WSPA

ATTACHMENT A

GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] *(Title 2 enacted by Stats. 1943, Ch. 134.)*

DIVISION 3. EXECUTIVE DEPARTMENT [11000 - 15990.3] *(Division 3 added by Stats. 1945, Ch. 111.)*

PART 1. STATE DEPARTMENTS AND AGENCIES [11000 - 11898] *(Part 1 added by Stats. 1945, Ch. 111.)*

CHAPTER 3.5. Administrative Regulations and Rulemaking [11340 - 11361] *(Heading of Chapter 3.5 amended by Stats. 1994, Ch. 1039, Sec. 2.)*

ARTICLE 5. Public Participation: Procedure for Adoption of Regulations [11346 - 11348] *(Heading of Article 5 amended by Stats. 1994, Ch. 1039, Sec. 19.)*

11346.2. Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. The agency shall draft the regulation in plain English.

(2) The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations.

(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal, the problem the agency intends to address, and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed. The statement shall enumerate the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute. These benefits may include, to the extent applicable, nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government, among other things. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(2) (A) For a regulation that is not a major regulation, the economic impact assessment required by subdivision (b) of Section 11346.3.

(B) For a major regulation proposed on or after November 1, 2013, the standardized regulatory impact analysis required by subdivision (c) of Section 11346.3.

(3) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(4) (A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. Reasonable alternatives to be considered include, but are not limited to, alternatives that are proposed as less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

(B) A description of reasonable alternatives to the regulation that would lessen any adverse impact on small business and the agency's reasons for rejecting those alternatives.

(C) Notwithstanding subparagraph (A) or (B), an agency is not required to artificially construct alternatives or describe unreasonable alternatives.

(5) (A) Facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

(B) (i) If a proposed regulation is a building standard, the initial statement of reasons shall include the estimated cost of compliance, the estimated potential benefits, and the related assumptions used to determine the estimates.

(ii) The model codes adopted pursuant to Section 18928 of the Health and Safety Code shall be exempt from the requirements of this subparagraph. However, if an interested party has made a request in writing to the agency, at least 30 days before the submittal of the initial statement of reasons, to examine a specific section for purposes of estimating the cost of compliance and the potential benefits for that section, and including the related assumptions used to determine the estimates, then the agency shall comply with the requirements of this subparagraph with regard to that requested section.

(6) A department, board, or commission within the Environmental Protection Agency, the Natural Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

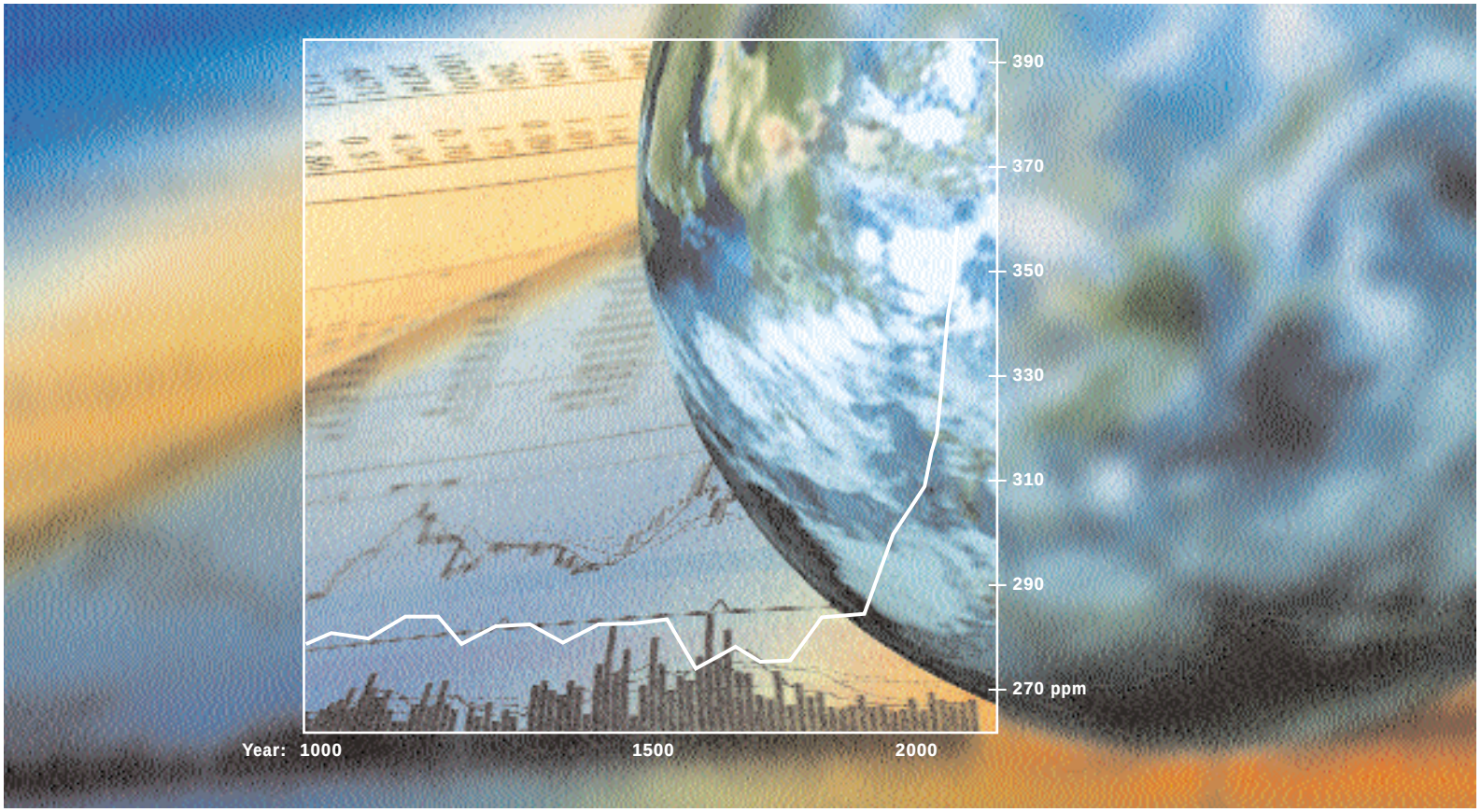
(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with subdivision (b) if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

(d) This section shall be inoperative from January 1, 2012, until January 1, 2014.

(Amended by Stats. 2014, Ch. 779, Sec. 1. (AB 1711) Effective January 1, 2015.)

The Greenhouse Gas Protocol



A Corporate Accounting and Reporting Standard

REVISED EDITION

World Business Council for Sustainable Development

WORLD RESOURCES INSTITUTE

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Introduction

The Greenhouse Gas Protocol Initiative is a multi-stakeholder partnership of businesses, non-governmental organizations (NGOs), governments, and others convened by the World Resources Institute (WRI), a U.S.-based environmental NGO, and the World Business Council for Sustainable Development (WBCSD), a Geneva-based coalition of 170 international companies. Launched in 1998, the Initiative's mission is to develop internationally accepted greenhouse gas (GHG) accounting and reporting standards for business and to promote their broad adoption.

The GHG Protocol Initiative comprises two separate but linked standards:

- *GHG Protocol Corporate Accounting and Reporting Standard* (this document, which provides a step-by-step guide for companies to use in quantifying and reporting their GHG emissions)
- *GHG Protocol Project Quantification Standard* (forthcoming; a guide for quantifying reductions from GHG mitigation projects)

The first edition of the *GHG Protocol Corporate Accounting and Reporting Standard (GHG Protocol Corporate Standard),* published in September 2001, enjoyed broad adoption and acceptance around the globe by businesses, NGOs, and governments. Many industry, NGO, and government GHG programs[1] used the standard as a basis for their accounting and reporting systems. Industry groups, such as the International Aluminum Institute, the International Council of Forest and Paper Associations, and the WBCSD Cement Sustainability Initiative, partnered with the GHG Protocol Initiative to develop complementary industry-specific calculation tools. Widespread adoption of the standard can be attributed to the inclusion of many stakeholders in its development and to the fact that it is robust, practical, and builds on the experience and expertise of numerous experts and practitioners.

This revised edition of the *GHG Protocol Corporate Standard* is the culmination of a two-year multi-stakeholder dialogue, designed to build on experience gained from using the first edition. It includes additional guidance, case studies, appendices, and a new chapter on setting a GHG target. For the most part, however, the first edition of the Corporate Standard has stood the test of time, and the changes in this revised edition will not affect the results of most GHG inventories.

This *GHG Protocol Corporate Standard* provides standards and guidance for companies and other types of organizations[2] preparing a GHG emissions inventory. It covers the accounting and reporting of the six greenhouse gases covered by the Kyoto Protocol — carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF_6). The standard and guidance were designed with the following objectives in mind:

- To help companies prepare a GHG inventory that represents a true and fair account of their emissions, through the use of standardized approaches and principles
- To simplify and reduce the costs of compiling a GHG inventory
- To provide business with information that can be used to build an effective strategy to manage and reduce GHG emissions
- To provide information that facilitates participation in voluntary and mandatory GHG programs
- To increase consistency and transparency in GHG accounting and reporting among various companies and GHG programs.

Both business and other stakeholders benefit from converging on a common standard. For business, it reduces costs if their GHG inventory is capable of meeting different internal and external information requirements. For others, it improves the consistency, transparency, and understandability of reported information, making it easier to track and compare progress over time.

The business value of a GHG inventory

Global warming and climate change have come to the fore as a key sustainable development issue. Many governments are taking steps to reduce GHG emissions through national policies that include the introduction of emissions trading programs, voluntary programs, carbon or energy taxes, and regulations and standards on energy efficiency and emissions. As a result, companies must be able to understand and manage their GHG risks if they are to ensure long-term success in a competitive business environment, and to be prepared for future national or regional climate policies.

A well-designed and maintained corporate GHG inventory can serve several business goals, including:

- Managing GHG risks and identifying reduction opportunities
- Public reporting and participation in voluntary GHG programs
- Participating in mandatory reporting programs
- Participating in GHG markets
- Recognition for early voluntary action.

Who should use this standard?

This standard is written primarily from the perspective of a business developing a GHG inventory. However, it applies equally to other types of organizations with operations that give rise to GHG emissions, e.g., NGOs, government agencies, and universities.[3] It should not be used to quantify the reductions associated with GHG mitigation projects for use as offsets or credits—the forthcoming *GHG Protocol Project Quantification Standard* will provide standards and guidance for this purpose.

Policy makers and architects of GHG programs can also use relevant parts of this standard as a basis for their own accounting and reporting requirements.

Relationship to other GHG programs

It is important to distinguish between the GHG Protocol Initiative and other GHG programs. The *GHG Protocol Corporate Standard* focuses only on the accounting and reporting of emissions. It does not require emissions information to be reported to WRI or WBCSD. In addition, while this standard is designed to develop a verifiable inventory, it does not provide a standard for how the verification process should be conducted.

The *GHG Protocol Corporate Standard* has been designed to be program or policy neutral. However, many existing GHG programs use it for their own accounting and reporting requirements and it is compatible with most of them, including:

- Voluntary GHG reduction programs, e.g., the World Wildlife Fund (WWF) Climate Savers, the U.S. Environmental Protection Agency (EPA) Climate Leaders, the Climate Neutral Network, and the Business Leaders Initiative on Climate Change (BLICC)
- GHG registries, e.g., California Climate Action Registry (CCAR), World Economic Forum Global GHG Registry
- National and regional industry initiatives, e.g., New Zealand Business Council for Sustainable Development, Taiwan Business Council for Sustainable Development, Association des entreprises pour la réduction des gaz à effet de serre (AERES)
- GHG trading programs,[4] e.g., UK Emissions Trading Scheme (UK ETS), Chicago Climate Exchange (CCX), and the European Union Greenhouse Gas Emissions Allowance Trading Scheme (EU ETS)
- Sector-specific protocols developed by a number of industry associations, e.g., International Aluminum Institute, International Council of Forest and Paper Associations, International Iron and Steel Institute, the WBCSD Cement Sustainability Initiative, and the International Petroleum Industry Environmental Conservation Association (IPIECA).

Since GHG programs often have specific accounting and reporting requirements, companies should always check with any relevant programs for any additional requirements before developing their inventory.

GHG calculation tools

To complement the standard and guidance provided here, a number of cross-sector and sector-specific calculation tools are available on the GHG Protocol Initiative website (www.ghgprotocol.org), including a guide for small office-based organizations (see chapter 6 for full list). These tools provide step-by-step guidance and electronic worksheets to help users calculate GHG emissions from specific sources or industries. The tools are consistent with those proposed by the Intergovernmental Panel on Climate Change (IPCC) for compilation of emissions at the national level (IPCC, 1996). They have been refined to be user-friendly for non-technical company staff and to increase the accuracy of emissions data at a company level. Thanks to help from many companies, organizations, and individual experts through an intensive review of the tools, they are believed to represent current "best practice."

Reporting in accordance with the *GHG Protocol Corporate Standard*

The GHG Protocol Initiative encourages the use of the *GHG Protocol Corporate Standard* by all companies regardless of their experience in preparing a GHG inventory. The term "shall" is used in the chapters containing standards to clarify what is required to prepare and report a GHG inventory in accordance with the *GHG Protocol Corporate Standard.* This is intended to improve the consistency with which the standard is applied and the resulting information that is publicly reported, without departing from the initial intent of the first edition. It also has the advantage of providing a verifiable standard for companies interested in taking this additional step.

Overview of main changes to the first edition

This revised edition contains additional guidance, case studies, and annexes. A new guidance chapter on setting GHG targets has been added in response to many requests from companies that, having developed an inventory, wanted to take the next step of setting a target. Appendices have been added on accounting for indirect emissions from electricity and on accounting for sequestered atmospheric carbon.

Changes to specific chapters include:

- CHAPTER 1: Minor rewording of principles.
- CHAPTER 2: Goal-related information on operational boundaries has been updated and consolidated.
- CHAPTER 3: Although still encouraged to account for emissions using both the equity and control approaches, companies may now report using one approach. This change reflects the fact that not all companies need both types of information to achieve their business goals. New guidance has been provided on establishing control. The minimum equity threshold for reporting purposes has been removed to enable emissions to be reported when significant.
- CHAPTER 4: The definition of scope 2 has been revised to exclude emissions from electricity purchased for resale—these are now included in scope 3. This prevents two or more companies from double counting the same emissions in the same scope. New guidance has been added on accounting for GHG emissions associated with electricity transmission and distribution losses. Additional guidance provided on Scope 3 categories and leasing.
- CHAPTER 5: The recommendation of pro-rata adjustments was deleted to avoid the need for two adjustments. More guidance has been added on adjusting base year emissions for changes in calculation methodologies.
- CHAPTER 6: The guidance on choosing emission factors has been improved.
- CHAPTER 7: The guidance on establishing an inventory quality management system and on the applications and limitations of uncertainty assessment has been expanded.
- CHAPTER 8: Guidance has been added on accounting for and reporting project reductions and offsets in order to clarify the relationship between the *GHG Protocol Corporate* and *Project Standards*.
- CHAPTER 9: The required and optional reporting categories have been clarified.
- CHAPTER 10: Guidance on the concepts of materiality and material discrepancy has been expanded.
- CHAPTER 11: New chapter added on steps in setting a target and tracking and reporting progress.

Frequently asked questions

Below is a list of frequently asked questions, with directions to the relevant chapters.

- What should I consider when setting out to account for and report emissions? CHAPTER 2
- How do I deal with complex company structures and shared ownership? CHAPTER 3
- What is the difference between direct and indirect emissions and what is their relevance? CHAPTER 4
- Which indirect emissions should I report? CHAPTER 4
- How do I account for and report outsourced and leased operations? CHAPTER 4
- What is a base year and why do I need one? CHAPTER 5
- My emissions change with acquisitions and divestitures. How do I account for these? CHAPTER 5
- How do I identify my company's emission sources? CHAPTER 6
- What kinds of tools are there to help me calculate emissions? CHAPTER 6
- What data collection activities and data management issues do my facilities have to deal with? CHAPTER 6
- What determines the quality and credibility of my emissions information? CHAPTER 7
- How should I account for and report GHG offsets that I sell or purchase? CHAPTER 8
- What information should be included in a GHG public emissions report? CHAPTER 9
- What data must be available to obtain external verification of the inventory data? CHAPTER 10
- What is involved in setting an emissions target and how do I report performance in relation to my target? CHAPTER 11

NOTES

[1] GHG program is a generic term used to refer to any voluntary or mandatory international, national, sub-national government or non-governmental authority that registers, certifies, or regulates GHG emissions or removals.

