Wolters Kluwer

大成 DENTONS

dentons.com

Special Report: Canada Federal Budget 2017

This annual publication is produced by the Tax Group at Dentons Canada LLP together with Wolters Kluwer CCH. This edition contains editorial comments regarding the tax proposals announced in the 2017 Federal Budget.

Editorial Comment on Budget Resolutions

That it is expedient to amend the *Income Tax Act* ("the Act") and other tax legislation as follows:

Resolutions 1 and 2: Disability Tax Credit — Nurse Practitioners

1. (1) The portion of paragraph 118.2(1)(*a*.2) of the Act before subparagraph (i) is replaced by the following:

(*a*.2) in the case of an impairment in physical or mental functions, the effects of which are such that the individual's ability to perform a single basic activity of daily living is markedly restricted or would be so restricted but for therapy referred to in paragraph (*a*.1), a medical practitioner has certified in prescribed form that the impairment is a severe and prolonged impairment in physical or mental functions the effects of which are such that the individual's ability to perform a basic activity of daily living is markedly restricted or would be markedly restricted, but for the therapy referred to in paragraph (*a*.1), where the medical practitioner is a medical doctor, a nurse practitioner or, in the case of

(2) Subparagraphs 118.3(1)(*a*.1)(i) and (ii) of the Act are replaced by the following:

(i) an impairment with respect to the individual's ability in feeding or dressing himself, or in walking, a medical doctor, a nurse practitioner or an occupational therapist, and

(ii) in the case of any other impairment, a medical doctor or nurse practitioner,

(3) Subsections (1) and (2) apply in respect of certifications made on or after Budget Day.

2. (1) The portion of subsection 118.4(2) of the Act before paragraph (*a*) is replaced by the following:

(2) *Reference to medical practitioners, etc.*. For the purposes of sections 63, 64, 118.2, 118.3 and 118.6, a reference to an audiologist, dentist, medical doctor, medical practitioner, nurse, nurse practitioner, occupational therapist, optometrist, pharmacist, physiotherapist, psychologist or speech-language pathologist is a reference to a person authorized to practise as such,

(2) Subsection (1) comes into force on Budget Day.

Dentons Canada LLP Commentary: The disability tax credit ("DTC") is a non-refundable tax credit that may be claimed by an individual with one or more severe and prolonged impairments in mental or physical functions. The individual's ability to perform a basic activity of daily living must be markedly restricted, would be markedly restricted but for life-sustaining therapy, or the cumulative effect of multiple restrictions on daily living activities has the cumulative effect of having a single marked restriction. An eligible medical practitioner must certify that the individual meets one of these conditions on Form T2201. Depending on the nature of the disability, only certain types of medical practitioners may certify eligibility for the DTC. For example, where the individual is visually impaired, an optometrist may make the certification. Medical doctors can certify eligibility regardless of its nature.

Effective for certifications made with respect to the DTC on or after March 22, 2017, nurse practitioners are added to the types of medical practitioners who can certify a taxpayer's eligibility for the DTC. The nurse must be an authorized nurse practitioner. The only requirement on the type of impairments nurse practitioners may certify is that they only certify impairments that are within the scope of their practice.

Resolution 3: Medical Expense Tax Credit — Eligible expenditures

3. (1) Section 118.2 of the Act is amended by adding the following after subsection (2.1)

(2.2) *Fertility expenses.* An amount is deemed to be a medical expense of an individual for the purposes of this section if the amount

(a) is paid for the purpose of a *patient* (within the meaning of subsection (2)) conceiving a child; and

(b) would be a medical expense of the individual, within the meaning of subsection (2), if the patient were incapable of conceiving a child because of a medical condition.

(2) Subsection (1) applies to the 2017 and subsequent taxation years. However, if an individual makes a request for a refund in respect of a taxation year to the Minister of National Revenue within the time limit specific in paragraph 164(1.5)(*a*) of the Act, subsection (1) also applies in respect of that taxation year.

Dentons Canada LLP Commentary: Medical expenses that qualify for a non-refundable tax credit under section 118.2 and are in excess of the lesser of $2,268 and 3 percent of net income have been modified as follows:

- eligible costs incurred by any individual related to the use of reproductive technologies in order to conceive a child become eligible medical expenses
- the individual need not be medically infertile, but may only need some medical intervention to conceive a child.

This measure is applicable to expenses incurred in 2017 and subsequent taxation years. The taxpayer can also elect to deduct similar expenses for the preceding 10 taxation years.

Resolutions 4 to 7: Consolidation of Caregiver Credits

4. (1) Subsection 117.1(1.1) of the Act is repealed.

(2) Subsection (1) applies to the 2017 and subsequent taxation years.

5. (1) Clause (A) of the description of C in subparagraph (*a*)(ii) of the description of B in subsection 118(1) of the Act is replaced by the following:

(A) $2,150 if the spouse or common-law partner is dependent on the individual by reason of mental or physical infirmity, and

(2) The portion of clause (A) before subclause (I) of the description of D in subparagraph (*b*)(iv) of the description of B in subsection 118(1) of the Act is replaced by the following:

(A) $2,150 if

(3) The portion of paragraph (*b*.1) before subparagraph (i) of the description of B in subsection 118(1) of the Act is replaced by the following:

(*b*.1) *Caregiver amount for infirm child.* $2,150 for each child, who is under the age of 18 years at the end of the taxation year, of the individual and who, by reason of mental or physical infirmity, is likely to be, for a long and continuous period of indefinite duration, dependent on others for significantly more assistance in attending to the child's personal needs and care, when compared to children of the same age if

(4) Paragraphs (*c*.1) to (*e*) of the description of B in subsection 118(1) of the Act are replaced by the following:

(*d*) *Canada caregiver credit.* for each person who, at any time in the year,

(i) is dependent on the individual because of mental or physical infirmity, and

(ii) either

(A) is a spouse or common-law partner of the individual, or

(B) has attained the age of 18 years and is a dependant of the individual,

the amount determined by the formula

$$\$6,883 - E$$

where

E is the amount, if any, by which the dependant's income for the year exceeds $16,163, and

(*e*) *Additional amount.* in the case of an individual entitled to a deduction in respect of a person because of paragraph (*a*) or (*b*) and who would also be entitled, but for paragraph (4)(*c*), to a deduction because of paragraph (*d*) in respect of the person, the amount by which the amount that would be determined under paragraph (*d*) exceeds the amount determined under paragraph (*a*) or (*b*), as the case may be, in respect of the person.

(5) Paragraphs 118(4)(*c*) to (*e*) of the Act are replaced by the following:

(*c*) if an individual is entitled to a deduction under subsection (l) because of paragraph (*a*) or (*b*) of the description of B in subsection (1) for a taxation year in respect of any person, no amount may be deducted because of paragraph (*d*) of that description by any individual for the year in respect of the person; and

(*d*) if more than one individual is entitled to a deduction under subsection (1) because of paragraph (*d*) of the description of B in subsection (l) for a taxation year in respect of the same person,

(i) the total of all amounts so deductible for the year shall not exceed the maximum amount that would be so deductible for the year by any one of those individuals for that person if that individual were the only individual entitled to deduct an amount for the year because of that paragraph for that person, and

(ii) if the individuals cannot agree as to what portion of the amount each can so deduct, the Minister may fix the portions.

(6) The portion of subsection 118(6) of the Act before paragraph (*a*) is replaced by the following:

(6) *Definition of dependant.* For the purposes of paragraph (*d*) of the description of Bin subsection (1), *dependant*, of an individual for a taxation year, means a person who at any time in the year is dependent on the individual for support and is

(7) Subsections (1) to (6) apply to the 2017 and subsequent taxation years. However, for the 2017 taxation year, subsection 117.1(1) of the Act does not apply in respect of amounts expressed in dollars in

(*a*) clause (A) of the description of C in subparagraph (*a*)(ii) of the description of B in subsection 118(1) of the Act, as enacted by subsection (1);

(*b*) clause (A) of the description of D in subparagraph (*b*)(iv) of the description of B in subsection 118(1) of the Act, as amended by subsection (2);

(*c*) paragraph (*b*.1) of the description of B in subsection 118(1) of the Act, as amended by subsection (3); and

(*d*) paragraph (*d*) of the description of B in subsection 118(1) of the Act, as enacted by subsection (4).

6. (1) Clause (*c*)(i)(B) of the definition eligible individual in subsection 118.041(1) of the Act is replaced by the following:

(B) paragraph (*d*) of the description of B in that subsection where the qualifying individual is a parent, grandparent, child, grandchild, brother, sister, aunt, uncle, nephew or niece of the individual, or of the individual's spouse or common-law partner, or

(2) Subsection (1) applies to the 2017 and subsequent taxation years.

7. (1) Clause 118.3(2)(*a*)(i)(B) of the Act is replaced by the following:

(B) paragraph (*d*) of that description where the person is a parent, grandparent, child, grandchild, brother, sister, aunt, uncle, nephew or niece of the individual, or of the individual's spouse or common-law partner, or

(2) Subsection (1) applies to the 2017 and subsequent taxation years.

Dentons Canada LLP Commentary: Currently, there are several non-refundable tax credits with different eligibility criteria that depend on the circumstances of the dependant and the caregiver. The infirm dependant credit is available to individuals who support an infirm family member (other than a spouse or common-law partner). The caregiver credit is available to individuals who provide in-home care to their senior (65 and over) parents/grandparents and other infirm adult family members who are dependent on the individual. Last, the family caregiver tax credit is a supplemental tax credit that increases the value of other credits claimed by a caregiver of an infirm family member who claims one of the other dependency credits.

Budget 2017 proposes to simplify this range of caregiver credits by replacing the credits mentioned above with the single Canada Caregiver Credit ("CCC"). The amount of the credit is $6,883 in respect of family members (other than the individual's spouse or common-law partner, or child under 18). Where an individual claims a spousal or common-law partner amount, or an eligible dependant amount, or has an infirm child under 18 at year end, the base CCC amount is $2,150. Where claiming a spousal or common-law partner or eligible dependant credit in respect of an infirm dependant results in a lesser total tax credit than what could have been claimed under the full CCC amount ($6,883), an additional credit is provided to make up the difference.

Note that the CCC is no longer available to non-infirm seniors who live with their adult children. The caregiver is not required to live with the dependant in order to claim the credit. The CCC can also be shared between multiple caregivers. The credit is reduced dollar-for-dollar by the dependant's net income exceeding $16,163. The credit will apply for 2017 and subsequent years. Also, the base credit amounts and income threshold are indexed to inflation after 2017.

Resolution 8: Mineral Exploration Tax Credit for Flow-Through Share Investors

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

(*a*) that is a Canadian exploration expense incurred by a corporation after March 2017 and before 2019 (including, for greater certainty, an expense that is deemed by subsection 66(12.66) to be incurred before 2019) in conducting mining exploration activity from or above the surface of the earth for the purpose of determining the existence, location, extent or quality of a mineral resource described in paragraph (*a*) or (*d*) of the definition *mineral resource* in subsection 248(1),

(2) Paragraphs (*c*) and (*d*) of the definition *flow-through mining expenditure* in subsection 127(9) of the Act are replaced by the following:

(*c*) an amount in respect of which is renounced in accordance with subsection 66(12.6) by the corporation to the taxpayer (or a partnership of which the taxpayer is a member) under an agreement described in that subsection and made after March 2017 and before April 2018, and

(*d*) that is not an expense that was renounced under subsection 66(12.6) to the corporation (or a partnership of which the corporation is a member), unless that renunciation was under an agreement described in that subsection and made after March 2017 and before April 2018;

Dentons Canada LLP Commentary: Flow-through shares allow resource companies to renounce or "flow through" tax expenses associated with their Canadian exploration activities to investors, who can deduct the expenses in calculating their own taxable income. The mineral exploration tax credit provides an additional income tax benefit for individuals who invest in mining flow-through shares by augmenting the tax benefits associated with the flowed-through deductions equal to 15 per cent of specified mineral exploration expenses incurred in Canada and renounced to flow-through share investors.

Like many Budgets that came before it, Budget 2017 proposes to again extend the availability of the mineral exploration tax credit for flow-through investors — this measure was previously announced prior to Budget Day. Budget 2017 proposes to further extend the credit to flow-through share agreements entered into on or before March 31, 2018.

Under the existing "look-back" rule, funds raised in one calendar year with the benefit of the credit can be spent on eligible exploration up to the end of the following calendar year. Therefore, for example, funds raised with the credit during the first three months of 2018 can support eligible exploration until the end of 2019.

Resolutions 9 and 10: Electronic Distribution of T4 Information Slips

9. (1) The Act is amended by adding the following after section 221:

221.01 *Providing information returns in electronic format.* A person may provide an information return electronically under subsection 209(5) of the *Income Tax Regulations* if the criteria specified by the Minister are met.

(2) Subsection (1) comes into force on January 1, 2018.

10. (1) Section 209 of the *Income Tax Regulations* is amended by adding the following after subsection (4):

(5) A person may provide a Statement of Remuneration Paid (T4) information return, as required under subsection (1), as a single document in an electronic format (instead of the two copies required under subsection (1)) to the taxpayer to whom the return relates, on or before the date on which the return is to be filed with the Minister, unless

(*a*) the specified criteria referred to in section 221.01 of the Act are not met;

(*b*) the taxpayer has requested that the information return be provided in paper format; or

(*c*) the taxpayer cannot reasonably be expected to have access to the information return in electronic format, including as a consequence of the taxpayer

(i) being on extended leave, or

(ii) no longer being an employee of the person.

(2) Subsection (1) applies in respect of information returns that are required to be filed after 2017.

Dentons Canada LLP Commentary: Section 221.01 is added to the Act and section 209 of the *Income Tax Regulations* is amended to allow employers to distribute T4 slips to employees electronically instead of by paper, provided certain conditions are met. Exceptions are provided where an employee has requested a paper copy or where an employee cannot reasonably be expected to have access to the electronic copy such as where the employee is on extended leave or where the employee is no longer an employee. An exception also exists where an employer does not have sufficient privacy safeguards in place, in accordance with standards to be set by the Minister of National Revenue. In such circumstances, an employer will be required to provide paper copies to employees, unless the employee provides express consent.

This measure will apply to T4 slips issued that are required to be filed after 2017.

Resolutions 11 and 12: Tuition Tax Credit

11. (1) Subparagraph 118.5(1)(*a*)(ii.1) of the Act is replaced by the following:

(ii.1) are paid to an educational institution described in subparagraph (i) in respect of courses that are not at the post-secondary school level, if

(A) the individual had not attained the age of 16 years before the end of the year, or

(B) the purpose of the individual's enrolment at the institution cannot reasonably be regarded as being to provide the individual with skills, or to improve the individual's skills, in an occupation,

(2) Subsection (1) applies to the 2017 and subsequent taxation years.

12. (1) The portion of the definition *qualifying educational program* in subsection 118.6(1) of the Act before paragraph (*a*) is replaced by the following:

qualifying educational program means a program of not less than three consecutive weeks duration that provides that each student taking the program spend not less than 10 hours per week on courses or work in the program and, in respect of a program at an institution described in the definition designated educational institution (other than an institution described in subparagraph (*a*)(ii) of that definition), that is a program that does not consist primarily of research (unless the program leads to a diploma from a college or a College d'enseignement general et professionnel, or a bachelor, masters, doctoral or equivalent degree) but, in relation to any particular student, does not include a program if the student receives, from a person with whom the student is dealing at arm's length, any allowance, benefit, grant or reimbursement for expenses in respect of the program other than

(2) The portion of paragraph (*c*) of the definition qualifying student in subsection 118.6(1) of the Act before subparagraph (i) is replaced by the following:

(c) in the case of an individual who is enrolled in a program (other than a program at the post-secondary school level) at a designated educational institution described in subparagraph (*a*)(i) of the definition *designated educational institution* or who is enrolled in a program at a designated educational institution described in subparagraph (*a*)(ii) of that definition,

(3) The definition qualifying student in subsection 118.6(1) of the Act is amended by striking out "and" at the end of paragraph (*b*), by adding "and" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(d) in the case of an individual who is enrolled at a designated educational institution described in paragraph (c) of the definition designated educational institution, is enrolled in a program that is at the post-secondary level;

(4) Subsections (1) to (3) apply to the 2017 and subsequent taxation years.

Dentons Canada LLP Commentary: The tuition tax credit is a non-refundable credit for tuition and licensing exam fees paid by an individual who is enrolled at an eligible educational institution (see subsection 118.5(1) for the complete criteria). Currently, an eligible educational institution must meet either one of the following criteria:

- It is a university, college, or other educational institution that provides courses at a post-secondary school level; or
- It is an institution certified by the Minister of Employment and Social Development to be an educational institution providing courses (other than for university credits) that furnish or improve a person's skills for an occupation.

Currently, occupational skills courses offered by a university, college, or other educational institution that are not at the post-secondary level are not eligible for the tuition tax credit. Budget 2017 proposes to extend the tuition tax credit to tuition paid to a university, college, or other post-secondary institution in Canada for occupational skills courses that are not at the post-secondary level. Tuition paid for such courses will only be eligible if the course is taken to provide the individual with skills (or improving the person's skills) in an occupation and the individual has attained the age of 16 before the end of the year. This change will apply to 2017 and subsequent years.

