediate expensing incentive.

Clause 35

Anti-avoidance

ITR
1102(20.1)

Subsection 1102(20.1) deems a taxpayer not to be dealing at arm's length with another person or partnership in certain circumstances and is intended to prevent taxpayers from contriving arm’s length relationships in order to obtain the more favourable treatment that is available for “accelerated investment incentive property” per subsection 1104(4) in respect of arm’s length transfers.

Subsection 1102(20.1) is amended by adding references to new subsections 1100(0.3) and 1104(3.1) to ensure that the anti-avoidance rule also applies with respect to the new temporary accelerated CCA incentive announced in Budget 2021, the immediate expensing incentive.

Clause 36

Interpretation

ITR
1104

Section 1104 sets out various definitions and interpretation rules that apply for the purpose of determining the CCA for a taxation year in respect of a depreciable property of a taxpayer.

Section 1104 is amended to introduce a number of rules and definitions that apply for the purposes of the new accelerated CCA incentive announced in Budget 2021, the immediate expensing incentive.

Definitions

ITR
1104(3.1)

New subsection 1104(3.1) defines “designated immediate expensing property”, “eligible person or partnership”, “immediate expensing property”, and “taxpayer” for the purposes of Part XI and Schedules II to VI of the Regulations. These definitions and new subsection 1100(0.1) are the main provisions that implement the temporary enhanced CCA rules announced as part of Budget 2021, the immediate expensing incentive.

“designated immediate expensing property”

In order to be eligible to the immediate expensing incentive, property must qualify as “designated immediate expensing property” (DIEP). The definition contains three conditions.

First, a property must qualify as “immediate expensing property” of an “eligible person or partnership” (both also defined in new subsection 1104(3.1) and described below). Second, a property can only qualify as DIEP in the year in which it becomes available for use. This requirement is intended to ensure that a particular property cannot be eligible for the immediate expensing incentive in more than one taxation year. (Pursuant to paragraph 249(1)(a) of the Act, references to a “taxation year” include a fiscal period of a Canadian resident partnership).

Finally, the definition requires the property to be designated in prescribed form by the eligible person or partnership. The prescribed form must be filed with the Minister on or before the day that is 12 months after the person’s filing-due date for the taxation year to which the designation relates or, in the case of a partnership, on or before the day that is 12 months after the day by which any member of the partnership is required to file an information return pursuant to section 229 of the Regulations for the fiscal period to which the designation relates.

The designation and filing requirements are intended to allow “eligible persons or partnerships” to elect for which “immediate expensing property” they wish to claim a deduction under subsection (0.1) in a particular year or period, and to facilitate reporting and administration of the immediate expensing incentive.

“eligible person or partnership”

The immediate expensing incentive is available with respect to certain property of an “eligible person or partnership” (EPOP). The definition is restrictive and only includes three specific types of persons or partnerships:

- (a) Canadian-controlled private corporations,
- (b) individuals (other than trusts) resident in Canada, or
- (c) Canadian partnerships all of the members of which were, throughout the period, Canadian-controlled private corporations, individuals (other than trusts) resident in Canada or a combination thereof.

Furthermore, in order to qualify as an EPOP and benefit from the immediate expensing incentive, a person or partnership must meet the qualifications and maintain their status throughout the relevant taxation year.

Multi-tiered partnerships, *i.e.* partnerships with other partnerships as members, are excluded from the definition.

“immediate expensing property”

To qualify as “immediate expensing property” (IEP) (which excludes property included in class 1 to 6, 14.1, 17, 47, 49 and 51, which are generally long-lived asset classes), a property must be acquired by an “eligible person or partnership” after one of two dates (depending on the nature of the EPOP). If the EPOP is a Canadian-controlled private corporation, the property must be acquired after April 18, 2021. If the EPOP is an individual or a Canadian partnership, the property must be acquired after December 31, 2021. The property must also become available for use before 2024 (if the EPOP is a Canadian-controlled private corporation or a partnership with members who are not individuals) or 2025 (if the EPOP is an individual or a partnership all the members of which are individuals throughout the tax year) and satisfy one of the two conditions set out in paragraph (c) of the definition.

Subparagraph (c)(i), in general terms, describes new property and allows property to be IEP if it has never been used and no person or partnership has ever claimed CCA (or a terminal loss) in respect of the property. This rule makes no distinction between the arm’s length or non-arm’s length status of the vendor of the property. However, if the property is IEP solely because of this subparagraph (*i.e.*, it does not also qualify under subparagraph (c)(ii)), certain amounts in respect of the property could be disqualified from the enhanced CCA rules as a result of the application of new subsection 1100(0.3).

Subparagraph (c)(ii), in general terms, describes certain used property and allows property to be IEP if the property was not subject to a “rollover” and it was not previously owned or acquired by the “eligible person or partnership” or a non-arm’s length person or partnership.

In general terms, the exclusion for property acquired on a rollover applies to property acquired in circumstances where the "eligible person or partnership" was deemed to have claimed CCA when computing income for previous taxation years (*e.g.*, where the property is acquired in a transaction to which section 85 of the Act applies). It also includes property acquired in circumstances where the undepreciated capital cost of depreciable property of the "eligible person or partnership" was reduced by an amount determined by reference to the amount by which the capital cost of the property to the "eligible person or partnership" exceeds its cost amount (e.g., where the property is acquired in a transaction to which section 87 applies).

In respect of the arm's length condition, the "or acquired" criterion is intended to be relevant in circumstances where there is an acquisition of property in circumstances where the property is not yet owned, such as in paragraph 16.1(1)(b) of the Act.

"taxpayer"

New subsection 1104(3.1) defines "taxpayer" for purposes of Part XI and Schedules II to VI of the Regulations as including, unless the context requires otherwise, eligible persons or partnerships. This clarification is included, for greater certainty, to ensure that both existing and new rules contained in Part XI and Schedules II to VI apply appropriately to an *eligible person or partnership* that is a partnership.

Immediate expensing limit

ITR
1104(3.2)

An eligible person or partnership's (EPOP) "immediate expensing limit" (IEL) for a taxation year or fiscal period is, under subsection 1100(0.1), one of the limits of the deduction available under the new temporary enhanced CCA rules announced as part of Budget 2021 (the immediate expensing incentive).