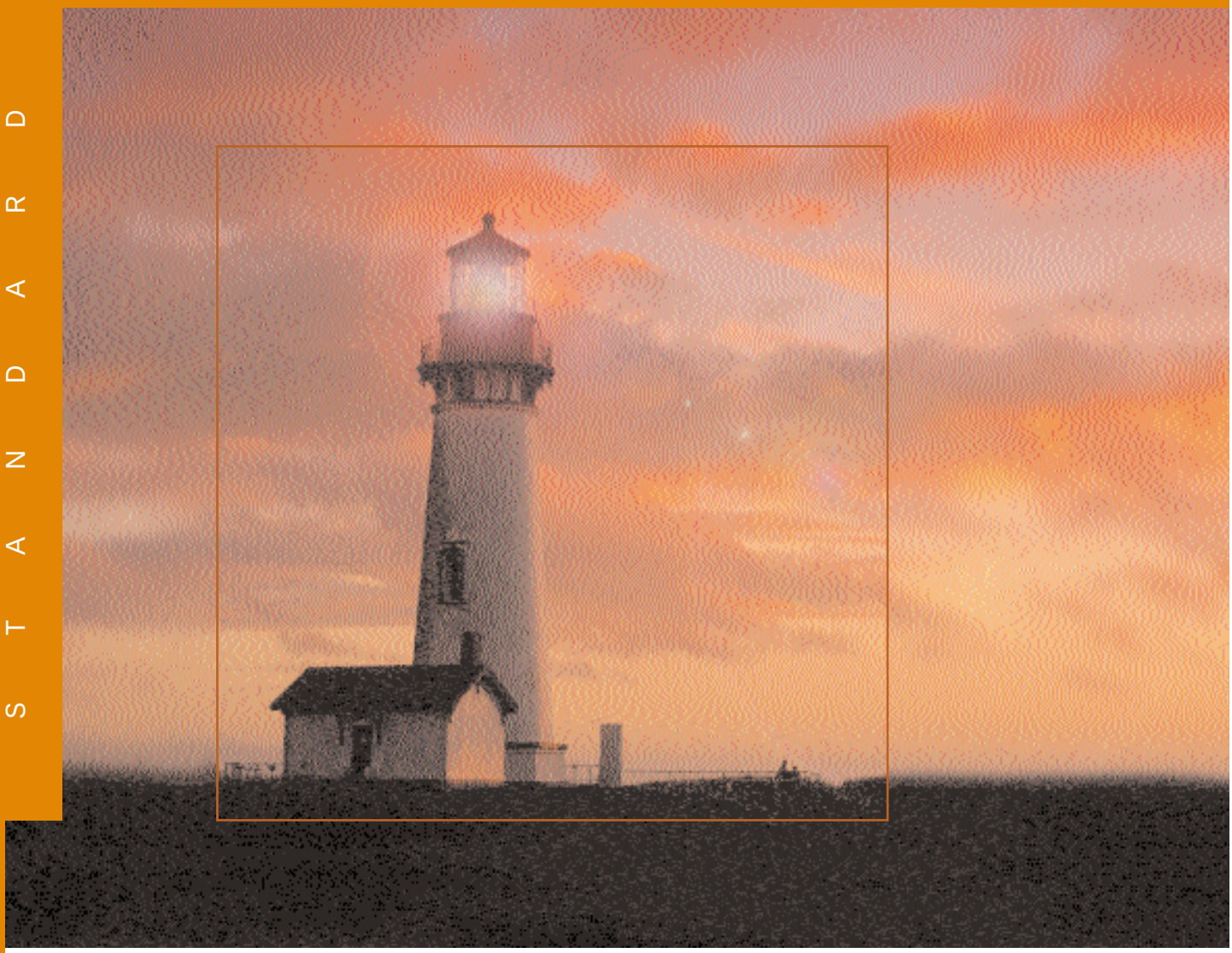
[2] Throughout the rest of this document, the term "company" or "business" is used as shorthand for companies, businesses and other types of organizations.

[3] For example, WRI uses the *GHG Protocol Corporate Standard* to publicly report its own emissions on an annual basis and to participate in the Chicago Climate Exchange.

[4] Trading programs that operate at the level of facilities primarily use the GHG Protocol Initiative calculation tools.

1 GHG Accounting and Reporting Principles

STANDARD



As with financial accounting and reporting, generally accepted GHG accounting principles are intended to underpin and guide GHG accounting and reporting to ensure that the reported information represents a faithful, true, and fair account of a company's GHG emissions.

STANDARD
GUIDANCE

GHG accounting and reporting practices are evolving and are new to many businesses; however, the principles listed below are derived in part from generally accepted financial accounting and reporting principles. They also reflect the outcome of a collaborative process involving stakeholders from a wide range of technical, environmental, and accounting disciplines.

GHG accounting and reporting shall be based on the following principles:

RELEVANCE

Ensure the GHG inventory appropriately reflects the GHG emissions of the company and serves the decision-making needs of users – both internal and external to the company.

COMPLETENESS

Account for and report on all GHG emission sources and activities within the chosen inventory boundary. Disclose and justify any specific exclusions.

CONSISTENCY

Use consistent methodologies to allow for meaningful comparisons of emissions over time. Transparently document any changes to the data, inventory boundary, methods, or any other relevant factors in the time series.

TRANSPARENCY

Address all relevant issues in a factual and coherent manner, based on a clear audit trail. Disclose any relevant assumptions and make appropriate references to the accounting and calculation methodologies and data sources used.

ACCURACY

Ensure that the quantification of GHG emissions is systematically neither over nor under actual emissions, as far as can be judged, and that uncertainties are reduced as far as practicable. Achieve sufficient accuracy to enable users to make decisions with reasonable assurance as to the integrity of the reported information.

STANDARD

These principles are intended to underpin all aspects of GHG accounting and reporting. Their application will ensure that the GHG inventory constitutes a true and fair representation of the company's GHG emissions. Their primary function is to guide the implementation of the *GHG Protocol Corporate Standard*, particularly when the application of the standards to specific issues or situations is ambiguous.

Relevance

For an organization's GHG report to be relevant means that it contains the information that users—both internal and external to the company—need for their decision making. An important aspect of relevance is the selection of an appropriate inventory boundary that reflects the substance and economic reality of the company's business relationships, not merely its legal form. The choice of the inventory boundary is dependent on the characteristics of the company, the intended purpose of information, and the needs of the users. When choosing the inventory boundary, a number of factors should be considered, such as:

- Organizational structures: control (operational and financial), ownership, legal agreements, joint ventures, etc.
- Operational boundaries: on-site and off-site activities, processes, services, and impacts
- Business context: nature of activities, geographic locations, industry sector(s), purposes of information, and users of information

More information on defining an appropriate inventory boundary is provided in chapters 2, 3, and 4.

Completeness

All relevant emissions sources within the chosen inventory boundary need to be accounted for so that a comprehensive and meaningful inventory is compiled. In practice, a lack of data or the cost of gathering data may be a limiting factor. Sometimes it is tempting to define a minimum emissions accounting threshold (often referred to as a materiality threshold) stating that a source not exceeding a certain size can be omitted from the inventory. Technically, such a threshold is simply a predefined and accepted negative bias in estimates (i.e., an underestimate). Although it appears useful in theory, the practical implementation of such a threshold is not compatible with the completeness principle of the *GHG Protocol Corporate Standard*. In order to utilize a materiality specification, the emissions from a particular source or activity would have to be quantified to ensure they were under the threshold. However, once emissions are quantified, most of the benefit of having a threshold is lost.

A threshold is often used to determine whether an error or omission is a material discrepancy or not. This is not the same as a de minimis for defining a complete inventory. Instead companies need to make a good faith effort to provide a complete, accurate, and consistent accounting of their GHG emissions. For cases where emissions have not been estimated, or estimated at an insufficient level of quality, it is important that this is transparently documented and justified. Verifiers can determine the potential impact and relevance of the exclusion, or lack of quality, on the overall inventory report.

More information on completeness is provided in chapters 7 and 10.

Consistency

Users of GHG information will want to track and compare GHG emissions information over time in order to identify trends and to assess the performance of the reporting company. The consistent application of accounting approaches, inventory boundary, and calculation methodologies is essential to producing comparable GHG emissions data over time. The GHG information for all operations within an organization's inventory boundary needs to be compiled in a manner that ensures that the aggregate information is internally consistent and comparable over time. If there are changes in the inventory boundary, methods, data or any other factors affecting emission estimates, they need to be transparently documented and justified.

More information on consistency is provided in chapters 5 and 9.

Volkswagen: Maintaining completeness over time

Volkswagen is a global auto manufacturer and the largest automaker in Europe. While working on its GHG inventory, Volkswagen realized that the structure of its emission sources had undergone considerable changes over the last seven years. Emissions from production processes, which were considered to be irrelevant at a corporate level in 1996, today constitute almost 20 percent of aggregated GHG emissions at the relevant plant sites. Examples of growing emissions sources are new sites for engine testing or the investment into magnesium die-casting equipment at certain production sites. This example shows that emissions sources have to be regularly re-assessed to maintain a complete inventory over time.

Accuracy

Data should be sufficiently precise to enable intended users to make decisions with reasonable assurance that the reported information is credible. GHG measurements, estimates, or calculations should be systemically neither over nor under the actual emissions value, as far as can be judged, and that uncertainties are reduced as far as practicable. The quantification process should be conducted in a manner that minimizes uncertainty. Reporting on measures taken to ensure accuracy in the accounting of emissions can help promote credibility while enhancing transparency.

More information on accuracy is provided in chapter 7.

Transparency

Transparency relates to the degree to which information on the processes, procedures, assumptions, and limitations of the GHG inventory are disclosed in a clear, factual, neutral, and understandable manner based on clear documentation and archives (i.e., an audit trail). Information needs to be recorded, compiled, and analyzed in a way that enables internal reviewers and external verifiers to attest to its credibility. Specific exclusions or inclusions need to be clearly identified and justified, assumptions disclosed, and appropriate references provided for the methodologies applied and the data sources used. The information should be sufficient to enable a third party to derive the same results if provided with the same source data. A "transparent" report will provide a clear understanding of the issues in the context of the reporting company and a meaningful assessment of performance. An independent external verification is a good way of ensuring transparency and determining that an appropriate audit trail has been established and documentation provided.

More information on transparency is provided in chapters 9 and 10.

The Body Shop: Solving the trade-off between accuracy and completeness

As an international, values-driven retailer of skin, hair, body care, and make-up products, the Body Shop operates nearly 2,000 locations, serving 51 countries in 29 languages. Achieving both accuracy and completeness in the GHG inventory process for such a large, disaggregated organization, is a challenge. Unavailable data and costly measurement processes present significant obstacles to improving emission data accuracy. For example, it is difficult to disaggregate energy consumption information for shops located within shopping centers. Estimates for these shops are often inaccurate, but excluding sources due to inaccuracy creates an incomplete inventory.

The Body Shop, with help from the Business Leaders Initiative on Climate Change (BLICC) program, approached this problem with a two-tiered solution. First, stores were encouraged to actively pursue direct consumption data through disaggregated data or direct monitoring. Second, if unable to obtain direct consumption data, stores were given standardized guidelines for estimating emissions based on factors such as square footage, equipment type, and usage hours. This system replaced the prior fragmentary approach, provided greater accuracy, and provided a more complete account of emissions by including facilities that previously were unable to calculate emissions. If such limitations in the measurement processes are made transparent, users of the information will understand the basis of the data and the trade - off that has taken place.

2 Business Goals and Inventory Design

Improving your understanding of your company's GHG emissions by compiling a GHG inventory makes good business sense. Companies frequently cite the following five business goals as reasons for compiling a GHG inventory:

- Managing GHG risks and identifying reduction opportunities
- Public reporting and participation in voluntary GHG programs
- Participating in mandatory reporting programs
- Participating in GHG markets
- Recognition for early voluntary action

Companies generally want their GHG inventory to be capable of serving multiple goals. It therefore makes sense to design the process from the outset to provide information for a variety of different users and uses—both current and future. The *GHG Protocol Corporate Standard* has been designed as a comprehensive GHG accounting and reporting framework to provide the information building blocks capable of serving most business goals (see Box 1). Thus the inventory data collected according to the *GHG Protocol Corporate Standard* can be aggregated and disaggregated for various organizational and operational boundaries and for different business geographic scales (state, country, Annex 1 countries, non-Annex 1 countries, facility, business unit, company, etc.).

BOX 1. Business goals served by GHG inventories

Managing GHG risks and identifying reduction opportunities
- Identifying risks associated with GHG constraints in the future
- Identifying cost effective reduction opportunities
- Setting GHG targets, measuring and reporting progress

Public reporting and participation in voluntary GHG programs
- Voluntary stakeholder reporting of GHG emissions and progress towards GHG targets
- Reporting to government and NGO reporting programs, including GHG registries
- Eco-labelling and GHG certification

Participating in mandatory reporting programs
- Participating in government reporting programs at the national, regional, or local level

Participating in GHG markets
- Supporting internal GHG trading programs
- Participating in external cap and trade allowance trading programs
- Calculating carbon/GHG taxes

Recognition for early voluntary action
- Providing information to support "baseline protection" and/or credit for early action

Appendix C provides an overview of various GHG programs—many of which are based on the *GHG Protocol Corporate Standard*. The guidance sections of chapters 3 and 4 provide additional information on how to design an inventory for different goals and uses.

Managing GHG risks and identifying reduction opportunities

Compiling a comprehensive GHG inventory improves a company's understanding of its emissions profile and any potential GHG liability or "exposure." A company's GHG exposure is increasingly becoming a management issue in light of heightened scrutiny by the insurance industry, shareholders, and the emergence of environmental regulations/policies designed to reduce GHG emissions.

In the context of future GHG regulations, significant GHG emissions in a company's value chain may result in increased costs (upstream) or reduced sales (downstream), even if the company itself is not directly subject to regulations. Thus investors may view significant indirect emissions upstream or downstream of a company's operations as potential liabilities that need to be managed and reduced. A limited focus on direct emissions from a company's own operations may miss major GHG risks and opportunities, while leading to a misinterpretation of the company's actual GHG exposure.

On a more positive note, what gets measured gets managed. Accounting for emissions can help identify the most effective reduction opportunities. This can drive increased materials and energy efficiency as well as the development of new products and services that reduce the GHG impacts of customers or suppliers. This in turn can reduce production costs and help differentiate the company in an increasingly environmentally conscious marketplace. Conducting a rigorous GHG inventory is also a prerequisite for setting an internal or public GHG target and for subsequently measuring and reporting progress.

IBM: The role of renewable energy in reducing GHG emissions

Indirect emissions associated with the consumption of purchased electricity are a required element of any company's accounting and reporting under the *GHG Protocol Corporate Standard*. Because purchased electricity is a major source of GHG emissions for companies, it presents a significant reduction opportunity. IBM, a major information technology company and a member of the WRI's Green Power Market Development Group, has systematically accounted for these indirect emissions and thus identified the significant potential to reduce them. The company has implemented a variety of strategies that would reduce either their demand for purchased energy or the GHG intensity of that purchased energy. One strategy has been to pursue the renewable energy market to reduce the GHG intensity of its purchased electricity.

IBM succeeded in reducing its GHG emissions at its facility in Austin, Texas, even as energy use stayed relatively constant, through a contract for renewable electricity with the local utility company, Austin Energy. Starting in 2001, this five-year contract is for 5.25 million kWhs of wind-power per year. This zero emission power lowered the facility's inventory by more than 4,100 tonnes of CO_2 compared to the previous year and represents nearly 5% of the facility's total electricity consumption. Company-wide, IBM's 2002 total renewable energy procurement was 66.2 million kWh, which represented 1.3% of its electricity consumption worldwide and 31,550 tonnes of CO_2 compared to the previous year. Worldwide, IBM purchased a variety of sources of renewable energy including wind, biomass and solar.

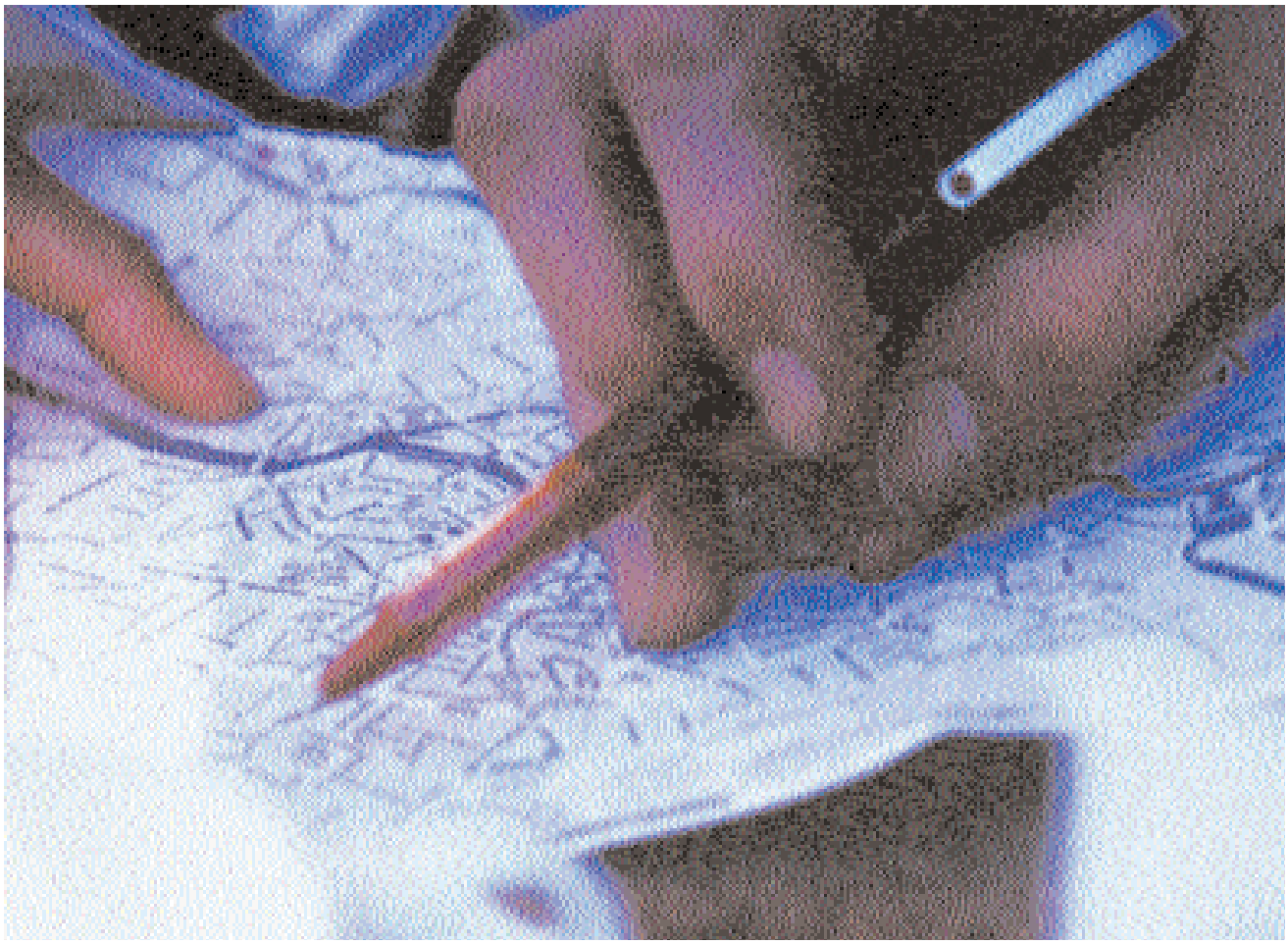
By accounting for these indirect emissions and looking for associated reduction opportunities, IBM has successfully reduced an important source of its overall GHG emissions.