Budget 2017 also proposes to expand the definition of a "qualified student" (subsection 118.6(1)) to include students enrolled in a course not at a post-secondary level at a university, college, or other educational institution. This definition is used in determining how much of a taxpayer's scholarship and bursary income is tax-exempt (see subsection 56(3)). This change also applies to 2017 and subsequent years.

Resolution 13: National Child Benefit Supplement

13. Subsection 29(9) of the *Budget Implementation Act, 2016, No. 1* is replaced by the following:

(9) Subsections (2) to (5) come into force on July 1, 2018.

Dentons Canada LLP Commentary: Budget 2016 introduced the Canada Child Benefit ("CCB"), which is a refundable tax credit that replaced the former Canada Child Tax Benefit, National Child Benefit Supplement ("NCBS") and Universal Child Care Benefit. For certain transitional purposes, the CCB contained a reference to the NCBS. In particular, the provinces and territories have been using information derived from taxpayers' NCBS to adjust social assistance and provincial child benefit amounts. The reference to the NCBS was scheduled to be repealed on July 1, 2017. However, since some of the provinces and territories have been unable to transition their programs before July 1, 2017, the repeal of the reference to the NCBS has been delayed a further year until July 1, 2018.

Resolutions 14 to 17: Ecological Gifts Program

14. (1) The portion of subsection 43(2) of the Act before the formula in paragraph (*a*) is replaced by the following:

(2) *Ecological gifts.* For the purposes of subsection (1) and section 53, if at any time a taxpayer disposes of a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a real or personal servitude, in circumstances where subsection 110.1(5) or 118.1(12) applies,

(*a*) the portion of the adjusted cost base to the taxpayer of the land immediately before the disposition that can reasonably be regarded as attributable to the covenant, easement or servitude, as the case may be, is deemed to be equal to the amount determined by the formula

(2) Subsection (1) applies in respect of gifts made on or after Budget Day.

15. (1) The portion of paragraph ll0.1(1)(*d*) of the Act before subparagraph (i) is replaced by the following:

(d) *Ecological gifts*. the total of all amounts each of which is the eligible amount of a gift of land (including a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a personal servitude (the rights to which the land is subject and which has a term of not less than 100 years) or a real servitude) if

(2) Clauses ll0.1(1)(*d*)(iii)(B) to (D) of the Act are replaced by the following:

(B) a municipality in Canada that is approved by that Minister or the designated person in respect of the gift,

(C) a municipal or public body performing a function of government in Canada that is approved by that Minister or the designated person in respect of the gift, or

(D) a registered charity (other than a private foundation) one of the main purposes of which is, in the opinion of that Minister, the conservation and protection of Canada's environmental heritage, and that is approved by that Minister or the designated person in respect of the gift.

(3) The portion of paragraph ll0.1(5)(*b*) of the Act before subparagraph (i) is replaced by the following:

(*b*) where the gift is a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a real or personal servitude, the greater of

(4) Subsections (1) to (3) apply in respect of gifts made on or after Budget Day.

16. (1) The portion of paragraph (*a*) of the definition total ecological gifts in subsection 118.1(1) of the Act before subparagraph (i) is replaced by the following:

(*a*) of land (including a covenant or an easement to which land is subject or, in the case of land in the Province of Quebec, a personal servitude (the rights to which the land is subject and which has a term of not less than 100 years) or a real servitude)

(2) Subparagraphs (*b*)(i) and (ii) of the definition *total ecological gifts* in subsection 118.1(1) of the Act is replaced by the following:

(i) Her Majesty in right of Canada or of a province,

(i.1) a municipality in Canada, or a municipal or public body performing a function of government in Canada, that is approved by that Minister or the designated person in respect of the gift, or

(ii) a registered charity (other than a private foundation) one of the main purposes of which is, in the opinion of that Minister, the conservation and protection of Canada's environmental heritage, and that is approved by that Minister or the designated person in respect of the gift, and

(3) Subsections (1) and (2) apply in respect of gifts made on or after Budget Day.

17. (1) Section 207.31 of the Actis replaced by the following:

207.31 (1) *Ecological gift — tax payable*. A charity, municipality in Canada or municipal or public body performing a function of government in Canada (each of which is referred to in this section as the *recipient*) shall, in respect of a property, pay a tax under this Part in respect of a taxation year if

(a) at any time in the year, the recipient

(i) disposes of the property, or

(ii) in the opinion of the Minister of the Environment, or a person designated by that Minister, changes the use of the property;

(b) the property is described in paragraph 110.1(1)(*d*) or in the definition total ecological gifts in subsection 118.1(1); and

(c) the disposition or change is made without the authorization of the Minister of the Environment or a person designated by that Minister.

(2) *Ecological gift — amount of tax.* The amount of tax to be paid under subsection (1) is equal to 50% of the amount that would be determined for the purposes of section 110.1 or 118.1, if this Act were read without reference to subsections 110.1(3) and 118.1(6), to be the fair market value of the property referred to in subsection (1) if the property were given to the recipient immediately before the disposition or change referred to in paragraph (l)(*a*).

(2) Subsection (1) applies in respect of dispositions made, and changes of use that occur, on or after Budget Day.

Dentons Canada LLP Commentary: Donations of certain types of ecologically-sensitive land ("ecological gifts") qualify for the donations tax credit for individuals and a deduction in computing taxable income for corporations. The amount of the ecological gift that qualifies in a particular year is up to 100% of the donor's income. Unused credits can be carried forward for up to 10 years. As an additional incentive, any capital gains resulting from ecological gifts are not taxable.

Budget 2017 proposes certain measures "in order to better protect gifts of ecologically sensitive land".

Qualified donees of ecological gifts include the federal and provincial governments, municipalities and municipal or public bodies performing a function of government in Canada ("municipal bodies"), and a registered charity one of the main purposes of which is, in the opinion of Minister of Environment and Climate Change, the conservation and protection of Canada's environmental heritage.

Under current law, each gift to a registered charity must also be approved by the Minister; this gift-by-gift basis approval is not required for the other qualified donees. Resolutions 15 and 16 extend the gift-by-gift approval requirement for recipients that are municipalities or municipal or public bodies, effective for gifts made on or after Budget Day 2017. The requirement does not extend to the federal and provincial government donees.

Under current law, a registered charity that is a private foundation can be a qualified donee of an ecological gift. Resolutions 15 and 16 provide that private foundations will no longer be qualified donees, effective for gifts made on or after Budget Day 2017.

Resolutions 14, 15, and 16 also provide amendments that will allow a personal servitude of land in the province of Quebec to qualify as an ecological gift, provided that the servitude has a duration of at least 100 years.

Where the recipient donee of an ecological gift subsequently disposes of the property or changes its use without the authorization of the Minister of the Environment and Climate Change, a penalty tax applies, equal to 50% of the fair market value of the property. Currently, the tax does not apply to a qualified donee to which the property was not donated–for example, a charity or municipality to which the property was transferred by the original recipient donee. Resolution 17 proposes to extend the penalty tax to any charity, municipality in Canada, or municipal or public body performing a function of government in Canada that disposes of the property or changes to use of property. In addition, the Minister of the Environment and Climate Change is granted the ability, under Resolution 17, to determine whether changes to the use of the property have occurred. The resolution applies to disposes or changes of use made on or after Budget Day 2017.

Resolutions 18 and 19: Public Transit Tax Credit

18. (1) The description of C in subsection 118.02(2) of the Act is replaced by the following:

C is the total of all amounts each of which is the portion of the cost of an eligible public transit pass or of an eligible electronic payment card, attributable to the use of public commuter transit services in the taxation year and before July 2017 by the individual or by a person who is in the taxation year a qualifying relation of the individual, and

(2) Section 118.02 of the Act, as amended by subsection (1), is repealed.

(3) Subsection (1) applies to the 2017 taxation year.

(4) Subsection (2) applies to the 2018 and subsequent taxation years.

19. (1) Section 118.92 of the Act is replaced by the following:

118.92 *Ordering of credits.* In computing an individual's tax payable under this Part, the following provisions shall be applied in the following order: subsections 118(1) and (2), section 118.7, subsections 118(3) and (10) and sections 118.01, 118.04, 118.041, 118.05, 118.06, 118.07, 118.3, 118.61, 118.5, 118.9, 118.8, 118.2, 118.1, 118.62 and 121.

(2) Subsection (1) applies to the 2018 and subsequent taxation years.

Dentons Canada LLP Commentary: The Public Transit Credit, which allowed a 15% non-refundable tax credit on certain transit expenses, including the cost of eligible public transit passes and electronic fare cards, is being eliminated effective July 1, 2017.

Resolution 20: Allowances for Members of Legislative Assemblies and Certain Municipal Officers

20. (1) Subsections 81(2) and (3) of the Act are repealed.

(2) Subsection (1) comes into force on January 1, 2019.

Dentons Canada LLP Commentary: Subsections 81(2) and 81(3) exclude from taxation non-accountable expense allowances received by certain elected officials.

These provision applied in respect of expense allowances received by:

- elected members of provincial and territorial legislative assemblies and officers of incorporated municipalities;
- elected officers of municipal utilities boards, commissions, corporations, or similar bodies; and
- members of public or separate school boards or of similar bodies governing a school district.

Effective January 1, 2019, these exemptions are repealed. The reimbursement of eligible employment expenses of these elected officials will continue to be non-taxable to the recipient.

Resolutions 21 to 25: Home Relocation Loans Deduction

21. (1) Subsection 80.4(4) of the Act is replaced by the following:

(4) *Interest on loans for home purchase or relocation.* For the purpose of computing the benefit under subsection (1) in a taxation year in respect of a home purchase loan or a home relocation loan, the amount of interest determined under paragraph (1)(*a*) shall not exceed the amount of interest that would have been determined thereunder if it had been computed at the prescribed rate in effect at the time the loan was received or the debt was incurred, as the case may be.

(2) Subsection (1) comes into force on January 1, 2018.

22. (1) Paragraph 110(1)(*j*) of the Act is repealed.

(2) Subsection 110(1.4) of the Act is repealed.

(3) Subsections (1) and (2) come into force on January 1, 2018.

23. (1) Paragraph (*b*) of the description of E in the definition *non-capital loss* in subsection 111(8) of the Act is replaced by the following

(*b*) an amount deducted under paragraph (1)(*b*) or section 110.6, or deductible under any of paragraphs 110(1)(*d*) to (*d.3*), (*f*), (*g*) and (*k*), section 112 and subsections 113(1) and 138(6), in computing the taxpayer's taxable income for the year, or

(2) Subsection (1) comes into force on January 1, 2018.

24. (1) Subparagraph 122.3(1)(*e*)(iii) of the Act is replaced by the following:

(iii) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(*b*), or deductible under paragraph 110(1)(*d*.2), (*d*.3), (*f*) or (*g*), in computing the individual's taxable income for the year.

(2) Subsection (1) comes into force on January 1, 2018.

25. (1) Subclause 126(1)(*b*)(ii)(A)(III) of the Act is replaced by the following:

(III) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(*b*), or deductible under any of paragraphs 110(1)(*d*) to (*d*.3), (*f*) and (*g*) and sections 112 and 113, in computing the taxpayer's taxable income for the year, and

(2) Subclause 126(2.1)(*a*)(ii)(A)(III) of the Act is replaced by the following:

(III) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(*b*), or deductible under any of paragraphs 110(1)(*d*) to (*d*.3), (*f*) and (*g*) and sections 112 and 113, in computing the taxpayer's taxable income for the year, and

(3) Subparagraph 126(3)(*b*)(iii) of the Act is replaced by the following:

(iii) the total of all amounts each of which is an amount deducted under section 110.6 or paragraph 111(1)(*b*), or deductible under paragraph 110(1)(*d*.2), (*d*.3), (*f*) or (*g*), in computing the individual's taxable income for the year.

(4) Subsections (1) to (3) come into force on January 1, 2018.

Dentons Canada LLP Commentary: Currently, when an employer provides a loan to an employee and the loan carries no interest or a rate of interest below the prescribed rate of interest under the Act, the employee generally includes an imputed interest benefit in employment income. The benefit equals the prescribed rate of interest in effect during the relevant year multiplied by the principal amount of the loan outstanding during the year, minus any interest paid on the loan within the year or within 30 days after the year. Accordingly, if the prescribed rate fluctuates, the amount of the benefit will normally fluctuate.

However, if the loan is used to acquire a home in which the employee intends to reside ("home purchase loan"), there is an effective "cap" on the imputed interest benefit, in that the maximum benefit is the amount that would be included using the rate in effect at the time of the loan, even if the prescribed rate otherwise fluctuates. The cap applies to a maximum of five years. If the loan remains outstanding after five years, a new cap applies using the prescribed rate in effect at that time**.**

In addition, if the home purchase loan qualifies as a "home relocation loan", the employee is allowed a deduction under the Act. The deduction is the amount that would be the imputed benefit in respect of a $25,000 loan; basically, this means that the imputed benefit on the first $25,000 of the loan is non-taxable. A home relocation loan is one that is in respect of the employee's new home that is at least 40 kilometres closer to the new work location relative to the employee's former home.

The home relocation loan deduction under Division C is eliminated effective as of January 1, 2018. However, the loans will still be eligible for the five-year interest cap described above.

Resolutions 26 to 40: Anti-avoidance Rules for Registered Plans

26. (1) The portion of subsection 87(10) of the Act after paragraph (*f*) is replaced by the following:

the new share is deemed, for the purposes of subsection 116(6), the definitions *qualified investment* in subsections 146(1), 146.1(1), 146.3(1) and 146.4(1), in section 204 and in subsection 207.01(1), and the definition *taxable Canadian property* in subsection 248(1), to be listed on the exchange until the earliest time at which it is so redeemed, acquired or cancelled.

(2) Subsection (1) comes into force on the day after Budget Day.

27. (1) Paragraph 132.2(3)(*h*) of the Act is replaced by the following:

(*h*) where a share to which paragraph (*g*) applies would, if this Act were read without reference to this paragraph, cease to be a *qualified investment* (within the meaning assigned by subsection 146(1), 146.1(1), 146.3(1) or 146.4(1), section 204 or subsection 207.01(1)) as a consequence of the qualifying exchange, the share is deemed to be a qualified investment until the earlier of the day that is 60 days after the day that includes the transfer time and the time at which it is disposed of in accordance with paragraph (*g*);

(2) Subsection (1) comes into force on the day after Budget Day.

28. (1) Paragraph (*b*) of the definition *education savings plan* in subsection 146.1(1) of the Act is replaced by the following:

(*b*) a person (in this definition referred to as the *promoter*)

(2) Subsection 146.1(1) of the Act is amended by adding the following definition in alphabetical order:

promoter of an arrangement, means the person described as the promoter in the definition *education savings plan*.

(3) Paragraphs 146.1(2.1)(*a*) and (*b*) of the Act are repealed.

(4) Subsection 146.1(5) of the Act is replaced by the following:

(5) *Trust not taxable.* No tax is payable under this Part by a trust that is governed by a RESP on its taxable income for a taxation year, except that, if at any time in the taxation year, it holds one or more properties that are not qualified investments for the trust, tax is payable under this Part by the trust on the amount that would be its taxable income for the taxation year if it had no income or

losses from sources other than those properties, and no capital gains or capital losses other than from dispositions of those properties, and for that purpose,

(*a*) income includes dividends described in section 83;

(*b*) the trust's taxable capital gain or allowable capital loss from the disposition of a property is equal to its capital gain or capital loss, as the case may be, from the disposition; and

(*c*) the trust's income shall be computed without reference to subsection 104(6).

(5) Subsection 146.1(7) of the Act is replaced by the following:

(7) *Educational assistance payments.* There shall be included in computing an individual's income for a taxation year the total of all educational assistance payments (other than an excluded amount) paid out of registered education savings plans to or for the individual in the year.

(6) Paragraph 146.1(7.1)(*a*) of the Act is replaced by the following:

(*a*) each accumulated income payment (other than an excluded amount or an accumulated income payment made under subsection (1.2)) received in the year by the taxpayer under a registered education savings plan; and

(7) Subsection 146.1(7.2) of the Act is replaced by the following:

(7.2) *Excluded amount.* An excluded amount in respect of a registered education savings plan is,

(*a*) for the purposes of subsection (7) and paragraph (7.1)(*a*), an amount in respect of which the subscriber pays a tax under Part X1.01, unless the tax is waived, cancelled or refunded; and

(*b*) for the purposes of paragraph (7.1)(*b*),

(i) any amount received under the plan,

(ii) any amount received in satisfaction of a right to a refund of payments under the plan, or

(iii) any amount received by a taxpayer under a decree, order or judgment of a competent tribunal, or under a written agreement, relating to a division of property between the taxpayer and the taxpayer's spouse or common-law partner or former spouse or common-law partner in settlement of rights arising out of, or on the breakdown of, their marriage or common-law partnership.

