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LEGISLATIVE SUMMARY

Bill C-29:

A second Act to implement certain provisions of the budget tabled in Parliament on March 22, 2016 and other measures

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

Legislative Summary of Bill C-29
(Legislative Summary)

Publication No. 42-1-C29-E

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LEGISLATIVE SUMMARY OF BILL C-29: A SECOND ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON MARCH 22, 2016 AND OTHER MEASURES*

1 BACKGROUND

Bill C-29, A second Act to implement certain provisions of the budget tabled in Parliament on March 22, 2016 and other measures (short title: Budget Implementation Act, 2016, No. 2),[1] was introduced and read for the first time in the House of Commons on 25 October 2016. The bill was amended by committees of the House and Senate, and received Royal Assent on 15 December 2016.

As its title suggests, the purpose of the bill is to implement the overall budget policy that was introduced by the government in the House of Commons on 22 March 2016. Consistent with established legislative practice, it is the second implementation bill for Budget 2016. Bill C-15, the first implementation bill for Budget 2016, was passed on 22 June 2016.

Bill C-29 has four parts:

- Part 1 implements income tax measures, such as amendments to anti-avoidance rules and indexing of the Canada child benefit (clauses 2 to 88).
- Part 2 implements certain Goods and Services Tax/Harmonized Sales Tax (GST/HST) and excise measures (clauses 89 to 99).
- Part 3 implements amended excise measures related to tobacco and alcohol products (clause 100).
- Part 4 implements various other measures by amending several Acts, including the *Employment Insurance Act*, the *Old Age Security Act* and the *Bank Act* (clauses 101 to 145).

This document provides a brief description of the main measures provided for in Bill C-29 by summarizing the substance of each part of the bill. For ease of reference, the information is presented in the order in which it appears in the summary of the bill.

2 DESCRIPTION AND ANALYSIS

2.1 PART 1: IMPLEMENTATION OF CERTAIN INCOME TAX MEASURES PROPOSED IN THE 2016 BUDGET

2.1.1 ELIMINATION OF THE ELIGIBLE CAPITAL PROPERTY RULES AND INTRODUCTION OF A NEW CLASS OF DEPRECIABLE PROPERTY

Clauses 3 and 4 of Bill C-29 repeal the eligible capital property rules in the *Income Tax Act* (ITA)[2] and replace them with rules that apply to a new class of depreciable property.

Depreciable property is such entities as buildings, furniture or equipment that a taxpayer typically acquires when running a business or a property from which he or she earns income. Because this property loses value over time, the ITA does not allow a taxpayer to deduct the full cost of this "eligible capital property" (ECP) when calculating income for the year in which he or she acquired it. Instead, a taxpayer deducts the property's cost over a period of several years. This deduction is called a "capital cost allowance."

The former ECP regime governed all eligible capital expenditures and eligible capital receipts that did not come within any of the depreciable property classes listed in the ITA – certain intangible items such as goodwill,[3] client lists and franchise rights.

Clause 4 repeals section 14 of the ITA, which governed the ECP regime. Clause 3 refers to the new class that replaces the former ECP regime: it amends section 13 to include new Class 14.1 of Schedule II to the *Income Tax Regulations*,[4] which applies to depreciable property. The change in the ECP rules is effective 1 January 2017.[5]

Clause 3(3) replaces section 13(34) with new sections 13(34) to 13(42), which provide rules for a business's expenditures and receipts that do not relate to property (formerly ECP) under new Class 14.1 of depreciable property. The amended section 13(34) states that every business is considered to have goodwill property associated with it, even if there has not been an expenditure to acquire goodwill, and provides rules for determining the cost of goodwill acquired and disposed of by a business.

New section 13(35) provides that a taxpayer incurs goodwill for a business through any business expense related to gaining or producing income for that business. The goodwill acquired is deemed equal to the amount of the expense, subject to certain conditions listed in new sections 13(35)(a) and 13(35)(b).

Under new section 13(36), amounts paid to purchase shares are excluded from new Class 14.1.

Under new section 13(37), a taxpayer is deemed to dispose of goodwill if he or she was entitled, during the taxation year, to receive an amount (called the "receipt") for capital in his or her business. The disposition's proceeds are equal to the amount by which the receipt exceeds the total non-deductible expenses incurred to obtain the receipt.

Transitional rules that apply following the repeal of the ECP regime and the creation of new Class 14.1 are outlined in new sections 13(38) to 13(42).

New section 13(38) allows a taxpayer's existing cumulative eligible capital balance for a business acquired before 1 January 2017 to be transferred to the undepreciated capital cost balance for the business described in new Class 14.1. This section enables such a transfer by providing that the undepreciated capital cost of new Class 14.1 is equal to the amount that would have been the cumulative eligible capital balance.

Clause 3(2) adds sections 13(7.41) and 13(7.42), which clarify the application of new section 13(38). New section 13(7.41) provides that if certain conditions are met, new section 13(38) applies to a business' repayment of government assistance after 2016 as if the repayment had been made immediately before 2017. This provision takes into account the repeal of section 14(10), which increased the taxpayer's eligible capital expenditure if government assistance was repaid before business ceased. New section 13(7.42) provides that an amount of repaid assistance referred to in new section 13(7.41) may be deducted from income from business or property starting in the year in which the assistance is repaid.

To prevent excess gains from the sale of depreciable capital property being reported as income, new section 13(39) increases the undepreciated capital cost of new Class 14.1 for ECP acquired before 1 January 2017 that is disposed of on or after 1 January 2017.

New section 13(40) decreases the undepreciated capital cost of new Class 14.1 property for non–arm's-length transfers of eligible capital property made before 1 January 2017 in order to prevent the misuse of section 13(39) through the application of such a transfer.

New section 13(41) provides that, for the purposes of new sections 13(38) to 13(40) and 40(13) to 40(16), the terms "cumulative eligible capital," "eligible capital expenditure," "eligible capital property" and "exempt gains balance" have the same meanings as they would have if the ITA read as it did immediately before 1 January 2017.

New section 13(42) outlines rules that apply where a taxpayer owns, at the beginning of 1 January 2017, property for a business that is included in new Class 14.1 and that was an ECP in respect of that business immediately before 1 January 2017. These rules clarify the manner in which property that was subject to certain treatment under section 14 will be treated under the new rules.

Clause 15 adds sections 40(13) to 40(16), which give transitional rules for new Class 14.1. Section 40 provides rules for determining a taxpayer's gain or loss from the disposition of capital property. New sections 40(14) and 40(16) reduce a taxpayer's capital gain from the disposition of property included in new Class 14.1 in certain circumstances. The reduction described in new section 40(14) is related to the 1988 conversion of the cumulative eligible capital pool from a 50% to a 75% inclusion rate. The reduction presented in new section 40(16) is related to the 1994 elimination of the $100,000 lifetime capital gains exemption.[6] Subject to certain conditions, sections 40(13) and 40(15) provide that sections 40(14) and 40(16), respectively, apply in relation to a disposition of a property under new Class 14.1 if the property was an ECP immediately before 1 January 2017.

As a result of the repeal of the ECP regime, several clauses in Bill C-29 enact consequential amendments to the ITA, the *Income Tax Application Rules*[7] and the *Income Tax Regulations* to remove all mentions of ECP and section 14, and in some cases, to replace any such mention with new Class 14.1 and/or amended section 13. These consequential amendments affect all sections that deal with the acquisition or disposal of property related to a business, including the transfer of property to a corporation by shareholders, ceasing to carry on a business or partnership, and winding up corporations resident in Canada.

2.1.2 Introduction of Rules to Prevent Avoidance of the Shareholder Loan Rules Using Back-to-Back Arrangements

Clause 5 adds sections 15(2.16) to 15(2.192) to the ITA, and clause 24 amends sections 80.4(2)(e) and 80.4(7), to prevent a taxpayer from receiving a loan from a related corporation through an arm's-length intermediary without including the amount of the loan in his or her taxable income and, if applicable, without paying the withholding tax on interest paid to a non-resident. For example, a corporation was able to lend funds to an arm's-length person on condition that the person subsequently make a loan to the taxpayer (in what is known as a "back-to-back arrangement") so that the transaction is not subject to the Canadian shareholder benefit rules under section 15(2) and non-resident shareholder rules under section 80.4(2) of the ITA.

In similar cases, clause 5 deems the corporation to have provided a loan to a taxpayer who is a shareholder, or to a person or partnership connected to that shareholder. The amount of the loan is equal to the funding indirectly provided by the corporation, and the amount of the repayment is deemed to be the amount of the reduction in the funding indirectly provided. Clause 24 makes a consequential change to section 80.4 of the ITA to deem interest to be paid to a non-resident involved in a back-to-back arrangement.

Clause 5 applies for loans received and indebtedness incurred, and to specific rights granted, after 21 March 2016 and to outstanding loans, indebtedness and specific rights on that date.