New subsection 1104(3.2) defines an EPOP's IEL for a taxation year or fiscal period to be $1,500,000 unless the EPOP is associated with another EPOP under the Act. Where this is the case, the EPOP's IEL is nil except as otherwise provided in this section. Subsections (3.3) to (3.6) provide rules to address the allocation of the $1.5 million limit among associated EPOPs. In general terms, these new provisions operate similarly to the rules in section 125 of the Act that provide for the allocation of the business limit for the purposes of the small business deduction.

Associated corporations

ITR
1104(3.3)

New subsection 1104(3.3) requires that associated “eligible persons or partnerships” (EPOPs) file with the Minister of National Revenue an election, in prescribed form, in which the group apportions to one or more of its members the maximum “immediate expensing limit” for the year ($1,500,000). Under this new provision, associated EPOPs will determine their immediate expensing limits for a year in a two-stage process. First, the associated EPOPs will assign to one or more members of the associated group a percentage such that the total of the percentages assigned does not exceed 100%. If the total does exceed 100%, then the associated group has an immediate expensing limit of nil. The EPOPs must file an agreement in prescribed form in order for the agreed upon percentage allocation to have effect. Second, each associated EPOP to which a percentage has been assigned will multiply that percentage by $1,500,000.

Failure to file agreement

ITR
1104(3.4)

New subsection 1104(3.4) allows the Minister of National Revenue to allocate the “immediate expensing limit” of $1,500,000 among a group of associated “eligible persons or partnerships” if the group fails to file an agreement allocating the immediate expensing limit among its members within 30 days after the Minister requests such information in writing.

Special rules for immediate expensing limit

ITR
1104(3.5)

New subsection 1104(3.5) introduces two additional rules regarding the calculation of the “immediate expensing limit” of an “eligible person or partnership” (EPOP) for a taxation year.

First, paragraph 1104(3.5)(a) determines the “immediate expensing limit” of an EPOP (the “first person”) that has two or more taxation years (under subsection (3.6)) ending in a calendar year in which it is associated with another EPOP that has a taxation year (under subsection (3.6)) ending in that calendar year. This rule provides that, subject to the pro-rating rule for short taxation years in paragraph (b), the “immediate expensing limit” for the first person for a particular taxation year ending in the calendar year, after the first taxation year ending in that calendar year, is deemed to be the lesser of

- the amount allocated to that person for its first such taxation year under subsection 1104(3.3) or (3.4), and
- the amount allocated to the person for that particular taxation year under subsection 1104(3.3) or (3.4).

This rule ensures that the total of the amounts determined as the “immediate expensing limit” for the year for a group of EPOPs that are associated with each other in any second or subsequent taxation years ending in a calendar year does not exceed $1,500,000 for such years.

Second, a new rule concerning the calculation of an EPOP’s “immediate expensing limit” for a short taxation year is introduced in paragraph (b). This provision applies to all EPOPs, whether or not associated, and requires a proration of the limit for any taxation year of less than 51 weeks in duration. It provides that an EPOP’s “immediate expensing limit” for such a taxation year is its limit otherwise determined multiplied by the number of days in the taxation year and divided by 365.

Associated - interpretation

ITR
1104(3.6)

New subsection 1104(3.6) contains interpretive rules that apply in determining whether two or more eligible persons or partnerships are associated with each other for purposes of the “immediate expensing limit”.

The rules are generally intended to extend the concept of “association” to individuals and partnerships that qualify as EPOPs for purposes of the new enhanced CCA measure announced in Budget 2021, the immediate expensing incentive. Determining whether two EPOPs are associated is necessary to establish their “immediate expensing limit” for a taxation year and thus, to determine the amount of deduction they are entitled to claim under new subsection 1100(0.1). As described below, the new rules take the approach of deeming individuals and partnerships to be corporations. Note that this deeming applies only for the purposes of the association concept for determining the allocation of the “immediate expensing limit” among a group.

Paragraph (a) provides that, for the purposes described above, a partnership is deemed to be a corporation (the “deemed corporation”) with a capital stock of a single class of shares and with a total of 100 issued and outstanding shares. Each member of the partnership is deemed to be a shareholder of the deemed corporation and to own a number of shares based on the partner’s proportionate interest in the partnership. More specifically, the number of shares deemed to be owned by each partner at any time is determined by reference to its “specified proportion” (as defined in subsection 248(1) of the Act) in respect of the partnership for the last fiscal period of the partnership ending before that time. Where this is not determinable (e.g., because no fiscal period of the partnership has ended since the partner became a member of the partnership), the number of shares deemed to be held by the partner is determined by reference to the relative fair market value of its interest in the partnership.

In the case of businesses carried on, or immediate expensing property acquired, directly by an individual, paragraph (b) provides that the individual, in respect of that business or immediate expensing property, is deemed to be a corporation that is itself deemed to be controlled by the individual. Thus, for example, if an individual carries on a business as a sole proprietor and also holds all of the shares of a Canadian-controlled private corporation (CCPC) that carries on a second, distinct business, the CCPC and the individual, with respect to the sole proprietorship, would need to share the $1,500,000 "immediate expensing limit". Indeed, the individual would be deemed, with regard to the sole proprietorship, to be a corporation (the "deemed corporation") controlled by the individual. Consequently, the CCPC and the deemed corporation would be deemed to be associated under paragraph 256(1)(b) of the Act since both the CCPC and the deemed corporation would be (or be deemed to be) controlled by the individual. In order to facilitate the administration of the deemed association rules, this deeming rule applies only to the extent that an individual carries on a business or has acquired immediate expensing property at any given time.

The deeming rules contained in subsection (3.6) do not replace, but rather apply in addition to, all other rules of the Act that are relevant in determining whether two corporations are associated with each other.

Clause 37

ITR
1104(13)

Subsection 1104(13) of the Regulations sets out various definitions that apply for purposes of CCA Classes 43.1 and 43.2 in Schedule II to the Regulations. Consequential on the amendments to expand eligibility for Classes 43.1 and 43.2 to equipment used to convert specified waste materials into liquid and solid biofuels, subsection 1104(13) is amended by repealing the conditions in paragraphs (a) and (b) of the definition "plant residue" as those conditions are no longer necessary. Furthermore, the definition "separated organics" is amended by removing the reference to a system that converts biomass into biogas.