(8) Subsections (1), (2) and (5) to (7) come into force on the day after Budget Day.

(9) Subsections (3) and (4) apply in respect of

(*a*) any investment acquired after Budget Day; and

(*b*) any investment acquired on or before Budget Day that ceases to be a qualified investment (as defined in subsection 146.1(1) of the Act) after Budget Day.

29. (1) The portion of paragraph (*d*) of the definition *contribution* in subsection 146.4(1) of the Act before subparagraph (i) is replaced by the following:

(*d*) other than for the purposes of paragraphs (4)(*f*) to (*h*) and (*n*),

(2) The portion of subparagraph (*a*)(i) of the definition *disability savings plan* in subsection 146.4(1) of the Act before clause (A) is replaced by the following:

(i) a corporation (in this definition referred to as the *issuer*)

(3) The description of A in the definition *specified maximum amount* in subsection 146.4(1) of the Act is replaced by the following:

A is 10% of the fair market value of the property held by the plan trust at the beginning of the calendar year (other than annuity contracts held by the plan trust that, at the beginning of the calendar year, are not described in paragraph (*b*) of the definition *qualified investment*), and

(4) Subparagraph (i) of the description of B in the definition *specified maximum amount* in subsection 146.4(1) of the Act is replaced by the following:

(i) a periodic payment under an annuity contract held by the plan trust at the beginning of the calendar year (other than an annuity contract described at the beginning of the calendar year in paragraph (*b*) of the definition *qualified investment*) that is paid to the plan trust in the calendar year, or

(5) Subsection 146.4(1) of the Act is amended by adding the following in alphabetical order:

issuer of an arrangement, means the person described as the issuer in the definition *disability savings plan*.

qualified investment for a trust governed by a RDSP, means

(*a*) an investment that would be described by any of paragraphs (*a*) to (*d*), (*f*) and (*g*) of the definition *qualified investment* in section 204 if the reference in that definition to "a trust governed by a deferred profit sharing plan or revoked plan" were read as a reference to "a trust governed by a RDSP" and if that definition were read without reference to the words "with the exception of excluded property in relation to the trust";

(*b*) a contract for an annuity issued by a licensed annuities provider where

(i) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract, and

(ii) the holder of the contract has a right to surrender the contract at any time for an amount that would , if reasonable sales and administration charges were ignored, approximate the value of funds that could otherwise be applied to fund future periodic payments under the contract;

(*c*) a contract for an annuity issued by a licensed annuities provider where

(i) annual or more frequent periodic payments are or may be made under the contract to the holder of the contract,

(ii) the trust is the only person who, disregarding any subsequent transfer of the contract by the trust, is or may become entitled to any annuity payments under the contract,

(iii) neither the time nor the amount of any payment under the contract may vary because of the length of any life, other than the life of the beneficiary under the plan,

(iv) the day on which the periodic payments began or are to begin is not later than the end of the later of

(A) the year in which the beneficiary under the plan attains the age of 60 years, and

(B) the year following the year in which the contract was acquired by the trust,

(v) the periodic payments are payable for the life of the beneficiary under the plan and either there is no guaranteed period under the contract or there is a guaranteed period that does not exceed 15 years,

(vi) the periodic payments

(A) are equal, or

(B) are not equal solely because of one or more adjustments that would, if the contract were an annuity under a retirement savings plan, be in accordance with subparagraphs 146(3)(*b*)(iii) to (*v*) or that arise because of a uniform reduction in the entitlement to the periodic payments as a consequence of a partial surrender of rights to the periodic payments, and

(vii) the contract requires that, in the event the plan must be terminated in accordance with paragraph (4)(*p*), any amounts that would otherwise be payable after the termination be commuted into a single payment; and

(*d*) a prescribed investment

(6) The description of A in paragraph 146.4(4)(*l*) of the Act is replaced by the following:

A is the fair market value of the property held by the plan trust at the beginning of the calendar year (other than annuity contracts held by the plan trust that, at the beginning of the calendar year, are not described in paragraph (*b*) of the definition *qualified investment* in subsection (1)),

(7) Subparagraph (*i*) of the description of D in paragraph 146.4(4)(*l*) of the Act is replaced by the following:

(i) a periodic payment under an annuity contract held by the plan trust at the beginning of the calendar year (other than an annuity contract described at the beginning of the calendar year in paragraph (*b*) of the definition *qualified investment* in subsection (1)) that is paid to the plan trust in the calendar year, or

(8) The portion of paragraph 146.4(5)(*b*) of the Act before subparagraph (*i*) is replaced by the following:

(*b*) if the trust is not otherwise taxable under paragraph (*a*) on its taxable income for the year and, at any time in the year, it carries on one or more businesses or holds one or more properties that are not qualified investments for the trust, tax is payable under this Part by the trust on the amount that its taxable income for the year would be if it had no incomes or losses from sources other than those businesses and properties, and no capital gains or losses other than from dispositions of those properties, and for this purpose,

(9) The formula in subsection 146.4(7) of the Act is replaced by the following:

$$A \times B/C + D$$

(10) Subsection 146.4(7) of the Act is amended by striking out "and" at the end of the description of B, by adding "and" at the end of the description C and by adding the following after the description of C:

D an amount in respect of which a holder of the plan pays a tax under Part XI.01, unless the tax is waived, cancelled or refunded.

(11) Subsection 146.4(13) of the Act is amended by adding "and" at the end of paragraph (*c*) and by repealing paragraph (*d*).

(12) Subsections (1) to (11) come into force on the day after Budget Day.

30. (1) Part XI of the Act is repealed.

(2) Subsection (1) applies to transactions and events occurring, income earned, capital gains accruing and investments acquired, after Budget Day.

31. (1) The heading of Part XI.01 of the Act is replaced by the following:

Taxes in Respect of Registered Plans.

(2) Subsection (1) comes into force on the day after Budget Day.

32. (1) The portion of subsection 207.01(1) of the Act before the definition advantage is replaced by the following:

207.01 (1) *Definitions*. The following definitions and the definitions in subsections 146(1) (other than the definition *benefit*),146.1(1), 146.2(1), 146.3(1) and 146.4(1) apply in this Part and Part XLIX of the *Income Tax Regulations*.

(2) The definition RRSP strip in subsection 207.01(1) of the Act is repealed.

(3) The definitions *controlling individual, registered plan* and *transitional prohibited property* in subsection 207.01(1) of the Act are replaced by the following:

controlling individual of a registered plan, means

(*a*) the holder of a TFSA;

(*b*) a holder of a RDSP;

(*c*) a subscriber of a RESP; or

(*d*) the annuitant of a RRIF or RRSP.

registered plan means a RDSP, RESP, RRIF, RRSP or TFSA

transitional prohibited property at any time for a particular trust governed by a registered plan (other than a TFSA) of a controlling individual , means a property that is held by the particular trust at that time, that was held

(*a*) on March 22, 2011 by a trust governed by a RRIF or RRSP of the controlling individual and that was a prohibited investment for that trust on March 23, 2011; or

(*b*) on Budget Day by a trust governed by a RDSP or RESP of the controlling individual and that was a prohibited investment for that trust on the day after Budget Day.

(4) Subparagraphs (*a*)(iii) and (iv) of the definition advantage in subsection 207.01(1) of the Act are replaced by the following:

(iii) a payment out of or under the registered plan in satisfaction of all or part of a beneficiary's or controlling individual's interest in the registered plan,

(iv) the payment or allocation of any amount to the registered plan by the issuer, carrier or promoter,

(iv.1) an amount paid under or because of the *Canada Disability Savings Act*, the *Canada Education Savings Act* or under a designated provincial program, and

(5) The portion of subparagraph (*c*)(ii) of the definition advantage before clause (A) in subsection 207.01(1) of the Act is replaced by the following:

(ii) in the case of a registered plan that is not a TFSA, an amount received by the controlling individual of the registered plan, or by a person who does not deal at arm's length with the controlling individual (if it is reasonable to consider, having regard to all the circumstances, that the amount was paid in relation to, or would not have been paid but for, property held in connection with the registered plan) and the amount was paid as, on account or in lieu of, or in satisfaction of, a payment

(6) Paragraph (*d*) of the definition advantage in subsection 207.01(1) of the Act is replaced by the following:

(*d*) a registered plan strip in respect of the registered plan; and

(7) Paragraph (*b*) of the definition *swap transaction* in subsection 207.01(1) of the Act is replaced by the following:

(*b*) a payment into the registered plan that is

(i) a contribution, a premium or an amount transferred in accordance with paragraph 146.3(2)(*f*),

(ii) described in paragraph (*a*) or (*b*) of the definition *contribution* in subsection 146.1(1), or

(iii) described in any of paragraphs (*a*) to (*d*) of the definition *contribution* in subsection 146.4(1);

(8) Paragraph (*d*) of the definition *swap transaction* in subsection 207.01(1) of the Act is amended by striking out "or" at the end of subparagraph (i) and by adding the following after subparagraph (ii):

(iii) both registered plans are RDSPs, or

(iv) both registered plans are RESPs ;

33. (1) Subsection 207.04(3) of the Act is replaced by the following:

(3) *Both prohibited and non-qualified investment.* For the purposes of this section and subsections 146(10.1), 146.1(5), 146.2(6), 146.3(9), 146.4(5) and 207.01(6), if a trust governed by a registered plan holds property at any time that is, for the trust, both a prohibited investment and a non-qualified investment, the property is deemed at that time not to be a non-qualified investment, but remains a prohibited investment, for the trust.

(2) Section 207.04 of the Act is amended by adding the following after subsection (4):

(5) *Apportionment of refund.* If more than one person is entitled to a refund under subsection (4) for a calendar year in respect of the disposition of a property, the total of all amounts so refundable shall not exceed the amount that would be so refundable for the year to any one of those persons in respect of that disposition if that person were the only person entitled to a refund for the year under that subsection in respect of the disposition. If the persons cannot agree as to what portion of the refund each can so claim, the Minister may fix the portions.

(6) *Liability for tax.* Each person who is a holder of a RDSP or a subscriber of a RESP at the time that a tax is imposed under subsection (1) in connection with the plan is jointly and severally, or solidarily, liable to pay the tax.

(3) Subsections (1) and (2) come into force on the day after Budget Day.

34. (1) Paragraph 207.05(2)(*c*) of the Act is replaced by the following:

(*c*) in the case of a registered plan strip, the amount of the registered plan strip.

(2) Subsection 207.05(3) of the Act is replaced by the following:

(3) *Liability for tax.* Each controlling individual of a registered plan in connection with which a tax is imposed under subsection (l) is jointly and severally, or solidarily, liable to pay the tax except that, if the advantage is extended by the issuer, carrier or promoter of the registered plan or by a person with whom the issuer, carrier or promoter is not dealing at arm's length, the issuer carrier or promoter, and not the controlling individual, is liable to pay the tax.

(3) Section 207.05(4) of the Act is replaced by the following:

(4) *Transitional rule — RRIF or RRSP.* If an individual so elects before March 2, 2013 in prescribed form, subsection (l) does not apply in respect of any advantage that is an amount included in the calculation of the transitional prohibited investment benefit of the individual for a taxation

year provided that each portion of the transitional prohibited investment benefit that is attributable to a RRIF or RRSP

(*a*) is paid to the individual, from a RRIF or RRSP of the individual, on or before the later of April 2, 2013 and the day that is 90 days after the end of the taxation year; and

(*b*) is not paid by way of transfer to another RRIF or RRSP of the individual

(5) *Transitional rule — RDSP or RESP.* If an individual so elects before April 2, 2018 in prescribed form, subsection (1) does not apply in respect of any advantage that is an amount included in the calculation of the transitional prohibited investment benefit of the individual for a taxation year provided that each portion of the transitional prohibited investment benefit that is attributable to a RDSP or RESP

(*a*) is paid to the individual, from the RDSP or RESP of the individual, on or before the day that is 90 days after the end of the taxation year; and

(*b*) is not paid by way of transfer to another RDSP or RESP of the individual

(4) Subsections (1) to (3) come into force on the day after Budget Day.

35. (1) Section 207.07 of the Act is amended by adding the following after subsection (1):

(1.1) *Multiple holders or subscribers.* If two or more holders of a RDSP, or two or more subscribers of a RESP, are jointly and severally, or solidarily, liable with each other to pay a tax under this Part for a calendar year in connection with the plan,

(*a*) a payment by any of the holders, or any of the subscribers, on account of that tax liability shall to the extent of the payment discharge the joint liability; and

(*b*) a return filed by one of the holders, or one of the subscribers, as required by this Part for the year is deemed to have been filed by each other holder, or each other subscriber, in respect of the joint liability to which the return relates.

(2) Subsection (1) comes into force on the day after Budget Day.

36. (1) Subsection 207.1(3) of the Act is repealed.

(2) Subsection (1) applies in respect of

(*a*) any investment acquired after Budget Day; and

(*b*) any investment acquired on or before Budget Day that ceases to be a qualified investment (as defined in subsection 146.1(1) of the Act) after Budget Day.

37. (1) The definition designated provisions in subsection 259(5) of the Act is replaced by the following:

designated provisions means sections 146 and 146.1 to 146.4 and Parts X, XI.01 and XI.1, as they apply in respect of investments that are not qualified investments for a trust, and Part X.2;

(2) Subsection (1) comes into force on the day after Budget Day.

38. (1) Subsection 221(2) of the *Income Tax Regulations* is replaced by the following:

(2) Where in any taxation year a reporting person (other than a registered investment) claims that a share of its capital stock issued by it, or an interest as a beneficiary under it, is a qualified investment under section 146, 146.1, 146.3, 146.4, 204, or 207.01 of the Act, the reporting person shall, in respect of the year and within 90 days after the end of the year, make an information return in prescribed form.

(2) Subsection (1) comes into force on the day after Budget Day.

39. (1) The *Income Tax Regulations* are amended by adding the following after section 221:

222. The issuer of a RDSP, or the promoter of a RESP, that governs a trust shall notifY the holders of the RDSP, or subscribers of the RESP, in prescribed form and manner before March of a calendar year if, at any time during the preceding calendar year,

(*a*) the trust acquires or disposes of property that is a not a qualified investment for the trust; or

(*b*) property held by the trust becomes or ceases to be a qualified investment for the trust.

(2) Subsection (1) comes into force on the day after Budget Day.

40. (1) The portion of subsection 4900(1) of the *Income Tax Regulations* before paragraph (*a*) is replaced by the following:

4900. (1) For the purposes of paragraph (*d*) of the definition *qualified investment* in subsection 146(1) of the Act, paragraph (*e*) of the definition *qualified investment* in subsection 146.1(1) of the Act, paragraph (*c*) of the definition *qualified investment* in subsection 146.3(1) of the Act, paragraph (*d*) of the definition *qualified investment* in subsection 146.4(1) of the Act, paragraph (*h*) of the definition *qualified investment* in section 204 of the Act and paragraph (*c*) of the definition *qualified investment* in subsection 207.01(1) of the Act, each of the following investments is prescribed as a qualified investment for a plan trust at a particular time if at that time it is

(2) The portion of paragraph 4900(l)(*g*) of the *Income Tax Regulations* before subparagraph (i) is re- placed by the following:

(*g*) a bond, debenture, note or similar obligation (in this paragraph referred to as the *obligation*) issued by, or a deposit with, a credit union that has not at any time during the calendar year in which the particular time occurs granted any benefit or privilege to a person who is a connected person under the governing plan of the plan trust, as a result of the ownership by

(3) Subsection 4900(5) of the *Income Tax Regulations* is replaced by the following:

(5) For the purposes of paragraph (*e*) of the definition *qualified investment* in subsection 146.1(1) of the Act, paragraph (*d*) of the definition *qualified investment* in subsection 146.4(1) of the Act and paragraph (*c*) of the definition *qualified investment* in subsection 207.01(1) of the Act, a property is prescribed as a *qualified investment* for a trust governed by a registered disability savings plan, a registered education savings plan or a TFSA at any time if at that time the property is an interest in a trust or a share of the capital stock of a corporation that was a registered investment for a trust governed by a registered retirement savings plan during the calendar year in which that time occurs or during the preceding year.

(4) The portion of subsection 4900(6) of the *Income Tax Regulations* before paragraph (*b*) is replaced by the following:

(6) Subject to subsection (9), for the purposes of paragraph (*d*) of the definition *qualified investment* in subsection 146(1) of the Act, paragraph (*e*) of the definition *qualified investment* in subsection 146.1(1) of the Act and paragraph (*c*)of the definition *qualified investment* in subsection 146.3(1) of the Act, a property is prescribed as a qualified investment for a trust governed by a registered retirement savings plan, a registered education savings plan and a registered retirement income fund at any time if at that time the property is not a prohibited investment for the trust and is

(*a*) a share of the capital stock of an *eligible corporation* (as defined in subsection 5100(1));

(5) Subsections 4900(8), (12) and (13) of the *Income Tax Regulations* are repealed.