2.1.3 Exclusion of Derivatives from the Application of the Inventory Valuation Rules

Clause 2 adds section 10(15) to the ITA to deem certain financial contracts not to be inventory for the purposes of section 10, which addresses the valuation of inventory. In particular, a swap agreement, a forward purchase or sale agreement, a forward rate agreement, a futures agreement, an option agreement or any similar agreement is to be valued in accordance with the general principles of profit computation under section 9 of the ITA, and not with the lower of cost and fair market value indicated under section 10. Thus, for tax purposes, the valuation of these financial contracts will be based on the amount realized upon their sale, and not on their annual accrued gain or loss.

2.1.4 Amendments with Respect to the Return on a Linked Note

Existing section 20(14.1) of the ITA provides that interest has accrued and must be included in the income of the vendor for the year in which a prescribed debt obligation,[8] which includes a typical linked note,[9] is sold.

Generally, interest is not deemed to accrue on a linked note prior to the maximum amount of interest becoming determinable, which is usually shortly before maturity.

Some investors who hold linked notes as capital property sell them before the determination date in a secondary market sale in order to convert the return on the notes from interest income to capital gains, only 50% of which must be included in their taxable income.

Clause 7(4) adds section 20(14.2) to the ITA to introduce a specific anti-avoidance rule that attributes interest to a linked note, whether it is earned at maturity or previously, in a secondary market sale.

Clause 7 also provides that fluctuations in the exchange rates of foreign-currency-denominated notes are not taken into account for the purposes of calculating capital gains.

This measure applies to sales of linked notes that occur after 2016.

2.1.5 Clarification of Tax Rules Surrounding Emissions Allowances

Several provinces have introduced, or are working to introduce, greenhouse-gas-emission trading regimes, also known as cap-and-trade programs. Generally, these programs are designed to cap the total amount of emissions and specify emissions limits for regulated emitters. The programs usually permit emitters that have emitted more than their allowed level to purchase additional emissions allowances from others that have emitted less than their allowed levels. These allowances can also be earned through emission-reduction activities, or they can be obtained directly, usually free of cost, from government.

Clause 10(1) adds section 27.1 to provide that emissions allowances are treated as inventory. To this effect, special rules are introduced to provide for the valuation of the inventory to account for the potential volatility of the value of emissions allowances. Other additions are made so that any free emissions allowances received by an emitter do not have to be included as income for tax purposes. In addition, amendments clarify and limit, in certain circumstances, the extent to which accumulated emissions obligations can be deducted from income if these obligations exceed the taxpayer’s emissions allowances. Finally, the amendments clarify that, if a taxpayer disposes of an emissions allowance outside of an emissions allowance regime, the net proceeds are included as income for tax purposes.

2.1.6 Amendments to Ensure that Any Accrued Foreign Exchange Gains on a Foreign Currency Debt Will Be Realized when the Debt Becomes a Parked Obligation

Under the ITA, amounts relevant to the computation of taxable income must be reported in Canadian dollars. Therefore, when these amounts are denominated in a foreign currency, they must be converted into Canadian dollars. This conversion into Canadian dollars can result in a taxable exchange gain or a deductible exchange loss.

According to the ITA rules on calculating exchange gains and losses on debt obligations denominated in a foreign currency, the exchange gain is generally taxable when the debt obligation is completely repaid or otherwise extinguished.

To avoid realizing a taxable exchange gain when a debt obligation denominated in a foreign currency is repaid, before fully repaying the obligation, some taxpayers enter into sometimes complex tax avoidance transactions in which they transfer their foreign-currency-denominated debts to a party with which they do not deal at arm's length.

Clauses 13(4) and 69 amend sections 39 and 261 of the ITA respectively in order to introduce a specific anti-avoidance rule so that any accrued exchange gains on a currency debt obligation are taken into account in calculating income when the debt obligation becomes a "parked obligation" as defined in new section 39(2.02) of the ITA.

2.1.7 Amendments to Clarify Tax Consequences of a Disposition of an Interest in a Life Insurance Policy

Clauses 16, 29 and 53 amend sections 53(1)(e), 89(1) and 148(7) of the ITA respectively. In general, the amendments aim to limit the preferential tax treatment of insurance proceeds received by a corporation and paid to a shareholder as a result of either a disposition of an interest in a life insurance policy or upon the death of a taxpayer.

Amended section 53(1)(e) limits a taxpayer's acquisition cost – or the adjusted cost base – of an interest in a partnership when the partnership received the proceeds of a life insurance policy but is not a policyholder. The amount of the proceeds that can be added to the acquisition cost of the interest is limited to the taxpayer's share of any proceeds received by the partnership that exceeds the total of the following three amounts:

- all amounts, each of which is the acquisition cost of a policyholder's interest in the policy;
- the amount received by the taxpayer for the disposition of the interest in the policy that is greater than the acquisition cost of the life insurance policy and that would have been included in the policyholder's taxable income; and
- the amount, if any, by which the lesser of the acquisition cost of the policy paid by the policyholder before the disposition and the amount given for the disposition of the interest in the policy as defined by section 148(7) exceeds the absolute value of the negative amount, if any, of the acquisition cost before death.

Amended section 89(1) limits two amounts:

- the amount of the insurance proceeds received by the corporation that are added to the capital dividend account; and
- the amount that is added to the paid-up capital for a class of shares where an interest in a life insurance policy is transferred to the corporation.

This change limits the amount of dividends that can subsequently be issued tax-free as a capital dividend to a shareholder.

Section 148(7) applies to the disposition of an interest in a life insurance policy to a corporation, and is amended to reduce the tax-free amount that may be subsequently paid to or received by a shareholder through a capital dividend of that corporation or upon the sale of the corporation's shares.

The changes apply only where an interest in a policy was disposed of after 1999 and before 22 March 2016, and the death that gives rise to the proceeds occurs after 21 March 2016.

2.1.8 Amendments with Respect to the Exception in the Anti-avoidance Rules in the *Income Tax Act* for Cross-Border Surplus-Stripping Transactions

Clause 58 amends section 212.1 of the ITA to prevent the removal of the corporate surplus of a corporation that is resident in Canada (called a "subject corporation" in this section of the Act) through the purchase of its shares by another Canadian-resident corporation (called a "purchaser corporation" in this section of the Act) that is related to a non-resident person or designated partnership. Without these changes, a subject corporation's corporate surplus could be transferred to the non-resident person or designated partnership as a tax-free capital dividend, and/or the disposition of the subject corporation's shares by the non-resident partnership would not be subject to tax in Canada. This practice is known as "surplus stripping."

In particular, amended section 212.1(1) ensures that a dividend is deemed to be paid by the Canadian-resident subject corporation to the non-resident person or designated partnership if, immediately before the disposition, the purchaser corporation controlled the non-resident person or designated partnership. Amounts deemed to be dividends under this provision could be subject to a lower withholding tax rate if there is a tax treaty between Canada and the non-resident person's country of residence.

Clause 58 also adds section 212.1(1.2) to deem that the amount of dividend income received by the non-resident person or designated partnership is the amount, if any, by which the fair market value of the subject corporation's shares disposed of by the non-resident person or designated partnership exceeds the amount of any increase in the fair market value of the purchaser corporation's shares resulting from the disposition.

Existing section 212.1(4) permits purchaser corporations to restructure through a controlled non-resident corporation that purchases the shares of a subject corporation. Amended section 212.1(4) permits such transactions only when another non-resident corporation or designated partnership does not own shares in the purchaser corporation and does not deal at arm's length with it.

Changes are made to sections 212.1(2), 212.1(3) and 212.1(4) to include any non-resident person or designated partnerships, not only the non-resident person or partnership that transferred the shares.

The amendments apply to dispositions that occur after 21 March 2016.

2.1.9 Amendments to Index the Maximum Benefit Amounts and the Phase-Out Thresholds Under the Canada Child Benefit

Clause 43 amends section 122.61 of the ITA to introduce indexation to inflation for the Canada child benefit. In particular, section 122.61(5) specifies the formula for the annual adjustment to Canada child benefit amounts that are indicated in section 122.61(1), while section 122.61(7) provides for rounding to the nearest multiple of $1.00.

Indexation begins as of 1 July 2020.

2.1.10 Amendments to the Anti-avoidance Rules in the *Income Tax Act* that Prevent the Multiplication of Access to the Small Business Deduction and the Avoidance of Certain Limits

The small business deduction in the current section 125 of the ITA effectively reduces the rate of tax imposed on income earned by a Canadian-controlled private corporation (CCPC) up to a certain level of income, which is known as the "business limit."

Clause 44 amends section 125 to limit the use of the small business deduction by associated CCPCs where a corporation provides services and property to another corporation. Section 125 is also amended to limit the use of the small business deduction by a CCPC that is a member of a partnership in cases where the CCPC provides services and property to the partnership.