Subsection 1104(13) is also amended by adding the definitions "specified waste material", "liquid biofuel" and "solid biofuel" as part of the expansion of eligibility for Classes 43.1 and 43.2 to waste conversion equipment, as noted above. These definitions, and the added definition "gaseous biofuel", are also relevant for the purposes of paragraph (b) of the definition "qualified zero-emission technology manufacturing activities" in section 5202, which is relevant for computing the zero-emission technology manufacturing deduction under new section 125.2 of the Act.

Consistent with the expansion in respect of equipment used to produce liquid and solid biofuels, the definitions "biogas" and "producer gas" are amended to expand the types of feedstock from which these gases may be produced or generated. This in turn expands eligibility for certain property in Classes 43.1 and 43.2 (for instance subparagraph (d)(ix) of Class 43.1).

Finally, the definition "producer gas" is also amended, in respect of property of a taxpayer that becomes available for use by the taxpayer after 2024, to remove from that definition producer gas that is generated from feedstock of which more than 25 percent of the energy content is from fossil fuel. The energy content is to be expressed as the higher heating value of the feedstock.

"gaseous biofuel"

The definition "gaseous biofuel" applies for the purpose of determining what constitutes a qualified zero-emission technology manufacturing activity under subparagraph (b)(ii) of that definition in section 5202.

Gaseous biofuel means a fuel produced all or substantially all from specified waste material (also a defined term added to this subsection), that is a gas at a temperature of 15.6 degrees Celsius and a pressure of 101 kPa.

"liquid biofuel"

The definition "liquid biofuel" is added as part of the amendments to expand property eligible for Classes 43.1 and 43.2 under subparagraph (d)(xi) to equipment used to produce liquid biofuel. This new definition also applies for the purpose of determining what constitutes a qualified zero-emission technology manufacturing activity under subparagraph (b)(iii) of that definition in section 5202.

Liquid biofuel means fuel all or substantially all of which is produced from a specified waste material (also a defined term added to this subsection) or carbon dioxide. In order to be liquid biofuel, the fuel must be in a liquid state at a temperature of 15.6 degrees Celsius and at a pressure of 101 kPa.

"solid biofuel"

The definition "solid biofuel" is added as part of the amendments to expand property eligible for Classes 43.1 and 43.2 under new subparagraph (d)(xx) to equipment used to produce solid biofuels. This new definition also applies for the purpose of determining what constitutes a qualified zero-emission technology manufacturing activity under subparagraph (b)(iv) of that definition in section 5202.

Solid biofuel means a fuel produced all or substantially from specified waste material (also a defined term added to this subsection). In order to be considered a solid biofuel, the fuel must be solid at a temperature of 15.6 degrees Celsius and a pressure of 101 kPa and have been produced either through 1) a thermo-chemical conversion process to increase its carbon fraction and densification or 2) densification into pellets or briquettes.

Solid biofuel does not include charcoal that is used for cooking or fuels with fossil fuel-derived ignition accelerants.

“specified waste material”

The definition “specified waste material” is introduced consequential on the amendments to expand eligibility for Classes 43.1 and 43.2 to equipment converting any of a list of organic materials into liquid biofuel or solid biofuel. Conversion equipment that converts specified waste material into these fuels is eligible for one of those two Classes. Specifically, “specified waste material” means wood waste, plant residue, municipal waste, sludge from an eligible sewage treatment facility, spent pulping liquor, food and animal waste, manure, pulp and paper by-product and separated organics.

“biogas”

The definition “biogas” is amended in order to expand the types of feedstocks from which the gas can be produced. Specifically, this amendment provides that biogas may be produced from any specified waste material (for more information, see the commentary on new definition “specified waste material” in this subsection) as long as it is produced by the process of anaerobic digestion. This amendment expands Class 43.1 eligibility for certain property, for instance, property that meets the criteria under subparagraph (d)(xiii) of that Class.

“producer gas”

Producer gas means fuel the composition of which, excluding its water content, is all or substantially all non-condensable gases, that is generated primarily from eligible waste fuel (as defined in subsection 1104(13)) using a thermo-chemical conversion process and that is not generated using any fuels other than eligible waste fuel or fossil fuel. This definition is relevant for the purposes of determining whether equipment is eligible for inclusion in Classes 43.1 and 43.2 because it is described in clause (c)(i)(A), subparagraph (d)(ix) or subparagraph (d)(xvi) of Class 43.1 of Schedule II to the Regulations.

The definition “producer gas” is amended in two ways. First, new paragraph (a) of this definition expands the list of eligible feedstock such that producer gas may be primarily generated from any feedstock that is a specified waste material even if that feedstock is not considered eligible waste fuel, e.g., spent pulping liquor or separated organics. For more information, see the commentary on new definition “specified waste material” in this subsection.

This definition is also amended by adding paragraph (b) to introduce a restriction for property of a taxpayer that becomes available for use by the taxpayer after 2024. Specifically, the restriction that producer gas may in part be generated from fossil fuel as long as it is primarily generated from eligible waste fuel and specified waste material is narrowed such that producer gas may only be generated from feedstock of which no more than 25 percent of the energy content is from fossil fuel. The energy content is to be expressed as the higher heating value of the feedstock.

These amendments apply to property acquired after April 18, 2021 that has not been used or acquired for use before April 19, 2021.

Clause 38

ITR
1104(17)

Subsection 1104(17) of the Regulations requires environmental compliance in respect of certain properties before those properties can be included in Class 43.1 or 43.2 in Schedule II in the Regulations. The subsection applies to property that would otherwise be included in subparagraph (c)(i) of Class 43.1 and to property that is described in any of subparagraphs (d)(vii) to (ix), (xi), (xiii), (xiv), (xvi) and (xvii) of Class 43.1 or paragraph (a) of Class 43.2. Property is not in compliance unless, at the time the property becomes available for use by the taxpayer, the taxpayer has satisfied the requirements of all environmental laws, by-laws and regulations of Canada, a province or a municipality in Canada, or of a municipal or public body performing a function of government in Canada, applicable in respect of the property.

If a property is not included in Class 43.1 or 43.2 because of subsection 1104(17), the property may remain included in the CCA class that would otherwise apply to that property.

Paragraph 1104(17)(a) is amended to add references to new subparagraphs (d)(xix), (xx), (xxi) and (xxii) of Class 43.1 to Schedule II to ensure that the requirement for environmental compliance also applies to property described in those subparagraphs. This amendment is consequential on the introduction of

- new subparagraph (d)(xix) of Class 43.1 to Schedule II (to include certain pumped hydroelectric energy storage installation property),
- new subparagraph (d)(xx) of Class 43.1 to Schedule II (including certain equipment used to produce solid biofuels),
- new subparagraph (d)(xxi) of Class 43.1 to Schedule II (including certain hydrogen refuelling equipment), and
- new subparagraph (d)(xxii) of Class 43.1 to Schedule II (including certain equipment to produce hydrogen through electrolysis of water).