(6) The portion of subsection 4900(14) of the *Income Tax Regulations* before paragraph (*a*) is replaced by the following:

(14) For the purposes of paragraph (*d*) of the definition *qualified investment* in subsection 146(1) of the Act, paragraph (*e*) of the definition *qualified investment* in subsection 146.1(1) of the Act, paragraph (*c*) of the definition *qualified investment* in subsection 146.3(1) of the Act and paragraph (*c*) of the definition qualified investment in subsection 20 7.01(1) of the Act, a property is prescribed as a qualified investment for a trust governed by a RESP, RRIF, RRSP or TFSA at any time if, at the time the property was acquired by the trust, the property

(7) The portion of subsection 4900(15) of the *Income Tax Regulations* before paragraph (*a*) is replaced by the following:

(15) For the purposes of the definition *prohibited investment* in subsection 207.01(1) of the Act, property that is a qualified investment for a trust governed by a RESP, RRIF, RRSP or TFSA solely because of subsection (14) is prescribed property for the trust at any time if, at that time, the property is not described in any of subparagraphs (14)(*a*)(i) to (iii).

(8) Subsections (1) and (3) come into force on the day after Budget Day.

(9) Subsections (2) and (4) to (7) apply in respect of

(*a*) any investment acquired after Budget Day; and

(*b*) any investment acquired on or before Budget Day that ceases to be a *qualified investment* (as defined in subsection 146.1(1) of the Act) after Budget Day.

Dentons Canada LLP Commentary: Budget 2017 proposes to expand the advantage rules, prohibited investment rules and non-qualified investment rules and the resulting tax payable under Part XI.01 of the Act that currently apply to other tax-assisted registered plans such as tax-free savings accounts ("TFSAs"), registered retirement savings plans ("RRSPs") and registered retirement income funds ("RRIFs") to registered education savings plans ("RESPs") and registered disability savings plans ("RDSPs").

The advantage rules help prevent the exploitation of the tax attributes of a registered plan and specify that advantages are subject to a tax that is generally equal to their fair market value. Transactions that are considered advantages include benefits derived from transactions that would not have occurred in a regular, open market between arm's length parties, certain types of payments, certain "swap transactions", and income derived from non-qualified or prohibited investments.

The prohibited investment rules define a "prohibited investment" to be debt of the registered plan holder and investments in entities in which the registered plan holder or a non-arm's length person has a "significant interest" (generally 10 per cent or more) or with which the registered plan holder does not deal at arm's length. These rules apply a tax equal to 50 per cent of the fair market value of a prohibited investment acquired by the registered plan (or at the time that an investment becomes prohibited, as the case may be). The tax will generally be refunded, if the investment is disposed of from the registered plan by the end of the year following the year in which the tax applied (or by such later time as the Minister of National Revenue considers reasonable), unless the annuitant knew or ought to have known that the investment was a prohibited investment when it was acquired.

The non-qualified investment rules refer to the holding of an investment that is not a "qualified investment" by a registered plan and the taxation of the trust governed by the plan of the income earned on non-qualified investments. Examples of non-qualified investments include shares in private investment holding companies or foreign private companies, and real estate. Income earned on non-qualified investments held by registered plans will generally be taxable to the trust governed by the registered plan.

In order to expand these rules to RESPs and RDSPs a number of consequential amendments have been proposed:

- For RESPs, Budget 2017 proposes to replace subsection 146.1(5) to specify where a trust governed by an RESP holds properties that are not qualified investments, tax will be payable by the trust under Part I of the Act on the amount that would be the trust's income if it only had income from those properties and capital gains or capital losses from those properties. The trust's income shall be computed without reference to subsection 104(6) of the Act, which provides a deduction for the trust on certain amounts that become payable in the year to a beneficiary.
- In order to avoid double taxation on these amounts, Budget 2017 proposes to introduce the concept of an "excluded amount" for RESPs. The definition is contained in subsection 146.1(7.2) to mean an amount in respect of which the subscriber pays a tax under Part XI.01. As a result of the tax being paid by the RESP on the income derived from the prohibited investments, Budget 2017 proposes to amend subsection 146.1(7) of the Act to ensure that amount of income is not taxed in the hands of the individual when those amounts are paid out of the RESP.
- For RDSPs, Budget 2017 proposes to make similar amendments as specified above for RESPs. In addition, the definition of "qualified investment" is added to subsection 146.4(1) and adopting the definition of "qualified investment" that was contained in subsection 205(1). This is required as a result of the proposal to repeal Part XI (as a consequence of expanding Part XI.01 to RDSPs) and the resulting deletion of section 205.
- Budget 2017 also proposes to make the other consequential amendments required to expand these anti-avoidance rules to RESPs and RDSPs including the necessary cross references throughout the Act.

These proposals will come into force on the day after Budget Day (March 23, 2017), apply to investments acquired after Budget Day, investments acquired before Budget Day that cease to be qualified investments after Budget Day and income generated after Budget Day on previously acquired investments. However, the advantage rules will not apply to any swap transactions undertaken before July 2017 and will not apply to certain swap transactions undertaken before the end of 2021 to ensure that an RESP or RDSP complies with the new rules.

The government's statement in the "Tax Measures: Supplementary Information" is that these proposals are not expected to have an impact on the vast majority of RESP and RDSP holders.

Resolutions 41 to 45: Investment Fund Mergers

41. (1) The definition *qualifying exchange* in subsection 132.2(1) of the Act is replaced by the following:

qualifying exchange means a transfer at any time (in this section referred to as the *transfer time*) if

(*a*) the transfer is a transfer of all or substantially all of the property of

(i) a mutual fund corporation (other than a SIFT wind-up corporation) to one or more mutual fund trusts, or

(ii) a mutual fund trust to a mutual fund trust;

(*b*) all or substantially all of the shares issued by the mutual fund corporation referred to in subparagraph (*a*)(i) or the first mutual fund trust referred to in subparagraph (*a*)(ii) (in this section referred to as the *transferor*) and outstanding immediately before the transfer time are within 60 days after the transfer time disposed of to the transferor;

(*c*) no person disposing of shares of the transferor to the transferor within that 60-day period (otherwise than pursuant to the exercise of a statutory right of dissent) receives any consideration for the shares other than units of one or more mutual fund trusts referred to in subparagraph (*a*)(i) or the second mutual fund trust referred to in subparagraph (*a*)(ii) (in this section referred to as a *transferee* and, together with the transferor, as the *funds*);

(*d*) if property of the transferor has been transferred to more than one transferee,

(i) all shares of each class of shares, that is recognized under securities legislation as or as part of an investment fund, of the transferor are disposed of to the transferor within 60 days after the transfer time, and

(ii) the units received in consideration for a particular share of a class of shares, that is recognized under securities legislation as or as part of an investment fund, of the transferor are units of the transferee that received all or substantially all of the assets that were allocated to that investment fund immediately before the transfer time; and

(*e*) the funds jointly so elect, by filing a prescribed form with the Minister on or before the election's due date.

(2) The portion of paragraph 132.2(3)(*a*) of the Act before subparagraph (i) is replaced by the following:

(*a*) each property of a fund, other than property disposed of by the transferor to a transferee at the transfer time and depreciable property, is deemed to have been disposed of, and to have been reacquired by the fund, at the first intervening time, for an amount equal to the lesser of

(3) The portion of paragraph 132.2(3)(*e*) of the Act before subparagraph (i) is replaced by the following:

(*e*) except as provided in paragraph (*m*), the transferor's cost of any particular property received by the transferor from a transferee as consideration for the disposition of the property is deemed to be

(4) Paragraph 132.2(3)(*f*) of the Act is replaced by the following:

(*f*) the transferor's proceeds of disposition of any units of a transferee that were disposed of by the transferor at any particular time that is within 60 days after the transfer time in exchange for shares of the transferor, are deemed to be equal to the cost amount of the units to the transferor immediately before the particular time;

(5) The portion of paragraph 132.2(3)(*g*) of the Act before subparagraph (i) is replaced by the following:

(*g*) if, at any particular time that is within 60 days after the transfer time, a taxpayer disposes of shares of the trans- feror to the transferor in exchange for units of a transferee

(6) The portion of subparagraph 132.2(3)(*g*)(vi) of the Act before clause (A) is replaced by the following:

(vi) if the taxpayer is at the particular time affiliated with the transferor or the transferee,

(7) Paragraphs 132.2(3)(*i*) and (*j*) of the Act are replaced by the following:

(*i*) there shall be added to the amount determined under the description of A in the definition *refundable capital gains tax on hand* in subsection 132(4) in respect of a transferee for its taxation years that begin after the transfer time the amount determined by the formula

$$(A - B) \times C/D$$

where

A is the transferor's *refundable capital gains tax on hand* (within the meaning assigned by subsection 131(6) or 132(4), as the case may be) at the end of its taxation year that includes the transfer time,

B is the transferor's *capital gains refund* (within the meaning assigned by paragraph 131(2)(*a*) or 132(1)(*a*), as the case may be) for that year,

C is the total fair market value of property received, net of liabilities assumed, by the transferee from the transferor on the qualifying exchange, and

D is the total fair market value of property received, net of liabilities assumed, by all transferees from the transferor on the qualifying exchange;

(*j*) no amount in respect of a non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss of a fund for a taxation year that began before the transfer time is deductible in computing the taxable income of any of the funds for a taxation year that begins after the transfer time;

(8) Subparagraph 132.2(3)(*m*)(ii) of the Act is replaced by the following:

(ii) a transferee is deemed not to have acquired any property that was transferred to it on the qualifying exchange; and

(9) Paragraph 132.2(3)(*n*) of the Act is replaced by the following:

(*n*) except as provided in subparagraph (*l*)(i), the transferor is, notwithstanding subsections 131(8) and (8.01) and 132(6), deemed to be neither a mutual fund corporation nor a mutual fund trust for taxation years that begin after the transfer time.

(10) Clause 132.2(4)(*b*)(ii)(B) of the Act is replaced by the following:

(B) the amount that the transferor and the transferee agree on in respect of the property in their election, and

(11) Clause 132.2(5)(*c*)(ii)(B) of the Act is replaced by the following:

(B) the amount that the transferor and the transferee agree on in respect of the property in their election, and

(12) Subsection 132.2(7) of the Act is replaced by the following:

(7) *Amendment or Revocation of Election*. The Minister may, on joint application by the funds on or before the due date of an election referred to in paragraph (*e*) of the definition *qualifying exchange* in subsection (1), grant permission to amend or revoke the election.

(13) Subsections (1) to (12) apply in respect of transfers that occur on or after Budget Day.

42. (1) The portion of paragraph 138.1(1)(*a*) of the Act before subparagraph (i) is replaced by the following:

(*a*) a trust (in this section and section 138.2 referred to as the *related segregated fund trust*) is deemed to be created at the time that is the later of

(2) Paragraph 138.1(1)(*f*) of the Act is replaced by the following:

(*f*) the taxable income of the related segregated fund trust is deemed for the purposes of subsections 104(6), (13) and (24) to be an amount that has become payable in the year to the beneficiaries under the segregated fund trust and the amount therefor in respect of any particular beneficiary is equal to the amount determined by reference to the terms and conditions of the segregated fund policy;

(3) Subsections (1) and (2) apply to taxation years that begin after 2017.

43. (1) Section 138.1 of the Act is amended by adding the following after subsection (2):

(2.1) *Transition — pre-2018 non-capital losses.* For the purpose of determining the taxable income of a related segregated fund trust for a taxation year that begins after 2017, the non-capital losses of the related segregated fund trust that arise in a taxation year that begins before 2018 are deemed to be nil.

44. (1) The Act is amended by adding the following after section 138.1:

138.2 *Qualifying transfer of funds.* (1) For the purposes of this section, a qualifying transfer occurs at a particular time (in this section referred to as the *transfer time*) if

(*a*) all of the property that, immediately before the transfer time, was property of a related segregated fund trust has become, at the transfer time, the property of another related segregated fund trust (in this section referred to as the *transferor* and *transferee*, respectively, and collectively as the *funds*);

(*b*) every person that had an interest in the transferor immediately before the transfer time (in this section referred to as a *beneficiary*) has ceased to be a beneficiary of the transferor at the transfer time and has received no consideration for the interest other than an interest in the transferee;

(*c*) the trustee of the funds is a resident of Canada; and

(*d*) the trustee of the funds so elects, by filing a prescribed form with the Minister on or before the election's due date.

(2) *General.* If there has been a qualifying transfer,

(*a*) the last taxation years of the funds that began before the transfer time are deemed to have ended at the transfer time and the next taxation year of the transferee is deemed to have begun immediately after the transfer time;

(*b*) no amount in respect of a non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss of a fund for a taxation year that began before the transfer time is deductible in computing the taxable income of the funds for a taxation year that begins after the transfer time;

(*c*) each beneficiary's interest in the transferor is deemed to have been disposed of at the transfer time for proceeds of disposition equal to the cost amount to the beneficiary of that interest immediately before the transfer time;

(*d*) any amount determined under subsection 138.1(6) in respect of a policyholder's interest in the transferor is deemed

(i) to have been charged, transferred or paid in respect of the policyholder's interest in the transferee that is acquired on the qualifying transfer, and

(ii) to not have been charged, transferred or paid in respect of the policyholder's interest in the transferor; and (*e*) subsections 138.1(4) and (5) do not apply in respect of any disposition of an interest in the transferor arising on the qualifying transfer.

(3) *Transferor — capital gains and losses.* In respect of a qualifying transfer, each property of the transferor held immediately before the transfer time is deemed to have been disposed of by the transferor immediately before the transfer time for proceeds of disposition, and to have been acquired by the transferee at the transfer time for a cost, equal to the lesser of

(*a*) the fair market value of the property immediately before the transfer time; and

(*b*) the greater of

(i) the cost amount of the property to the transferor immediately before the transfer time, and

(ii) the amount that is designated in respect of the property in the election in respect of the qualifying transfer.

(4) *Transferee — capital gains and losses.* In respect of a qualifying transfer, each property of the transferee held immediately before the transfer time is deemed to have been disposed of by the transferee immediately before the transfer time for proceeds of disposition, and to have been reacquired by the transferee at the transfer time for a cost, equal to the lesser of

(*a*) the fair market value of the property immediately before the transfer time; and

(*b*) the greater of

(i) the cost amount of the property to the transferee immediately before the transfer time, and

(ii) the amount that is designated in respect of the property in the election in respect of the qualifying transfer.

(5) *Loss limitation.* Subsection 138.1(3) does not apply to capital losses of a fund from the disposition of property on a qualifying transfer under subsection (3) or (4) to the extent that the amount of such capital losses exceeds the amount of capital gains of the fund from the disposition of property on the qualifying transfer under subsection (3) or (4), as the case may be.

(6) *Due date.* The due date of an election referred to in paragraph (l)(*d*) is the later of

(*a*) the day that is six months after the day that includes the transfer time; and

(*b*) a day that the Minister may specify.

(2) Subsection (1) comes into force on January 1, 2018.

45. This Act is further amended by making other consequential amendments as a result of sections 42 to 44.

Dentons Canada LLP Commentary: Mutual funds can be structured as corporations or trusts. Section 132.2 of the Act effectively allows the tax-deferred merger of two mutual fund trusts, or a mutual fund corporation (“transferor”) into a mutual fund trust (“transferee”). Generally speaking, the property of the transferor can be transferred to the transferee without immediate tax consequences, and the holders of shares in the transferor will dispose of their shares and receive units in the transferee on a tax-deferred rollover basis.

A mutual fund corporation can be organized as a “switch fund” corporation. Under this type of structure, the corporation has multiple classes of shares, with each class effectively forming a separate investment fund.

Section 132.2 does not currently allow the merger of “switch fund” corporations into more than one mutual fund trust. Resolution 41 proposes to expand the concept of a "qualifying exchange" (the tax-deferred merger) under section 132.2 to allow the merger of a "switch fund" corporation into multiple mutual fund trusts.

Basically, the tax-deferred merger will be allowed where, in respect of each class of shares of the "switch fund" corporation that is a separate investment fund, all or substantially all of the assets allocated to that class are transferred to a mutual fund trust. (The CRA takes the position that "all or substantially all" generally means 90% or more). The shareholders of that class of the corporation must receive only units in that mutual fund trust as consideration. Since a qualifying exchange is allowed in respect of each such class of shares, the "switch fund" corporation can be effectively reorganized into multiple mutual fund trusts.

Resolution 41 applies to transfers on or after Budget Day 2017.

Segregated funds issued by insurance companies, although conceptually similar to mutual funds, are not currently allowed to merge on a tax-deferred basis.

To provide consistent treatment between mutual fund trusts and segregated funds, resolutions 42 through 44 propose to allow tax-deferred mergers of segregated funds, effective as of the 2018 year.

Proposed new section 138.2 provides the requirements for a "qualifying transfer" of property from one segregated fund to another, which largely parallel the "qualifying exchange" requirements applicable to mutual funds discussed in the commentary to resolution 41 above. One noticeable difference requires that **all** of the property of the transferor fund be transferred to the transferee fund (rather than all or substantially all of the property).