In particular, sections 125(1), 125(5), 125(5.1) and 125(7) are amended, and sections 125(3.1), 125(3.2), 125(8) and 125(9) are added, to allow a CCPC to transfer a portion of the business limit to an associated CCPC that provides all or substantially all of its services or property to the CCPC undertaking the transfer. As a consequence, a single business limit applies to the total income earned by associated CCPCs.

Sections 125(7) and 125(8) are amended to adjust the business limit of a CCPC that is a member of a partnership and that provides all or substantially all of its services or property to the partnership. In particular, the business limit is reduced by the CCPC's proportionate share of the partnership's total income and by any business limit amount that has been transferred to another CCPC. As a consequence, a single business limit applies to the total income earned by all members of a partnership that is a CCPC.

Moreover, section 125(7) is amended by adding a definition of “specified corporate income” that allows the Minister of National Revenue to determine an amount of a CCPC’s income that is reasonable for purposes of section 125.

New section 125(9) prevents a corporation from using a related corporation or partnership to avoid the operation of the new restrictions on the business limit described above. This outcome is achieved by deeming the income of such a corporation to be ineligible for the small business deduction.

New section 125(10) allows a CCPC, for purposes of the small business deduction, to claim income from services or property provided to an associated corporation if the other associated corporation deducted the amount of that income from its taxable income and thus did not use the income in calculating the small business deduction.

2.1.11 Amendments to the Tax Rules Surrounding the Exchange of Shares that Results in the Investor Switching Between Funds

Under the existing provisions of the ITA, investors are able to exchange, without tax consequences, shares of one class for shares of another class when they invest in a mutual fund corporation. This deferral benefit is not available to those investing either in mutual fund trusts or, on their own account, directly in securities. These exchanges result instead in a capital gain or loss.

Clauses 47 and 48 amend sections 131 and 132 of the ITA so that an exchange of shares of a mutual fund corporation that results in an investor switching between funds will be considered to be a disposition at fair market value resulting in a capital gain or loss for the investor.

The measure will not apply to switches where the shares received in exchange differ only in respect of management fees to be borne by investors and otherwise derive their value from the same portfolio or fund within the mutual fund corporation.

This measure will apply to dispositions of shares that occur after 2016.

2.1.12 Implementation of Country-by-Country Reporting Standards and a Common Reporting Standard as Recommended by the Organisation for Economic Co-operation and Development

Clauses 61 and 71 add sections to the ITA to implement two Organisation for Economic Co-operation and Development (OECD) initiatives:

- country-by-country reporting, which requires multinational companies to report detailed financial information about their foreign subsidiaries to the tax authority in the jurisdiction in which the parent company resides; and
- a common reporting standard, which is a global standard that sets out the minimum requirements for the automatic exchange between countries of financial account information collected by financial institutions.

Clause 61 is related to the OECD's Base Erosion and Profit Shifting project, which was launched in July 2013 with the goal of assisting governments to combat tax evasion and tax avoidance by multinational companies. In particular, country-by-country reporting is meant to enhance transparency by providing information with which to assess high-level transfer pricing, as well as other base erosion and profit-shifting risks.

Clause 61 adds section 233.8 to the ITA to set out the requirements for country-by-country reporting. New section 233.8(1) contains definitions for such terms as "constituent entity," "multinational enterprise group" or MNE, "excluded MNE group," "reporting fiscal year," "surrogate parent entity" and "ultimate parent entity." The definition of "multinational enterprise group" contains three elements, one of which provides an exclusion for "excluded MNE groups." These excluded groups are groups with consolidated group revenue of less than €750 million during the immediately preceding fiscal year.

New section 233.8(2) provides a rule for deeming as resident in Canada an ultimate parent entity that is a partnership that would not normally have a residency for purposes of Canadian taxation.

According to new section 233.8(3), the country-by-country report generally must be filed, in a prescribed manner and on or before the date specified in new section 233.8(6), by the ultimate parent entity of the multinational enterprise group if it is resident in Canada in the reporting fiscal year. In certain circumstances, the report must also be filed by a Canadian-resident constituent entity of such a group that is not the group's ultimate parent entity.

New sections 233.8(4) and 233.8(5) address situations of more than one constituent entity and surrogate filing.

Finally, new section 233.8(6) indicates the deadline for the filing of a country-by-country report. In general, a report for a reporting fiscal year of a multinational group must be filed within 12 months of the reporting fiscal year's last day. This deadline can be extended under certain circumstances.

The requirement for country-by-country reporting applies to reporting fiscal years of multinational enterprise groups that begin on or after 1 January 2016.

Clause 71 relates to a common reporting standard. With the enactment of the reporting requirements, tax authorities in various jurisdictions can exchange country-by-country reports through tax treaties, tax information exchange agreements or the *Convention on Mutual Administrative Assistance on Tax Matters*;[10] Canada ratified the Convention in November 2013. The OECD published a common reporting standard in 2014 and the Convention was recently used to implement it. This standard, which underlies the automatic exchange of financial account information, requires the introduction of rules obliging financial institutions to report specific information to the Canada Revenue Agency and to follow due diligence procedures.

Clause 71 adds Part XIX, containing new sections 270 to 281, to the ITA to provide for a common reporting standard.

New section 270(1) contains definitions, and new sections 270(2) and 270(3) provide for interpretive rules. New section 270(4) contains a deeming rule to determine whether equity or debt interest is held in a trust that is a financial institution.

The general reporting requirements for reporting financial institutions are contained in new section 271, with new sections 271(1) and 271(2) identifying the information that generally must be reported, and new sections 271(3) and 271(4) providing exceptions.

General rules pertaining to due diligence procedures related to new Part XIX, pre-existing individual accounts, new individual accounts, pre-existing entity accounts and new entity accounts are contained in new sections 272, 273, 274, 275 and 276 respectively. As well, new section 277 contains special due diligence procedures that reporting financial institutions must apply. These procedures address such issues as self-certification or documentary evidence, aggregation rules, dealer accounts, and group insurance and annuities.

New section 278 contains requirements related to reporting. According to new section 278(1), a reporting financial institution that maintains a reportable account at any time during a calendar year and after 30 June 2017 must file an information return with the Minister of National Revenue before 2 May of the following year. New section 278(2) requires electronic filing.

New section 279 contains requirements regarding record keeping, the form of records and record retention, while new section 280 provides an anti-avoidance rule.

Finally, new section 281 addresses “taxpayer identification numbers” or TINs, including the production of these unique combinations of letters or numbers that identify an individual or entity for purposes of administering tax laws in a particular jurisdiction, as well as their confidentiality.

Part XIX comes into force on 1 July 2017.

2.1.13 Clarification of Anti-avoidance Rules in the *Income Tax Act* for Back-to-Back Loans to Multiple Intermediary Structures

Existing sections 212(3.1) to 212(3.3) of the ITA deem a loan to be made and interest to be paid by the taxpayer resident in Canada on amounts effectively paid to a non-resident when an entity lends funds to another person (called an “intermediary” in this section of the Act) on the condition that the other person will make a loan to the Canadian-resident taxpayer, an arrangement known as a “back-to-back” loan. Non-resident withholding tax is applied to any payment made by the Canadian-resident taxpayer to the non-resident intermediary, resulting in the taxpayer being liable for the tax imposed on the cross-border interest payment.

Clause 57 amends sections 212(3.1) to 212(3.3) and 212(3.8) and adds sections 212(3.21), 212(3.22), 212(3.4), 212(3.81) and 212(4.5) to the ITA to ensure that the existing back-to-back loan rules apply in cases where there are multiple intermediaries. This outcome is achieved by allocating interest to the relevant intermediary.

Moreover, clause 57 adds sections 212(3.6) and 212(3.7) to prevent the avoidance of the back-to-back loan rules through the lending of financial instruments other than money and through arrangements other than a loan, such as royalty arrangements.

The amendments made by clause 57 apply for amounts paid or credited as, on account of or in lieu of payment of, or in satisfaction of, interest after 2016.

2.1.14 Introduction of Rules to Prevent Withholding Tax on Rents, Royalties and Similar Payments Using Back-to-Back Arrangements and Character Substitution

Existing section 212(1)(d) of the ITA describes types of rent, royalties and similar payments made by a taxpayer resident in Canada to a non-resident for which a withholding tax is imposed on the Canadian-resident taxpayer.

Clause 57 adds sections 212(3.9) to 212(3.94) to the ITA to ensure that the withholding tax on payments mentioned in section 212(1)(d) are not reduced or avoided through an arrangement in which payments are made by a Canadian-resident taxpayer to a non-resident intermediary for the benefit of a party connected to the intermediary, in what is known as a “back-to-back” arrangement.