These amendments apply to property acquired after April 18, 2021 that has not been used or acquired for use before April 19, 2021.

Clause 39

Certificates issued by the Minister of Canadian Heritage

ITR
1106

Section 1106 of the Regulations addresses criteria to be applied by the Minister of Canadian Heritage in determining whether a production may be certified as a “Canadian film or video production” that is eligible for the Canadian film or video production tax credit under section 125.4 of the Act.

COVID-19 — Application for a Certificate of Completion

ITR
1106(1.1)

Pursuant to the definition “application for a certificate of completion” in subsection 1106(1) of the Regulations, an application for a certificate of completion must be filed within 24 months of the end of the production company’s first taxation year following the start of principal photography. The production’s application deadline can be extended by 18 months (to 42 months) if valid waivers are filed with the Canada Revenue Agency in respect of the first and second taxation years ending after the production’s principal photography began.

In response to the COVID-19 pandemic, new subsection 1106(1.1) provides a further extension to the production application deadline by an additional 12 months (to 54 months). To be eligible for the additional extension, valid waivers in respect of the first, second and third taxation years ending after the production’s principal photography began would need to be filed with the Canada Revenue Agency within the normal reassessment period for each of those years.

The additional 12-month extension is available to corporations that incurred labour expenditure in respect of film or video productions in taxation years ending in 2020 or 2021.

COVID-19 — Excluded Production

ITR
1106(1.2)

Subsection 1106(1) of the Regulations provides the definition of an “excluded production” for purposes of the Canadian film or video production tax credit under section 125.4 of the Act. For these purposes, an excluded production is not a “Canadian film or video production” and is not eligible for the Canadian film or video production tax credit.

Under the existing definition in subsection 1106(1), an excluded production includes a production where there is no written agreement with a Canadian distributor or with a broadcaster licensed by the Canadian Radio-television and Telecommunications Commission (CRTC) to show the production in Canada within a two-year period that begins at the earliest time after the production was completed that it is commercially exploitable.

In response to the COVID-19 pandemic, new subsection 1106(1.2) extends, in certain circumstances, the two-year period to a three-year period for a production to be shown in Canada under a written agreement with a Canadian distributor or with a CRTC-licensed broadcaster.

This extension applies only to corporations in respect of film or video productions that incurred labour expenditure in taxation years ending in 2020 or 2021.

Clause 40

Qualifying disbursement – grantee organization

ITR
3703

New definition “qualifying disbursement” in subsection 149.1(1), and related amendments, permit charities to make disbursements to grantee organizations (i.e. entities and natural persons other than qualified donees) if certain conditions are satisfied.

Paragraph (b) of that definition provides that disbursements to a grantee organization are qualifying disbursements if the disbursements are in furtherance of a charitable purpose of the charity, the charity ensures that the disbursements are exclusively applied to charitable activities in furtherance of a charitable purpose of the charity and the disbursement meets prescribed conditions.

New section 3703 of the Regulations prescribes conditions that must be satisfied in order for a disbursement to a grantee organization to be a qualifying disbursement of a charity. These conditions include:

- The disbursement must be subject to an agreement in writing between the charity and the grantee organization that includes requirements related to the use of the disbursement, reporting requirements and record keeping requirements.
- The charity is also required to undertake measures to ensure that the agreement is complied with, and that the disbursement will be applied exclusively for the purposes for which it was disbursed. This must include conducting a pre-disbursement inquiry, ongoing monitoring of the grantee organization, and reviewing and approving the final report of the grantee organization.
- If the charity becomes aware that any part of the agreement is not being complied with, the charity must undertake adequate remedial action. Where appropriate, this could include withholding further disbursements and attempting to recover disbursements.

New section 3703 comes into force on Royal Assent.

Information returns

ITR
3704

Subsection 149.1(14) of the Act requires registered charities to annually file an information return, and a public information return, containing prescribed information, part of which the Minister of National Revenue may disclose to the public under subsection 149.1(15). The returns are required to be filed within six months from the end of the taxation year of the charity.

New definition “qualifying disbursement” in subsection 149.1(1) of the Act, and related amendments, permit charities to make disbursements to both qualified donees and grantee organizations (i.e. entities and natural persons other than qualified donees) if certain conditions are satisfied.

New section 3704 of the Regulations applies for purposes of subsection 149.1(14) of the Act to prescribe particular information in respect of certain qualifying disbursements to grantee organizations. If a charity makes qualifying disbursements of more than $5000 to a grantee organization in a taxation year, the charity must provide the name of the grantee organization, the purpose of each disbursement to the grantee organization and the total amount disbursed by the charity to the grantee organization in the taxation year.

New section 3704 comes into force on Royal Assent.

Clause 41

Interpretation

ITR
5202

Section 5202 of the Regulations defines a number of terms that apply for the purposes of Part LII of the Regulations (except as otherwise provided in sections 5203 or 5204 of the Regulations) and are therefore relevant in determining a corporation’s manufacturing and processing profits for a taxation year for the purposes of the manufacturing and processing credit in section 125.1 of the Act.

Section 5202 is amended to add the definitions “qualified zero-emission technology manufacturing activities”, “ZETM cost of capital” and “ZETM cost of labour” required in determining a corporation’s zero-emission technology manufacturing profits for a taxation year for the purposes of the zero-emission technology manufacturing deduction (in new section 125.2).

Definitions

ITR
5202

“qualified zero-emission technology manufacturing activities”

The definition “qualified zero-emission technology manufacturing activities” provides the activities that qualify for the zero-emission technology manufacturing deduction. First, a qualified zero-emission technology manufacturing activity must be a qualified activity (unless the activity is described in paragraph (c)), which is defined in this section for purposes of determining eligibility for the manufacturing and processing deduction under section 125.1 of the Act. In general, a qualified activity is an activity performed in Canada in connection with the manufacturing or processing of goods for sale or lease, subject to the inclusions under subparagraphs (a)(i) to (ix) of that definition and to the exclusions under paragraphs (d) to (i) of that definition and of paragraphs (a) to (k) in the definition “manufacturing or processing” in subsection 125.1(3) of the Act.