The remainder of section 138.2 similarly parallels the various mutual fund merger rules found in section 132.2, including a deemed disposition of the transferor fund's property and the transferee fund's property immediately before the qualifying transfer (along with a deemed acquisition by the transferee). Similar to the mutual fund rules, the deemed disposition of property can take place on a full rollover basis, or the fund can trigger a gain by designating an amount that is greater than the cost amount of the property. In this regard, subsection 138.2(5) limits the amount of capital losses, if any, from the deemed dispositions to the amount of the capital gains from the deemed dispositions. Further, loss carryforwards from the transferor in taxation years prior to the transfer are not allowed for post-transfer taxation years of the merged fund.

Resolution 43 effectively provides that non-capital losses of a segregated fund for a taxation year beginning before 2018 cannot be carried forward to taxation years beginning after 2017. As a result, for taxation years beginning after 2017, non-capital losses of a segregated fund can be utilized but only if they are carried over from another taxation year ending after 2017. The Budget 2017 papers indicate that carryover rules will be subject to the normal limitations regarding the carry back or carry forward of losses.

The effective date of the segregated fund rules is deferred to January 1, 2018, to ensure, according to the Budget 2017 papers, "that the life insurance industry has an opportunity to provide comments on these proposed rules".

Resolutions 46 to 48: Clean Energy Generation Equipment: Geothermal Energy

46. (1) Clause 1104(17)(*a*)(ii)(A) of the *Income Tax Regulations* is replaced by the following:

(A) any of subparagraphs (*d*) (vii) to (ix), (xi), (xiii), (xiv), (xvi) and (xvii) of Class 43.1, or

(2) Subsection (1) applies in respect of property acquired for use on or after Budget Day that has not been used or acquired for use before Budget Day.

47. (1) Paragraph 1219(1)(*f*) of the *Income Tax Regulations* is replaced by the following:

(*f*) for the drilling or completion of a well for the project, other than

(i) a well that is, or can reasonably be expected to be, used for the installation of underground piping that is included in paragraph (*d*) of Class 43.1or paragraph (*b*) of Class 43.2 in Schedule II, or

(ii) a well referred to in paragraph (*h*);

(2) Subsection 1219(1) of the *Income Tax Regulations* is amended by adding "or" at the end of para-graph (*g*) and by adding the following after that paragraph:

(*h*) if at least 50% of the depreciable property to be used in the project, determined by reference to its capital cost, is described in subparagraph (*d*)(vii) of Class 43.1,

(i) for the drilling of a well, or

(ii) solely for the purpose of determining the extent and quality of a geothermal resource.

(3) Section 1219 of the *Income Tax Regulations* is amended by adding the following after subsection (4):

(5) A Canadian renewable and conservation expense does not include an expense incurred by a taxpayer at any time that is in respect of a geothermal project

(*a*) that at that time is described in paragraph (l)(*h*); and

(*b*) in respect of which the taxpayer is not at that time in compliance with the requirements of all environmental laws, by-laws and regulations of

(i) Canada,

(ii) a province or a municipality in Canada, or

(iii) a municipal or public body performing a function of government in Canada.

(4) Subsections (1) to (3) apply in respect of expenses incurred on or after Budget Day.

48. (1) Subparagraph (*d*)(vii) of Class 43.1 of Schedule II to the *Income Tax Regulations* is replaced by the following:

(vii) equipment used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of generating electrical energy or heat energy, or both electrical and heat energy, solely from geothermal energy, including such equipment that consists of piping (including above or below ground piping and the cost of completing a well (including the wellhead and production string), or trenching, for the purpose of installing that piping), pumps, heat exchangers, steam separators, electrical generating equipment and ancillary equipment used to collect the geothermal heat, but not including buildings, distribution equipment, equipment used to heat water for use in a swimming pool, equipment described in subclause (i)(A)(II), property otherwise included in Class 10 and property that would be included in Class 17 if that Class were read without reference to its paragraph (*a*.1),

(2) Clause (B) of subparagraph (*d*)(xv) of Class 43.1 of Schedule II to the *Income Tax Regulations* is replaced by the following:

(B) is part of a district energy system that uses thermal energy that is primarily supplied by equipment that is described in subparagraphs (i), (iv), (vii) or (ix) or would be described in those subparagraphs if owned by the taxpayer, and

(3) Subsections (1) and (2) apply in respect of property acquired for use on or after Budget Day that has not been used or acquired for use before Budget Day.

Dentons Canada LLP Commentary: Capital cost allowance Classes 43.1 (30%) and 43.2 (50%) provide accelerated CCA rates for clean energy generation and conservation equipment and are frequently revised with respect to the types of equipment that qualify for accelerated CCA. Budget 2017 proposes to again expand these classes with respect to geothermal energy equipment. First, subparagraph (*d*)(vii) of Class 43.1 is expanded to include equipment that is used primarily for the purpose of generating heat or a combination of heat and electricity. Prior to this proposed changed, only geothermal equipment used primarily for the purpose of generating electrical energy was included in Classes 43.1 and 43.2.

Second, Budget 2017 proposes to include geothermal heating as an eligible thermal energy source for use in a district energy system. Essentially, a district energy system is a means of transferring thermal energy (e.g., from the generation plant to another building).

These measures apply to property acquired for use on or after March 22, 2017 that has not been used or acquired before that day.

Budget 2017 also proposes to extend the definition of "Canadian renewable and conservation expense" to include expenses incurred for the purposes of drilling a well or determining the extent and quality of a geothermal resource provided that at least 50% of the depreciable property to be used in the project is included in the expanded subparagraph (*d*)(vii) of Class 43.1 subject to an exclusion for projects that are not in compliance with various federal, provincial, and municipal environmental laws.

This measure applies in respect of expenses incurred on or after March 22, 2107.

Resolution 49: Canadian Exploration Expense: Oil and Gas Discovery Wells

49. Subparagraph (*d*)(i) of the definition *Canadian exploration expense* in subsection 66.1(6) of the Act is amended by striking out "and" at the end of clause (A), by adding "and" at the end of clause (B) and by adding the following after clause (B):

(C) the expense is incurred

(I) before 2021 (excluding an expense that is deemed by subsection 66(12.66) to have been incurred on December 31, 2020), if the expense is incurred in connection with an obligation that was committed to in writing (including a commitment to a government under the terms of a license or permit) by the taxpayer before Budget Day, or

(II) before 2019 (excluding an expense that is deemed by subsection 66(12.66) to have been incurred on the December 31, 2018), in any other case,

Dentons Canada LLP Commentary: Canadian exploration expenses ("CEE") are expenses associated with drilling an oil or gas well resulting in the discovery of previously unknown oil and gas reserves (a "discovery well"). CEE is deductible in full in the year incurred.

Canadian development expenses ("CDE") are expenses associated with drilling an oil or gas well, other than a discovery well. CDE is deductible on a 30% declining-balance basis.

Supplementary information contained in the Budget 2017 documents suggests that expenditures related to a discovery well are typically able to be used, and are used, for the production of oil and gas. Moreover, such expenditures comprise a majority of CEE.

Budget 2017 proposes that expenditures related to a discovery well, building a temporary access road, and site preparation in respect of a discovery well be classified as CDE going forward in order to ensure that expenditures more clearly linked to a successful well are deducted gradually over time as development expenses, rather than as exploration expenses.

No changes are proposed to the classification of expenditures in circumstances where a well has been abandoned or has not produced within 24 months, or where the Minister of National Resources has certified that the costs associated with drilling the well are expected to exceed $5 million and the well will not produce within 24 months. These expenditures will continue to be classified as CEE. CEE classification will also continue to be available to early stage expenditures such as geophysical and geochemical surveying.

These proposed measures apply to expenditures incurred after 2018 (including expenditures incurred in 2019 that are deemed to have been incurred in 2018 under the one-year "look-back" provisions). The proposed measures will not apply to expenditures actually incurred before 2021 where the taxpayer has entered into a written agreement before Budget Day (including a commitment to a government under a permit or license) to incur these expenses.

Resolution 50: Reclassification of Expenses Renounced to Flow-Through Share Investors

50. (1) Paragraph 66(12.601)(*b*) of the Act is replaced by the following:

(*b*) during the period beginning on the particular day the agreement was entered into and ending on the earlier of December 31, 2018 and the day that is 24 months after the end of the month that included that particular day, the corporation incurred Canadian development expenses (excluding expenses that are deemed by subsection (12.66) to have been incurred on December 31, 2018) described in paragraph (*a*) or (*b*) of the definition *Canadian development expense* in subsection 66.2(5) or that would be described in paragraph (*f*) of that definition if the words "paragraphs (*a*) to (*e*)" in that paragraph were read as "paragraphs (*a*) and (*b*)",

(2) Subsection (1) comes into force on Royal Assent except that, in its application in respect of agreements entered into after 2016 and before Budget Day, paragraph 66(12.601)(*b*) of the Act, as enacted by subsection (1), is to be read without reference to the phrase "the earlier of December 31, 2018 and".

Dentons Canada LLP Commentary: Eligible small oil and gas corporations (taxable capital employed in Canada of $15 million or less) are currently entitled to treat up to $1 million of Canadian development expenses ("CDE") as Canadian exploration expenses ("CEE") when renounced to shareholders under a flow-through share agreement. CEE is deductible in full in the year incurred, whereas CDE is only deductible on a 30% declining-balance basis.

Flow-through share agreements permit oil and gas corporations to renounce CEE and CDE expenditures incurred after the agreement is entered into. The oil and gas corporation forfeits the right to deduct the expenditures in favour of the flow-through shareholders, who can then deduct such expenses in determining their own taxable income. Under the "look-back" provisions, eligible expenditures in respect of funds raised in one calendar year under a flow-through share agreement can be renounced with an effective date in that year, even though the expenditures are actually incurred in the following calendar year.

Budget 2017 proposes to eliminate the ability of eligible small oil and gas corporations to classify the first $1 million of CDE as CEE. This measure will apply to expenditures incurred after 2018 (including expenditures incurred in 2019 that are deemed to have been incurred in 2018 under the one-year "look-back" provisions). The proposed measure will not apply to expenditures incurred after 2018 and before April 2019 that are renounced under a flow-through share agreement entered into after 2016 and before Budget Day 2017.

Resolution 51: Meaning of Factual Control

51. (1) Section 256 of the Act is amended by adding the following after subsection (5.1):

(5.11) *Factual control — Interpretation.* For the purposes of this Act, the determination of whether a taxpayer has, in respect of a corporation, any direct or indirect influence that, if exercised, would result in control in fact of the corporation

(*a*) shall take into consideration all factors that are relevant in the circumstances; and

(*b*) shall not be limited to, and the relevant factors to be considered in making the determination need not include, whether the taxpayer has a legally enforceable right or ability to effect a change in the board of directors of the corporation, or the board's powers, or to exercise influence over the shareholder or shareholders who have that right or ability.

(2) Subsection (1) applies to taxation years that begin on or after Budget Day.

Dentons Canada LLP Commentary: There are two forms of corporate control recognized for tax purposes: *de jure* (legal) and *de facto* (factual). Factual control is relevant in determining the application of certain tax provisions such as associated corporation status. Historically, *de facto* control was determined by examining factors indicative of influence that, if exercised, would result in control in fact of the corporation.

A recent decision of the Federal Court of Appeal, *McGillivray Restaurant Ltd. v. The Queen* (2016 DTC 5048), held that:

> . . .a factor that does not include a legally enforceable right and ability to effect a change to the board of directors or its powers, or to exercise influence over the shareholder or shareholders who have that right and ability, ought not to be considered as having the potential to establish *de facto* control.

Budget 2017 proposes to amend section 256 of the *Income Tax Act* to confirm that the factors that may be considered in making a determination of factual control are not limited to those identified in recent jurisprudence such as *McGillivray Restaurant Ltd.* and should include all factors relevant in the circumstances. This measure applies to taxation years that commence on or after Budget Day 2017.

Resolutions 52 to 59: Timing of Recognition of Gains and Losses on Derivatives

52. (1) The Act is amended by adding the following after section 10:

10.1 (1) *Mark-to-market election.* Subsection (3) applies to a taxpayer in respect of a taxation year and subsequent taxation years if the taxpayer elects to have subsection (3) apply to the taxpayer and has filed that election in prescribed form on or before its filing-due date for the taxation year.

(2) *Revocation.* A taxpayer may revoke its election under subsection (1) with the concurrence of the Minister and on such terms and conditions as are specified by the Minister. The revocation applies to each taxation year of the taxpayer that begins after the day on which the taxpayer is notified in writing that the Minister concurs with the revocation.

(3) *Application.* If this subsection applies to a taxpayer in respect of a taxation year,

(*a*) if the taxpayer is a *financial institution* (as defined in subsection 142.2(1)) in the taxation year, each eligible derivative held by the taxpayer at any time in the taxation year is, for the purpose of applying the provisions of this Act and with such modifications as the context requires, deemed to be *mark-to-market property* (as defined in subsection 142.2(1)) of the taxpayer for the taxation year; and (*b*) in any other case, subsection (5) applies to the taxpayer in respect of each eligible derivative held by the taxpayer at the end of the taxation year.

(4) *Eligible derivative*. For the purposes of this section, an *eligible derivative*, of a taxpayer for a taxation year, means a swap agreement, a forward purchase or sale agreement, a forward rate agreement, a futures agreement, an option agreement or a similar agreement if

(*a*) the agreement is not a capital property, a Canadian resource property, a foreign resource property or an obligation on account of capital of the taxpayer;

(*b*) either

(i) the taxpayer has produced audited financial statements prepared in accordance with generally accepted accounting principles in respect of the taxation year, or

(ii) the agreement has a readily ascertainable fair market value; and

(*c*) where the agreement is held by a *financial institution* (as defined in subsection 142.2(1)), the agreement is not a *tracking property* (as defined in subsection 142.2(1)), other than an *excluded property* (as defined in subsection 142.2(1)), of the financial institution.

(5) *Deemed disposition*. If this subsection applies to a taxpayer in respect of each eligible derivative held by the taxpayer at the end of a taxation year, for each eligible derivative held by the taxpayer at the end of the taxation year, the taxpayer is deemed

(*a*) to have disposed of the eligible derivative immediately before the end of the year and received proceeds or paid an amount, as the case may be, equal to its fair market value at the time of disposition; and

(*b*) to have reacquired, or reissued or renewed, the eligible derivative at the end of the year at an amount equal to the proceeds or the amount, as the case may be, determined under paragraph (*a*).

(6) *Election year — gains and losses*. If a taxpayer holds, at the beginning of its first taxation year in respect of which an election referred to in subsection (1) applies (in this subsection referred to as the *election year*), an eligible derivative and, in the taxation year immediately preceding the election year, the taxpayer did not compute its profit or loss in respect of that eligible derivative in accordance with a method of profit computation that produces a substantially similar effect to subsection (5), then

(*a*) the taxpayer is deemed

(i) to have disposed of the eligible derivative immediately before the beginning of the election year and received proceeds or paid an amount, as the case may be, equal to its fair market value at that time, and

(ii) to have reacquired, or reissued or renewed, the eligible derivative at the start of the year at an amount equal to the proceeds or the amount, as the case may be, determined under subparagraph (i);

(*b*) the profit or loss that would arise (determined without reference to this paragraph) on the deemed disposition in subparagraph (*a*)(i)

(i) is deemed not to arise in the taxation year immediately preceding the election year, and

(ii) is deemed to arise in the taxation year in which the taxpayer disposes of the eligible derivative (otherwise than because of paragraph (5)(*a*)); and

(*c*) for the purpose of applying subsection 18(15) in respect of the disposition of the eligible derivative referred to in subparagraph (*b*)(ii), the profit or loss deemed to arise because of that subparagraph is included in determining the amount of the transferor's loss, if any, from the disposition.

(7) *Default realization method*. If subsection (3) does not apply to a taxpayer referred to in paragraph (3)(*b*) in respect of a taxation year, a method of profit computation that produces a substantially similar effect to subsection (5) shall not be used for the purpose of computing the taxpayer's income from a business or property in respect of a swap agreement, a forward purchase or sale agreement, a forward rate agreement, a futures agreement, an option agreement or a similar agreement for the taxation year.

(8) *Interpretation*. For the purposes of subsections (5) and (6), if an agreement that is an eligible derivative of a taxpayer is not a property of the taxpayer, the taxpayer is deemed

(*a*) to hold the eligible derivative at any time while the taxpayer is a party to the agreement; and

(*b*) to have disposed of the eligible derivative when it is settled or extinguished in respect of the taxpayer.

(2) Subsections (1) applies to taxation years that begin on or after Budget Day.

53. (1) Paragraph 18(14)(*c*) of the Act is replaced by the following:

(*c*) the disposition is not a disposition that is deemed to have occurred by subsection 10.1(5) or (6), section 70, subsection 104(4), section 128.1, paragraph 132.2(3)(*a*) or (*c*) or subsection 138(11.3) or 149(10);

(2) Subsection (1) applies to taxation years that begin on or after Budget Day.