In particular, these new sections apply only if the back-to-back arrangement leads to a reduction in the amount of withholding tax payable if the rent, royalty or similar payment were made directly to the ultimate beneficiary of the payment. The new sections deem a payment to be made by the Canadian-resident taxpayer to the ultimate beneficiary for purposes of the withholding tax, and the amount of the deemed payment is determined based on the amount of withholding tax that was avoided.

New sections 212(3.92) and 212(3.93) prevent a Canadian-resident taxpayer from changing the legal character of the transaction by substituting a lease, licence or similar arrangement to avoid the application of the new rules for back-to-back arrangements.

The amendments made by clause 57 apply for interest paid, credited or otherwise satisfied after 2016.

2.2 Part 1: Implementation of Other Income Tax Measures Confirmed in the 2016 Budget

2.2.1 Amendments to Increase Flexibility for Recognizing Charitable Donations Made by an Individual’s Former Graduated-Rate Estate

Clause 42 amends section 118.1(5.1) of the ITA to allow an individual’s graduated-rate estate to claim a charitable donations tax credit for donations made between 36 and 60 months after the individual’s death. Donations eligible for a credit are gifts in which the subject property was acquired by the estate upon – and as a consequence of – a death after 2015, or was a gift that was deemed by section 118.1(5.2) to be made in respect of the death. Section 118.1(5.2) applies to funds donated from a life insurance policy, registered retirement savings plan, registered retirement income fund or tax-free savings account.

Consequential changes are made by clause 12 to sections 38(a.1)(ii)(B) and 38(a.2)(ii)(B), by clause 13 to section 39(1)(a)(i.1)(B), and by clause 42 to section 118.1(19)(c). Changes are also made by clause 42 to the definitions of "total charitable gifts," "total cultural gifts" and "total ecological gifts" in section 118.1(1).

The changes apply to the 2016 and subsequent taxation years.

2.2.2 Clarification of Types of Investment Funds Excluded from the Loss Restriction Event Rules

Various clauses of Bill C-29 amend the ITA to ensure that certain types of investment funds are clearly excluded from the loss restriction event rules that otherwise limit a trust's use of certain tax attributes. According to section 251.2(2), a loss restriction event occurs when a person – or group of persons – at arm's length from a corporation acquires control of the corporation, or when a person – or group of persons – at arm's length from a trust becomes a majority-interest beneficiary of the trust. The intent of the loss restriction rules is to prevent "loss trading," whereby corporations or trusts deduct capital or non-capital losses from income that arose before the change in control.[11]

Bill C-29 clarifies the types of investment funds excluded from the loss restriction event rules. These amendments are deemed to have come into force on 21 March 2013.[12]

Clause 30 amends section 94 to include "investment fund," defined in amended section 251.2(1), as a type of trust excluded from the application of section 94(3)(a). Amended section 94(3)(a) deems a trust to be resident in Canada if it is non-resident and has a resident contributor to, or a resident beneficiary under, the trust.

Clause 49 amends section 132.11(1)(b) to clarify that mutual fund trusts that are subject to a loss restriction event cannot elect to have taxation years that end on 15 December, rather than on 31 December. Mutual fund trusts that are subject to a loss restriction event are instead governed by section 249(4)(a), which provides rules for determining a taxation year's end when the taxpayer is subject to a loss restriction event.

Clause 63(3) amends the definition of "balance-due day" in section 248(1)(a). A balance-due day is the day by which the taxpayer is normally required to pay any balance of taxes payable under Part I of the ITA for the year. Previously, this section provided that the balance-due day of a trust was "90 days after the end of the year." The amended section clarifies that trusts that are subject to a loss restriction event follow different rules than trusts that are not subject to such an event.

Clause 64 amends section 249(4)(b) to narrow its application to corporations only. Section 249(4) provides that, if a taxpayer is subject to a loss restriction event, the taxpayer's taxation year is deemed to end immediately before that event occurred, and a new taxation year is deemed to begin at that time. However, if the loss restriction event occurs within seven days of the end of the taxpayer's preceding taxation year, section 249(4)(b) permits the taxpayer to elect to extend that preceding taxation year to include those additional days. Clause 64 precludes trusts from making this election.

Clause 65 amends section 251.2, which contains rules for determining when a taxpayer is subject to a loss restriction event. It provides that the acquisition or disposition of equity in certain types of investment trusts is not treated as a loss restriction event if certain conditions are met.

Clause 65(1) repeals the definition of "portfolio investment fund," and clause 65(2) amends the definitions of "investment fund" and "majority-interest beneficiary" in section 251.2(1). For the purposes of section 251.2, a majority-interest beneficiary is clarified to mean both a person who is a beneficiary under the trust and a majority-interest beneficiary (i.e., a person whose beneficiary interest in the income or capital of a trust is greater than 50% of all the interests). The new definition of "investment fund" contains more details about the attributes that trusts must have in order to be classified as investment funds; for example, they must be subject to the investor protection provisions of federal or provincial securities laws, be resident in Canada, limit their undertakings to the investing of their funds in property, and follow a reasonable policy of investment diversification.

Clause 65(3) amends section 251.2(3), which describes certain transactions and events. To determine if the particular trust is subject to a loss restriction event, a person is deemed not to become a majority-interest beneficiary of the particular trust. Specifically, section 251.2(3)(f) is amended to provide that the acquisition or disposition of equity in a trust that is an investment fund is not a loss restriction event, provided that the acquisition or disposition does not contribute to the trust no longer qualifying as an investment fund.

Clause 65(4) adds an anti-avoidance rule to section 251.2(5), which provides rules of application for the purpose of determining whether a trust is subject to a loss restriction event. The new rule specifies that, if a person acquires a security in order to reduce a trust's control over a corporation or securities so that the trust may qualify as an investment fund under the amended definition, then the trust will be deemed not to qualify as an investment fund.

Clause 65(5) amends section 251.2(7), which provides the timing of filing for trusts subject to a loss restriction event. With this change, this timing is aligned with the deadlines outlined in the amended definition of "balance-due day" in section 248(1) regarding trusts subject to a loss restriction event.

Clause 66 amends section 253.1(1), which provides that, where a trust or corporation holds an interest as a limited partner in a limited partnership, the trust or corporation will not be considered to carry on any business or other activity of the partnership solely because it holds this interest. This amendment extends the section's application to investment funds as defined in amended section 251.2(1).

Clause 67(4) amends section 256(8) to add a reference to the definition of "investment fund" in amended section 251.2(1)(b), which provides that a trust is disqualified as an investment fund under section 251.2 if it controls a corporation, either alone or as part of a group. Section 256(8) applies to a number of provisions to determine whether an acquisition of control has occurred. The section provides that, if a taxpayer acquires a right to shares in order to avoid certain income tax rules that are triggered by an acquisition of control, then the taxpayer must be treated as

having exercised the right to shares that was acquired for this purpose. If the taxpayer in this scenario is a trust, then the trust cannot be an investment fund as defined in amended section 251.2(1).

2.2.3 Amendments to Taxation Provisions for Income Arising in Certain Trusts on the Death of the Trust's Primary Beneficiary

Clause 35 adds section 104(13.4)(b.1) to the ITA to deem that, when a beneficiary of a spousal or common-law partner trust has died, the income is to be payable to the beneficiary in the year of his or her death if these conditions are met:

- the beneficiary was resident in Canada before his or her death;
- the trust was created by the will of a taxpayer who died before 2017;
- the trust and the beneficiary file an election for section 104(13.4)(b) of the ITA to apply; and
- the tax returns of the trust and beneficiary include the joint election.

Thus, if a beneficiary's year of death is after 2016, the trust and not the beneficiary will be taxed for the trust's income.

Clause 35 makes consequential amendments to section 104(6)(b) to ensure that section 104(13.4)(b.1) does not affect the existing rules applicable to certain income earned by a trust.

Clause 38 adds section 108(1.1)(b) to the ITA to ensure that a testamentary trust is not disqualified from being treated as a testamentary trust for tax purposes if the trust receives a payment from an individual's estate and the estate files an election for it to receive the income of a spousal or common-law partner trust pursuant to new section 104(13.4)(b.1).

These changes apply to the 2016 and subsequent taxation years.

2.2.4 Amendments to the *Income Tax Act*, the *Excise Tax Act* and the *Excise Act, 2001* to Clarify When the Canada Revenue Agency and the Courts May Increase or Adjust an Amount Included in an Assessment that Is Under Objection or Appeal

Clause 55 amends section 152(9) of the ITA to clarify that the Minister of National Revenue may, after the normal reassessment period,[13] increase an amount for an income source included in an assessment that is under objection or appeal, provided that the total amount determined on assessment does not increase.

This amendment responds to the Federal Court decision in *Her Majesty the Queen v. Geoffrey Last*,[14] in which the Court held that, while the Minister of National Revenue may, under the ITA, change the basis of an assessment after the normal reassessment period has expired, each source of income is to be considered in isolation and cannot increase.