Public reporting and participation in voluntary GHG programs

As concerns over climate change grow, NGOs, investors, and other stakeholders are increasingly calling for greater corporate disclosure of GHG information. They are interested in the actions companies are taking and in how the companies are positioned relative to their competitors in the face of emerging regulations. In response, a growing number of companies are preparing stakeholder reports containing information on GHG emissions. These may be stand-alone reports on GHG emissions or broader environmental or sustainability reports. For example, companies preparing sustainability reports using the Global Reporting Initiative guidelines should include information on GHG emissions in accordance with the *GHG Protocol Corporate Standard* (GRI, 2002). Public reporting can also strengthen relationships with other stakeholders. For instance, companies can improve their standing with customers and with the public by being recognized for participating in voluntary GHG programs.

Some countries and states have established GHG registries where companies can report GHG emissions in a public database. Registries may be administered by governments (e.g., U.S. Department of Energy 1605b Voluntary Reporting Program), NGOs (e.g., California Climate Action Registry), or industry groups (e.g., World Economic Forum Global GHG Registry). Many GHG programs also provide help to companies setting voluntary GHG targets.

Most voluntary GHG programs permit or require the reporting of direct emissions from operations (including all six GHGs), as well as indirect GHG emissions from purchased electricity. A GHG inventory prepared in accordance with the *GHG Protocol Corporate Standard* will usually be compatible with most requirements (Appendix C provides an overview of the reporting requirements of some GHG programs). However, since the accounting guidelines of many voluntary programs are periodically updated, companies planning to participate are advised to contact the program administrator to check the current requirements.



Participating in mandatory reporting programs

Some governments require GHG emitters to report their emissions annually. These typically focus on direct emissions from operations at operated or controlled facilities in specific geographic jurisdictions. In Europe, facilities falling under the requirements of the Integrated Pollution Prevention and Control (IPPC) Directive must report emissions exceeding a specified threshold for each of the six GHGs. The reported emissions are included in a European Pollutant Emissions Register (EPER), a publicly accessible internet-based database that permits comparisons of emissions from individual facilities or industrial sectors in different countries (EC-DGE, 2000). In Ontario, Ontario Regulation 127 requires the reporting of GHG emissions (Ontario MOE, 2001).

Participating in GHG markets

Market-based approaches to reducing GHG emissions are emerging in some parts of the world. In most places, they take the form of emissions trading programs, although there are a number of other approaches adopted by countries, such as the taxation approach used in Norway. Trading programs can be implemented on a mandatory (e.g., the forthcoming EU ETS) or voluntary basis (e.g., CCX).

Although trading programs, which determine compliance by comparing emissions with an emissions reduction target or cap, typically require accounting only for direct emissions, there are exceptions. The UK ETS, for example, requires direct entry participants to account for GHG emissions from the generation of purchased electricity (DEFRA, 2003). The CCX allows its members the option of counting indirect emissions associated with electricity purchases as a supplemental reduction commitment. Other types of indirect emissions can be more difficult to verify and may present challenges in terms of avoiding double counting. To facilitate independent verification, emissions trading

may require participating companies to establish an audit trail for GHG information (see chapter 10).

GHG trading programs are likely to impose additional layers of accounting specificity relating to which approach is used for setting organizational boundaries; which GHGs and sources are addressed; how base years are established; the type of calculation methodology used; the choice of emission factors; and the monitoring and verification approaches employed. The broad participation and best practices incorporated into the *GHG Protocol Corporate Standard* are likely to inform the accounting requirements of emerging programs, and have indeed done so in the past.

Recognition for early voluntary action

A credible inventory may help ensure that a corporation's early, voluntary emissions reductions are recognized in future regulatory programs. To illustrate, suppose that in 2000 a company started reducing its GHG emissions by shifting its on-site powerhouse boiler fuel from coal to landfill gas. If a mandatory GHG reduction program is later established in 2005 and it sets 2003 as the base against which reductions are to be measured, the program might not allow the emissions reductions achieved by the green power project prior to 2003 to count toward its target.

However, if a company's voluntary emissions reductions have been accounted for and registered, they are more likely to be recognized and taken into account when regulations requiring reductions go into effect. For instance, the state of California has stated that it will use its best efforts to ensure that organizations that register certified emission results with the California Climate Action Registry receive appropriate consideration under any future international, federal, or state regulatory program relating to GHG emissions.

Tata Steel: Development of institutional capacity in GHG accounting and reporting

For Tata Steel, Asia's first and India's largest integrated private sector steel company, reducing its GHG emissions through energy efficiency is a key element of its primary business goal: the acceptability of its product in international markets. Each year, in pursuit of this goal, the company launches several energy efficiency projects and introduces less-GHG-intensive processes. The company is also actively pursuing GHG trading markets as a means of further improving its GHG performance. To succeed in these efforts and be eligible for emerging trading schemes, Tata Steel must have an accurate GHG inventory that includes all processes and activities, allows for meaningful benchmarking, measures improvements, and promotes credible reporting.

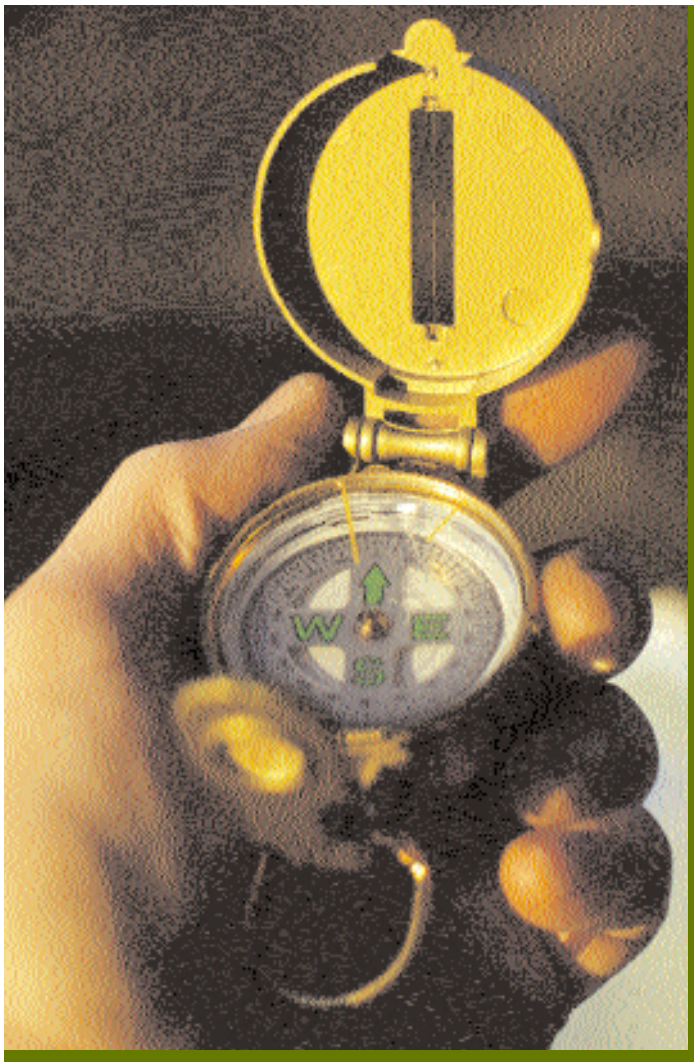
Tata Steel has developed the capacity to measure its progress in reducing GHG emissions. Tata Steel's managers have access to on-line information on energy usage, material usage, waste and byproduct generation, and other material streams. Using this data and the GHG Protocol calculation tools, Tata Steel generates two key long-term, strategic performance indicators: specific energy consumption (Giga calorie / tonne of crude steel) and GHG intensity (tonne of CO_2equivalent / tonne of crude steel). These indicators are key sustainability metrics in the steel sector worldwide, and help ensure market acceptability and competitiveness. Since the company adopted the *GHG Protocol Corporate Standard*, tracking performance has become more structured and streamlined. This system allows Tata Steel quick and easy access to its GHG inventory and helps the company maximize process and material flow efficiencies.

Ford Motor Company: Experiences using the *GHG Protocol Corporate Standard*

When Ford Motor Company, a global automaker, embarked on an effort to understand and reduce its GHG impacts, it wanted to track emissions with enough accuracy and detail to manage them effectively. An internal cross-functional GHG inventory team was formed to accomplish this goal. Although the company was already reporting basic energy and carbon dioxide data at the corporate level, a more detailed understanding of these emissions was essential to set and measure progress against performance targets and evaluate potential participation in external trading schemes.

For several weeks, the team worked on creating a more comprehensive inventory for stationary combustion sources, and quickly found a pattern emerging. All too often team members left meetings with as many questions as answers, and the same questions kept coming up from one week to the next. How should they draw boundaries? How do they account for acquisitions and divestitures? What emission factors should be used? And perhaps most importantly, how could their methodology be deemed credible with stakeholders? Although the team had no shortage of opinions, there also seemed to be no clearly right or wrong answers.

The *GHG Protocol Corporate Standard* helped answer many of these questions and the Ford Motor Company now has a more robust GHG inventory that can be continually improved to fulfill its rapidly emerging GHG management needs. Since adopting the *GHG Protocol Corporate Standard*, Ford has expanded the coverage of its public reporting to all of its brands globally; it now includes direct emissions from sources it owns or controls and indirect emissions resulting from the generation of purchased electricity, heat, or steam. In addition, Ford is a founding member of the Chicago Climate Exchange, which uses some of the *GHG Protocol* calculation tools for emissions reporting purposes.



3 Setting Organizational Boundaries

Business operations vary in their legal and organizational structures; they include wholly owned operations, incorporated and non-incorporated joint ventures, subsidiaries, and others. For the purposes of financial accounting, they are treated according to established rules that depend on the structure of the organization and the relationships among the parties involved. In setting organizational boundaries, a company selects an approach for consolidating GHG emissions and then consistently applies the selected approach to define those businesses and operations that constitute the company for the purpose of accounting and reporting GHG emissions.

For corporate reporting, two distinct approaches can be used to consolidate GHG emissions: the equity share and the control approaches. Companies shall account for and report their consolidated GHG data according to either the equity share or control approach as presented below. If the reporting company wholly owns all its operations, its organizational boundary will be the same whichever approach is used.[1] For companies with joint operations, the organizational boundary and the resulting emissions may differ depending on the approach used. In both wholly owned and joint operations, the choice of approach may change how emissions are categorized when operational boundaries are set (see chapter 4).

Equity share approach

Under the equity share approach, a company accounts for GHG emissions from operations according to its share of equity in the operation. The equity share reflects economic interest, which is the extent of rights a company has to the risks and rewards flowing from an operation. Typically, the share of economic risks and rewards in an operation is aligned with the company's percentage ownership of that operation, and equity share will normally be the same as the ownership percentage. Where this is not the case, the economic substance of the relationship the company has with the operation always overrides the legal ownership form to ensure that equity share reflects the percentage of economic interest. The principle of economic substance taking precedent over legal form is consistent with international financial reporting standards. The staff preparing the inventory may therefore need to consult with the company's accounting or legal staff to ensure that the appropriate equity share percentage is applied for each joint operation (see Table 1 for definitions of financial accounting categories).

Control approach

Under the control approach, a company accounts for 100 percent of the GHG emissions from operations over which it has control. It does not account for GHG emissions from operations in which it owns an interest but has no control. Control can be defined in either financial or operational terms. When using the control approach to consolidate GHG emissions, companies shall choose between either the operational control or financial control criteria.

In most cases, whether an operation is controlled by the company or not does not vary based on whether the financial control or operational control criterion is used. A notable exception is the oil and gas industry, which often has complex ownership / operatorship structures. Thus, the choice of control criterion in the oil and gas industry can have substantial consequences for a company's GHG inventory. In making this choice, companies should take into account how GHG emissions accounting and reporting can best be geared to the requirements of emissions reporting and trading schemes, how it can be aligned with financial and environmental reporting, and which criterion best reflects the company's actual power of control.

- Financial Control. The company has financial control over the operation if the former has the ability to direct the financial and operating policies of the latter with a view to gaining economic benefits from its activities.[2] For example, financial control usually exists if the company has the right to the majority of benefits of the operation, however these rights are conveyed. Similarly, a company is considered to financially control an operation if it retains the majority risks and rewards of ownership of the operation's assets.

  Under this criterion, the economic substance of the relationship between the company and the operation takes precedence over the legal ownership status, so that the company may have financial control over the operation even if it has less than a 50 percent interest in that operation. In assessing the economic substance of the relationship, the impact of potential voting rights, including both those held by the company and those held by other parties, is also taken into account. This criterion is consistent with international financial accounting standards; therefore, a company has financial control over an operation for GHG accounting purposes if the operation is considered as a group company or subsidiary for the purpose of financial

consolidation, i.e., if the operation is fully consolidated in financial accounts. If this criterion is chosen to determine control, emissions from joint ventures where partners have joint financial control are accounted for based on the equity share approach (see Table 1 for definitions of financial accounting categories).

- Operational Control. A company has operational control over an operation if the former or one of its subsidiaries (see Table 1 for definitions of financial accounting categories) has the full authority to introduce and implement its operating policies at the operation. This criterion is consistent with the current accounting and reporting practice of many companies that report on emissions from facilities, which they operate (i.e., for which they hold the operating license). It is expected that except in very rare circumstances, if the company or one of its subsidiaries is the operator of a facility, it will have the full authority to introduce and implement its operating policies and thus has operational control.

  Under the operational control approach, a company accounts for 100% of emissions from operations over which it or one of its subsidiaries has operational control.

  It should be emphasized that having operational control does not mean that a company necessarily has authority to make all decisions concerning an operation. For example, big capital investments will likely require the approval of all the partners that have joint financial control. Operational control does mean that a company has the authority to introduce and implement its operating policies.

  More information on the relevance and application of the operational control criterion is provided in petroleum industry guidelines for reporting GHG emissions (IPIECA, 2003).

Sometimes a company can have joint financial control over an operation, but not operational control. In such cases, the company would need to look at the contractual arrangements to determine whether any one of the partners has the authority to introduce and implement its operating policies at the operation and thus has the responsibility to report emissions under operational control. If the operation itself will introduce and implement its own operating policies, the partners with joint financial control over the operation will not report any emissions under operational control.

Table 2 in the guidance section of this chapter illustrates the selection of a consolidation approach at the corporate level and the identification of which joint operations will be in the organizational boundary depending on the choice of the consolidation approach.

Consolidation at multiple levels

The consolidation of GHG emissions data will only result in consistent data if all levels of the organization follow the same consolidation policy. In the first step, the management of the parent company has to decide on a consolidation approach (i.e., either the equity share or the financial or operational control approach). Once a corporate consolidation policy has been selected, it shall be applied to all levels of the organization.

State-ownership

The rules provided in this chapter shall also be applied to account for GHG emissions from industry joint operations that involve state ownership or a mix of private/state ownership.

BP: Reporting on the basis of equity share

BP reports GHG emissions on an equity share basis, including those operations where BP has an interest, but where BP is not the operator. In determining the extent of the equity share reporting boundary BP seeks to achieve close alignment with financial accounting procedures. BP's equity share boundary includes all operations undertaken by BP and its subsidiaries, joint ventures and associated undertakings as determined by their treatment in the financial accounts. Fixed asset investments, i.e., where BP has limited influence, are not included.

GHG emissions from facilities in which BP has an equity share are estimated according to the requirements of the BP Group Reporting Guidelines for Environmental Performance (BP 2000). In those facilities where BP has an equity share but is not the operator, GHG emissions data may be obtained directly from the operating company using a methodology consistent with the BP Guidelines, or is calculated by BP using activity data provided by the operator.

BP reports its equity share GHG emissions every year. Since 2000, independent external auditors have expressed the opinion that the reported total has been found to be free from material misstatement when audited against the BP Guidelines.

TABLE 1. Financial accounting categories

ACCOUNTING CATEGORY	FINANCIAL ACCOUNTING DEFINITION	ACCOUNTING FOR GHG EMISSIONS ACCORDING TO *GHG PROTOCOL CORPORATE STANDARD*	
		BASED ON EQUITY SHARE	BASED ON FINANCIAL CONTROL
Group companies / subsidiaries	The parent company has the ability to direct the financial and operating policies of the company with a view to gaining economic benefits from its activities. Normally, this category also includes incorporated and non-incorporated joint ventures and partnerships over which the parent company has financial control. Group companies/subsidiaries are fully consolidated, which implies that 100 percent of the subsidiary's income, expenses, assets, and liabilities are taken into the parent company's profit and loss account and balance sheet, respectively. Where the parent's interest does not equal 100 percent, the consolidated profit and loss account and balance sheet shows a deduction for the profits and net assets belonging to minority owners.	Equity share of GHG emissions	100% of GHG emissions
Associated / affiliated companies	The parent company has significant influence over the operating and financial policies of the company, but does not have financial control. Normally, this category also includes incorporated and non-incorporated joint ventures and partnerships over which the parent company has significant influence, but not financial control. Financial accounting applies the equity share method to associated/affiliated companies, which recognizes the parent company's share of the associate's profits and net assets.	Equity share of GHG emissions	0% of GHG emissions
Non-incorporated joint ventures / partnerships / operations where partners have joint financial control	Joint ventures/partnerships/operations are proportionally consolidated, i.e., each partner accounts for their proportionate interest of the joint venture's income, expenses, assets, and liabilities.	Equity share of GHG emissions	Equity share of GHG emissions
Fixed asset investments	The parent company has neither significant influence nor financial control. This category also includes incorporated and non-incorporated joint ventures and partnerships over which the parent company has neither significant influence nor financial control. Financial accounting applies the cost/dividend method to fixed asset investments. This implies that only dividends received are recognized as income and the investment is carried at cost.	0%	0%
Franchises	Franchises are separate legal entities. In most cases, the franchiser will not have equity rights or control over the franchise. Therefore, franchises should not be included in consolidation of GHG emissions data. However, if the franchiser does have equity rights or operational/financial control, then the same rules for consolidation under the equity or control approaches apply.	Equity share of GHG emissions	100% of GHG emissions

NOTE: Table 1 is based on a comparison of UK, US, Netherlands and International Financial Reporting Standards (KPMG, 2000).