54. (1) Section 85 of the Act is amended by adding the following after subsection (1.11):

(1.12) *Eligible derivatives*. Notwithstanding subsection (1.1), an *eligible derivative* (as defined in subsection 10.1(4)) of a taxpayer to which subsection 10.1(5) applies is not an eligible property of the taxpayer in respect of a disposition by the taxpayer to a corporation.

(2) The portion of paragraph 85(2)(*a*) of the Act before subparagraph (i) is replaced by the following:

(*a*) a partnership has disposed, to a taxable Canadian corporation for consideration that includes shares of the corporation's capital stock, of any partnership property (other than an *eligible derivative*, as defined in subsection 10.1(4), of the partnership if subsection 10.1(5) applies to the partnership) that was

(3) Subsections (1) and (2) apply to taxation years that begin on or after Budget Day.

55. (1) Subsection 87(2) of the Act is amended by adding the following after paragraph (*e*.4):

(*e*.41) if subsection 10.1(5) applied to a predecessor corporation in its last taxation year, each eligible derivative (as defined in subsection 10.1(4)) of the predecessor corporation immediately before the end of its last taxation year is deemed to have been reacquired, or reissued or renewed, as the case may be, by the new corporation at its fair market value immediately before the amalgamation ;

(*e*.42) for the purposes of subsection 10.1(6), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(2) Subsection (1) applies to taxation years that begin on or after Budget Day.

56. (1) Subsection 88(1) of the Act is amended by adding the following after paragraph (i):

(*i*.1) for the purposes of subsection 10.1(5), the subsidiary's taxation year in which an *eligible derivative* (as defined in subsection 10.1(4)) was distributed to, or assumed by, the parent on the winding-up is deemed to have ended immediately before the time when the eligible derivative was distributed or assumed;

(2) The portion of paragraph 88(1)(*e*.2) of the Act before subparagraph (i) is replaced by the following:

(*e*.2) paragraphs 87(2)(*c*), (*d*.l), (*e*.l), (*e*.3), (*e*.42), (*g*) to (*l*), (*l*.21) to (*u*), (*x*), (*z*.l), (*z*.2), (*aa*), (*cc*), (*ll*), (*nn*), (*pp*), (*rr*) and (*tt*) to (*ww*), subsection 87(6) and, subject to section 78, subsection 87(7) apply to the winding-up as if the references in those provisions to

(3) Subsections (1) and (2) apply to taxation years that begin on or after Budget Day.

57. (1) The portion of subsection 97(2) of the Act before paragraph (*a*) is replaced by the following:

(2) Notwithstanding any other provision of this Act other than subsections (3) and 13(21.2), where a taxpayer at any time disposes of any property (other than an *eligible derivative*, as defined in subsection 10.1(4), of the taxpayer if subsection 10.1(5) applies to the taxpayer) that is a capital property, Canadian resource property, foreign resource property or inventory of the taxpayer to a partnership that immediately after that time is a Canadian partnership of which the taxpayer is a member, if the taxpayer and all the other members of the partnership jointly so elect in prescribed form within the time referred to in subsection 96(4),

(2) Subsection (1) applies to taxation years that begin on or after Budget Day.

58. This Act is further amended by making other consequential amendments as a result of sections 52 to 57.

59. (1) Section 18 of the Act is amended by adding the following after subsection (16):

(17) *Definitions*. The following definitions apply in this subsection and subsections (18) to (23).

offsetting position, in respect of a particular position of a person or partnership (in this definition referred to as the *holder*), means one or more positions that

(*a*) are held by

(i) the holder,

(ii) a person or partnership that does not deal at arm's length with, or is affiliated with, the holder (in this subsection and subsections (20) and (22) referred to as the *connected person*), or

(iii) for greater certainty, by any combination of the holder and one or more connected persons;

(*b*) have the effect, or would have the effect if each of the positions held by a connected person were held by the holder, of eliminating all or substantially all of the holder's risk of loss and opportunity for gain or profit in respect of the particular position; and

(*c*) if held by a connected person, can reasonably be considered to have been held with the purpose of obtaining the effect described in paragraph (*b*).

position, of a person or partnership, means one or more properties, obligations or liabilities of the person or partnership, if

(*a*) each property, obligation or liability is

(i) a share in the capital stock of a corporation,

(ii) an interest in a partnership,

(iii) an interest in a trust,

(iv) a commodity,

(v) foreign currency,

(vi) a swap agreement, a forward purchase or sale agreement, a forward rate agreement, a futures agreement, an option agreement or a similar agreement,

(vii) a debt owed to or owing by the person or partnership that, at any time, is

(A) denominated in a foreign currency,

(B) described in paragraph 7000(1)(*d*) of the *Income Tax Regulations*, or

(C) convertible into or exchangeable for an interest, or for civil law a right, in any property that is described in any of subparagraphs (i) to (iv),

(viii) an obligation to transfer or return to another person or partnership a property identical to a particular property described in any of subparagraphs (i) to (vii) that was previously transferred or lent to the person or partnership by that other person or partnership, or

(ix) an interest, or for civil law a right, in any property that is described in any of subparagraphs (i) to (vii); and

(*b*) it is reasonable to conclude that, if there is more than one property, obligation or liability, each of them is held in connection with each other.

successor position, in respect of a position (in this definition referred to as the *initial position*), means a particular position if

(*a*) the particular position is an offsetting position in respect of a second position;

(*b*) the second position was an offsetting position in respect of the initial position that was disposed of at a particular time; and

(*c*) the particular position was entered into during the period that begins 30 days before, and ends 30 days after, the particular time.

unrecognized loss, in respect of a position of a person or partnership at a particular time in a taxation year, means the loss, if any, that would be deductible in computing the income of the person or partnership for the year with respect to the position if it were disposed of immediately before the particular time at its fair market value at the time of disposition.

unrecognized profit, in respect of a position of a person or partnership at a particular time in a taxation year, means the profit, if any, that would be included in computing the income of the person or partnership for the year with respect to the position if it were disposed of immediately before the particular time at its fair market value at the time of disposition.

(18) *When subsection (19) applies.* Subject to subsection (20), subsection (19) applies in respect of a disposition of a particular position by a person or partnership (in this subsection and subsections (19), (20) and (22) referred to as the *transferor*), if

(*a*) the disposition is not a disposition that is deemed to have occurred by section 70, subsection 104(4), section 128.1 or subsection 138(11.3) or 149(10);

(*b*) the transferor is not a *financial institution* (as defined in subsection 142.2(1)), a mutual fund corporation or a mutual fund trust; and

(*c*) the particular position was, immediately before the disposition, not a capital property, or an obligation or liability on account of capital, of the transferor.

(19) *Straddle losses.* If this subsection applies in respect of a disposition of a particular position by a transferor, the portion of the transferor's loss, if any, from the disposition of the

particular position that is deductible in computing the transferor's income for a particular taxation year is the amount determined by the formula

A + B - C

where

A is

(*a*) if the particular taxation year is the taxation year in which the disposition occurs, the amount of the loss determined without reference to this subsection (which is, for greater certainty, subject to subsection (15)), and

(*b*) in any other taxation year, nil;

B is

(*a*) if the disposition occurred in a preceding taxation year, the amount determined for C in respect of the disposition for the immediately preceding taxation year, and

(*b*) in any other case, nil; and

C is the lesser of

(*a*) the amount determined for A for the taxation year in which the disposition occurs, and

(*b*) the amount determined by the formula

D - (E + F)

where

D is the total of all amounts each of which is the amount of unrecognized profit at the end of the particular taxation year in respect of

(i) the particular position,

(ii) positions that are offsetting positions in respect of the particular position (or would be, to the extent that there is no successor position in respect of the particular position, if the particular position continued to be held by the transferor),

(iii) successor positions in respect of the particular position (for this purpose, a successor position in respect of a position includes a successor position that is in respect of a successor position in respect of the position), and

(iv) positions that are offsetting positions in respect of any successor position referred to in subparagraph (iii) (or would be, if any such successor position continued to be held by the holder),

E is the total of all amounts each of which is the amount of unrecognized loss at the end of the particular taxation year in respect of positions referred to in subparagraphs (i) to (iv) of the description of D, and

F is the total of all amounts each of which is an amount determined by the formula

G - H

where

G is the amount determined for A for the taxation year in which the disposition occurs in respect of any position that was disposed of prior to the disposition of the particular position, if

(i) (i) the particular position was a successor position in respect of that position (for this purpose, a successor position in respect of a position includes a successor position that is in respect of a successor position in respect of the position), or

(ii) that position was

(A) an offsetting position in respect of the particular position,

(B) an offsetting position in respect of a position in respect of which the particular position was a successor position (for this purpose, a successor position in respect of a position includes a successor position that is in respect of a successor position in respect of the position), or

(C) the particular position, and

H is the total of all amounts each of which is, in respect of a position described in G, an amount determined under the first formula in this subsection for the particular taxation year or a preceding taxation year.

(20) *Exceptions*. Subsection (19) does not apply in respect of a particular position of a transferor if

(*a*) it is the case that

(i) either the particular position, or the offsetting position in respect of the particular position, consists of

(A) commodities that the holder of the position manufactures, produces, grows, extracts or processes, or

(B) debt that the holder of the position incurs in the course of its business (other than a business comprised primarily of the holding of positions and offsetting positions in respect of those positions), and

(ii) it can reasonably be considered that the position not described in subparagraph (i) - the particular position if the offsetting position is described in subparagraph (i) or the offsetting position if the particular position is described in that subparagraph - is held to reduce the risk, with respect to the position described in subparagraph (i), from

(A) in the case of a position described in clause (i)(A), price changes or fluctuations in the value of currency with respect to the goods described in clause (i)(A), or

(B) in the case of a position described in clause (i)(B), fluctuations in interest rates or in the value of currency with respect to the debt described in clause (i)(B);

(*b*) the transferor or a connected person (in this paragraph referred to as the *holder*) continues to hold a position - that would be an offsetting position in respect of the particular position if the particular position continued to be held by the transferor - throughout a 30-day period beginning on the date of disposition of the particular position, and at no time during the period

(i) is the holder's risk of loss or opportunity for gain or profit with respect to the position changed in any material respect by another position entered into or disposed of by the holder, or

(ii) would the holder's risk of loss or opportunity for gain or profit with respect to the position be changed in any material respect by another position entered into or disposed of by a connected person, if the other position were entered into or disposed of by the holder; or

(*c*) it can reasonably be considered that none of the main purposes of the series of transactions or events, or any of the transactions or events in the series, of which the holding of both the particular position and offsetting position are part, is to avoid, reduce or defer tax that would otherwise be payable under this Act.

(21) *Application.* For the purposes of subsections (17) to (23),

(*a*) if a position of a person or partnership is not a property of the person or partnership, the person or partnership is deemed

(i) to hold the position at any time while it is a position of the person or partnership, and

(ii) to have disposed of the position when the position is settled or extinguished in respect of the person or partnership;

(*b*) a disposition of a position is deemed to include a disposition of a portion of the position; and

(*c*) a position held by one or more persons or partnerships referred to in paragraph (*a*) of the definition *offsetting position* in subsection (17) is deemed to be an offsetting position in respect of a particular position of a person or partnership if

(i) there is a high degree of negative correlation between changes in value of the position and the particular position,and

(ii) it can reasonably be considered that the principal purpose of the series of transactions or events, or any of the transactions in the series, of which the holding of both the position and the particular position are part, is to avoid, reduce or defer tax that would otherwise be payable under this Act.

(22) *Different taxation years.* Subsection (23) applies if

(*a*) at anytime in a particular taxation year of a transferor, a position referred to in any of subparagraphs (ii) to (iv) of the description of D in subsection (19) (in this subsection and subsection (23) referred to as the *gain position*) is held by a connected person;

(*b*) the connected person disposes of the gain position in the particular taxation year; and

(*c*) the taxation year of the connected person in which the disposition referred to in paragraph (*b*) occurs ends after the end of the particular taxation year.

(23) *Different taxation years.* If this subsection applies, for the purposes of the definition *unrecognized profit* in subsection (17) and subsection (19), the portion of the profit, if any, realized from the disposition of the gain position referred to in paragraph (22)(*b*) that is determined by the following formula is deemed to be unrecognized profit in respect of the gain position until the end of the taxation year of the connected person in which the disposition occurs:

$$A \times B/C$$

where

A is the amount of the profit otherwise determined;

B is the number of days in the taxation year of the connected person in which the disposition referred to in paragraph (22)(*b*) occurs that are after the end of the particular taxation year; and

C is the total number of days in the taxation year of the connected person in which the disposition referred to in paragraph (22)(*b*) occurs.

(2) Subsection (1) applies in respect of a *position* (as defined in subsection 18(17) of the Act, as enacted by subsection (1)) of a person or partnership if the position, or an *offsetting position* (as defined in subsection 18(17) of the Act, as enacted by subsection (1)) in respect of the position, is acquired, entered into, renewed or extended, or becomes owing, by the person or partnership on or after Budget Day.

Dentons Canada LLP Commentary: Budget 2017 proposes two measures dealing with timing of the recognition of gains and losses on derivatives held on income account. First, Budget 2017 proposes to introduce an elective mark-to-market regime for derivatives held on income account for all taxpayers that are not a financial institution. Second, Budget 2017 proposes to introduce a specific anti-avoidance rule that targets straddle transactions.

Mark-to-Market Election

Budget 2017 proposes the mark-to-market election in response to the Federal Court of Appeal decision in *Kruger Incorporated v. Her Majesty the Queen*, 2016 FCA 186, ("*Kruger*") that was decided in favour of the taxpayer. The corporate taxpayer in *Kruger* was not a financial institution, but purchased and sold foreign currency option contracts in order to reduce its exposure to foreign currencies. It accounted for its foreign exchange options using the mark-to-market accounting method, which involved an accrual approach in which both the writer and purchaser valued the options at market as at each balance sheet date, and recognized changes in market values as a gain or loss for the period. At the Federal Court of Appeal, the Government argued that absent a provision to the contrary, profit for tax purposes is only recognized on a realization basis, notwithstanding that mark-to-market may have better described the taxpayer's profit for some other non-tax purposes.

In Budget 2017, the Minister of Finance acknowledges that the mark-to-market method has a number of advantages including: for a taxpayer, the potential reduction of book-to-tax differences; for the Government, the elimination of the possibility of the selective realization of gains and losses on such derivatives by removing the taxpayer's control over when these gains and losses are recognized for tax purposes.

Budget 2017 proposes to introduce new section 10.1 to the Act which will provide for an election that taxpayers may file to permit the mark-to-market method of income recognition for all eligible derivatives. Once made, the election will remain effective for all subsequent years unless revoked with the consent of the Minister of National Revenue.

New section 10.1 will govern the use of the mark-to-market method for eligible derivatives and requires the election to be filed by a taxpayer on or before the filing-due date for the taxation year. If no election is filed, new subsection 10.1(7) provides that where the taxpayer is not a financial institution, the method of profit computation the taxpayer uses with respect to income from a business or property in respect of a derivative cannot produce a similar result to the mark-to-market method.

New subsection 10.1(4) defines eligible derivatives for the purposes of section 10.1 to mean:

- a swap agreement;
- a forward purchase or sale agreement;
- a forward rate agreement;
- a futures agreement;
- an option agreement;
- or a similar agreement if:
  - that agreement is not capital property, a Canadian resource property, a foreign resource property, or an obligation on account of capital of the taxpayer;
  - either the taxpayer has produced audited financial statements prepared in accordance with generally accepted accounting principles or the agreement has a readily ascertainable fair market value ("FMV"); and

- where the agreement is held by a financial institution (as defined in subsection 142.2(1)) the agreement is not a "tracking property" (as defined in subsection 142.2(1)) other than an "excluded property" (as defined in subsection 142.2(1)) of the financial institution.

Paragraph 10.1(3)(*b*) specifies that the mark-to-market method (as defined in section 142.2(1)) will remain mandatory for financial institutions and deems all eligible derivatives to be mark-to-market property (as defined in subsection 142.2(1) of the Act). Paragraph 10.1(3)(*b*) provides that all other taxpayers may elect to use the mark-to-market method in respect of each eligible derivative held by the taxpayer at the end of the taxation year.

In general, for a taxpayer that has elected to use the mark-to-market method for eligible derivatives, new subsection 10.1(5) provides that the taxpayer is deemed to dispose of each eligible derivative immediately before the end of the year for proceeds of disposition equal to its FMV at that time and to have reacquired, reissued, or renewed the eligible derivative for an amount equal to the proceeds of disposition.

New subsection 10.1(6) provides a transition rule for the year in which an election is made (the "election year") where the taxpayer did not use mark-to-market in the prior year in respect of its eligible derivatives. New subsection 10.1(6) provides that such a taxpayer is deemed to have disposed of and reacquired the eligible derivative immediately before the beginning of the election year and received proceeds or paid an amount, as the case may be, equal to its FMV at that time. This amount will not enter the taxpayer's income until the taxpayer disposes of the eligible derivative. This prevents taxpayers from utilizing the election to recognize losses on eligible derivatives which have accrued prior to the election year. Also, the profit or loss arising as a result of new subsection 10.1(6) will be included in computing the loss for purposes of the superficial loss rules contained in subsection 18(15) of the Act in the year of actual disposition of the eligible derivative.