Second, a qualified zero-emission technology manufacturing activity must be an activity performed in connection with the manufacturing or processing of certain property described in clauses (a)(i)(A) to (K) (subject to the restriction in subparagraph (a)(ii)) or the production of certain gases or fuels described in subparagraphs (b)(i) to (iv). The following is a list of eligible property the manufacturing or processing of which may constitute a qualified zero-emission technology manufacturing activity under subparagraph (a)(i):

- solar energy conversion equipment, including solar thermal collectors, photovoltaic solar arrays and custom supporting structures or frames (but does not include passive solar heating equipment) (clause (A)),
- wind energy conversion equipment, including wind turbine towers, nacelles and rotor blades, (clause (B)),
- water energy conversion equipment, including hydroelectric, water current, tidal and wave energy conversion equipment (clause (C)),
- geothermal energy equipment (clause (D)),
- equipment for a ground source heat pump system (clause (E)).
- electrical energy storage equipment used for storage of renewable energy or for providing grid-scale storage or other ancillary services, including battery, compressed air and flywheel storage systems (clause (F)),
- equipment used to charge, or to dispense hydrogen to, a zero-emission vehicle as described below in clause (J) (clause (G)), and
- equipment used for the production of hydrogen by electrolysis of water (clause (H)).

Clause (I) provides an additional inclusion so that manufacturing (or processing) of equipment that is a component of property included in clauses (A) to (H) above may be a qualified zero-emission technology manufacturing activity, but only if such equipment is purpose-built or designed exclusively to form an integral part of that property.

Additional property the manufacturing or processing of which may be included as a qualified zero-emission technology manufacturing activity includes

- a motor vehicle that is a plug-in hybrid that meets the conditions prescribed by subsection 1102(26) of the Regulations or
- automotive equipment that is fully electric, fully powered by hydrogen or fully powered by a combination of electricity and hydrogen (clause (J)).

Clause J (described above) is intended to incorporate the assembly of the zero-emission vehicles not the manufacturing or processing of components that go into that final assembly.

Clause (K) provides that the manufacturing of integral components of a zero-emission vehicle may be qualified zero-emission technology manufacturing activities only to the extent that those components are integral to the powertrain of a zero-emission vehicle described in clause (J), including batteries or fuel cells. For instance, the manufacturing of windshield wipers solely for zero-emission vehicles would not fall under this definition, but the manufacturing of components of the electric engine would.

Subparagraph (a)(ii) clarifies that qualified zero-emission technology manufacturing activities do not include the manufacturing or processing of general purpose parts or equipment where such parts or equipment are suitable for integration into property other than property described in subparagraph (i). For instance, manufacturing standard bolts used in turbines described in subparagraph (i), and in other equipment, is excluded.

Paragraph (b) provides that certain production activities may be qualified zero-emission technology manufacturing activities if performed in connection with the production of certain gases and fuels. The list of eligible gases and fuels is as follows:

- hydrogen produced by electrolysis of water (subparagraph (i)),
- gaseous biofuel as defined in subsection 1104(13) of the Regulations (subparagraph (ii)),
- liquid biofuel as defined in subsection 1104(13) of the Regulations (subparagraph (iii)), and
- solid biofuel as defined in subsection 1104(13) of the Regulations (subparagraph (iv)).

For more information, please see the commentary on the new definition gaseous biofuel, liquid biofuel and solid biofuel in subsection 1104(13).

Paragraph (c) provides that converting a vehicle (that is not a zero-emission vehicle) into a zero-emission vehicle is a qualified zero-emission technology manufacturing activity.

“ZETM cost of capital”

The definition “ZETM cost of capital” of a corporation for a taxation year means the portion of the cost of capital (also defined in section 5202) of that corporation that reflects the extent to which each property used in the computation of that corporation’s cost of capital was used in qualified zero-emission technology manufacturing activities during the year. For purposes of computing the ZETM cost of capital of a corporation, the portion of time during a taxation year that a property was used in qualified zero-emission technology manufacturing activities must be determined. For instance, if a property were used 50% of the time during the year in qualified zero-emission technology manufacturing activities, the ZETM cost of capital would equal 50% of that property’s cost of capital for the year.

“ZETM cost of labour”

The definition “ZETM cost of labour” of a corporation for a taxation year means the cost of labour (also defined in section 5202) to the extent those costs were for qualified zero-emission technology manufacturing activities.

Specifically, paragraph (a) provides that ZETM cost of labour includes the amount of salaries and wages paid or payable to persons engaged in qualified zero-emission technology manufacturing activities for the portion of the time those persons were so engaged.

Paragraph (b) includes in ZETM cost of labour other amounts paid or payable to non-employees for the performance of functions (that would normally be performed by an employee of the corporation) directly related to qualified zero-emission technology manufacturing activities.

These amendments come into force on January 1, 2022.

Clause 42

Partnerships

ITR
5204

Section 5204 provides a number of definitions that apply for the purpose of calculating Canadian manufacturing and processing profits in circumstances under which a corporation is a member of a partnership. The introductory portion of section 5204 is amended to clarify that this is a definition section that defines certain terms for purposes of Part LII of the Regulations.

Section 5204 is also amended to add the definitions “ZETM cost of capital” and “ZETM cost of labour” that apply for purposes of calculating a corporate partner’s zero-emission technology manufacturing profits for the taxation year for purposes of the zero-emission technology manufacturing deduction (in new section 125.2).

“ZETM cost of capital” - partnership

The definition “ZETM cost of capital” in this section describes the computation of ZETM cost of capital for a taxation year of a corporate member of a partnership. The definition “cost of capital” in this section requires a corporate partner to include in its cost of capital a proportion of the partnership’s cost of capital based on the corporation’s income share of that partnership. This definition provides that a portion of the amount added to the corporate partner’s cost of capital for the taxation year is included in the corporation’s ZETM cost of capital to the extent that each such property of the partnership is used in qualified zero-emission technology manufacturing activities during the year.

For further information, please see the commentary on the definition “ZETM cost of capital” in section 5202.

“ZETM cost of labour” – partnership

The definition “ZETM cost of labour” in this section describes the computation of ZETM cost of labour of a corporate member of a partnership.

Paragraph (a) of the definition “ZETM cost of labour” provides that a portion of the amount added to the corporate partner’s cost of labour for the taxation year under this section is included in the corporation’s ZETM cost of labour to the extent the salaries and wages paid or payable to employees by the partnership are for time spent engaged in qualified zero-emission technology manufacturing activities.