Clause 92 amends section 298(6.1) of the *Excise Tax Act* to make similar changes respecting the GST and HST.

These provisions come into force on the day on which Bill C-29 receives Royal Assent. However, they apply only to appeals instituted after that day.

2.3 Part 1: Amendments to the *Employment Insurance Act* and Regulations to Replace the Term "Child Tax Benefit" with "Canada Child Benefit"

Part 1 also amends various pieces of legislation to accommodate changes in the terminology resulting from the replacement of the Canada child tax benefit with the Canada child benefit, which came into effect on 1 July 2016.[15]

Specifically, clause 86 of Bill C-29 amends the *Employment Insurance Act* (EI Act)[16] by replacing the term "child tax benefit" with "Canada child benefit" in the provisions of that Act that outline the criteria for low-income family eligibility that must be met by a claimant or a self-employed person with one or more dependent children in order to qualify for a family supplement. Clause 87(2) amends in a similar manner the provisions in the *Employment Insurance Regulations*[17] dealing with eligibility for a family supplement.

Clause 87(1) amends the *Canada Pension Plan Regulations*[18] to reflect the above-noted change in the terminology as used in provisions that offer guidance with regards to family allowance recipients, and that set out the information and evidence required to determine whether any months during which a contributor was a family allowance recipient should be included in his or her contributory period.

Finally, clause 87 makes similar terminology changes to the provisions of the *Immigration and Refugee Protection Regulations*[19] provisions that set out the rules and exceptions with respect to the calculation of a sponsor's total income.

Clause 88 establishes 1 July 2016 as the date on which the amendments outlined above are deemed to have come into force.

2.4 Part 2: Implementation of Certain Goods and Services Tax/ Harmonized Sales Tax Measures Proposed or Confirmed in the 2016 Budget

2.4.1 Addition of Certain Exported Call Centre Services to the List of Goods and Services Tax/ Harmonized Sales Tax Zero-Rated Exports

Clause 93 amends Part V of Schedule VI to the *Excise Tax Act* to add section 23.1, which relates to call centre services.

With two exceptions, a supply of technical or customer support service through telecommunications, which includes telephone, email and web chat, is zero-rated[20] if it is made to an unregistered non-resident person who is not a consumer of the service. The exceptions are supplies of:

- an advisory, consulting or professional service; or
- a service that involves either acting as the non-resident person's agent, or arranging for, procuring or soliciting orders for supplies by or to the non-resident person.

The provision applies in relation to a supply made after 22 March 2016 and to a supply made on or before that date if the supplier had not, on or before that date, charged, collected or remitted an amount as the tax payable or on account of the tax payable under Part IX of the *Excise Tax Act* in relation to that supply.

2.4.2 Amendments with Respect to the Test for Determining Whether Two Corporations, or a Partnership and a Corporation, Can Be Considered Closely Related

Closely related corporations are permitted to file an election that allows:

- the GST/HST to be eliminated on intercompany charges; and
- closely related corporations to offset amounts related to GST/HST remittances.

Clause 89 amends the definition of "qualifying subsidy" in section 123(1) of the *Excise Tax Act*, and clause 90 amends section 128(1) and adds section 128(1.1) to the Act, to set out the new concept of qualifying voting control in determining whether two corporations are closely related. In particular, a person – or a group of persons – holds qualifying voting control for a corporation if that person – or the members of the group collectively – owns shares that have at least 90% of the shareholder votes that may be cast for all matters, with two exceptions: matters laid out in legislation that are not found in the corporation's incorporating documents, and matters that are prescribed by regulation.

Clause 90 adds section 128(4) to deem a shareholder to not own a share of the corporation if another person has effective control of the vote attached to that share through a contract, equity or other mechanism at the time at which the relatedness of two corporations is determined.

Unless an election has been filed under section 150(1) or 156(2) for the amendment to apply to a day after 22 March 2016 and before 22 March 2017, these amendments apply as of 22 March 2017. The amendments also apply as of 23 March 2016 to the provision of certain financial services between closely related corporations if the agreement for the service is entered into after 22 March 2016 and before 22 March 2017, and all of the services are not performed before 22 March 2017. The financial services include:

- information transfer, collection or processing services; and
- administrative services for the payment or receipt of an amount between closely related corporations where the service is supplied with respect to a financial instrument to a person who does not incur any risk in respect of that instrument.

2.4.3 Amendments to Ensure that the Application of the Goods and Services Tax/Harmonized Sales Tax Is Unaffected by Amendments that Convert Eligible Capital Property into a New Class of Depreciable Property

Clauses 89(1) and 96 amend the *Excise Tax Act* and the *Streamlined Accounting (GST/HST) Regulations* (SAR)[21] to ensure that the application of the GST/HST is unaffected by the conversion of ECP into a new class of depreciable property under the ITA (see section 2.1.1 of this Legislative Summary).

Clause 89(1) amends the definition of "capital property" in section 123(1) of the *Excise Tax Act* to reflect the repeal of the ECP regime. This section defines terms relating to the GST/HST. Clause 89(1) excludes new Class 14.1 from the definition of "capital property" to ensure that ECP continues not to be capital property for GST/HST purposes.

Clause 96 removes references to ECP from all relevant sections of the SAR. The clause also amends the definition of "capital asset" in the SAR to include both capital property within the meaning of the ITA and property that would have been ECP before 1 January 2017.

2.5 Part 3: Implementation of Measures in the *Excise Act, 2001*

Clause 100 amends section 191(7) of the *Excise Act, 2001*,[22] respecting excise duties on tobacco and alcohol products, to clarify that the Minister of National Revenue may increase or adjust an amount in a tax assessment that is under objection at any time, provided that the total amount determined on assessment does not increase. This amendment is similar to amendments made to section 152(9) of the ITA and section 298(6.1) of the *Excise Tax Act* (discussed in section 2.2.4 of this Legislative Summary).

2.6 Part 4: Implementation of Various Other Measures

2.6.1 Division 1: Amendments to the *Employment Insurance Act*

Clause 101 amends the interpretation provision of Part I of the EI Act by adding section 6(4) to specify the circumstances that do not constitute suitable employment for the purposes of certain provisions of that Act, including those dealing with the disqualification and disentitlement of claimants for failing to prove that they have made efforts to obtain suitable employment while being capable and available for work. Specifically, under new section 6(4), employment will not be considered suitable if it:

- arises as a consequence of a work stoppage linked to a labour dispute;
- is in the claimant's usual occupation but is either at a lower rate of earnings or has less favourable conditions than those observed by a labour agreement or recognized by good employers; or

- is not in the claimant's usual occupation and is either at a lower rate of earnings or has conditions less favourable than might be reasonably expected by the claimant.

The interpretation provision of Part I of the EI Act is further amended, in clause 101, by adding section 6(5) stipulating when employment that is not in the claimant's usual occupation will be considered suitable. In accordance with new section 6(5), following the lapse of a reasonable interval from the date the insured person became unemployed, employment which is not in the claimant's usual occupation will be considered suitable if the employment does not have a lower rate of earnings or less favourable conditions than those observed by a labour agreement or recognized by good employers.

Clause 102 repeals section 27(2) of the EI Act, as the text of this provision has been included within section 6(4)(a).

Finally, clause 103 indicates that Division 1 of Part 4 of Bill C-29 will come into force on a day to be fixed by order of the Governor in Council.

2.6.2 Division 2: Amendments to the *Old Age Security Act*

Clause 104 amends section 19 of the *Old Age Security Act* (OAS Act)[23] and adds sections 19(8) and 19(9) dealing with the payment of monthly allowances to a pensioner's spouse or common-law partner. Specifically, new section 19(8) provides that, within the context of a joint application made by the pensioner and his or her spouse or common-law partner for the payment of an allowance, the minister may direct that the monthly joint income be calculated based on the income of the allowance recipient alone in circumstances where the low-income couple has to live apart for reasons not attributable to either of them. This ministerial direction is deemed to have been made for every subsequent payment period, unless an investigation reveals a change in the circumstances of the low-income couple, in accordance with new section 19(9).

Clause 105 amends the definition of "monthly joint income" found in section 22(1) of the OAS Act to accommodate the ministerial direction that may be made if the low-income spouses or common-law partners are living apart. Existing section 22(1) provides that the monthly joint income of the low-income couple is the amount that equals 1/12 of the total of both of their incomes for the base calendar year. Exceptionally, if the pensioner is an incarcerated person, the monthly joint income is the amount that equals 1/12 of the income of the allowance recipient. Amended section 22(1) includes a second exception to the general formula for calculating the monthly joint income, namely, that when a ministerial direction has been made under new section 19(8), the monthly joint income is also the amount that equals 1/12 of the income of the allowance recipient.

Division 2 of Part 4 of Bill C-29 comes into force on 1 January 2017, in accordance with clause 106.