Budget 2017 also proposes the following consequential amendments.

(1) The annual deemed disposition and reacquisition of eligible derivatives to which an election applies are excluded from being subject to the superficial loss rules in subsection 18(15).

(2) Eligible derivatives that are subject to the section 10.1 election are not eligible property within the meaning of subsection 85(1.1) and cannot be transferred pursuant to subsection 85(2) or 97(2) of the Act.

(3) Where corporations amalgamate in accordance with subsection 87(2), the deemed disposition and reacquisition specified in subsection 10.1(5) applies at the time of amalgamation and the new corporation is deemed to continue to have elected to use the mark-to-market method. Similarly, where there is a winding up to which subsection 88(1) applies, the subsidiary's taxation year for the purposes of the mark-to-market rules is deemed to end immediately before the time the eligible derivative was distributed or assumed by the parent corporation.

New section 10.1 will apply to taxation years that begin on or after Budget Day.

Resolutions 60 to 65: Investment Tax Credit for Child Care Spaces

60. (1) Paragraph 110.1(1)(*a*.1) of the Act is repealed.

(2) Subsections 110.1(8) and (9) of the Act are repealed.

(3) Subsections (1) and (2) apply in respect of gifts made on or after Budget Day.

61. (1) Subsection 149.1(15) of the Act is amended by adding "and" at the end of paragraph (*b*), by striking out "and" at the end of paragraph (*c*) and by repealing paragraph (*d*).

(2) Subsection (1) applies in respect of gifts made on or after Budget Day.

62. (1) Section 3505 of the *Income Tax Regulations* is repealed.

(2) Subsection (1) applies in respect of gifts made on or after Budget Day.

63. (1) Subsection 18(9) of the Act is amended by adding "and" at the end of paragraph (*d*), by striking out "and" at the end of paragraph (*e*) and by repealing paragraph (*f*).

(2) Subsection (1) applies in respect of expenditures incurred on or after Budget Day, except that subsection (1) does not apply in respect of expenditures incurred before 2020 under a written agreement entered into before Budget Day.

64. (1) Paragraph 20(1)(*nn*.1) of the Act is repealed.

(2) Subsection (1) applies in respect of expenditures incurred on or after Budget Day, except that subsection (1) does not apply in respect of expenditures incurred before 2020 under a written agreement entered into before Budget Day.

65. (1) Subparagraph 127(5)(*a*)(i) of the Act is replaced by the following:

(i) the taxpayer's investment tax credit at the end of the year in respect of property acquired before the end of the year, of the taxpayer's apprenticeship expenditure for the year or a preceding taxation year, of the taxpayer's flow-through mining expenditure for the year or a preceding taxation year, of the taxpayer's pre-production mining expenditure for the year or a preceding taxation year or of the taxpayer's SR&ED qualified expenditure pool at the end of the year or at the end of a preceding taxation year, and

(2) Clause 127(5)(*a*)(ii)(A) of the Act is replaced by the following:

(A) the taxpayer's investment tax credit at the end of the year in respect of property acquired in a subsequent taxation year, of the taxpayer's apprenticeship expenditure for a subsequent taxation year, of the taxpayer's flow-through mining expenditure for a subsequent taxation year, of the taxpayer's pre-production mining expenditure for a subsequent taxation year or of the taxpayer's SR&ED qualified expenditure pool atthe end of the subsequent taxation year to the extent that an investment tax credit was not deductible under this subsection for the subsequent taxation year, and

(3) Subsection 127(7) of the Act is replaced by the following:

(7) *Investment tax credit of certain trusts.* If, in a particular taxation year of a taxpayer who is a beneficiary under a trust that is a graduated rate estate or that is deemed to be in existence by section 143, an amount is determined in respect of the trust under paragraph (*a*), (*a*.l), (*a*.4), (*b*) or (*e*.l) of the definition *investment tax credit* in subsection (9) for its taxation year that ends in that particular taxation year, the trust may, in its return of income for its taxation year that ends in that particular taxation year, designate the portion of that amount that can, having regard to all the circumstances including the terms and conditions of the trust, reasonably be considered to be attributable to the taxpayer and was not designated by the trust in respect of any other beneficiary of the trust, and that portion is to be added in computing the investment tax credit of the taxpayer at the end of that particular taxation year and is to be deducted in computing the

investment tax credit of the trust at the end of its taxation year that ends in that particular taxation year.

(4) The portion of subsection 127(8) of the Act before paragraph (*a*) is replaced by the following:

(8) *Investment tax credit of partnership.* Subject to subsection (28), where, in a particular taxation year of a taxpayer who is a member of a partnership, an amount would be determined in respect of the partnership, for its taxation year that ends in the particular taxation year, under paragraph (*a*), (*a*.l), (*a*.4), (*b*) or (*e*.l) of the definition *investment tax credit* in subsection (9), if

(5) Subparagraph 127(8.2)(*b*)(i) of the Act is amended by adding "or" at the end of clause (A.l) and by repealing clause (A.2).

(6) Paragraph 127(8.31)(*a*) of the Act is replaced by the following:

(*a*) the total of all amounts each of which is an amount that would, if the partnership were a person and its fiscal period were its taxation year, be determined in respect of the partnership under paragraph (*a*), (*a*.l), (*a*.4), (*b*) or (*e*.l) of the definition *investment tax credit* in subsection (9) for a taxation year that is the fiscal period,

(7) The definitions *child care space amount, eligible child care space expenditure, specified child care start-up expenditure* and *specified property* in subsection 127(9) of the Act are repealed.

(8) Paragraph (*a*.5) of the definition *investment tax credit* in subsection 127(9) of the Act is repealed.

(9) Paragraph (*e*.1) of the definition *investment tax credit* in subsection 127(9) of the Act is amended by adding "or" at the end of subparagraph (v), by replacing "or" at the end of subparagraph (vi) with "and" and by repealing subparagraph (vii).

(10) Paragraph (*f*.1) of the definition *specified percentage* in subsection 127(9) of the Act is amended by adding "or" at the end of subparagraph (i), by striking out "or" at the end of subparagraph (ii) and by repealing subparagraph (iii).

(11) Subsection 127(11.1) of the Act is amended by adding "and" at the end of paragraph (*c*.4) and by re-pealing paragraph (*c*.5).

(12) Subsection 127(11.2) of the Act is replaced by the following:

(11.2) *Time of acquisition.* In applying subsections (5), (7) and (8), paragraphs (*a*) and (*a*.1) of the definition *investment tax credit* in subsection (9) and section 127.1, qualified property and qualified resource property are deemed not to have been acquired by a taxpayer before the property is considered to have become available for use by the taxpayer, determined without reference to paragraphs 13(27)(*c*) and (28)(*d*).

(13) Subsections 127(27.1) to (27.12) of the Act are repealed.

(14) Subsection 127(28.1) of the Act is repealed.

(15) Subparagraph 127(30)(*a*) of the Act is amended by adding "and" at the end of subparagraph (i), by striking out "and" at the end of subparagraph (ii) and by repealing subparagraph (iii).

(16) Paragraph 127(30)(*b*) of the Act is replaced by the following:

(*b*) the amount that would be determined in respect of the partnership under subsection (8) if that subsection were read without reference to subsections (28) and (35).

(17) Subsections (1) to (16) apply in respect of expenditures incurred on or after Budget Day, except that subsections (1) to (16) do not apply in respect of expenditures incurred before 2020 under a written agreement entered into before Budget Day.

Dentons Canada LLP Commentary: Paragraph 110.1(1)(*a*.1) allows corporations to claim an additional deduction for the amount of an "eligible medical gift" (i.e., certain donations of medicine for use by a Canadian charity outside Canada) made to an eligible charity.

Budget 2017 proposes to eliminate this deduction for eligible medical gifts made on or after March 22, 2017. This does not affect the general tax treatment of donations made by corporations to registered charities.

Currently, subsection 127(5) provides an investment tax credit in respect of a taxpayer's "child space care amount" that is available to taxpayers who create new child care spaces for the taxpayer's employees. Generally, the credit is 25% of eligible expenditures incurred on the creation of a new child care space, with a maximum credit of $10,000 per child care space. Unused credits in one year can be carried back three years or forward 20 years.

Budget 2017 proposes to repeal the credit for child space care amounts, effective for expenditures incurred on or after Budget Day 2017.

Under a transitional provision, the child care space tax credit will continue to be available in respect of eligible expenditures incurred before 2020 pursuant to a written agreement entered into before Budget Day 2017.

Resolutions 66 to 68: Insurers of Farming and Fishing Property

66. (1) Paragraph (*b*) of the definition *taxable Canadian corporation* in subsection 89(1) of the Act is replaced by the following:

(*b*) was not, by reason of a statutory provision, exempt from tax under this Part;

(2) Subsection (1) applies to taxation years that begin after 2018.

67. (1) Paragraph 149(1)(*t*) of the Act is repealed.

(2) Subsections 149(4.1) to (4.3) of the Act are repealed.

(3) The portion of subsection 149(10) of the Act before paragraph (*a*) is replaced by the following:

(10) *Becoming or ceasing to be exempt.* If at any time (in this subsection referred to as *that time*), a person - that is a corporation or, if that time is after September 12, 2013, a trust - becomes or ceases to be exempt from tax under this Part on its taxable income, the following rules apply:

(4) Subsections (1) to (3) apply to taxation years that begin after 2018.

68. (1) Subsection 4802(2) of the *Income Tax Regulations* is repealed.

(2) Subsection (1) applies to taxation years that begin after 2018.

Dentons Canada LLP Commentary: Where a non-life insurer earns more that 20% of its gross premium income (net of reinsurance ceded) from the insurance of property used in farming or fishing or from the residences of farmers or fishermen, paragraph 149(1)(t) provides an exemption from Part I tax for a portion of the insurer's taxable income. Budget 2017 proposes to eliminate this exemption, effective for taxation years that begin after 2018.

Resolutions 69 and 70: Billed-basis Accounting

69. (1) Section 10 of the Act is amended by adding the following after subsection (14):

(14.1) *Work in progress - transitional.* If paragraph 34(*a*) applies in computing a taxpayer's income from a business for the last taxation year of the taxpayer that begins before Budget Day, then for the purpose of computing the income of the taxpayer from the business, at the end of the first taxation year that begins on or after Budget Day,

(*a*) the amount of the cost of the taxpayer's work in progress is deemed to be one-half of the amount of its cost determined without reference to this paragraph; and

(*b*) the amount of the fair market value of the taxpayer's work in progress is deemed to be one-half of the amount of its fair market value determined without reference to this paragraph.

(2) Subsections 10(14) and (14.1), as enacted by subsection (1), of the Act are repealed.

(3) Subsection (1) applies to taxation years ending on or after Budget Day.

(4) Subsection (2) comes into force on January 1, 2020.

70. (1) Paragraph 34(*a*) of the Act is replaced by the following:

(*a*) if the taxpayer so elects in the taxpayer's return of income under this Part for the year and the year begins before Budget Day, there shall not be included any amount in respect of work in progress at the end of the year; and

(2) Section 34 of the Act, as amended by subsection (1), is repealed.

(3) Subsection (1) applies to taxation years ending on or after Budget Day.

(4) Subsection (2) comes into force on January 1, 2020.

Dentons Canada LLP Commentary: Taxpayers who are designated professionals (accountants, dentists, lawyers, medical doctors, veterinarians, and chiropractors) are able to elect to exclude the value of work-in progress ("WIP") in computing income for tax purposes each year. This essentially permits the designated professional to defer recognition of income until work is billed, or an account is issued, to the client rather than when the services are performed. Costs related to providing services are deductible when incurred. The result is a deferral of income and related income taxes where the election is made.

Budget 2017 proposes to eliminate the ability for these professionals to elect to exclude WIP in determining income from a business for taxation years commencing on or after Budget Day.

Transitional relief will be provided in the form of a two-year phase-in. For the first taxation year commencing after Budget Day (which will be January 1, 2018 for the majority of professionals affected), only 50% of the lesser of cost and fair market value of the WIP will be taken into account for the valuation of the inventory of the business. For the second, and each taxation year thereafter, 100% of the lesser of cost and fair market value of the WIP will be taken into account for the valuation of the inventory of the business. For professionals with December 31 fiscal periods, 50% of the lesser of cost and fair market value of WIP will be included in income for the year ended December 31, 2018, and 100% in the year ended December 31, 2019.

In determining the cost of a professional firm's WIP, it should be noted that it is not the value of the WIP, but the cost of the WIP that is to be taken into account when computing the income of the firm. The cost of the WIP should not include any time spent by any partner of the firm, and only the cost to the firm of an associate's time in respect of the file.

Professionals who bill their clients on a contingency basis are likely the hardest hit by this proposed measure. For example, a personal injury law firm may accumulate WIP for several years before a matter is settled. Under existing provisions the WIP would be excluded from income and not subject to taxation until the matter was settled and damages paid to the client. At that time, legal counsel would retain a portion of the amount payable to the client as payment for legal fees. Under the proposed measure, the law firm will be required to include an amount in income each year and pay tax on that amount even though the law firm receives no payment from the client. This could affect contingency fee arrangements going forward. At the very least it will cause professionals to look critically at the value of WIP each year to avoid including amounts in income that may never be realized. It should be noted that for files billed on a contingency basis, a strong argument can be made for a significant discount from the cost due to the uncertainty of the outcome.

Resolutions 71 and 72: Extending the Base Erosion Rules to Foreign Branches of Life Insurers

71. (1) The portion of paragraph 95(2)(*a*.23) of the Act before subparagraph (i) is replaced by the following:

(*a*.23) for the purposes of paragraphs (*a*.2), (*a*.21) and (*a*.24), *specified Canadian risk* means a risk in respect of

(2) Subsection 95(2) of the Act is amended by adding the following after paragraph (*a*.23):

(*a*.24) for the purposes of paragraph (*a*.2),

(i) a risk is deemed to be a specified Canadian risk of a particular foreign affiliate of a taxpayer if

(A) as part of transaction or series of transactions, the particular affiliate insured or reinsured the risk,

(B) the risk would not be a specified Canadian risk if this Act were read without reference to this paragraph, and

(C) it can reasonably be concluded that one of the purposes of the transaction or series of transactions was to avoid the application of any of paragraphs (*a*.2) to (*a*.22), and

(ii) if the particular affiliate — or a foreign affiliate of another taxpayer, if that other taxpayer or affiliate, or a partnership of which that other taxpayer or affiliate is a member, does not deal at arm's length with the particular affiliate — enters into one or more agreements or arrangements in respect of a risk that is deemed to be a specified Canadian risk because of subparagraph (i),

(A) activities performed in connection with those agreements or arrangements are deemed to be a separate business, other than an active business, carried on by the particular affiliate or other affiliate, as the case may be, and

(B) any income of the particular affiliate or other affiliate, as the case may be, from the business (including income that pertains to or is incident to the business) is deemed to be income from a business other than an active business;

(3) Subsections (1) and (2) apply to taxation years of a taxpayer that begin on or after Budget Day.

72. (1) Section 138 of the Act is amended by adding the following after subsection (2):

(2.1) *Income — designated foreign insurance business.* If a life insurer resident in Canada has designated foreign insurance business in a taxation year,

(*a*) for the purpose of computing the life insurer's income or loss from carrying on an insurance business in Canada for the taxation year, the life insurer's insurance business carried on in Canada is deemed to include the insurance of the specified Canadian risks that are insured as part of the designated foreign insurance business;

(*b*) if, in the immediately preceding taxation year, the designated foreign insurance business was not a designated foreign insurance business, then for the purposes of paragraph (4)(*a*), subsection (9), the definition *designated insurance property* in subsection (12) and paragraphs 12(1)(*d*) to (*e*), the life insurer is deemed to have carried on the business in Canada in that immediately preceding year and to have claimed the maximum amounts to which it would have been entitled under paragraphs 3(*a*) (other than under subparagraph 3(*a*)(ii.1), (iii) or (v)), 20(1)(*l*) and (*l*.1) and 20(7)(*c*) in respect of those specified Canadian risks if that designated foreign insurance business had been a designated foreign insurance business in that immediately preceding year; and

(*c*) for the purposes of subparagraph (3)(*a*)(ii.1) and subsection 20(22),

(i) the life insurer is deemed to have carried on the business in Canada in that immediately preceding year, and

(ii) the amounts, if any, that would have been prescribed in respect of the insurer for the purposes of paragraphs (4)(*b*) and 12(1)(*e*.1) for that immediately preceding year in respect of the insurance policies in respect of those specified Canadian risks are deemed to have been included in computing its income for that year.