When planning the consolidation of GHG data, it is important to distinguish between GHG accounting and GHG reporting. GHG accounting concerns the recognition and consolidation of GHG emissions from operations in which a parent company holds an interest (either control or equity) and linking the data to specific operations, sites, geographic locations, business processes, and owners. GHG reporting, on the other hand, concerns the presentation of GHG data in formats tailored to the needs of various reporting uses and users.

Most companies have several goals for GHG reporting, e.g., official government reporting requirements, emissions trading programs, or public reporting (see chapter 2). In developing a GHG accounting system, a fundamental consideration is to ensure that the system is capable of meeting a range of reporting requirements. Ensuring that data are collected and recorded at a sufficiently disaggregated level, and capable of being consolidated in various forms, will provide companies with maximum flexibility to meet a range of reporting requirements.

Double counting

When two or more companies hold interests in the same joint operation and use different consolidation approaches (e.g., Company A follows the equity share approach while Company B uses the financial control approach), emissions from that joint operation could be double counted. This may not matter for voluntary corporate public reporting as long as there is adequate disclosure from the company on its consolidation approach. However, double counting of emissions needs to be avoided in trading schemes and certain mandatory government reporting programs.

Reporting goals and level of consolidation

Reporting requirements for GHG data exist at various levels, from a specific local facility level to a more aggregated corporate level. Examples of drivers for various levels of reporting include:

- Official government reporting programs or certain emissions trading programs may require GHG data to be reported at a facility level. In these cases, consolidation of GHG data at a corporate level is not relevant
- Government reporting and trading programs may require that data be consolidated within certain geographic and operational boundaries (e.g., the U.K. Emissions Trading Scheme)
- To demonstrate the company's account to wider stakeholders, companies may engage in voluntary public reporting, consolidating GHG data at a corporate level in order to show the GHG emissions of their entire business activities.

Contracts that cover GHG emissions

To clarify ownership (rights) and responsibility (obligations) issues, companies involved in joint operations may draw up contracts that specify how the ownership of emissions or the responsibility for managing emissions and associated risk is distributed between the parties. Where such arrangements exist, companies may optionally provide a description of the contractual arrangement and include information on allocation of CO_2 related risks and obligations (see Chapter 9).

Using the equity share or control approach

Different inventory reporting goals may require different data sets. Thus companies may need to account for their GHG emissions using both the equity share and the control approaches. The *GHG Protocol Corporate Standard* makes no recommendation as to whether voluntary public GHG emissions reporting should be based on the equity share or any of the two control approaches, but encourages companies to account for their emissions applying the equity share and a control approach separately. Companies need to decide on the approach best suited to their business activities and GHG accounting and reporting requirements. Examples of how these may drive the choice of approach include the following:

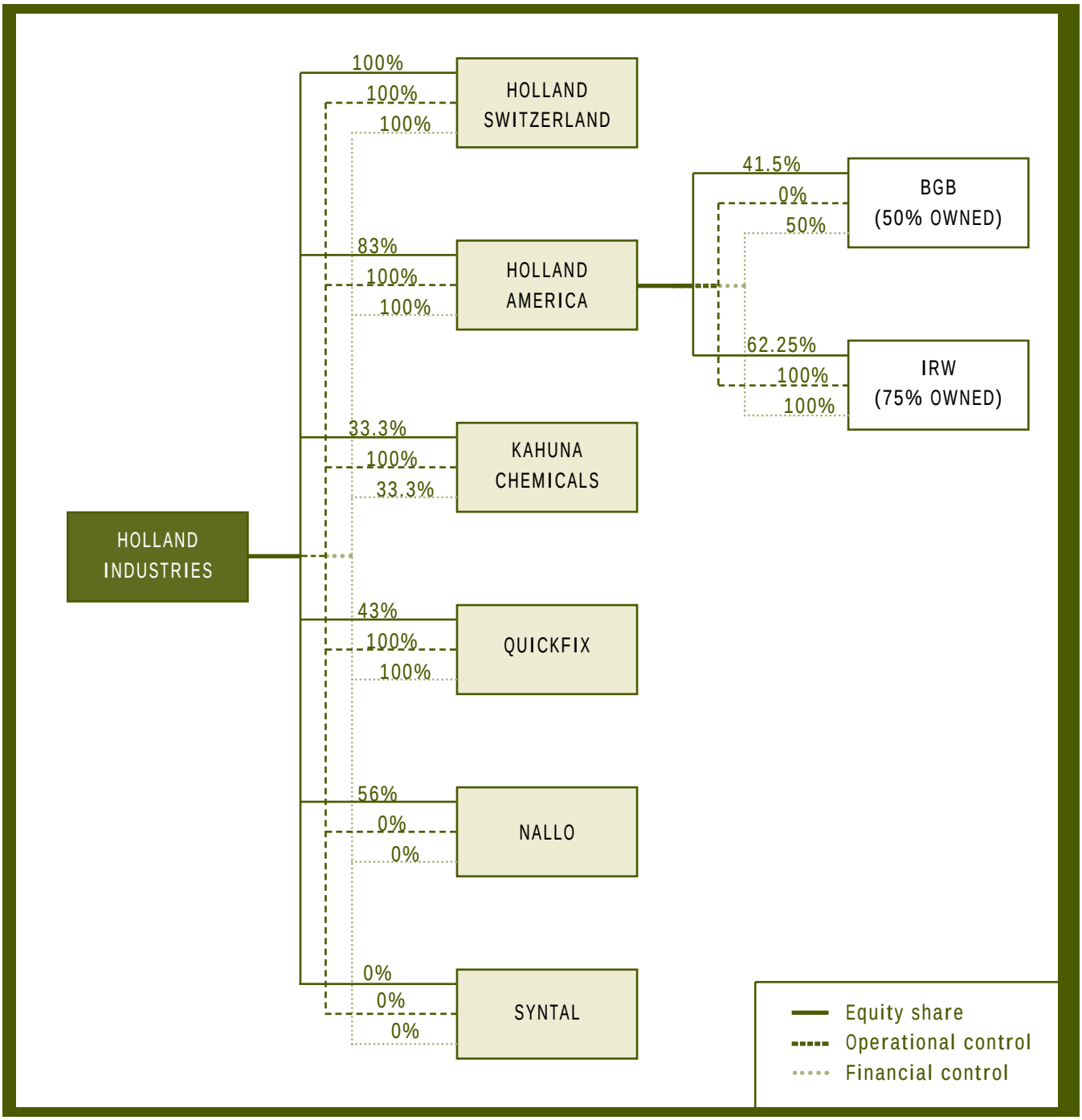
- Reflection of commercial reality. It can be argued that a company that derives an economic profit from a certain activity should take ownership for any GHG emissions generated by the activity. This is achieved by using the equity share approach, since this approach assigns ownership for GHG emissions on the basis of economic interest in a business activity. The control approaches do not always reflect the full GHG emissions portfolio of a company's business activities, but have the advantage that a company takes full ownership of all GHG emissions that it can directly influence and reduce.

- Government reporting and emissions trading programs. Government regulatory programs will always need to monitor and enforce compliance. Since compliance responsibility generally falls to the operator (not equity holders or the group company that has financial control), governments will usually require reporting on the basis of operational control, either through a facility level-based system or involving the consolidation of data within certain geographical boundaries (e.g. the EU ETS will allocate emission permits to the operators of certain installations).
- Liability and risk management. While reporting and compliance with regulations will most likely continue to be based directly on operational control, the ultimate financial liability will often rest with the group company that holds an equity share in the operation or has financial control over it. Hence, for assessing risk, GHG reporting on the basis of the equity share and financial control approaches provides a more complete picture. The equity share approach is likely to result in the most comprehensive coverage of liability and risks. In the future, companies might incur liabilities for GHG emissions produced by joint operations in which they have an interest, but over which they do not have financial control. For example, a company that is an equity shareholder in an operation but has no financial control over it might face demands by the companies with a controlling share to cover its requisite share of GHG compliance costs.
- Alignment with financial accounting. Future financial accounting standards may treat GHG emissions as liabilities and emissions allowances/credits as assets. To assess the assets and liabilities a company creates by its joint operations, the same consolidation rules that are used in financial accounting should be applied in GHG accounting. The equity share and financial control approaches result in closer alignment between GHG accounting and financial accounting.
- Management information and performance tracking. For the purpose of performance tracking, the control approaches seem to be more appropriate since managers can only be held accountable for activities under their control.
- Cost of administration and data access. The equity share approach can result in higher administrative costs than the control approach, since it can be difficult and time consuming to collect GHG emissions data from joint operations not under the control of the reporting company. Companies are likely to have better access to operational data and therefore greater ability to ensure that it meets minimum quality standards when reporting on the basis of control.
- Completeness of reporting. Companies might find it difficult to demonstrate completeness of reporting when the operational control criterion is adopted, since there are unlikely to be any matching records or lists of financial assets to verify the operations that are included in the organizational boundary.

Royal Dutch/Shell: Reporting on the basis of operational control

In the oil and gas industry, ownership and control structures are often complex. A group may own less than 50 percent of a venture's equity capital but have operational control over the venture. On the other hand, in some situations, a group may hold a majority interest in a venture without being able to exert operational control, for example, when a minority partner has a veto vote at the board level. Because of these complex ownership and control structures, Royal Dutch/Shell, a global group of energy and petrochemical companies, has chosen to report its GHG emissions on the basis of operational control. By reporting 100 percent of GHG emissions from all ventures under its operational control, irrespective of its share in the ventures' equity capital, Royal Dutch/Shell can ensure that GHG emissions reporting is in line with its operational policy including its Health, Safety and Environmental Performance Monitoring and Reporting Guidelines. Using the operational control approach, the group generates data that is consistent, reliable, and meets its quality standards.

FIGURE 1. Defining the organizational boundary of Holland Industries



AN ILLUSTRATION:

THE EQUITY SHARE AND CONTROL APPROACHES

Holland Industries is a chemicals group comprising a number of companies/joint ventures active in the production and marketing of chemicals. Table 2 outlines the organizational structure of Holland Industries and shows how GHG emissions from the various wholly owned and joint operations are accounted for under both the equity share and control approaches.

In setting its organizational boundary, Holland Industries first decides whether to use the equity or control approach for consolidating GHG data at the corporate level. It then determines which operations at the corporate level meet its selected consolidation approach. Based on the selected consolidation approach, the consolidation process is repeated for each lower operational level. In this process, GHG emissions are first apportioned at the lower operational level (subsidiaries, associate, joint ventures, etc.) before they are consolidated at the corporate level. Figure 1 presents the organizational boundary of Holland Industries based on the equity share and control approaches.

TABLE 2. Holland Industries - organizational structure and GHG emissions accounting

WHOLLY OWNED AND JOINT OPERATIONS OF HOLLAND	LEGAL STRUCTURE AND PARTNERS	ECONOMIC INTEREST HELD BY HOLLAND INDUSTRIES	CONTROL OF OPERATING POLICIES	TREATMENT IN HOLLAND INDUSTRIES' FINANCIAL ACCOUNTS (SEE TABLE 1)	EMISSIONS ACCOUNTED FOR AND REPORTED BY HOLLAND INDUSTRIES	
					EQUITY SHARE APPROACH	CONTROL APPROACH
Holland Switzerland	Incorporated company	100%	Holland Industries	Wholly owned subsidiary	100%	100% for operational control 100% for financial control
Holland America	Incorporated company	83%	Holland Industries	Subsidiary	83%	100% for operational control 100% for financial control
BGB	Joint venture, partners have joint financial control other partner Rearden	50% by Holland America	Rearden	via Holland America	41.5% (83% x 50%)	0% for operational control 50% for financial control (50% x 100%)
IRW	Subsidiary of Holland America	75% by Holland America	Holland America	via Holland America	62.25% (83% x 75%)	100% for operational control 100% for financial control
Kahuna Chemicals	Non-incorporated joint venture; partners have joint financial control; two other partners: ICT and BCSF	33.3%	Holland Industries	Proportionally consolidated joint venture	33.3%	100% for operational control 33.3% for financial control
QuickFix	Incorporated joint venture, other partner Majox	43%	Holland Industries	Subsidiary (Holland Industries has financial control since it treats Quick Fix as a subsidiary in its financial accounts)	43%	100% for operational control 100% for financial control
Nallo	Incorporated joint venture, other partner Nagua Co.	56%	Nallo	Associated company (Holland Industries does not have financial control since it treats Nallo as an Associated company in its financial accounts)	56%	0% for operational control 0% for financial control
Syntal	Incorporated company, subsidiary of Erewhon Co.	1%	Erewhon Co.	Fixed asset investment	0%	0% for operational control 0% for financial control

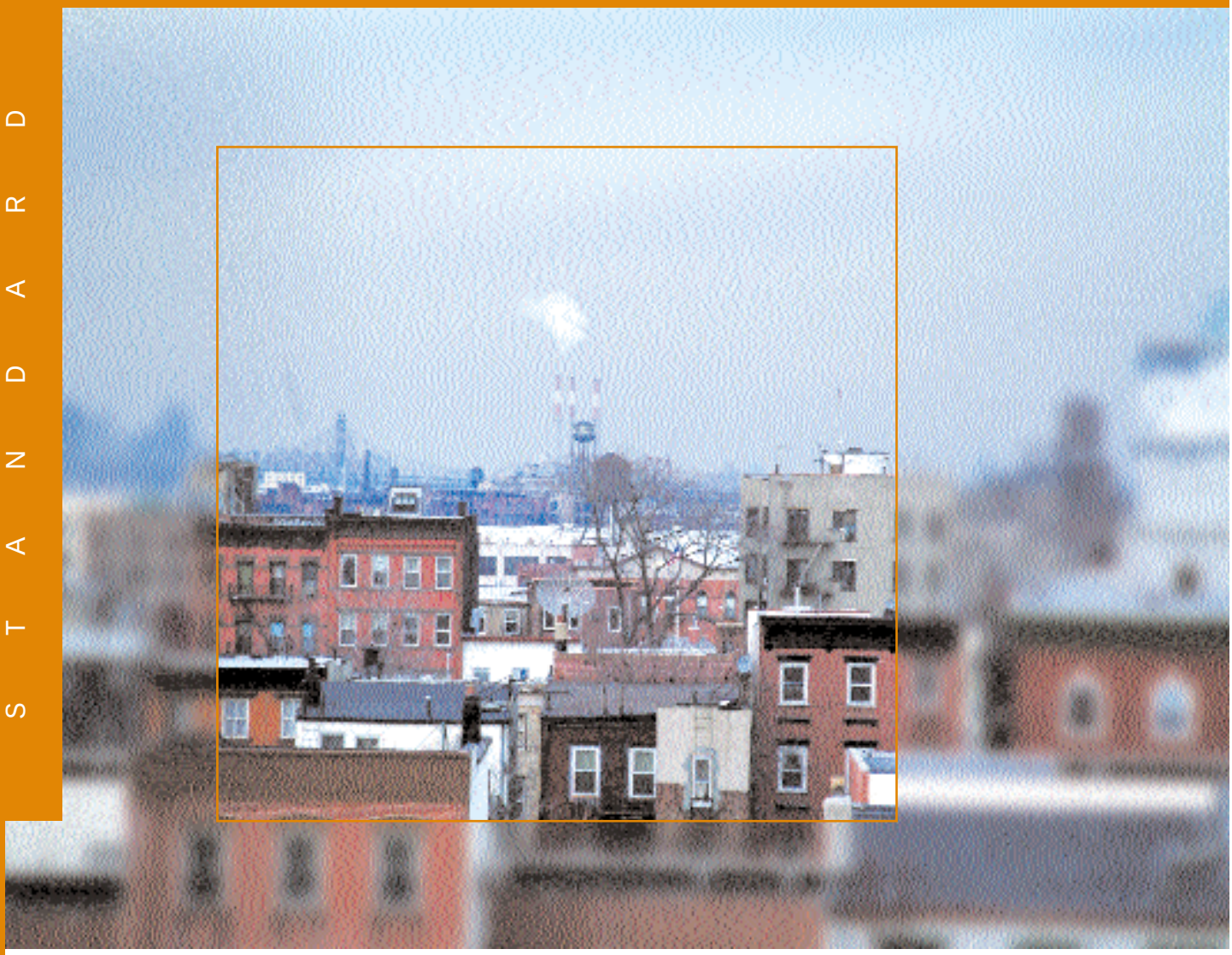
In this example, Holland America (not Holland Industries) holds a 50 percent interest in BGB and a 75 percent interest in IRW. If the activities of Holland Industries itself produce GHG emissions (e.g., emissions associated with electricity use at the head office), then these emissions should also be included in the consolidation at 100 percent.

NOTES

[1] The term "operations" is used here as a generic term to denote any kind of business activity, irrespective of its organizational, governance, or legal structures.

[2] Financial accounting standards use the generic term "control" for what is denoted as "financial control" in this chapter.