Paragraph (b) provides a similar rule for amounts paid or payable to non-employees for the performance of functions directly related to qualified zero-emission technology manufacturing activities.

For further information, please see the commentary on the definition “ZETM cost of labour” in section 5202.

These amendments come into force on January 1, 2022.

Clause 43

COVID-19 — accredited production

ITR
9300(1.1)

Subsection 9300(1) of the Regulations provides the definition of an “accredited production” for purposes of the film or video production services tax credit under section 125.5 of the Act. To qualify as an accredited production, existing subsection 9300(1) provides that a film or video production must incur expenditures that exceed certain thresholds within a 24-month period after the time that the principal filming or taping of the production began.

In response to the COVID-19 pandemic, new subsection 9300(1.1) extends the 24-month period to a 36-month period in certain circumstances. Under subsection (1.1), a film or video production is an accredited production if the related expenditure thresholds are exceeded within a 36-month period after the time that the principal filming or taping of the production began.

This extension applies only to corporations that incurred Canadian labour expenditure in respect of film or video productions in taxation years ending in 2020 or 2021.

Clause 44

ITR
Schedule II

Schedule II to the Regulations lists the properties that can be included in each CCA class. A portion of the capital cost of depreciable property is deductible as CCA each year. CCA rates for each type of property, identified by their CCA classes, are set out in section 1100 of the Regulations.

Class 43.1 (30% CCA rate)

Class 43.1 in Schedule II currently provides an accelerated CCA rate of 30% per year (on a declining-balance basis) for clean energy generation and energy conservation equipment. Class 43.1 (and indirectly Class 43.2) is amended to expand eligibility for inclusion in Classes 43.1 and 43.2 to certain

- pumped hydroelectric energy storage installations,
- equipment that generates electricity by diverting or impeding the natural flow of water (or by using physical barriers or dam-like structures),
- active solar heating equipment, equipment that is part of a ground source heat pump system, and equipment used to produce electrical or heat energy from geothermal energy, that is used to heat water for use in a swimming pool,
- equipment used to convert specified waste material into solid biofuel,
- equipment used to convert specified waste material or carbon dioxide into liquid biofuel,
- equipment used to produce hydrogen by electrolysis of water, and
- hydrogen refuelling equipment.

Class 43.1 (and indirectly Class 43.2) is also amended to restrict eligibility for inclusion in Classes 43.1 and 43.2 for certain cogeneration systems, specified waste-fuelled heat production equipment and producer gas generating equipment.

Cogeneration Systems

Paragraphs (a) to (c) of Class 43.1 describe cogeneration property eligible for that Class. Subparagraphs (c)(i) and (ii) describe different kinds of cogeneration systems. Property that is a part of one of those systems is eligible for inclusion in this Class, provided the conditions contained in paragraphs (a) and (b), and the preamble to Class 43.1, are met. Subparagraph (c)(i) describes a system used to generate electrical energy, or both electrical and heat energy (using certain eligible fuels), that meet a designated heat rate threshold. Subparagraph (c)(i) is amended to designate a new heat rate and to add a new restriction on the use of fossil fuels.

Specifically, clause (c)(i)(B) is amended to designate a new heat rate threshold applicable to systems rated to generate more than three megawatts of electrical energy. Such systems will be required to meet a heat rate threshold of less than or equal to 11,000 British thermal units (BTUs) per kilowatt-hour on an annual basis. The heat rate is determined using the formula

$(2 \times B + C)/(D + E/3412)$

where

- B is the energy content of fossil fuel other than solution gas (expressed as the higher heating value of the fuel) consumed by the system in BTU,
- C is the energy content of the eligible waste fuel, producer gas and spent pulping liquor (expressed as the higher heating value of the fuel) consumed by the system in BTU,
- D is the gross electrical energy produced by the system in kilowatt-hours, and
- E is the net useful energy in the form of heat exported from the system to a thermal host in BTU.

For greater certainty, in computing the formula, element B is first multiplied by 2 before being added to C in determining the numerator and element E is first divided by 3412 before being added to D in determining the denominator.

Subparagraph (c)(i) is also amended by adding clause (C), implementing a new restriction on fossil fuel usage by these systems. Specifically, clause (C) provides that no more than 25 percent of the energy content of the fuel used by the system may be from fossil fuel, as determined on an annual basis. The energy content is to be expressed as the higher heating value of the fuel.

Subparagraph (c)(ii) applies to certain equipment that is part of an enhanced combined cycle system. Subparagraph (c)(ii) is repealed in order that such equipment no longer be considered eligible for Class 43.1.

Active Solar Heating, Ground Source Heat Pump and Geothermal Energy Systems Used to Heat a Swimming Pool

Subparagraph (d)(i) of Class 43.1 in Schedule II applies to certain active solar heating equipment and equipment that is part of a ground source heat pump system. Clause (d)(i)(B) is amended to remove the restriction on active solar heating equipment, and ground-source heat pump system equipment, used to heat swimming pools.

Subparagraph (d)(iv) of Class 43.1 in Schedule II applies to certain heat recovery equipment used primarily for the purpose of conserving energy, reducing the requirement to acquire energy or extracting heat for sale, by extracting for reuse thermal waste that is generated directly in an industrial process (other than an industrial process that generates or processes electrical energy). Subparagraph (d)(iv) is amended to remove the restriction on heat recovery equipment used to heat swimming pools.

Subparagraph (d)(vii) of Class 43.1 in Schedule II describes equipment that is used primarily for the purpose of generating electrical energy, heat energy, or both electrical and heat energy, solely from geothermal energy (geothermal energy equipment). Subparagraph (d)(vii) is amended to remove the restriction on geothermal energy equipment used to heat swimming pools.

Specified Waste-Fuelled Heat Production Equipment

Subparagraph (d)(ix) of Class 43.1 to Schedule II describes equipment used for the sole purpose of generating heat energy, primarily from the consumption of eligible waste fuel and not using any fuel other than eligible waste fuel or fossil fuel.

Subparagraph (d)(ix) is amended by adding new clause (B) to implement the restriction that equipment is not eligible under this subparagraph unless it uses fuel no more than 25 percent of the energy content of which is from fossil fuel, as determined on an annual basis. The energy content is to be expressed as the higher heating value of the fuel.