2.6.3 Division 3: Amendments to the *Canada Education Savings Act*

Clauses 107(1) and 107(2) repeal the definitions of "child tax benefit" and "national child benefit supplement" in section 2(1) of the *Canada Education Savings Act*.[24]

Clause 107(3) amends the definition of "primary caregiver" in section 2(1) of the *Canada Education Savings Act*.

Clause 107(4) adds the definition of the new "Canada child benefit" in section 2(1) of the *Canada Education Savings Act*.

Clause 108 replaces various parts of the *Canada Education Savings Act* to refer to the new Canada child benefit instead of the child tax benefit, which was eliminated.

Clause 109(1) sets out the transitional measures for eligibility for the Canada Learning Bond from the period from 1 July 2016 to 30 June 2017.

Clause 109(3) adds section 6(2.1), which states that the $500 portion of the Canada Learning Bond cannot be paid to the same beneficiary more than once in the lifetime of the beneficiary, while the $100 portion cannot be paid more than once in a year as of 1 July 2016. Clause 109(4) states that this also applies after 30 June 2017.

Clause 109(2) sets out the new eligibility rules, which will come into force on 1 July 2017. Those eligible for the Canada Learning Bond under these new rules are as follows:

- persons for whom a special allowance under the *Children's Special Allowances Act* is to be paid;
- qualified dependants of eligible individuals who have not more than three qualified dependants and whose adjusted income used to determine the amount of a Canada child benefit is less than or equal to the first threshold for the particular year in which the benefit year begins; and
- qualified dependants of eligible individuals who have more than three qualified dependants and whose adjusted income used to determine the amount of a Canada child benefit is less than the amount determined using the formula in clause 109(4).

Clause 109(4) also states that the amounts previously expressed in dollars are to be adjusted to the Consumer Price Index as currently set out in section 117.1 of the ITA for each particular year after 2016.

Clause 112 adds transitional provisions stating that, for applications for years before 1 July 2016, the previous rules apply.

Lastly, clause 113(1) states that sections 107(2), 107(3), 109(1), 109(3), 110(1), 111 and 112(1) are deemed to have come into force on 1 July 2016, while clause 113(2) states that the other changes come into force on 1 July 2017.

2.6.4 Division 4: Amendments to the *Canada Disability Savings Act*

Clauses 114 and 115 of Division 4 of Part 4 of the *Canada Disability Savings Act* (CDSA)[25] replace the term "child tax benefit" with "Canada child benefit" and amend the definition "phase-out income."

Specifically, clause 114 renames the child tax benefit, which is defined as a deemed overpayment under Subdivision A.1 of Division E of Part 1 of the ITA, replacing it with the term "Canada child benefit" for the purposes of the CDSA.

Clause 114(2) amends the definition of "phase-out income" in section 2(1) of the CDSA. Specifically, under the amendment, the phase-out threshold amount before 2017 is calculated using section 122.61(1) of the ITA as it read on 1 January 2016. From 2017 onward, the formula will be based on section 122.61(1) of the ITA as adjusted under that Act for the particular year.

Clause 115 replaces references to the "child tax benefit" with "Canada child benefit" in calculating the payment of Canada Disability Savings Grants and Canada Disability Savings Bonds, as outlined under sections 6(2)(a)(ii), 7(2)(a)(ii), 7(2)(b)(ii) and 7(6) of the CDSA. References to the "Canada child benefit" also replace the "child tax benefit" in section 6(4) of the CDSA, so that if there has been no determination of eligibility in January in a particular year, the adjusted income to be used for the purposes of determining the calculation of the Canada Disability Savings Grant and Canada Disability Savings Bond amount is based on the first month in the year in which eligibility was established. The method by which payments are determined remains unchanged.

Finally, in the French version of sections 6(5) and 7(7) of the CDSA, clause 115(2) replaces "prestation fiscale pour enfants" with "allocation canadienne pour enfants."

2.6.5 Division 5: Amendments to the *Royal Canadian Mint Act*

Clause 117 repeals section 3(2.1) of the *Royal Canadian Mint Act*,[26] which states that "the Mint shall not anticipate profit with respect to the provision of any goods or services to Her Majesty in right of Canada, including the minting of circulation coins." Thus, the Mint can now anticipate profit with respect to the provision of goods and services.

Clause 118(2) amends section 4(1) of the *Royal Canadian Mint Act*, to set out new powers of the Mint, such as the right to:

> (i) issue, promote, deal in or trade in financial services and products relating to gold, silver and other metals, subject to the approval of the Minister and in a manner consistent with the Mint's last corporate plan as approved under section 122 of the *Financial Administration Act*; … and …
>
> (p) subject to the approval of the Minister and in a manner consistent with the Mint's last corporate plan as approved under section 122 of the *Financial Administration Act*, engage in any other activity.

Clause 119 amends the *Royal Canadian Mint Act* to confirm that non-circulating $350 coins dated 1999, 2000, 2001, 2002, 2003, 2004, 2005 or 2006 are current and legal tender.

Clause 120 repeals section 12(1) of the *Royal Canadian Mint Act*, which stated that "[e]ach director appointed under section 11 must have experience in the field of metal fabrication or production, industrial relations or a related field." Thus, the Mint can now appoint directors who do not have this experience.

2.6.6 DIVISION 6: AMENDMENTS TO THE *FINANCIAL ADMINISTRATION ACT*, THE *BANK OF CANADA ACT* AND THE *CANADA MORTGAGE AND HOUSING CORPORATION ACT*

Clause 121 amends the *Financial Administration Act* (FAA)[27] by adding after section 42.1 a new Part III.2: Financial Transactions Related to Asset Management.

Section 42.2 of new Part III.2 defines the terms "fiscal agent" and "registrar" as a fiscal agent and a registrar appointed under this part and specifies that both terms include the Bank of Canada.

New section 42.3(1) allows the Minister of Finance to lend money through an auction on any terms and conditions that he or she considers appropriate for the sound and efficient management of the Consolidated Revenue Fund. New section 42.3(2) limits the amount of a loan to the surplus of the part of the Consolidated Revenue Fund that is on deposit with the Bank of Canada at the time that the loan is made. New section 42.3(3) clarifies that, for the purposes of new section 42.3(2), the amount of the surplus is determined by the Bank of Canada. New section 42.3(4) clarifies that any loans made under new section 42.3(1) may only be paid out of the part of the Consolidated Revenue Fund that is on deposit with the Bank of Canada.

New section 42.3(5) allows the Minister of Finance to enter into any contract or agreement related to the loans and do any other thing relating to the loans that he or she considers appropriate despite new section 42.5, which allows the Governor in Council to authorize the Minister of Finance, subject to any terms and conditions that it may specify, to enter into any contract or agreement of a financial nature, including options, derivatives, swaps and forwards, on any terms and conditions that the minister considers necessary for the management of risks related to the financial position of the Government of Canada.

New section 42.4(1) allows the Minister of Finance to establish rules governing the conduct of an auction, including rules relating to any of the following:

- the eligibility of persons to participate in the auction;
- the provision to the Minister of Finance by participants of any information that the minister considers relevant;
- the form of bids; and
- the maximum amount that a participant may bid.

New section 42.4(2) clarifies that the rules governing the conduct of an auction are not statutory instruments as defined in the *Statutory Instruments Act*, that is, rules made in the execution of a power conferred by or under an Act of Parliament or the authority of the Governor in Council.

Under new section 42.6, the Minister of Finance is permitted to appoint one or more registrars or fiscal agents to perform any services that the minister may specify for financial transactions entered into under new Part III.2, and fix the remuneration or compensation of any registrar or fiscal agent appointed under this section.

New section 42.7 allows the Governor in Council to authorize the following expenses to be paid out of the Consolidated Revenue Fund:

> (a) the remuneration and compensation of registrars and fiscal agents appointed under section 42.6;
>
> (b) all costs, expenses and charges incurred in the management of financial transactions referred to in [new Part III.2], including the negotiation, entering into and execution of those transactions;
>
> (c) all money required to be paid under contracts and agreements entered into under subsection 42.3(5) or section 42.5;
>
> (d) all money required to be paid under contracts and agreements entered into under this Act before the coming into force of [new Part III.2] that could also have been entered into under this Part if this Part had been in force when these contracts and agreements were entered into; and
>
> (e) all money that the Minister [of Finance] considers appropriate to pay in the exercise of his or her power to do any other thing relating to the lending of money under subsection 42.3(5).

New section 42.8 allows the Minister of Finance to delegate to any officer of the Department of Finance any of the minister's powers, duties or functions under new Part III.2, except the power to delegate this power to delegate.

Clause 122 amends section 55 of the FAA by adding new section 55(e), which allows the Governor in Council to authorize the payment out of the Consolidated Revenue Fund of any money that the Minister of Finance considers appropriate to be paid through his or her powers relating to the borrowing of money described in section 44(3).