4 Setting Operational Boundaries



After a company has determined its organizational boundaries in terms of the operations that it owns or controls, it then sets its operational boundaries. This involves identifying emissions associated with its operations, categorizing them as direct and indirect emissions, and choosing the scope of accounting and reporting for indirect emissions.

For effective and innovative GHG management, setting operational boundaries that are comprehensive with respect to direct and indirect emissions will help a company better manage the full spectrum of GHG risks and opportunities that exist along its value chain.

Direct GHG emissions are emissions from sources that are owned or controlled by the company.[1]

Indirect GHG emissions are emissions that are a consequence of the activities of the company but occur at sources owned or controlled by another company.

What is classified as direct and indirect emissions is dependent on the consolidation approach (equity share or control) selected for setting the organizational boundary (see chapter 3). Figure 2 below shows the relationship between the organizational and operational boundaries of a company.

Introducing the concept of " scope"

To help delineate direct and indirect emission sources, improve transparency, and provide utility for different types of organizations and different types of climate policies and business goals, three "scopes" (scope 1, scope 2, and scope 3) are defined for GHG accounting and reporting purposes. Scopes 1 and 2 are carefully defined in this standard to ensure that two or more companies will not account for emissions in the same scope. This makes the scopes amenable for use in GHG programs where double counting matters.

Companies shall separately account for and report on scopes 1 and 2 at a minimum.

Scope 1: Direct GHG emissions

Direct GHG emissions occur from sources that are owned or controlled by the company, for example, emissions from combustion in owned or controlled boilers, furnaces, vehicles, etc.; emissions from chemical production in owned or controlled process equipment.

Direct CO_2 emissions from the combustion of biomass shall not be included in scope 1 but reported separately (see chapter 9).

GHG emissions not covered by the Kyoto Protocol, e.g. CFCs, NOx, etc. shall not be included in scope 1 but may be reported separately (see chapter 9).

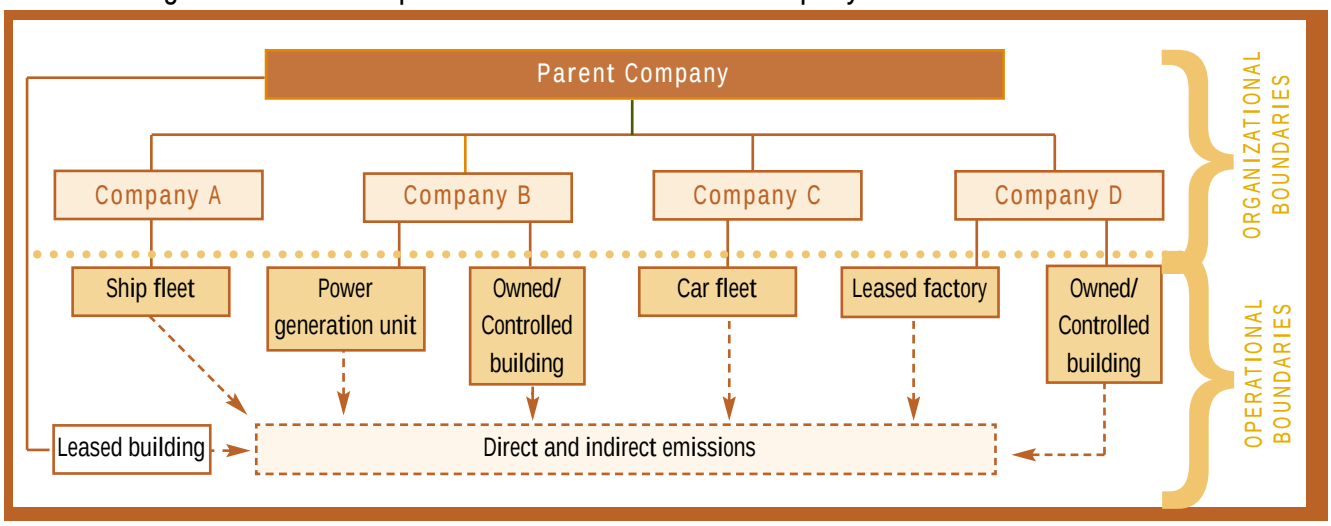
Scope 2: Electricity indirect GHG emissions

Scope 2 accounts for GHG emissions from the generation of purchased electricity[2] consumed by the company. Purchased electricity is defined as electricity that is purchased or otherwise brought into the organizational boundary of the company. Scope 2 emissions physically occur at the facility where electricity is generated.

Scope 3: Other indirect GHG emissions

Scope 3 is an optional reporting category that allows for the treatment of all other indirect emissions. Scope 3 emissions are a consequence of the activities of the company, but occur from sources not owned or controlled by the company. Some examples of scope 3 activities are extraction and production of purchased materials; transportation of purchased fuels; and use of sold products and services.

FIGURE 2. Organizational and operational boundaries of a company



An operational boundary defines the scope of direct and indirect emissions for operations that fall within a company's established organizational boundary. The operational boundary (scope 1, scope 2, scope 3) is decided at the corporate level after setting the organizational boundary. The selected operational boundary is then uniformly applied to identify and categorize direct and indirect emissions at each operational level (see Box 2). The established organizational and operational boundaries together constitute a company's inventory boundary.

BOX 2. Organizational and operational boundaries

Organization X is a parent company that has full ownership and financial control of operations A and B, but only a 30% non-operated interest and no financial control in operation C.

Setting Organizational Boundary: X would decide whether to account for GHG emissions by equity share or financial control. If the choice is equity share, X would include A and B, as well as 30% of C's emissions. If the approach chosen is financial control, X would count only A and B's emissions as relevant and subject to consolidation. Once this has been decided, the organizational boundary has been defined.

Setting Operational Boundary: Once the organizational boundary is set, X then needs to decide, on the basis of its business goals, whether to account only for scope 1 and scope 2, or whether to include relevant scope 3 categories for its operations.

Operations A, B and C (if the equity approach is selected) account for the GHG emissions in the scopes chosen by X, i.e., they apply the corporate policy in drawing up their operational boundaries.

Accounting and reporting on scopes

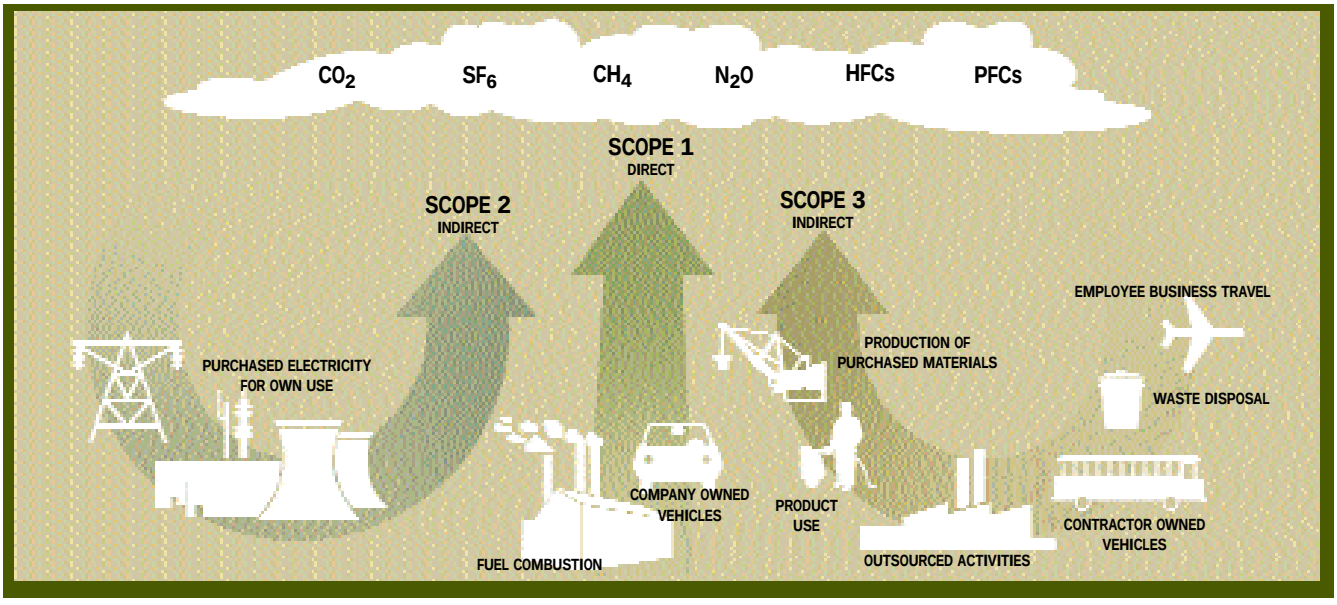
Companies account for and report emissions from scope 1 and 2 separately. Companies may further subdivide emissions data within scopes where this aids transparency or facilitates comparability over time. For example, they may subdivide data by business unit/facility, country, source type (stationary combustion, process, fugitive, etc.), and activity type (production of electricity, consumption of electricity, generation or purchased electricity that is sold to end users, etc.).

In addition to the six Kyoto gases, companies may also provide emissions data for other GHGs (e.g., Montreal Protocol gases) to give context to changes in emission levels of Kyoto Protocol gases. Switching from a CFC to HFC, for example, will increase emissions of Kyoto Protocol gases. Information on emissions of GHGs other than the six Kyoto gases may be reported separately from the scopes in a GHG public report.

Together the three scopes provide a comprehensive accounting framework for managing and reducing direct and indirect emissions. Figure 3 provides an overview of the relationship between the scopes and the activities that generate direct and indirect emissions along a company's value chain.

A company can benefit from efficiency gains throughout the value chain. Even without any policy drivers, accounting for GHG emissions along the value chain may reveal potential for greater efficiency and lower costs (e.g., the use of fly ash as a clinker substitute in the manufacture of cement that reduces downstream emissions from processing of waste fly ash, and upstream

FIGURE 3. Overview of scopes and emissions across a value chain



Adopted from NZBCSD, 2002

emissions from producing clinker). Even if such "win-win" options are not available, indirect emissions reductions may still be more cost effective to accomplish than scope 1 reductions. Thus accounting for indirect emissions can help identify where to allocate limited resources in a way that maximizes GHG reduction and return on investment.

Appendix D lists GHG sources and activities along the value chain by scopes for various industry sectors.

Scope 1: Direct GHG emissions

Companies report GHG emissions from sources they own or control as scope 1. Direct GHG emissions are principally the result of the following types of activities undertaken by the company:

- Generation of electricity, heat, or steam. These emissions result from combustion of fuels in stationary sources, e.g., boilers, furnaces, turbines
- Physical or chemical processing.[3] Most of these emissions result from manufacture or processing of chemicals and materials, e.g., cement, aluminum, adipic acid, ammonia manufacture, and waste processing
- Transportation of materials, products, waste, and employees. These emissions result from the combustion of fuels in company owned/controlled mobile combustion sources (e.g., trucks, trains, ships, airplanes, buses, and cars)
- Fugitive emissions. These emissions result from intentional or unintentional releases, e.g., equipment leaks from joints, seals, packing, and gaskets; methane emissions from coal mines and venting; hydrofluorocarbon (HFC) emissions during the use of refrigeration and air conditioning equipment; and methane leakages from gas transport.

SALE OF OWN-GENERATED ELECTRICITY

Emissions associated with the sale of own-generated electricity to another company are not deducted/netted from scope 1. This treatment of sold electricity is consistent with how other sold GHG intensive products are accounted, e.g., emissions from the production of sold clinker by a cement company or the production of scrap steel by an iron and steel company are not subtracted from their scope 1 emissions. Emissions associated with the sale/transfer of own-generated electricity may be reported in optional information (see chapter 9).

Scope 2: Electricity indirect GHG emissions

Companies report the emissions from the generation of purchased electricity that is consumed in its owned or controlled equipment or operations as scope 2. Scope 2 emissions are a special category of indirect emissions. For many companies, purchased electricity represents one of the largest sources of GHG emissions and the most significant opportunity to reduce these emissions. Accounting for scope 2 emissions allows companies to assess the risks and opportunities associated with changing electricity and GHG emissions costs. Another important reason for companies to track these emissions is that the information may be needed for some GHG programs.

Companies can reduce their use of electricity by investing in energy efficient technologies and energy conservation. Additionally, emerging green power markets[4] provide opportunities for some companies to switch to less GHG intensive sources of electricity. Companies can also install an efficient on site co-generation plant, particularly if it replaces the purchase of more GHG intensive electricity from the grid or electricity supplier. Reporting of scope 2 emissions allows transparent accounting of GHG emissions and reductions associated with such opportunities.

INDIRECT EMISSIONS ASSOCIATED WITH TRANSMISSION AND DISTRIBUTION

Electric utility companies often purchase electricity from independent power generators or the grid and resell it to end-consumers through a transmission and distribution (T&D) system.[5] A portion of the electricity purchased by a utility company is consumed (T&D loss) during its transmission and distribution to end-consumers (see Box 3).

Consistent with the scope 2 definition, emissions from the generation of purchased electricity that is consumed during transmission and distribution are reported in scope 2 by the company that owns or controls the T&D operation. End consumers of the purchased electricity do not report indirect emissions associated with T&D losses in scope 2 because they do not own or control the T&D operation where the electricity is consumed (T&D loss).

BOX 3. Electricity balance

GENERATED ELECTRICITY = Purchased electricity consumed by the utility company during T&D + Purchased electricity consumed by end consumers

This approach ensures that there is no double counting within scope 2 since only the T&D utility company will account for indirect emissions associated with T&D losses in scope 2. Another advantage of this approach is that it adds simplicity to the reporting of scope 2 emissions by allowing the use of commonly available emission factors that in most cases do not include T&D losses. End consumers may, however, report their indirect emissions associated with T&D losses in scope 3 under the category "generation of electricity consumed in a T&D system." Appendix A provides more guidance on accounting for emissions associated with T&D losses.

OTHER ELECTRICITY-RELATED INDIRECT EMISSIONS

Indirect emissions from activities upstream of a company's electricity provider (e.g., exploration, drilling, flaring, transportation) are reported under scope 3. Emissions from the generation of electricity that has been purchased for resale to end-users are reported in scope 3 under the category "generation of electricity that is purchased and then resold to end users." Emissions from the generation of purchased electricity for resale to non-end-users (e.g., electricity traders) may be reported separately from scope 3 in "optional information."

The following two examples illustrate how GHG emissions are accounted for from the generation, sale, and purchase of electricity.

Example one (Figure 4): Company A is an independent power generator that owns a power generation plant. The power plant produces 100 MWh of electricity and releases 20 tonnes of emissions per year. Company B is an electricity trader and has a supply contract with company A to purchase all its electricity. Company B resells the purchased electricity (100 MWh) to company C, a utility company that owns / controls the T&D system. Company C consumes 5 MWh of electricity in its T&D system and sells the remaining 95 MWh to company D. Company D is an end user who consumes the purchased electricity (95 MWh) in its own operations. Company A reports its direct emissions from power generation under scope 1. Company B reports emissions from the purchased electricity sold to a non-end-user as optional information separately from scope 3. Company C reports the indirect emissions from the generation of the part of the purchased electricity that is sold to the end-user under scope 3 and the part of the purchased electricity that it consumes in its T&D system under scope 2. End-user D reports the indirect emissions associated with its own consumption of purchased electricity under scope 2 and can optionally report emissions associated with upstream T&D losses in scope 3. Figure 4 shows the accounting of emissions associated with these transactions.

Example two: Company D installs a co-generation unit and sells surplus electricity to a neighboring company E for its consumption. Company D reports all direct emissions from the co-generation unit under scope 1. Indirect emissions from the generation of electricity for export to E are reported by D under optional information separately

Seattle City Light: Accounting for the purchase of electricity sold to end users

Seattle City Light (SCL), Seattle's municipal utility company, sells electricity to its end-use customers that is either produced at its own hydropower facilities, purchased through long-term contracts, or purchased on the short-term market. SCL used the first edition of the *GHG Protocol Corporate Standard* to estimate its year 2000 and year 2002 GHG emissions, and emissions associated with generation of net purchased electricity sold to end-users was an important component of that inventory. SCL tracks and reports the amount of electricity sold to end-users on a monthly and annual basis.

SCL calculates net purchases from the market (brokers and other utility companies) by subtracting sales to the market from purchases from the market, measured in MWh. This allows a complete accounting of all emissions impacts from its entire operation, including interactions with the market and end-users. On an annual basis, SCL produces more electricity than there is end-use demand, but the production does not match load in all months. So SCL accounts for both purchases from the market and sales into the market. SCL also includes the scope 3 upstream emissions from natural gas production and delivery, operation of SCL facilities, vehicle fuel use, and airline travel.

SCL believes that sales to end-users are a critical part of the emissions profile for an electric utility company. Utility companies need to provide information on their emissions profile to educate end-users and adequately represent the impact of their business, the providing of electricity. End-use customers need to rely on their utility company to provide electricity, and except in some instances (green power programs), do not have a choice in where their electricity is purchased. SCL meets a customer need by providing emissions information to customers who are doing their own emissions inventory.

from scope 3. Company E reports indirect emissions associated with the consumption of electricity purchased from the company D's co-generation unit under scope 2.

For more guidance, see Appendix A on accounting for indirect emissions from purchased electricity.

Scope 3: Other indirect GHG emissions

Scope 3 is optional, but it provides an opportunity to be innovative in GHG management. Companies may want to focus on accounting for and reporting those activities that are relevant to their business and goals, and for which they have reliable information. Since companies have discretion over which categories they choose to report, scope 3 may not lend itself well to comparisons across companies. This section provides an indicative list of scope 3 categories and includes case studies on some of the categories.