Clauses (A), (C) and (D) describe the existing conditions for eligibility under this subparagraph. Clause (A) provides that the equipment must be used for the sole purpose of generating heat energy, not using any fuel other than eligible waste fuel, fossil fuel, producer gas and any combination of those fuels (subject to the above limitation on fossil fuel). Clause (C) provides that for greater certainty eligible equipment may include (if the other conditions are met) fuel handling equipment used to upgrade the combustible portion of the fuel, control, feedwater and condensate systems and other ancillary equipment. Clause (D) provides that this subparagraph excludes equipment used for the purpose of producing heat energy to operate electrical generating equipment, buildings or other structures, heat rejection equipment (such as condensers and cooling water systems), fuel storage facilities, other fuel handing equipment and property otherwise included in Class 10 or 17.

Equipment Used to Produce Liquid Fuel from Specified Waste Material or Carbon Dioxide

Subparagraph (d)(xi) of Class 43.1 in Schedule II applies to certain equipment that is part of a system that is used to convert wood waste or plant residue into bio-oil.

Subparagraph (xi) is expanded to apply to equipment that is part of a system to convert any specified waste material (as defined in subsection 1104(13)), or convert carbon dioxide, into liquid biofuel (also defined in subsection 1104(13)). Such equipment includes storage, materials handling and ash-handling equipment and equipment used to remove non-combustibles and contaminants from the fuels produced.

However, Clauses (A), (B) and (D) to (F) provide that eligible equipment to produce liquid biofuel excludes equipment used to produce spent pulping liquor, equipment used for the collection or transportation of specified waste material or carbon dioxide, property that would otherwise be included in Class 17, automotive vehicles, and buildings or other structures. Clause (C) excludes equipment used for the transmission or distribution of liquid biofuel external to the liquid biofuel production site.

Water Current, Wave or Tidal Energy Technologies Using Physical Barriers

Subparagraph (d)(xii) of Class 43.1 in Schedule II includes a fixed location fuel cell that meets certain conditions. In particular, to be included in subparagraph (d)(xii), the fuel cell must use hydrogen, either generated from the fuel cell itself (if the fuel cell is reversible) or from ancillary electrolysis equipment that uses electricity all or substantially all of which is generated using kinetic energy of flowing water or wave or tidal energy, among other sources of energy. Subparagraph (d)(xii) is amended to remove the restriction on electricity generated by using kinetic energy of flowing water or wave or tidal energy by diverting or impeding the natural flow of water, or by using physical barriers or dam-like structures.

Subparagraph (d)(xiv) of Class 43.1 in Schedule II to the Regulations currently describes property that generates electricity using kinetic energy of flowing water or wave or tidal energy without diverting or impeding the natural flow of the water or by using physical barriers or other dam-like structures. Subparagraph (d)(xiv) is amended to remove the restriction related to diverting or impeding the natural flow of the water, or using physical barriers or other dam-like structures.

Producer Gas Generating Equipment

Subparagraph (d)(xvi) of Class 43.1 includes in that Class equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating producer gas. Eligible equipment to generate producer gas does not include equipment used to generate producer gas if the gas is to be converted into liquid biofuels or chemicals. This subparagraph is amended to clarify that this restriction applies to the conversion of producer gas into any liquid fuel, not just liquid biofuel.

Subparagraph (d)(xvi) is also amended by adding new Clause (B) to implement the restriction that equipment may only be eligible under this subparagraph if the equipment generates producer gas using feedstock no more than 25 percent of the energy content of which is from fossil fuel, as determined on an annual basis. The energy content is to be expressed as the higher heating value of the feedstock.

Clauses (A), (C) and (D) describe the existing conditions. Clause (A) provides that the equipment must be used by the taxpayer, or a lessee of the taxpayer, primarily for the purpose of generating producer gas (subject to the restrictions on conversion to liquid fuels or chemicals). Clause (C) provides that eligible equipment may include (if the other conditions are met) related piping (including fans and compressors), air separation equipment, storage equipment, equipment used for drying or shredding feedstock, ash-handling equipment, equipment used to upgrade producer gas into biomethane and equipment used to remove non-combustibles and contaminants from the producer gas.

Clause (D) provides that this subparagraph excludes buildings or other structures, heat rejection equipment (such as condensers and cooling water systems), equipment used to convert producer gas into liquid fuels or chemicals and property otherwise included in Class 10 or 17.

Pumped Hydroelectric Energy Storage Installations

New subparagraph (d)(xix) of Class 43.1 in Schedule II to the Regulations is introduced to expand Class 43.1 eligibility to pumped hydroelectric energy storage installations all or substantially all of the use of which by the taxpayer, or by a lessee of the taxpayer, is to store electrical energy.

In order to be eligible for inclusion in Class 43.1, the pumped hydroelectric energy storage installation must meet one of two additional conditions currently found in subclauses (d)(xvii)(B)(I) and (II). The first condition is that the electrical energy to be stored by the electrical energy storage equipment must be used in connection with Class 43.1 property of the taxpayer or a lessee of the taxpayer, as the case may be. The alternative condition, if the first condition is not met, is that the round trip efficiency of the electrical energy storage system is greater than 50%. In this regard, the round trip efficiency of the electrical energy storage system is to be computed by reference to the quantity of electrical energy supplied to and discharged from the electrical energy storage system.

Eligible property will include (assuming either the condition in subclause (I) or (II) is met) reversing turbines, transmission equipment, dams, reservoirs and related structures. However, new clauses (A) and (B) do not include property used solely for back-up electrical energy or buildings. This subparagraph is not intended to apply to large-scale hydroelectric power generating stations, as this subparagraph includes only equipment used for storing and discharging electrical energy by means of pumping water.

Equipment Used to Produce Solid Fuel from Specified Waste Material

New subparagraph (d)(xx) of Class 43.1 in Schedule II is introduced to expand Class 43.1 eligibility to equipment used to produce solid biofuel. Specifically, subparagraph (d)(xx) includes in Class 43.1 equipment all or substantially all of the use of which by the taxpayer, or by a lessee of the taxpayer, is to produce solid biofuel (as defined in amended subsection 1104(13)) from specified waste material (as defined in amended subsection 1104(13)). Eligible equipment includes storage, materials handling and ash-handling equipment.