Clause 123 amends section 18(m.1) of the *Bank of Canada Act*,[28] which currently allows the Bank of Canada to act as a custodian of the financial assets of the Canada Deposit Insurance Corporation, adding that the Bank of Canada can also act as a custodian of the financial assets of the Canada Mortgage and Housing Corporation (CMHC).

Clause 124 amends section 24 of the *Bank of Canada Act* by adding new section 24(2.1) after section 24(2). The new section allows the Minister of Finance to authorize the Bank of Canada to manage, on his or her behalf, the lending of money to an agent corporation as defined in section 83(1) of the FAA – a Crown corporation that is expressly declared by or pursuant to any other Act of Parliament to be an agent of the Crown – on any terms and conditions that the minister may establish.

Clause 125 amends the *Canada Mortgage and Housing Corporation Act*[29] by adding two sections, 35(1) and 35(2), after section 34. New section 35(1) allows the CMHC to maintain one or more accounts in its own name with the Bank of Canada. New section 35(2) allows the Bank of Canada to pay interest on any money that the CMHC deposits with it.

Clause 126 provides that clause 121 will come into force on the day ordered by the Governor in Council.

3 COMMENTARY

On 12 December 2016, the Standing Senate Committee on National Finance reported Bill C-29 to the Senate with one amendment: delete Division 5 of Part 4 of the 6 December 2016 version of the bill as passed by the House of Commons.[30] Bill C-29, as amended, received third reading in the Senate on 13 December 2016[31] and, on 14 December 2016, the House of Commons concurred with the amendment made by the Senate to delete Division 5. On 15 December 2016, Bill C-29, as amended, received Royal Assent.[32]

Division 5 of Part 4 would have amended the *Bank Act* to consolidate consumer protection provisions, and to establish a new, comprehensive and exclusive financial consumer protection framework that applies to banks. The appendix to this Legislative Summary contains a description and analysis of the provisions in Division 5.

NOTES

* This Legislative Summary was prepared by the following authors:

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June Dewetering and Mark Mahabir	Sections 2.1.2, 2.1.7, 2.1.8, 2.1.10, 2.1.13, 2.1.14, 2.2.1, 2.2.3 and 2.4.2
• Sylvain Fleury	Sections 2.1.4, 2.1.6, 2.1.11, 2.2.4 and 2.5
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• Alexandra Smith	Sections 2.1.1, 2.2.2 and 2.4.3
• Dillan Theckedath	Section 2.6.5
• Dominique Valiquet	"Background"

1. Bill C-29, A second Act to implement certain provisions of the budget tabled in Parliament on March 22, 2016 and other measures, 1st Session, 42nd Parliament.
2. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).
3. In accounting, "goodwill" is an intangible asset related to the established reputation of a business, such as brand name recognition, good customer relations or good employee relations.
4. *Income Tax Regulations*, C.R.C., c. 945.
5. The intent of the changes is to simplify the ECP regime, in response to concerns that the former ECP rules had become exceedingly complex and difficult to apply.
6. Finance Canada, *Explanatory Notes Relating to the Income Tax Act, Excise Tax Act, Excise Act, 2001 and Related Texts*, October 2016, pp. 54–55.
7. *Income Tax Application Rules*, R.S.C. 1985, c. 2 (5th Supplement).
8. For a description of "debt obligation," see *Income Tax Regulations*, s. 7000(1).
9. A linked note is a debt obligation generally issued by a financial institution, the return of which is linked to the performance of one or more reference assets or indexes. The reference asset or index can be, for example, units of an investment fund or a stock index.
10. Organisation for Economic Co-operation and Development, *Convention on Mutual Administrative Assistance in Tax Matters*.
11. Government of Canada, *Jobs, Growth and Long-Term Prosperity: Economic Action Plan 2013*, 21 March 2013, pp. 363–364.
12. The loss restriction rules were initially expanded to apply to trusts in addition to corporations in Budget 2013. In response, the investment fund industry raised several concerns, including that the rules could result in unexpected taxation year ends for many funds. The amendments in Bill C-29 intend to address these concerns by clarifying the types of trusts that are subject to loss restriction events.
13. For the definition of "normal reassessment period," see *Income Tax Act*, s. 152(3.1).
14. *Her Majesty the Queen v. Geoffrey Last*, 2014 FCA 129.
15. Canada Revenue Agency, *Canada child tax benefit for previous years – Overview*.
16. *Employment Insurance Act*, S.C. 1996, c. 23.
17. *Employment Insurance Regulations*, SOR/96-332.
18. *Canada Pension Plan Regulations*, C.R.C., c. 385.
19. *Immigration and Refugee Protection Regulations*, SOR/2002-227.
20. Zero-rated services are those for which no amount of GST/HST is collected because the rate of tax is 0%.
21. *Streamlined Accounting (GST/HST) Regulations*, SOR/91-51.
22. *Excise Act, 2001*, S.C. 2002, c. 22.
23. *Old Age Security Act*, R.S.C. 1985, c. O-9.
24. *Canada Education Savings Act*, S.C. 2004, c. 26.
25. *Canada Disability Savings Act*, S.C. 2007, c. 35, s. 136.
26. *Royal Canadian Mint Act*, R.S.C. 1985, c. R-9.
27. *Financial Administration Act*, R.S.C. 1985, c. F-11.

28. *Bank of Canada Act*, R.S.C. 1985, c. B-2.

29. *Canada Mortgage and Housing Corporation Act*, R.S.C. 1985, c. C-7.

30. Senate, Standing Committee on National Finance, *Eleventh Report*, 1st Session, 42nd Parliament, 12 December 2016.

31. Senate, *Debates*, Vol. 150, Issue 87, 1st Session, 42nd Parliament, 13 December 2016, 1740.

32. House of Commons, *Debates*, Vol. 148, Number 128-A, 1st Session, 42nd Parliament, 15 December 2016, 1655.

APPENDIX – DESCRIPTION AND ANALYSIS OF DIVISION 5 OF BILL C-29 AS WRITTEN BEFORE ITS DELETION FROM THE BILL

The following section provides a description and analysis of provisions contained in the 6 December 2016 version of Bill C-29, as passed by the House of Commons. These provisions were later deleted from the bill in the Senate.

DIVISION 5: AMENDMENTS TO THE *BANK ACT*

Division 5 amends the *Bank Act*[1] to consolidate consumer protection provisions and to create a new financial consumer protection framework that applies to banks.[2] The new framework, much of which existed in the *Bank Act* and associated regulatory provisions, is set out in clause 131, which adds Part XII.2 to the *Bank Act*. Clauses 121, 122, 123, 125, 127, 128 and 129 repeal consumer protection provisions. Division 5 comes into force on a day be fixed by order of the Governor in Council.

As set out in new section 627.03, the purpose of new Part XII.2 is to establish a comprehensive and exclusive regime in relation to banks' dealings with their customers and the public in order to:

> (a) provide those customers and the public with uniform protection on a national level;
>
> (b) allow [banks] to carry on the business of banking, consistently and efficiently on a national level; and
>
> (c) ensure the uniform supervision of [banks] and enforcement of provisions relating to the protection of their customers and of the public.

New Part XII.2 is intended to supersede any provincial provisions related to consumer protection or to banks' business practices regarding consumers.

New Part XII.2 is based on the following principles, which are listed in new section 627.02:

> (a) basic banking services should be accessible;
>
> (b) disclosure should enable [a bank's] customers and the public to make informed financial decisions;
>
> (c) [a bank's] customers and the public should be treated fairly;
>
> (d) complaints processes should be impartial, transparent and responsive; and
>
> (e) [a bank] should act responsibly, considering its customers and the public as well as the efficiency of its business operations.

Other provisions in new Part XII.2 relate to access to basic banking services, business practices, disclosure, complaints, accountability and regulations.

ACCESS TO BANKING SERVICES

The access-to-basic-banking-services provisions in new Part XII.2 of the *Bank Act* consolidate provisions previously located elsewhere in the Act, as well as provisions previously in the *Access to Basic Banking Services Regulations* [3] and the *Access to Funds Regulations*.[4]

Under new sections 627.04(1) and 627.12(1), the personal identification documents that a person is required to present when opening a retail deposit account, or when cashing a cheque or other instrument, must come from a reliable source. The *Access to Basic Banking Services Regulations* contained a specific list of accepted personal identification documents.