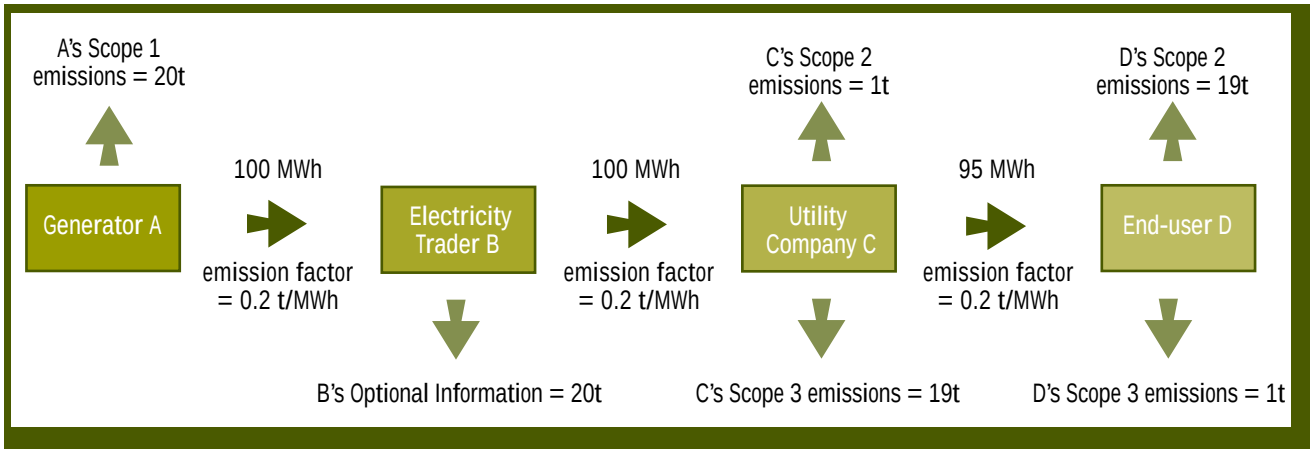
Some of these activities will be included under scope 1 if the pertinent emission sources are owned or controlled by the company (e.g., if the transportation of products is done in vehicles owned or controlled by the company). To determine if an activity falls within scope 1 or scope 3, the company should refer to the selected consolidation approach (equity or control) used in setting its organizational boundaries.

- Extraction and production of purchased materials and fuels[6]
- Transport-related activities
  - Transportation of purchased materials or goods
  - Transportation of purchased fuels
  - Employee business travel
  - Employees commuting to and from work
  - Transportation of sold products
  - Transportation of waste
- Electricity-related activities not included in scope 2 (see Appendix A)
  - Extraction, production, and transportation of fuels consumed in the generation of electricity (either purchased or own generated by the reporting company)
  - Purchase of electricity that is sold to an end user (reported by utility company)
  - Generation of electricity that is consumed in a T&D system (reported by end-user)
- Leased assets, franchises, and outsourced activities—emissions from such contractual arrangements are only classified as scope 3 if the selected consolidation approach (equity or control) does not apply to them. Clarification on the classification of leased assets should be obtained from the company accountant (see section on leases below).
- Use of sold products and services
- Waste disposal
  - Disposal of waste generated in operations
  - Disposal of waste generated in the production of purchased materials and fuels
  - Disposal of sold products at the end of their life

ACCOUNTING FOR SCOPE 3 EMISSIONS

Accounting for scope 3 emissions need not involve a full-blown GHG life cycle analysis of all products and operations. Usually it is valuable to focus on one or two major GHG-generating activities. Although it is difficult to provide generic guidance on which scope 3 emissions to include in an inventory, some general steps can be articulated:

FIGURE 4. GHG accounting from the sale and purchase of electricity



1. Describe the value chain. Because the assessment of scope 3 emissions does not require a full life cycle assessment, it is important, for the sake of transparency, to provide a general description of the value chain and the associated GHG sources. For this step, the scope 3 categories listed can be used as a checklist. Companies usually face choices on how many levels up- and down-stream to include in scope 3. Consideration of the company's inventory or business goals and relevance of the various scope 3 categories will guide these choices.

2. Determine which scope 3 categories are relevant. Only some types of upstream or downstream emissions categories might be relevant to the company. They may be relevant for several reasons:

- They are large (or believed to be large) relative to the company's scope 1 and scope 2 emissions
- They contribute to the company's GHG risk exposure
- They are deemed critical by key stakeholders (e.g., feedback from customers, suppliers, investors, or civil society)
- There are potential emissions reductions that could be undertaken or influenced by the company.

The following examples may help decide which scope 3 categories are relevant to the company.

- If fossil fuel or electricity is required to use the company's products, product use phase emissions may be a relevant category to report. This may be especially important if the company can influence product design attributes (e.g., energy efficiency) or customer behavior in ways that reduce GHG emissions during the use of the products.

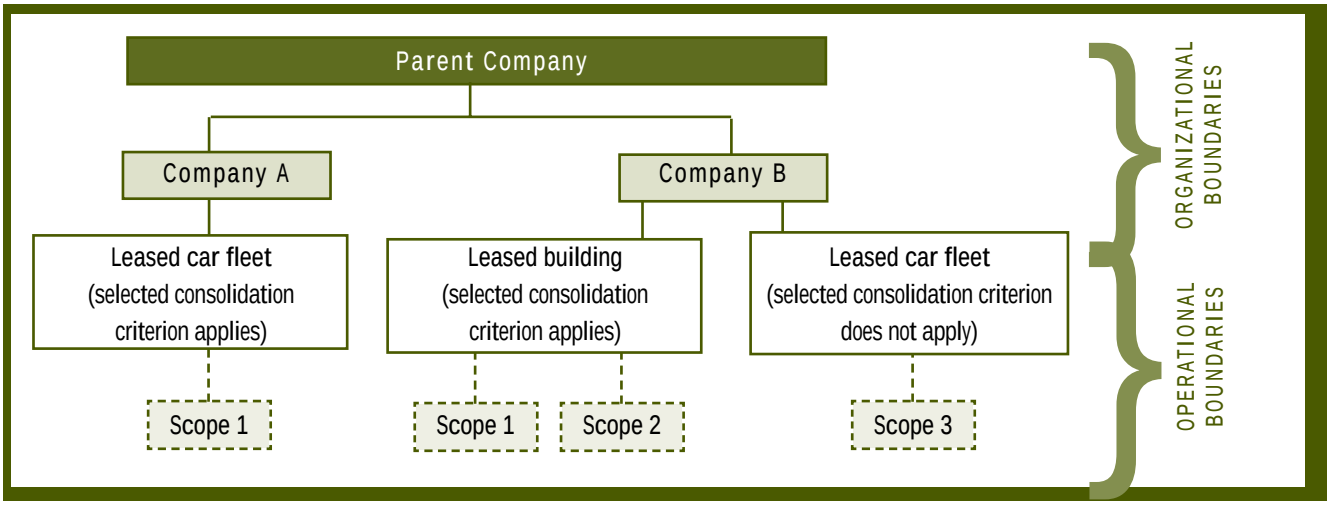
DHL Nordic Express: The business case for accounting for outsourced transportation services

As a major transportation and logistics company in northern Europe, DHL Express Nordic serves large loads and special transport needs as well as world wide express package and document deliveries and offers courier, express, parcel, systemized and specialty business services. Through participation in the Business Leaders Initiative on Climate Change, the company found that 98 percent of its emissions in Sweden originate from the transport of goods via outsourced partner transportation firms. Each partner is required, as an element of the subcontract payment scheme, to enter data on vehicles used, distance traveled, fuel efficiency, and background data. This data is used to calculate total emissions via a tailored calculation tool for outsourced transportation which gives a detailed picture of its scope 3 emissions. Linking data to specific carriers allows the company to screen individual carriers for environmental performance and affect decisions based on each carrier's emissions performance, which is seen through scope 3 as DHL's own performance.

By including scope 3 and promoting GHG reductions throughout the value chain, DHL Express Nordic increased the relevance of its emissions footprint, expanded opportunities for reducing its impacts and improved its ability to recognize cost saving opportunities. Without scope 3, DHL Express Nordic would have lacked much of the information needed to be able to understand and effectively manage its emissions.

SCOPE	EMISSIONS (tCO_2)
Scope 1	7,265
Scope 2	52
Scope 3	327,634
Total	334,951

FIGURE 5. Accounting of emissions from leased assets



- Outsourced activities are often candidates for scope 3 emissions assessments. It may be particularly important to include these when a previously outsourced activity contributed significantly to a company's scope 1 or scope 2 emissions.
- If GHG-intensive materials represent a significant fraction of the weight or composition of a product used or manufactured (e.g., cement, aluminum), companies may want to examine whether there are opportunities to reduce their consumption of the product or to substitute less GHG-intensive materials.
- Large manufacturing companies may have significant emissions related to transporting purchased materials to centralized production facilities.
- Commodity and consumer product companies may want to account for GHGs from transporting raw materials, products, and waste.
- Service sector companies may want to report on emissions from employee business travel; this emissions source is not as likely to be significant for other kinds of companies (e.g., manufacturing companies).

3. Identify partners along the value chain. Identify any partners that contribute potentially significant amounts of GHGs along the value chain (e.g., customers/users, product designers/manufacturers, energy providers, etc.). This is important when trying to identify sources, obtain relevant data, and calculate emissions.

4. Quantify scope 3 emissions. While data availability and reliability may influence which scope 3 activities are included in the inventory, it is accepted that data accuracy may be lower. It may be more important to understand the relative magnitude of and possible changes to scope 3 activities. Emission estimates are acceptable as long as there is transparency with regard to the estimation approach, and the data used for the analysis are adequate to support the objectives of the inventory. Verification of scope 3 emissions will often be difficult and may only be considered if data is of reliable quality.

IKEA: Customer transportation to and from its retail stores

IKEA, an international home furniture and furnishings retailer, decided to include scope 3 emissions from customer travel when it became clear, through participation in the Business Leaders Initiative on Climate Change (BLICC) program, that these emissions were large relative its scope 1 and scope 2 emissions. Furthermore, these emissions are particularly relevant to IKEA's store business model. Customer travel to its stores, often from long distances, is directly affected by IKEA's choice of store location and the warehouse shopping concept.

Customer transportation emission calculations were based on customer surveys at selected stores. Customers were asked for the distance they traveled to the store (based on home postal code), the number of customers in their car, the number of other stores they intended to visit at that shopping center that day, and whether they had access to public transportation to the store. Extrapolating this data to all IKEA stores and multiplying distance by average vehicle efficiencies for each country, the company calculated that 66 percent of its emissions inventory was from scope 3 customer travel. Based on this information, IKEA will have significant influence over future scope 3 emissions by considering GHG emissions when developing public transportation options and home delivery services for its existing and new stores.

Leased assets, outsourcing, and franchises

The selected consolidation approach (equity share or one of the control approaches) is also applied to account for and categorize direct and indirect GHG emissions from contractual arrangements such as leased assets, outsourcing, and franchises. If the selected equity or control approach does not apply, then the company may account for emissions from the leased assets, outsourcing, and franchises under scope 3. Specific guidance on leased assets is provided below:

- USING EQUITY SHARE OR FINANCIAL CONTROL: The lessee only accounts for emissions from leased assets that are treated as wholly owned assets in financial accounting and are recorded as such on the balance sheet (i.e., finance or capital leases).

- USING OPERATIONAL CONTROL: The lessee only accounts for emissions from leased assets that it operates (i.e., if the operational control criterion applies).

Guidance on which leased assets are operating and which are finance leases should be obtained from the company accountant. In general, in a finance lease, an organization assumes all rewards and risks from the leased asset, and the asset is treated as wholly owned and is recorded as such on the balance sheet. All leased assets that do not meet those criteria are operating leases. Figure 5 illustrates the application of consolidation criteria to account for emissions from leased assets.

Double counting

Concern is often expressed that accounting for indirect emissions will lead to double counting when two different companies include the same emissions in their respective inventories. Whether or not double counting occurs depends on how consistently companies with shared ownership or trading program administrators choose the same approach (equity or control) to set the organizational boundaries. Whether or not double counting matters, depends on how the reported information is used.

Double counting needs to be avoided when compiling national (country) inventories under the Kyoto Protocol, but these are usually compiled via a top-down exercise using national economic data, rather than aggregation of bottom-up company data. Compliance regimes are more likely to focus on the "point of release" of emissions (i.e., direct emissions) and/or indirect emissions from use of electricity. For GHG risk management and voluntary reporting, double counting is less important.

World Resources Institute: Innovations in estimating employee commuting emissions

The World Resources Institute has a long-standing commitment to reduce its annual GHG emissions to net zero through a combination of internal reduction efforts and external offset purchases. WRI's emissions inventory includes scope 2 indirect emissions associated with the consumption of purchased electricity and scope 3 indirect emissions associated with business air travel, employee commuting, and paper use. WRI has no scope 1 direct emissions.

Collecting employee commuting activity data from WRI's 140 staff can be challenging. The method used is to survey employees once each year about their average commuting habits. In the first two years of the initiative, WRI used an Excel spreadsheet accessible to all employees on a shared internal network, but only achieved a 48 percent participation rate. A simplified, web-based survey that downloaded into a spreadsheet improved participation to 65 percent in the third year. Using feedback on the survey design, WRI further simplified and refined survey questions, improved user friendliness, and reduced the time needed to complete the survey to less than a minute. Employee participation rate rose to 88 percent.

Designing a survey that was easily navigable and had clearly articulated questions significantly improved the completeness and accuracy of the employee commuting activity data. An added benefit was that employees felt a certain amount of pride at having contributed to the inventory development process. The experience also provided a positive internal communications opportunity.

WRI has developed a guide consistent with *GHG Protocol Corporate Standard* to help office-based organizations understand how to track and manage their emissions. *Working 9 to 5 on Climate Change: An Office Guide* is accompanied by a suite of calculation tools, including one for using a survey method to estimate employee commuting emissions. The Guide and tools can be downloaded from the GHG Protocol Initiative website (www.ghgprotocol.org).

Transportation-related emissions are the fastest growing GHG emissions category in the United States. This includes commercial, business, and personal travel as well as commuting. By accounting for commuting emissions, companies may find that several practical opportunities exist for reducing them. For example, when WRI moved to new office space, it selected a building located close to public transportation, reducing the need for employees to drive to work. In its lease, WRI also negotiated access to a locked bike room for those employees who cycle to work. Finally, telework programs significantly reduce commuting emissions by avoiding or decreasing the need to travel.

For participating in GHG markets or obtaining GHG credits, it would be unacceptable for two organizations to claim ownership of the same emissions commodity and it is therefore necessary to make sufficient provisions to ensure that this does not occur between participating companies (see chapter 11).

SCOPES AND DOUBLE COUNTING

The *GHG Protocol Corporate Standard* is designed to prevent double counting of emissions between different companies within scope 1 and 2. For example, the scope 1 emissions of company A (generator of electricity) can be counted as the scope 2 emissions of company B (end-user of electricity) but company A's scope 1 emissions cannot be counted as scope 1 emissions by company C (a partner organization of company A) as long as company A and company C consistently apply the same control or equity share approach when consolidating emissions.

Similarly, the definition of scope 2 does not allow double counting of emissions within scope 2, i.e., two different companies cannot both count scope 2 emissions from the purchase of the same electricity. Avoiding this type of double counting within scope 2 emissions makes it a useful accounting category for GHG trading programs that regulate end users of electricity.

When used in external initiatives such as GHG trading, the robustness of the scope 1 and 2 definitions combined with the consistent application of either the control or equity share approach for defining organizational boundaries allows only one company to exercise ownership of scope 1 or scope 2 emissions.

ABB: Calculating product use phase emissions associated with electrical appliances

ABB, an energy and automation technology company based in Switzerland, produces a variety of appliances and equipment, such as circuit breakers and electrical drives, for industrial applications. ABB has a stated goal to issue Environmental Product Declarations (EPDs) for all its core products based on life cycle assessment. As a part of its committment, ABB reports both manufacturing and product use phase GHG emissions for a variety of its products using a standardized calculation method and set of assumptions. For example, product use phase calculations for ABB's 4 kW DriveIT Low Voltage AC drive are based on a 15-year expected lifetime and an average of 5,000 annual operating hours. This activity data is multiplied by the average electricity emission factor for OECD countries to produce total lifetime product use emissions.

Compared with manufacturing emissions, product use phase emissions account for about 99 percent of total life cycle emissions for this type of drive. The magnitude of these emissions and ABB's control of the design and performance of this equipment clearly give the company significant leverage on its customers' emissions by improving product efficiency or helping customers design better overall systems in which ABB's products are involved. By clearly defining and quantifying significant value chain emissions, ABB has gained insight into and influence over its emissions footprint.

NOTES

[1] The terms "direct" and "indirect" as used in this document should not be confused with their use in national GHG inventories where 'direct' refers to the six Kyoto gases and 'indirect' refers to the precursors NOx, NMVOC, and CO.

[2] The term "electricity" is used in this chapter as shorthand for electricity, steam, and heating/cooling.