However, new clauses (A) to (D) provide that eligible equipment used to produce solid biofuel does not include

- equipment used to make wood chips, hog fuel or black liquor,
- property that would otherwise be included in Class 17,
- automotive vehicles, or
- buildings and other structures.

Hydrogen Refuelling Equipment

New subparagraph (d)(xxi) of Class 43.1 in Schedule II is introduced to expand Class 43.1 eligibility to hydrogen refuelling equipment. Specifically, subparagraph (d)(xxi) includes in Class 43.1 equipment used by a taxpayer, or by a lessee of the taxpayer, to dispense hydrogen for use in automotive equipment powered by hydrogen. Such equipment includes vaporization, compression, cooling and storage equipment.

However, new clauses (A) to (E) specify exclusions in this regard. Clause (A) excludes equipment used for the production of hydrogen and the transmission of hydrogen from an external location to the hydrogen refuelling equipment. Clause (B) excludes equipment used for the transmission or distribution of electricity from an external location to the hydrogen refuelling equipment. Clauses (C) to (E) provide that eligible equipment does not include automotive vehicles, auxiliary electrical generating equipment or buildings and other structures.

Hydrogen Production by Electrolysis of Water

New subparagraph (d)(xxii) of Class 43.1 in Schedule II to the Regulations is introduced to expand Class 43.1 eligibility to certain equipment where all or substantially all of its use by the taxpayer, or a lessee of the taxpayer, is to produce hydrogen by electrolysis of water. Such equipment includes electrolysers, rectifiers and other ancillary electrical equipment, water treatment and conditioning equipment and equipment used for hydrogen compression and storage.

However, new clauses (A) to (E) provide exclusions similar to those for hydrogen refueling equipment in new subparagraph (d)(xi). Specifically, clause (A) excludes equipment used for the transmission or distribution of hydrogen external to the hydrogen production site. Clause (B) excludes equipment used for the transmission or distribution of electricity external to the hydrogen production site. Clauses (C) to (E) provide that eligible equipment does not include automotive vehicles, auxiliary electrical generating equipment or buildings and other structures.

The amendments to expand Class 43.1 eligibility, which incorporates the amendments to subparagraphs (d)(i), (iv), (vii), (xi), (xii) and (xiv) and the addition of new subparagraphs (d)(xix) to (xxii), apply to property acquired after April 18, 2021 that has not been used or acquired for use before April 19, 2021.

The amendments to restrict Class 43.1 eligibility, which incorporates amendments to subparagraphs (c)(i), (d)(ix) and (d)(xvi), and the repeal of subparagraph (c)(ii), apply to property of a taxpayer that becomes available for use by the taxpayer after 2024, except for the amendment to (d)(xvi) to replace the reference to “liquid biofuels” with “liquid fuels” which applies to property acquired after April 18, 2021 that has not been used or acquired for use before April 19, 2021.

Clause 45

Class 43.2 (50% CCA rate)

Class 43.2 in Schedule II provides for a temporary accelerated CCA rate of 50% for certain Class 43.1 properties. Class 43.2 includes some of the properties described in Class 43.1 if acquired after February 22, 2005 and before 2025. However, under paragraph (a) and subparagraph (b)(i) of Class 43.2, certain cogeneration equipment will not be included in Class 43.2 if it does not meet a more stringent heat rate threshold. Consequential to amendments to paragraph (c) of Class 43.1 mandating a higher fuel efficiency standard for cogeneration systems in that Class, Class 43.2 is also amended to remove its more stringent heat rate threshold which is now unnecessary. Specifically, paragraph (a) is amended to remove reference to the more stringent heat rate threshold and subparagraph (b)(i) is repealed.

These amendments apply to property of a taxpayer that becomes available for use by the taxpayer after 2024.

For more information, please see the commentary on paragraph (c) of Class 43.1.

Amendments to the *Children’s Special Allowance Regulations* (“CSAR”)

Clause 46

Applicant

CSAR
2

Section 2 contains definitions that apply for purposes of the CSAR.

Section 2 provides the definition “applicant” to mean a department, agency or institution referred to in subsection 3(1) of the *Children’s Special Allowances Act*. Consequential on the amendment to subsection 3(1) of that Act, the definition “applicant” is amended to include an Indigenous governing body.

This measure applies as of January 1, 2020.

Clause 47

Communication of Information

CSAR
7

Section 7 provides rules relating to information sharing agreements between the Canada Revenue Agency and the government of a province that are authorized under section 11 of the *Children’s Special Allowances Act*. These rules require that the agreement must be in writing, provide for confidentiality of the information, and be used only to determine a person’s eligibility under a social, income assistance or health insurance program of the province that is specified in the agreement.

Consequential on the amendment to section 11 of that Act, Section 7 is amended to provide that the rules apply to information sharing agreements between the Canada Revenue Agency and an Indigenous governing body.

This measure applies as of January 1, 2020.

Clause 48

Maintenance of Child

CSAR
9(a) and (b)

Paragraph 9(a) provides that a child is considered to be maintained by an applicant for the month if the applicant provides for the child’s care, maintenance, education, training and advancement to a greater extent than any other department, agency or institution or any person. Paragraph 9(a) is amended to include an Indigenous governing body in this list of parties that may be providing for the child’s care, maintenance, education, training and advancement.

Paragraph 9(b) provides a rule for the change of custody of a child that is in the care of a provincial social services agency. This paragraph is amended to include Indigenous governing bodies and the laws of Indigenous governing bodies.

This measure applies as of January 1, 2020.

Coordinating Amendments

Clause 49

Bill C-222

This clause provides a coordinating amendment related to Bill C-222, which is currently before Parliament and addresses the same subject matter as other clauses of this Act. Its effect is that, if Bill C-222 receives royal assent before or on the same day as this Act receives royal assent, the amendments made in Bill C-222 will be repealed and deemed never to have come into force.

Clause 50

Bill C-241

This clause provides a coordinating amendment related to Bill C-241, which is currently before Parliament and addresses the same subject matter as other clauses of this Act. Its effect is that, if Bill C-241 receives royal assent before or on the same day as this Act receives royal assent, the amendments made in Bill C-241 will be repealed and deemed never to have come into force.

Clause 51

Bill S-216

This clause provides a coordinating amendment related to Bill S-216, which is currently before Parliament and addresses the same subject matter as other clauses of this Act. Its effect is that, if Bill S-216 receives royal assent before or on the same day as this Act receives royal assent, the amendments made in Bill S-216 will be repealed and deemed never to come into force.