(2.2) *Insurance swaps*. For the purposes of this section, one or more risks insured by a life insurer resident in Canada, as part of an insurance business carried on in a country other than Canada, that would not be specified Canadian risks if this Act were read without reference to this subsection, are deemed to be specified Canadian risks if those risks would be deemed to be specified Canadian risks because of paragraph 95(2)(*a*.21) if the life insurer were a foreign affiliate of a taxpayer.

(2.3) *Insurance swaps*. Subsection (2.4) applies in respect of one or more agreements or arrangements if

(*a*) subsection (2.2) applies to deem one or more risks insured by a particular life insurer resident in Canada to be specified Canadian risks; and

(*b*) those agreements or arrangements are in respect of risks described in paragraph (*a*) and have been entered into by any of the following (in subsection (2.4) referred to as an *agreeing party*):

(i) the particular life insurer,

(ii) another life insurer resident in Canada that does not deal at arm's length with the particular life insurer,

(iii) a partnership of which a life insurer described in subparagraph (i) or (ii) is a member,

(iv) a foreign affiliate of either the particular life insurer or a person that does not deal at arm's length with the particular life insurer, and

(v) a partnership of which a foreign affiliate described in subparagraph (iv) is a member.

(2.4) *Insurance swaps*. If this subsection applies in respect of one or more agreements or arrangements,

(*a*) to the extent that activities performed in connection with those agreements or arrangements can reasonably be considered to be performed for the purpose of obtaining the result described in subparagraph 95(2)(*a*.21)(ii) (with any modifications that the circumstances require), those activities are deemed to be,

(i) if the agreeing party is a life insurer resident in Canada, or a partnership of which such a life insurer is a member, part of the life insurer's insurance business carried on in Canada, and

(ii) if the agreeing party is a foreign affiliate of a taxpayer, or a partnership of which such an affiliate is a member, a separate business, other than an active business, carried on by the affiliate; and

(*b*) any income from those activities (including income that pertains to or is incident to those activities) is deemed to be,

(i) if the agreeing party is a life insurer resident in Canada, income from the life insurer's insurance business carried on in Canada, and

(ii) if the agreeing party is a foreign affiliate of a taxpayer, income from the business, other than an active business.

(2.5) *Ceding of Canadian risks*. Any income of a life insurer resident in Canada for a taxation year, from its insurance business carried on in a country other than Canada, in respect of the ceding of specified Canadian risks that would, if the life insurer were a foreign affiliate of a taxpayer, be included in computing the life insurer's income from a business, other than an active business, for the taxation year because of subparagraph 95(2)(*a*.2)(iii), is to be included in computing the life insurer's income or loss for that taxation year from its insurance business carried on in Canada, except to the extent it is already included because of subsection (2.1), (2.2) or (2.4).

(2.6) *Anti-avoidance*. For the purposes of this section,

(*a*) a risk is deemed to be a specified Canadian risk that is insured as part of an insurance business carried on in Canada by a particular life insurer resident in Canada if

(i) the particular life insurer insured the risk as part of a transaction or series of transactions,

(ii) the risk would not be a specified Canadian risk if this Act were read without reference to this subsection, and

(iii) it can reasonably be concluded that one of the purposes of the transaction or series of transactions was to avoid

(A) having a designated foreign insurance business, or

(B) the application of any of subsections (2.1) to (2.5) in respect of the risk; and

(*b*) if one or more agreements or arrangements in respect of the risk have been entered into by any of the persons or partnerships described in subparagraphs (2.3)(*b*)(i) to (v) (in this paragraph, referred to as an *agreeing party*),

(i) any activities performed in connection with those agreements or arrangements are deemed to be

(A) if the agreeing party is a life insurer resident in Canada, or a partnership of which such a life insurer is a member, part of the life insurer's insurance business carried on in Canada, and

(B) if the agreeing party is a foreign affiliate of a taxpayer, or a partnership of which such an affiliate is a member, a separate business, other than an active business, carried on by the affiliate, and

(ii) any income from those activities (including income that pertains to or is incident to those activities) is deemed to be,

(A) if the agreeing party is a life insurer resident in Canada, income from the life insurer's insurance business carried on in Canada, and

(B) if the agreeing party is a foreign affiliate of a taxpayer, income from a business other than an active business.

(2) Paragraph (*d*) of subsection 138(11.91) of the Act is replaced by the following:

(*d*) for the purposes of paragraph (4)(*a*), subsection (9), the definition designated insurance property in subsection (12) and paragraphs 12(1)(*d*) to (*e*), the insurer is deemed to have carried on the business in Canada in that preceding year and to have claimed the maximum amounts to which it would have been entitled under paragraphs (3)(*a*) (other than under subparagraph (3)(*a*)(ii.l), (iii) or (v)), 20(1)(*l*) and (*l*.1) and 20(7)(*c*) for that year,

(3) Subsection 138(12) of the Act is amended by adding the following definitions in alphabetical order:

designated foreign insurance business, of a life insurer resident in Canada in a taxation year, means an insurance business that is carried on by the life insurer in a country other than Canada in the year unless more than 90% of the gross premium revenue from the business for the year from the insurance of risks (net of reinsurance ceded) is in respect of the insurance of risks (other than specified Canadian risks) of persons with whom the life insurer deals at arm's length.

insurance, of a risk, includes the reinsurance of the risk.

specified Canadian risk has the same meaning as in paragraph 95(2)(*a*.23).

(4) Subsections (1) to (3) apply to taxation years of a taxpayer that begin on or after Budget Day.

Dentons Canada LLP Commentary: Generally, Canadian-resident life insurance companies are not taxed on income earned from carrying on business in a foreign jurisdiction (for instance, through a foreign branch). This treatment is similar to the taxation of foreign affiliates of Canadian-resident corporations. In contrast, income from a life insurance business carried on by a controlled foreign affiliate that insures Canadian risks (life insurance in respect of Canadian-resident persons) is generally considered foreign accrual property income ("FAPI"). This is designed to prevent the shifting of income from the insurance of Canadian risks into a controlled foreign affiliate resident in a low-tax jurisdiction. However, currently there is no equivalent rule for income earned by a foreign branch of a Canadian life insurance corporation.

Budget 2017 proposes to include income from the insurance of Canadian risks earned by a foreign branch in the Canadian resident insurer's taxable income. It applies where 10% or more of the gross premium income (net of reinsurance ceded) earned by a foreign branch of a Canadian life insurer is premium income in respect of Canadian risks. Where applicable, the income of a foreign branch will be deemed to be income of the Canadian resident life insurer from a business carried on in Canada. The related life insurance policies will also be deemed to be life insurance policies in Canada.

Related anti-avoidance rules are also proposed to ensure that the proposed measure cannot be avoided by use of "insurance swaps" or ceding of Canadian risks entered into by the foreign affiliate or an affiliate with which it does not deal at arm's length. Additionally, where it is reasonable to conclude that foreign risks were insured by the life insurer as part of a transaction or series of transactions one of the purposes of which is to avoid the proposed rule, the life insurer will be treated as if it had insured Canadian risks.

The proposed measures are effective for taxation years commencing on or after Budget Day.

Resolutions 73 and 74: Tobacco Taxation

73. Subsection 182(1) of the Act is replaced by the following:

182. (1) *Surtax.* Every corporation shall pay a tax under this Part for the corporation's taxation year equal to the amount determined by the formula

$$0.5A(B/C)$$

where

A is the corporation's Part I tax on tobacco manufacturing profits for the year;

B is the number of days in the year that are on or before Budget Day; and

C is the number of days in the year.

(2) Subsection (1) applies to taxation years that include Budget Day.

74. (1) Part II of the Act, as amended by subsection 73(1), is repealed.

(2) Subsection (1) applies to taxation years that begin after Budget Day.

Dentons Canada LLP Commentary: Section 182 or Part II of the Act currently imposes a surtax equal to 50% of a corporation's "Part I tax on tobacco manufacturing" profits for the year. Resolution 73 repeals this surtax, with a pro-rated amount for taxation years that straddle March 22, 2017. However, in order to maintain the intended tax burden of the manufacturers' surtax on tobacco products, Budget 2017 also proposes to adjust excise duty rates. These are covered in detail in the GST/HST portion of this report.

Customs and Excise Tax Measures

Taxi and Ride-Sharing Services

Under the GST/HST, all taxi operators are required to register for the GST/HST and collect tax on their fares, regardless of the total annual amount of sales. In other words, the rules allowing "small suppliers", generally defined as persons having annual sales under $30,000, do not apply to them. These rules, which have been in place since the inception of the GST, ensure that all taxi operators are treated in the same way.

For GST/HST purposes, a taxi business is currently defined to mean a business carried on in Canada of transporting passengers by taxi for fares that are regulated under the laws of Canada or a province. Taxi fares may also be regulated by municipalities under authority delegated by a province.

Commercial ride-sharing services facilitated by web applications such as Uber provide passenger transportation services that are similar to taxi services. There has been some debate as to whether or not such ride-sharing services were covered by the above-quoted *Excise Tax Act* definition of taxi business. For example, if their fare is not regulated by a province or municipality, they may technically not be considered as being involved in a taxi business and therefore not subject to the same rules as traditional taxi operators. Accordingly, some argued that ride-sharing services operators may not be required to register and collect GST/HST when their annual sales are under $30,000.

To ensure that the GST/HST applies consistently to taxi services and ride-sharing services, Budget 2017 proposes, effective July 1, 2017, to amend the definition of a taxi business to require providers of ride-sharing services to register for the GST/HST and charge tax on their fares in the same manner as taxi operators.

Accordingly, it is proposed that the GST/HST definition of a taxi business be amended to include persons engaged in a business of transporting passengers for fares by motor vehicle within a municipality and its environs where the transportation is arranged for or coordinated through an electronic platform or system, such as a mobile application or website. These changes will not apply to a school transportation service for elementary or secondary students or a sightseeing service.

Opioid Overdose Treatment Drug — Naloxone

Naloxone (including its salts, such as naloxone hydrochloride) is a drug used to treat opioid (e.g., fentanyl) overdose. Naloxone was until March 22, 2016 only available by prescription and as such, relieved from the GST/HST.

However, to facilitate access and avoid possible delays in the administration of the drug, on March 22, 2016, Health Canada removed the requirement for a prescription when naloxone is indicated for emergency use for opioid overdose outside hospital settings. As such, when supplied in this manner, naloxone no longer qualifies for GST/HST relief.

In order to restore the GST/HST-free treatment of naloxone, Budget 2017 proposes to add the drug (and its salts) to the list of GST/HST-free non-prescription drugs that are used to treat life-threatening conditions.

This measure generally comes into effect on March 22, 2016. However, this measure does not apply in respect of any supply, importation, or bringing into a participating province of naloxone occurring on or before March 22, 2016 for which GST/HST was charged, collected, remitted, or paid

GST/HST Rebate to Non-Residents for Tour Package Accommodations

A rebate is currently available to non-resident individuals and non-resident tour operators for the GST/HST that is payable in respect of the Canadian accommodation portion of eligible tour packages.

Budget 2017 proposes to repeal the GST/HST rebate available to non-residents for the GST/HST that is payable in respect of the accommodation portion of eligible tour packages. This repeal will generally apply in respect of supplies of tour packages or accommodations made after March 22, 2017.

As a transitional measure, the rebate will continue to be available in respect of a supply of a tour package or accommodations made after March 22, 2017 but before January 1, 2018 if all of the consideration for the supply is paid before January 1, 2018.

Excise Duty Rates Increases on Tobacco Products

As discussed previously, Budget 2017 proposes to eliminate the 10.5% surtax imposed by Part II of the *Income Tax Act* on profits arising from the manufacture of tobacco products. In order to maintain the intended tax burden of the manufacturers' surtax on tobacco products, Budget 2017 also proposes to adjust tobacco excise duty rates. Accordingly, the excise duty rate on cigarettes will increase from $0.52575 to $0.53900 for each five cigarettes or fraction thereof (i.e., from $21.03 to $21.56 per 200 cigarettes).

Budget 2017 also proposes that inventories of cigarettes held by manufacturers, importers, wholesalers and retailers at the end of Budget Day be subject to a tax of $0.00265 per cigarette (subject to certain exemptions).

Manufacturers, importers, wholesalers, and retailers should refer to the cigarette inventory tax mechanism in the *Excise Act, 2001* and Canada Revenue Agency publications for more information. Taxpayers will have until May 31, 2017 to file returns and pay the inventory tax.

Similarly, the excise duty rates for other tobacco products will also be adjusted accordingly. Budget 2017 proposes a corresponding increase in the excise duty rate on tobacco sticks from $0.10515 to $0.10780 per stick (i.e., from $21.03 to $21.56 per 200 tobacco sticks), and on manufactured tobacco (e.g., chewing tobacco or finecut tobacco for use in roll-your-own cigarettes) from $6.57188 to $6.73750 per 50 grams or fraction thereof (i.e., from approximately $26.29 to $26.95 per 200 grams). The excise duty rate on cigars is proposed to increase from $22.88559 to $23.46235 per 1,000 cigars, and the additional duty on cigars from the greater of $0.08226 per cigar and 82 per cent of the sale price or duty-paid value to the greater of $0.08434 per cigar and 84 per cent of the sale price or duty-paid value.

All these measures are effective March 23, 2017.

Excise Duty Rates Increase on Alcohol Products

Budget 2017 proposes that excise duty rates on alcohol products be increased by 2 per cent effective March 23, 2017, in respect of duty that becomes payable after that date. No special inventory tax will apply to alcohol products on which duty has been paid. In order to maintain their effectiveness, it is also proposed that the rates be automatically adjusted by the Consumer Price Index on April 1 of every year, starting in 2018.

Previously Announced Measures (GST/HST)

On July 22, 2016, the Department of Finance tabled extensive draft legislation on a variety of subjects including drop shipment rules. Budget 2016 contained measures relating to the Goods and Services Tax/Harmonized Sales Tax joint venture election. While these measures have not been enacted and are not included within the Ways and Means Motion presented with Budget 2017, the Government confirms its intention to proceed with these measures.

Table of Effective Dates — 2017

Personal Income Tax		
Resolutions 1-2	**Disability Tax Credit — Nurse Practitioners**	Effective March 22, 2017.
Resolution 3	**Medical Expense tax Credit — cost of reproductive technologies**	Effective January 1, 2017.
Resolutions 4-7	**Consolidation of Caregiver Credits**	Effective January 1, 2017.
Resolution 8	**Mineral Exploration Tax Credit for Flow-Through Share Investors**	Applicable to expenses renounced under a flow-through share agreement entered into after March 2017.
Resolutions 9, 10	**Electronic Distribution of T4 Information Slips**	Effective January 1, 2018.
Resolutions 11-12	**Tuition Tax Credit**	Effective January 1, 2017.
Resolution 13	**National Child Benefit Supplement**	Effective July 1, 2018.
Resolutions 14-17	**Ecological Gifts Program**	Effective March 22, 2017.
Resolutions 18, 19	**Public Transit Credit**	In effect various dates beginning January 1, 2017.
Business Income Tax		
Resolution 20	**Allowances for Members of Legislative Assemblies and certain Municipal Officers**	Effective January 1, 2019.
Resolutions 21-25	**Home Relocation Loans Deduction**	Effective January 1, 2018.
Resolutions 26-40	**Anti-Avoidance Rules for Registered Plans**	Effective March 23, 2017, subject to exceptions.
Resolutions 41-45	**Investment Fund Mergers**	In effect various dates beginning January 1, 2017.
Resolutions 46-48	**Clean Energy Generation Equipment: Geothermal Energy**	Effective March 22, 2017.
Resolution 49	**Canada Exploration Expense: Oil and Gas Discovery Wells**	Effective March 22, 2017.
Resolution 50	**Reclassification of Expenses Renounced to Flow-Through Share Investors**	Effective on Royal Assent, subject to exceptions.
Resolution 51	**Meaning of Factual Control**	Effective March 22, 2017.
Resolutions 52-59	**Timing of Recognition of Gains and Losses on Derivatives**	Effective March 22, 2017.
Resolutions 60-62	**Additional Deduction of Gifts of Medicine**	Effective March 22, 2017.
Resolutions 63-65	**Investment Tax Credit for Child Care Spaces**	Effective March 22, 2017, subject to exceptions.

Resolutions 66–68	**Insurers Of Farming and Fishing Property**	Effective after 2018.
Resolution 69, 70	**Billed-basis Accounting**	In effect various dates beginning March 22, 2017.
Resolutions 71, 72	**Extending the Base Erosion Rules to Foreign Branches of Life Insurers**	Effective March 22, 2017.
Resolutions 73, 74	**Tobacco Taxation**	In effect various dates beginning March 22, 2017.
GST/HST Measures		
Resolution 1	**Opioid Overdose Treatment Drug — Naloxone**	Effective March 22, 2016, subject to exceptions.
Resolution 2	**Taxi and Ride-Sharing Services**	Effective July 1, 2017.
Resolutions 3-8	**GST/HST Rebate to Non-Residents for Tour Package Accommodations**	In effect various dates beginning March 23, 2017.
Excise Tax and Excise Measures		
Resolutions 1-25	**Tobacco and Alcohol Taxation**	In effect various dates beginning March 22, 2017.