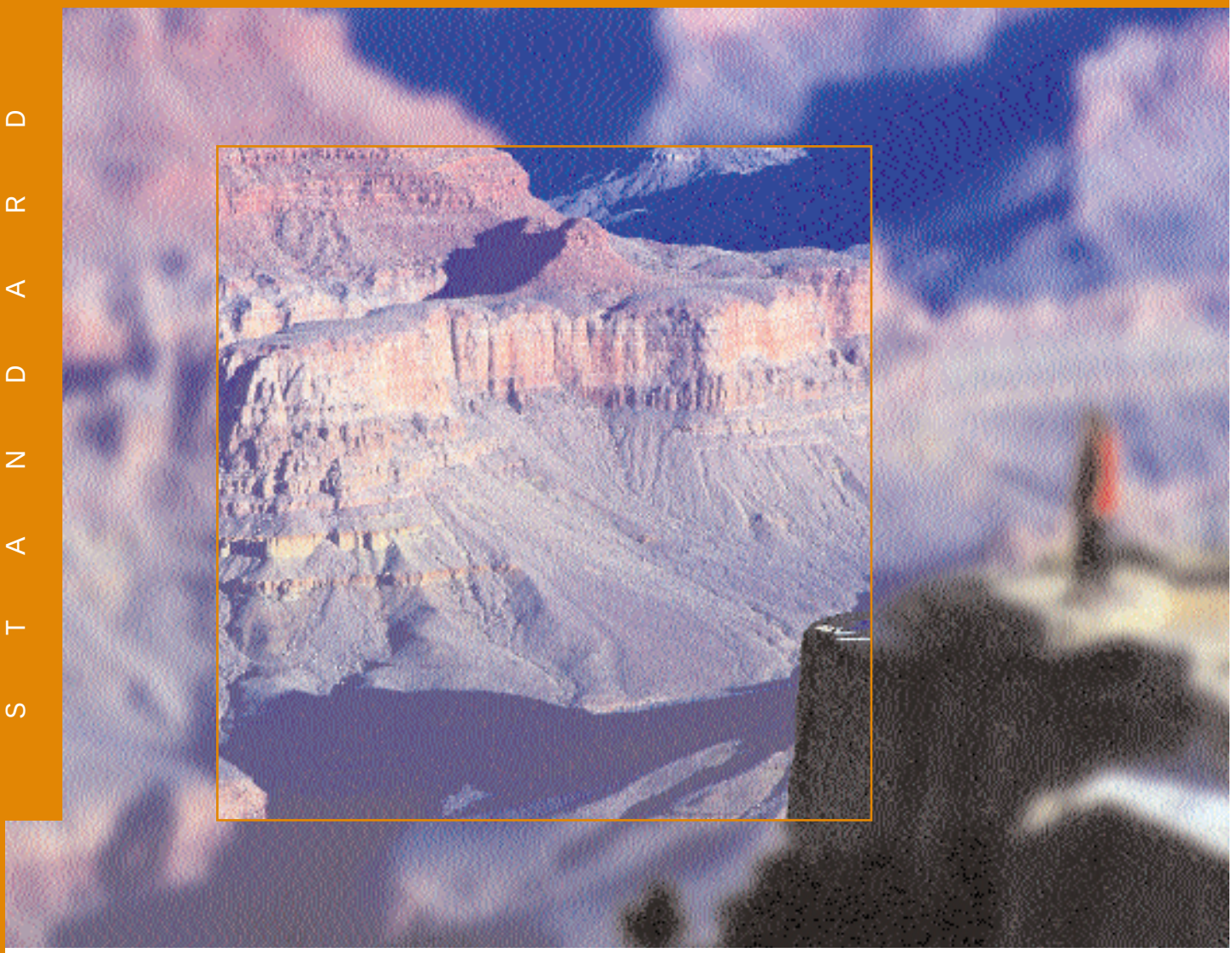
[3] For some integrated manufacturing processes, such as ammonia manufacture, it may not be possible to distinguish between GHG emissions from the process and those from the production of electricity, heat, or steam.

[4] Green power includes renewable energy sources and specific clean energy technologies that reduce GHG emissions relative to other sources of energy that supply the electric grid, e.g., solar photovoltaic panels, geothermal energy, landfill gas, and wind turbines.

[5] A T&D system includes T&D lines and other T&D equipment (e.g., transformers).

[6] "Purchased materials and fuels" is defined as material or fuel that is purchased or otherwise brought into the organizational boundary of the company.

5 Tracking Emissions Over Time



Companies often undergo significant structural changes such as acquisitions, divestments, and mergers. These changes will alter a company's historical emission profile, making meaningful comparisons over time difficult. In order to maintain consistency over time, or in other words, to keep comparing "like with like", historic emission data will have to be recalculated.

Companies may need to track emissions over time in response to a variety of business goals, including:

- Public reporting
- Establishing GHG targets
- Managing risks and opportunities
- Addressing the needs of investors and other stakeholders

A meaningful and consistent comparison of emissions over time requires that companies set a performance datum with which to compare current emissions. This performance datum is referred to as the base year[1] emissions. For consistent tracking of emissions over time, the base year emissions may need to be recalculated as companies undergo significant structural changes such as acquisitions, divestments, and mergers.

The first step in tracking emissions, however, is the selection of a base year.

Choosing a base year

Companies shall choose and report a base year for which verifiable emissions data are available and specify their reasons for choosing that particular year.

Most companies select a single year as their base year. However, it is also possible to choose an average of annual emissions over several consecutive years. For example, the U.K. ETS specifies an average of 1998–2000 emissions as the reference point for tracking reductions. A multi-year average may help smooth out unusual fluctuations in GHG emissions that would make a single year's data unrepresentative of the company's typical emissions profile.

The inventory base year can also be used as a basis for setting and tracking progress towards a GHG target in which case it is referred to as a target base year (see chapter 11).

Recalculating base year emissions

Companies shall develop a base year emissions recalculation policy, and clearly articulate the basis and context for any recalculations. If applicable, the policy shall state any "significance threshold" applied for deciding on historic emissions recalculation. "Significance threshold" is a qualitative and/or quantitative criterion used to define any significant change to the data, inventory boundary, methods, or any other relevant factors. It is the responsibility of the company to determine the "significance threshold" that triggers base year emissions recalculation and to disclose it. It is the responsibility of the verifier to confirm the company's adherence to its threshold policy. The following cases shall trigger recalculation of base year emissions:

- Structural changes in the reporting organization that have a significant impact on the company's base year emissions. A structural change involves the transfer of ownership or control of emissions-generating activities or operations from one company to another. While a single structural change might not have a significant impact on the base year emissions, the cumulative effect of a number of minor structural changes can result in a significant impact. Structural changes include:
  - Mergers, acquisitions, and divestments
  - Outsourcing and insourcing of emitting activities
- Changes in calculation methodology or improvements in the accuracy of emission factors or activity data that result in a significant impact on the base year emissions data
- Discovery of significant errors, or a number of cumulative errors, that are collectively significant.

In summary, base year emissions shall be retroactively recalculated to reflect changes in the company that would otherwise compromise the consistency and relevance of the reported GHG emissions information. Once a company has determined its policy on how it will recalculate base year emissions, it shall apply this policy in a consistent manner. For example, it shall recalculate for both GHG emissions increases and decreases.

Selection and recalculation of a base year should relate to the business goals and the particular context of the company:

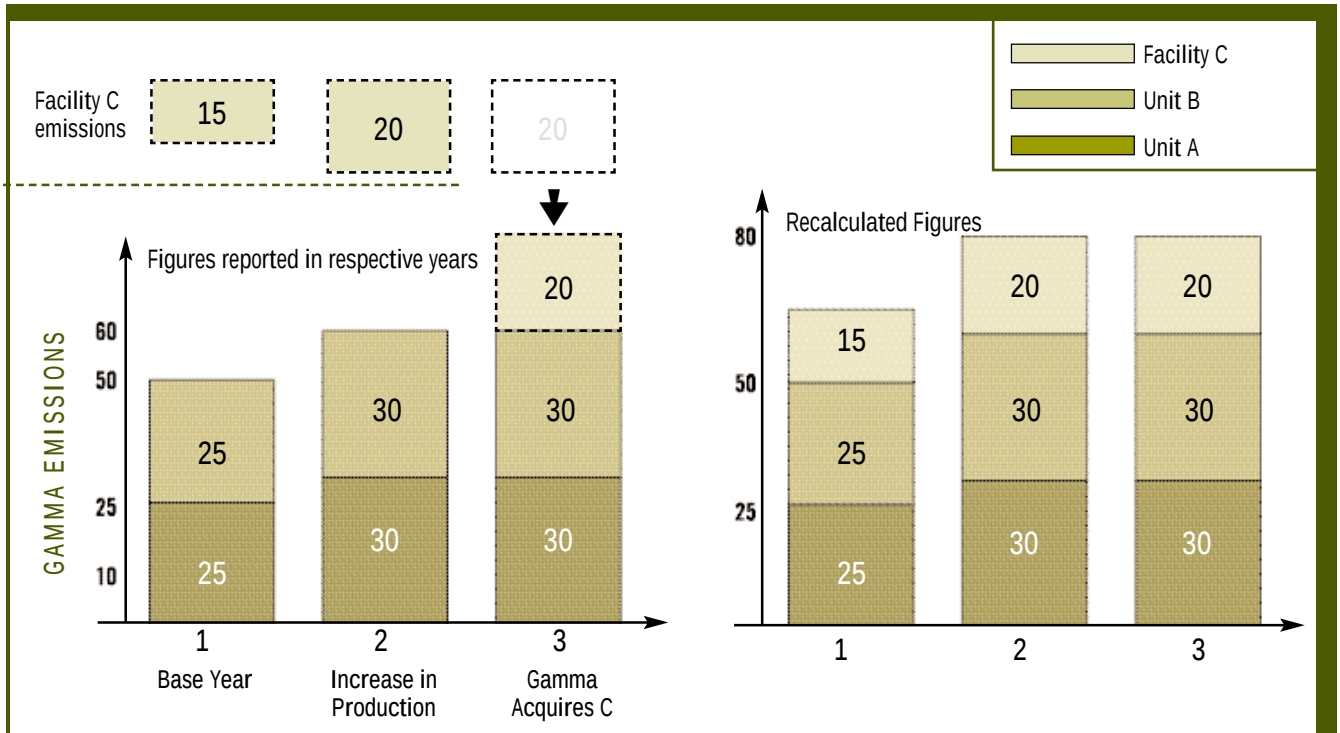
- For the purpose of reporting progress towards voluntary public GHG targets, companies may follow the standards and guidance in this chapter
- A company subject to an external GHG program may face external rules governing the choice and recalculation of base year emissions
- For internal management goals, the company may follow the rules and guidelines recommended in this document, or it may develop its own approach, which should be followed consistently.

Choosing a base year

Companies should choose as a base year the earliest relevant point in time for which they have reliable data. Some organizations have adopted 1990 as a base year in order to be consistent with the Kyoto Protocol. However, obtaining reliable and verifiable data for historical base years such as 1990 can be very challenging.

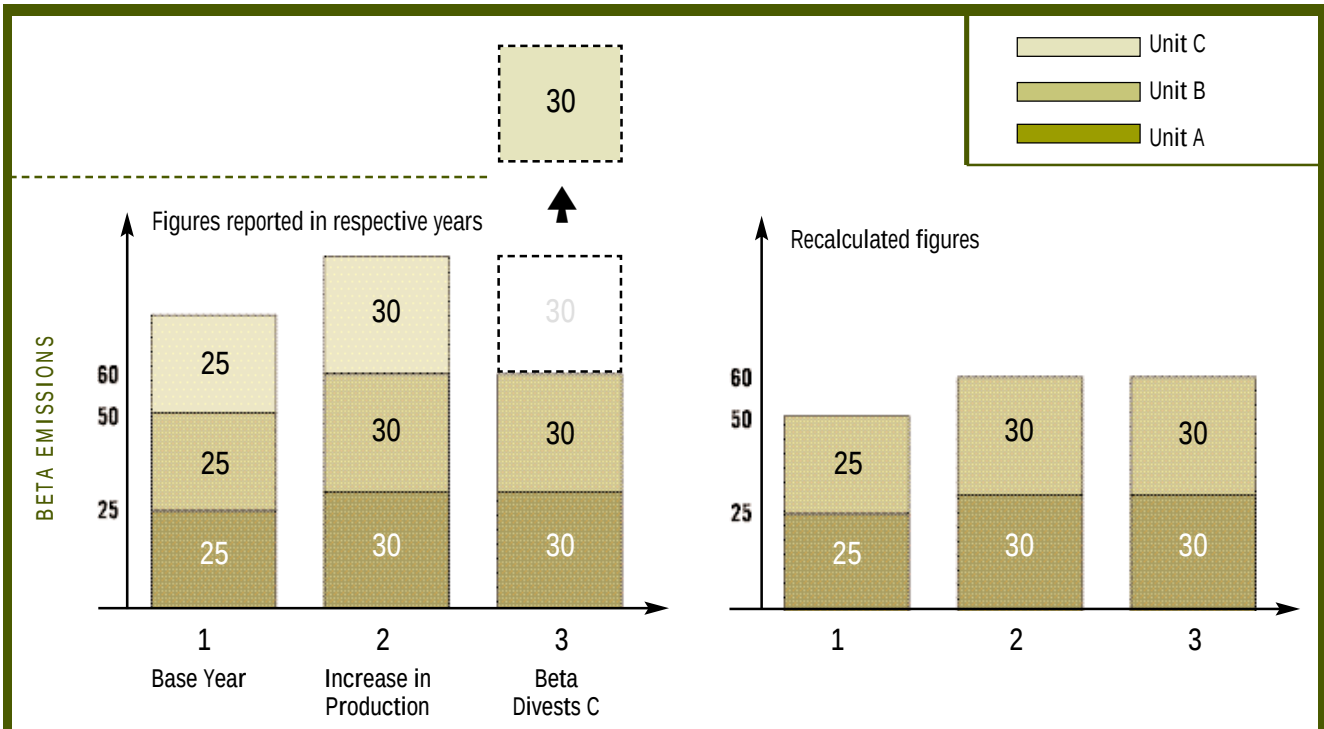
If a company continues to grow through acquisitions, it may adopt a policy that shifts or "rolls" the base year forward by a number of years at regular intervals. Chapter 11 contains a description of such a "rolling base year," including a comparison with the fixed base year approach described in this chapter. A fixed base year has the advantage of allowing emissions data to be compared on a like-with-like basis over a longer time period than a rolling base year approach. Most emissions trading and registry programs require a fixed base year policy to be implemented.

FIGURE 6. Base year emissions recalculation for an acquisition



Company Gamma consists of two business units (A and B). In its base year (year one), each business unit emits 25 tonnes CO_2. In year two, the company undergoes "organic growth," leading to an increase in emissions to 30 tonnes CO_2 per business unit, i.e., 60 tonnes CO_2 in total. The base year emissions are not recalculated in this case. At the beginning of year three, the company acquires production facility C from another company. The annual emissions of facility C in year one were 15 tonnes CO_2, and 20 tonnes CO_2 in years two and three. The total emission of company Gamma in year three, including facility C, are therefore 80 tonnes CO_2. To maintain consistency over time, the company recalculates its base year emissions to take into account the acquisition of facility C. The base year emissions increase by 15 tonnes CO_2—the quantity of emissions produced by facility C in Gamma's base year. The recalculated base year emissions are 65 tonnes CO_2. Gamma also (optionally) reports 80 tonnes CO_2 as the recalculated emissions for year two.

FIGURE 7. Base year emissions recalculation for a divestment



Company Beta consists of three business units (A, B, and C). Each business unit emits 25 tonnes CO_2 and the total emissions for the company are 75 tonnes CO_2 in the base year (year one). In year two, the output of the company grows, leading to an increase in emissions to 30 tonnes CO_2 per business unit, i.e., 90 tonnes CO_2 in total. At the beginning of year three, Beta divests business unit C and its annual emissions are now 60 tonnes, representing an apparent reduction of 15 tonnes relative to the base year emissions. However, to maintain consistency over time, the company recalculates its base year emissions to take into account the divestment of business unit C. The base year emissions are lowered by 25 tonnes CO_2—the quantity of emissions produced by the business unit C in the base year. The recalculated base year emissions are 50 tonnes CO_2, and the emissions of company Beta are seen to have risen by 10 tonnes CO_2 over the three years. Beta (optionally) reports 60 tonnes CO_2 as the recalculated emissions for year two.

Significance thresholds for recalculations

Whether base year emissions are recalculated depends on the significance of the changes. The determination of a significant change may require taking into account the cumulative effect on base year emissions of a number of small acquisitions or divestments. The *GHG Protocol Corporate Standard* makes no specific recommendations as to what constitutes "significant." However, some GHG programs do specify numerical significance thresholds, e.g., the California Climate Action Registry, where the change threshold is 10 percent of the base year emissions, determined on a cumulative basis from the time the base year is established.

Base year emissions recalculation for structural changes

Structural changes trigger recalculation because they merely transfer emissions from one company to another without any change of emissions released to the atmosphere, for example, an acquisition or divestment only transfers existing GHG emissions from one company's inventory to another.

Figures 6 and 7 illustrate the effect of structural changes and the application of this standard on recalculation of base year emissions.

Timing of recalculations for structural changes

When significant structural changes occur during the middle of the year, the base year emissions should be recalculated for the entire year, rather than only for the remainder of the reporting period after the structural change occurred. This avoids having to recalculate base year emissions again in the succeeding year. Similarly, current year emissions should be recalculated for the entire year to maintain consistency with the base year recalculation. If it is not possible to make a recalculation in the year of the structural change (e.g., due to

lack of data for an acquired company), the recalculation may be carried out in the following year.[2]

Recalculations for changes in calculation methodology or improvements in data accuracy

A company might report the same sources of GHG emissions as in previous years, but measure or calculate them differently. For example, a company might have used a national electric power generation emissions factor to estimate scope 2 emissions in year one of reporting. In later years, it may obtain more accurate utility-specific emission factors (for the current as well as past years) that better reflect the GHG emissions associated with the electricity that it has purchased. If the differences in emissions resulting from such a change are significant, historic data is recalculated applying the new data and/or methodology.

Sometimes the more accurate data input may not reasonably be applied to all past years or new data points may not be available for past years. The company may then have to backcast these data points, or the change in data source may simply be acknowledged without recalculation. This acknowledgement should be made in the report each year in order to enhance transparency; otherwise, new users of the report in the two or three years after the change may make incorrect assumptions about the performance of the company.

Any changes in emission factor or activity data that reflect real changes in emissions (i.e., changes in fuel type or technology) do not trigger a recalculation.

Optional reporting for recalculations

Optional information that companies may report on recalculations includes:

- The recalculated GHG emissions data for all years between the base year and the reporting year
- All actual emissions as reported in respective years in the past, i.e., the figures that have not been recalculated. Reporting the original figures in addition to the recalculated figures contributes to transparency since it illustrates the evolution of the company's structure over time.