New section 627.04(4) provides that, at the request of a person who "meets any prescribed condition," a bank must provide a low-cost or no-cost account that has prescribed characteristics. Repealed section 448.2 of the *Bank Act* allowed the Governor in Council to make regulations regarding access to low-fee retail deposit accounts, but no regulations in that regard had been passed.[5]

BUSINESS PRACTICES

The business practices provisions in new Part XII.2 of the *Bank Act* consolidate consumer protection measures regarding businesses' advertisements, coercive behaviour, requirements of the terms of agreement, the cancellation of products and services, and prepayment and renewal of loans and mortgages. In particular, new sections 627.15 to 627.36 require a bank to:

- advertise in a manner that is clear and not misleading;
- refrain from coercive behaviour in relation to those who are "unable to protect their own interests" or in circumstances to be prescribed in forthcoming regulations;
- seek express consent to enter into any agreement for a product or service, issue cheques on non-business credit card accounts, increase a credit limit or impose overdraft charges;
- follow any oral consent with a written acknowledgement;
- refrain from issuing charges or penalties for any product or service without prior agreement or a court order;
- allow a customer to cancel – without penalty – any product or service entered into by phone or mail within 14 days, or within three days if entered into by any other means, or within a forthcoming prescribed period for certain prescribed products or services;
- allow for the prepayment or advanced instalment payment of any loan, without penalty, other than mortgages on real property and loans for business purposes exceeding $100,000, or as otherwise prescribed in regulation;
- limit any charges resulting from a customer default to the costs reasonably incurred for legal services, to realize the bank's security interest, to process fees for cheques or other instruments, and for other circumstances to be prescribed in forthcoming regulations;

- issue a customer's statement of account without delay after the last day of each billing cycle, and refrain from requiring any minimum payment for 21 days thereafter or the following business day if the 21-day period ends on a non-business day;
- refrain from charging interest on any amounts credited that are repaid before the due date;
- allocate a payment received in relation to the balance of multiple credit cards to either the card that is subject to the highest interest rate alone, or in equal proportion to the outstanding balances of the multiple cards;
- round all outstanding amounts on a credit card bill that include a fraction of $1.00 down if the amount is below $0.50, and up if the amount is equal to or exceeds $0.50;
- refrain from imposing a charge for exceeding a credit limit as a result of a hold being placed on the account, other than for business accounts;
- refrain from having expiry dates on pre-paid or pre-loaded non-promotional products; and
- refrain from imposing maintenance fees on pre-paid or pre-loaded non-promotional products, unless the product is reloadable.

New Part XII.2 clarifies that the use of a bank's product or service does not constitute the express consent necessary to enter into any agreement for that product or service. It also specifies that the language used in seeking a customer's express consent must be clear and simple.

New section 627.26 specifies that, when a mortgage on real property is to be renewed on a specified day, the bank cannot change the agreement in any way that would increase the cost of borrowing during a prescribed period. It also specifies that the renewal does not take effect until a prescribed day. Additional information in forthcoming regulations may clarify the full effect of this provision.

DISCLOSURE

New Part XII.2 of the *Bank Act* consolidates consumer protection measures related to a bank's disclosure of information, including those for the issuance of deposit-type instruments, principal-protected notes, rates of interest on deposit accounts, use of past market performance in advertising, pre-paid products and promotional offers.

Furthermore, new Part XII.2 amalgamates the following disclosure-related provisions previously located elsewhere in the *Bank Act* and provisions previously found in relevant regulations:

- A disclosure made by a bank must be done in a manner, and using language, that is clear, simple and not misleading. Disclosures to the public must be prominently displayed in each of the bank's branches and points of service, and on its website(s). As well, disclosures must be provided to any person who requests them.

- Regarding deposit accounts, a bank must disclose any applicable charges, the maximum holding periods for deposits, any applicable rates of interest, the manner in which further information may be obtained, any changes to the aforementioned that will occur after entering into an agreement for a deposit account, and any other information that may be prescribed in forthcoming regulations.
- Before entering into an agreement with a customer, a bank must disclose the features of the relevant product or service, any charges or penalties applicable to it, any applicable rate of interest and relevant deadlines, the customer's rights and obligations, the complaints procedure, and any other information that may be prescribed in forthcoming regulations.
- Authorized foreign banks must disclose whether their products or services, or any deposits they accept, are not insured by the Canada Deposit Insurance Corporation.

Under new section 627.77(3), the disclosure provisions related to the imposition of charges for the insurance that a bank obtains against default on a mortgage are not subject to the general supremacy of new Part XII.2 over any provincial provisions related to consumer protection.

COMPLAINTS

New Part XII.2 of the *Bank Act* consolidates provisions previously located elsewhere in the *Bank Act* and provisions previously found in relevant regulations related to the complaints mechanisms and bodies to which the banks are subject. New sections 627.82 to 627.9 contain these provisions.

In particular, new Part XII.2 sets out the requirements regarding a bank's internal complaints procedures, and the approval or designation of external complaints bodies. These external complaints bodies, which are independent from the banks, provide a free and impartial review of customer complaints about banking services and products.

New Part XII.2 clarifies that the content of the annual report on external complaints bodies prepared by the Commissioner of the Financial Consumer Agency of Canada is to include the results of any consultation between the complaints bodies and the banks or its customers who have made complaints.

ACCOUNTABILITY

The accountability provisions in new Part XII.2 of the *Bank Act* relate to public accountability statements, notices of branch closure, and affiliates.

In relation to public accountability statements, new section 627.91 consolidates provisions previously located elsewhere in the *Bank Act* and provisions previously found in the *Public Accountability Statements (Banks, Insurance Companies, Trust and Loan Companies) Regulations*.[6] A bank with equity of $1 billion or more must file a written statement with the Commissioner of the Financial Consumer Agency of Canada within 135 days of the end of each financial year, and inform its customers and the public about means by which the statement is made available. Except under

certain circumstances, the statement must include prescribed information about the contribution made by the bank and its prescribed affiliates to the Canadian economy and society, as well as any other matter. It must also contain a description of the following:

- the measures taken by the bank to be consistent with the principles outlined in new section 627.02; and
- the consultations undertaken by the bank and prescribed affiliates with their customers and the public regarding their products and services, trends and emerging issues that could affect customers and the public, and matters about which the bank has received complaints.

New section 627.91 requires the bank to publish the public accountability statement online, and to send it without charge to any person who requests it.

New sections 627.92, 627.93 and 627.94 relate to the requirement that a bank give notice to the Commissioner of the Financial Consumer Agency of Canada, customers, the public and local authorities of a branch closure, and that the bank convene and hold meetings between representatives of the bank and the Financial Consumer Agency of Canada, as well as interested persons affected by the closure. These new sections consolidate provisions previously located elsewhere in the *Bank Act*, as well as provisions previously found in the *Notice of Branch Closure (Banks) Regulations*.[7] New section 627.92(3) provides that the content of the notice to the public is to be defined through regulations.

Regarding affiliates, and in a similar manner to repealed provisions of the *Bank Act*, new section 627.95 provides that a bank cannot enter into any arrangement, or cooperate with any of its intermediaries or with any prescribed affiliates or their intermediaries, to offer a product or service unless the intermediary or affiliate complies with the prescribed provisions of the *Bank Act*, and the requester has access to the bank's complaints procedures.

REGULATIONS

New section 627.96 in new Part XII.2 of the *Bank Act* allows the Governor in Council to make regulations regarding any matters involving a bank's dealings with customers or the public, and the products and services that are the subject of those dealings.

DIRECTORS' DUTIES AND OTHER CHANGES

Clause 120 provides that a committee of the board of the bank's directors, designated by the directors under section 157(2)(e) of the *Bank Act*, must:

- require management to establish procedures for complying with the financial consumer protection framework and report to the committee at least annually regarding its application of the procedures; and
- review the procedures established by management and determine their appropriateness.

As well, within 90 days of the end of each financial year, a bank's directors are required to report on the committee's activities to the Commissioner of the Financial Consumer Agency of Canada.

Clause 117 makes minor wording changes to the second and third paragraphs of the preamble to the *Bank Act*. Clauses 118, 124, 126, 130, 132 and 133 make consequential amendments to add references to new Part XII.2 of the Act. Clause 134 makes consequential amendments to the definition of "consumer provision" in the *Financial Consumer Agency Act* to add references to the new provisions in the *Bank Act*.

NOTES

1. *Bank Act*, S.C. 1991, c. 46.
2. While the term "institution" is used in many of the provisions of the *Bank Act*, for simplicity, in this section of this Legislative Summary the term "bank" is used, in keeping with the following definition of "institution" in new section 627.01 of the Act: "a bank or an authorized foreign bank."
3. *Access to Basic Banking Services Regulations*, SOR/2003-184.
4. *Access to Funds Regulations*, SOR/2012-24.
5. In 2014, a number of banks publicly committed to "enhance low-cost bank accounts and offer no-cost accounts with the same features as low-cost accounts to a wider range of eligible consumers." See Department of Finance Canada, "Harper Government Secures Commitment from Largest Banks to Offer No-Cost Accounts for Financially Vulnerable Canadians," News release, 27 May 2014.
6. *Public Accountability Statements (Banks, Insurance Companies, Trust and Loan Companies) Regulations*, SOR/2002-133.
7. *Notice of Branch Closure (Banks) Regulations*, SOR/2002-104.