No base year emissions recalculations for facilities that did not exist in the base year

Base year emissions are not recalculated if the company makes an acquisition of (or insources) operations that did not exist in its base year. There may only be a recalculation of historic data back to the year in which the acquired company came into existence. The same applies to cases where the company makes a divestment of (or outsources) operations that did not exist in the base year.

Figure 8 illustrates a situation where no recalculation of base year emissions is required, since the acquired facility came into existence after the base year was set.

No recalculation for " outsourcing/insourcing" if reported under scope 2 and/or scope 3

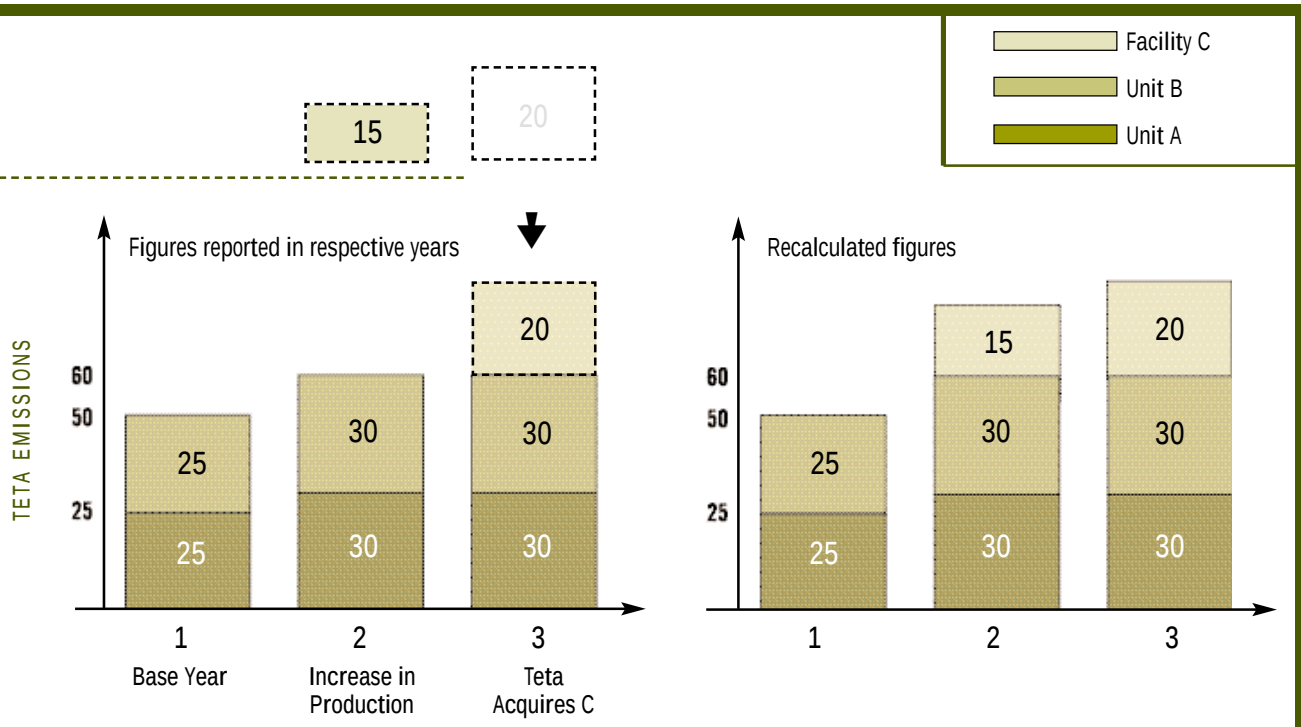
Structural changes due to "outsourcing" or "insourcing" do not trigger base year emissions recalculation if the company is reporting its indirect emissions from relevant outsourced or insourced activities. For example, outsourcing production of electricity, heat, or steam does not trigger base year emissions recalculation, since the *GHG Protocol Corporate Standard* requires scope 2 reporting. However, outsourcing/insourcing that shifts significant emissions between scope 1 and scope 3 when scope 3 is not reported does trigger a base year emissions recalculation (e.g., when a company outsources the transportation of products).

In case a company decides to track emissions over time separately for different scopes, and has separate base years for each scope, base year emissions recalculation for outsourcing or insourcing is made.

ENDESA: Recalculation of base year emissions because of structural changes

The *GHG Protocol Corporate Standard* requires setting a base year for comparing emissions over time. To be able to compare over time, the base year emissions must be recalculated if any structural changes occur in the company. In a deal completed January 2002, the ENDESA Group, a power generation company based in Spain, sold its 87.5 percent holding in Viesgo, a part of its Spanish power generation business, to ENEL, an Italian power company. To account for this structural change, historical emissions from the six power plants included in the sale were no longer accounted for in the Endesa GHG inventory and therefore removed from its base year emissions. This recalculation provides ENDESA with a complete and comparable picture of its historical emissions.

FIGURE 8. Acquisition of a facility that came into existence after the base year was set



Company Teta consists of two business units (A and B). In its base year (year one), the company emits 50 tonnes CO_2. In year two, the company undergoes organic growth, leading to an increase in emissions to 30 tonnes CO_2 per business unit, i.e., 60 tonnes CO_2 in total. The base year emissions are not recalculated in this case. At the beginning of year three, Teta acquires a production facility C from another company. Facility C came into existence in year two, its emissions being 15 tonnes CO_2 in year two and 20 tonnes CO_2 in year three. The total emissions of company Teta in year three, including facility C, are therefore 80 tonnes CO_2. In this acquisition case, the base year emissions of company Teta do not change because the acquired facility C did not exist in year one when the base year of Teta was set. The base year emissions of Teta therefore remain at 50 tonnes CO_2. Teta (optionally) reports 75 tonnes as the recalculated figure for year two emissions.

No recalculation for organic growth or decline

Base year emissions and any historic data are not recalculated for organic growth or decline. Organic growth/decline refers to increases or decreases in production output, changes in product mix, and closures and openings of operating units that are owned or controlled by the company. The rationale for this is that organic growth or decline results in a change of emissions to the atmosphere and therefore needs to be counted as an increase or decrease in the company's emissions profile over time.

NOTES

[1] Terminology on this topic can be confusing. Base year emissions should be differentiated from the term "baseline," which is mostly used in the context of project-based accounting. The term base year focuses on a comparison of emissions over time, while a baseline is a hypothetical scenario for what GHG emissions would have been in the absence of a GHG reduction project or activity.

[2] For more information on the timing of base year emissions recalculations, see the guidance document "Base year recalculation methodologies for structural changes" on the GHG Protocol website (www.ghgprotocol.org).

6 Identifying and Calculating GHG Emissions

Once the inventory boundary has been established, companies generally calculate GHG emissions using the following steps:

1. Identify GHG emissions sources
2. Select a GHG emissions calculation approach
3. Collect activity data and choose emission factors
4. Apply calculation tools
5. Roll-up GHG emissions data to corporate level.

This chapter describes these steps and the calculation tools developed by the GHG Protocol. The calculation tools are available on the GHG Protocol Initiative website at www.ghgprotocol.org.

To create an accurate account of their emissions, companies have found it useful to divide overall emissions into specific categories. This allows a company to use specifically developed methodologies to accurately calculate the emissions from each sector and source category.

Identify GHG emissions sources

The first of the five steps in identifying and calculating a company's emissions as outlined in Figure 9 is to categorize the GHG sources within that company's boundaries. GHG emissions typically occur from the following source categories:

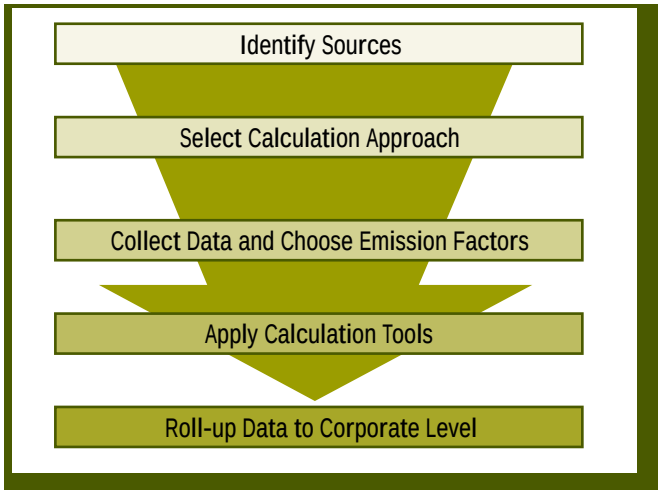
- Stationary combustion: combustion of fuels in stationary equipment such as boilers, furnaces, burners, turbines, heaters, incinerators, engines, flares, etc.
- Mobile combustion: combustion of fuels in transportation devices such as automobiles, trucks, buses, trains, airplanes, boats, ships, barges, vessels, etc.
- Process emissions: emissions from physical or chemical processes such as CO_2 from the calcination step in cement manufacturing, CO_2 from catalytic cracking in petrochemical processing, PFC emissions from aluminum smelting, etc.
- Fugitive emissions: intentional and unintentional releases such as equipment leaks from joints, seals, packing, gaskets, as well as fugitive emissions from coal piles, wastewater treatment, pits, cooling towers, gas processing facilities, etc.

Every business has processes, products, or services that generate direct and/or indirect emissions from one or more of the above broad source categories. The *GHG Protocol* calculation tools are organized based on these categories. Appendix D provides an overview of direct and indirect GHG emission sources organized by scopes and industry sectors that may be used as an initial guide to identify major GHG emission sources.

IDENTIFY SCOPE 1 EMISSIONS

As a first step, a company should undertake an exercise to identify its direct emission sources in each of the four source categories listed above. Process emissions are usually only relevant to certain industry sectors like oil and gas, aluminum, cement, etc. Manufacturing companies that generate process emissions and own or control a power production facility will likely have direct emissions from all the main source categories. Office-based organizations may not have any direct GHG emissions except in cases where they own or operate a vehicle, combustion device, or refrigeration and air-conditioning equipment. Often companies are surprised to realize that significant emissions come from sources that are not initially obvious (see United Technologies case study).

FIGURE 9.
Steps in identifying and calculating GHG emissions



IDENTIFY SCOPE 2 EMISSIONS

The next step is to identify indirect emission sources from the consumption of purchased electricity, heat, or steam. Almost all businesses generate indirect emissions due to the purchase of electricity for use in their processes or services.

IDENTIFY SCOPE 3 EMISSIONS

This optional step involves identification of other indirect emissions from a company's upstream and downstream activities as well as emissions associated with outsourced/contract manufacturing, leases, or franchises not included in scope 1 or scope 2.

The inclusion of scope 3 emissions allows businesses to expand their inventory boundary along their value chain and to identify all relevant GHG emissions. This provides a broad overview of various business linkages and possible opportunities for significant GHG emission reductions that may exist upstream or downstream of a company's immediate operations (see chapter 4 for an overview of activities that can generate GHG emissions along a company's value chain).

Select a calculation approach

Direct measurement of GHG emissions by monitoring concentration and flow rate is not common. More often, emissions may be calculated based on a mass balance or stoichiometric basis specific to a facility or process. However, the most common approach for calculating GHG emissions is through the application of documented emission factors. These factors are calculated ratios relating GHG emissions to a proxy measure of activity at an emissions source. The IPCC guidelines (IPCC, 1996) refer to a hierarchy of calculation approaches and techniques ranging from the application of generic emission factors to direct monitoring.

In many cases, particularly when direct monitoring is either unavailable or prohibitively expensive, accurate emission data can be calculated from fuel use data. Even small users usually know both the amount of fuel consumed and have access to data on the carbon content of the fuel through default carbon content coefficients or through more accurate periodic fuel sampling. Companies should use the most accurate calculation approach available to them and that is appropriate for their reporting context.

United Technologies Corporation: More than meets the eye

In 1996, United Technologies Corporation (UTC), a global aerospace and building systems technology corporation, appointed a team to set boundaries for the company's new Natural Resource Conservation, Energy and Water Use Reporting Program. The team focused on what sources of energy should be included in the program's annual report of energy consumption. The team decided jet fuel needed to be reported in the annual report; jet fuel was used by a number of UTC divisions for engine and flight hardware testing and for test firing. Although the amount of jet fuel used in any given year was subject to wide variation due to changing test schedules, the total amount consumed in an average year was believed to be large and potentially small enough to be specifically excluded. However, jet fuel consumption reports proved that initial belief incorrect. Jet fuel has accounted for between 9 and 13 percent of the corporation's total annual use of energy since the program commenced. Had UTC not included the use of jet fuel in annual data collection efforts, a significant emissions source would have been overlooked.

Collect activity data and choose emission factors

For most small to medium-sized companies and for many larger companies, scope 1 GHG emissions will be calculated based on the purchased quantities of commercial fuels (such as natural gas and heating oil) using published emission factors. Scope 2 GHG emissions will primarily be calculated from metered electricity consumption and supplier-specific, local grid, or other published emission factors. Scope 3 GHG emissions will primarily be calculated from activity data such as fuel use or passenger miles and published or third-party emission factors. In most cases, if source- or facility-specific emission factors are available, they are preferable to more generic or general emission factors.

Industrial companies may be faced with a wider range of approaches and methodologies. They should seek guidance from the sector-specific guidelines on the GHG Protocol website (if available) or from their industry associations (e.g., International Aluminum Institute, International Iron and Steel Institute, American Petroleum Institute, WBCSD Sustainable Cement Initiative, International Petroleum Industry Environmental Conservation Association).

Apply calculation tools

This section provides an overview of the GHG calculation tools and guidance available on the GHG Protocol Initiative website (www.ghgprotocol.org). Use of these tools is encouraged as they have been peer reviewed by experts and industry leaders, are regularly updated, and are believed to be the best available. The tools, however, are optional. Companies may substitute their own GHG calculation methods, provided they are more accurate than or are at least consistent with the *GHG Protocol Corporate Standards* approaches.

There are two main categories of calculation tools:

- Cross-sector tools that can be applied to different sectors. These include stationary combustion, mobile combustion, HFC use in refrigeration and air conditioning, and measurement and estimation uncertainty.
- Sector-specific tools that are designed to calculate emissions in specific sectors such as aluminum, iron and steel, cement, oil and gas, pulp and paper, office-based organizations.

Most companies will need to use more than one calculation tool to cover all their GHG emission sources. For example, to calculate GHG emissions from an aluminum production facility, the company would use the calculation tools for aluminum production, stationary combustion (for any consumption of purchased electricity, generation of energy on-site, etc), mobile combustion (for transportation of materials and products by train, vehicles employed on-site, employee business travel, etc), and HFC use (for refrigeration, etc). See Table 3 for the full list of tools.

STRUCTURE OF GHG PROTOCOL CALCULATION TOOLS

Each of the cross-sector and sector-specific calculation tools on the website share a common format and include step-by-step guidance on measuring and calculating emissions data. Each tool consists of a guidance section and automated worksheets with explanations on how to use them.

The guidance for each calculation tool includes the following sections:

- Overview: provides an overview of the purpose and content of the tool, the calculation method used in the tool, and a process description
- Choosing activity data and emission factors: provides sector-specific good practice guidance and references for default emission factors
- Calculation methods: describes different calculation methods depending on the availability of site-specific activity data and emission factors
- Quality control: provides good practice guidance
- Internal reporting and documentation: provides guidance on internal documentation to support emissions calculations.

ChevronTexaco: The SANGEA™ accounting and reporting system

ChevronTexaco, a global energy company, has developed and implemented energy utilization and GHG estimation and reporting software consistent with the *GHG Protocol Corporate Standard*. This software is available free of charge and makes it easier, more accurate, and less costly to institute a corporate-wide GHG accounting and reporting system in the oil and gas sector. Called the SANGEA™ Energy and Greenhouse Gas Emissions Estimating System, it is currently in use at all ChevronTexaco facilities worldwide, comprising more than 70 reporting entities.

The system is an auditable, Excel-and-Visual-Basic-based tool for estimating GHG emissions and energy utilization. It streamlines corporate-level data consolidation by allowing the inventory coordinator at each facility to configure a spreadsheet, enter monthly data, and send quarterly reports to a centralized database.

In practice, the SANGEA™ system employs a variety of strategies to ensure consistent calculation methods and ease company-wide standardization:

- Spreadsheet configuration and material input information for specific facilities can be carried over from year to year. Inventory specialists can easily modify configurations as a facility changes (due to new construction, retirement of units, etc.).
- Updates are efficient. Methodologies for estimating emissions, emission factors, and calculation equations are stored centrally in the software, easing updates when methodologies or default factors change. Updates to this central reference are automatically applied to the existing configuration and input data. Updates will mirror the timing and content of updates to the American Petroleum Institute Compendium of GHG emission estimating methodologies.
- The system is auditable. The software requires detailed audit trail information on data inputs and system users. There is documented accountability of who made any change to the system.
- Using one system saves money. Significant cost savings are achieved by using the same system in all facilities, as compared to conventional, disparate systems.

ChevronTexaco's one-off investment in developing the SANGEA™ system has already shown results: A rough cost estimate for ChevronTexaco's Richmond, California, refinery indicates savings of more than 70 percent over a five-year period compared with the conventional approaches based on locally developed reporting systems. SANGEA™ is expected to reduce the long term expenses of maintaining a legacy system and hiring independent consultants. Employing a combination of the *GHG Protocol Corporate Standard*s and SANGEA™ calculation software to replace a diverse and confusing set of accounting and reporting templates yields significant efficiency and accuracy gains, and allows the company to more accurately manage GHG emissions and institute specific emissions improvements.

TABLE 3. Overview of GHG calculation tools available on the GHG Protocol website

	CALCULATION TOOLS	MAIN FEATURES.
CROSS-SECTOR TOOLS	Stationary Combustion	• Calculates direct and indirect CO_2 emissions from fuel combustion in stationary equipment • Provides two options for allocating GHG emissions from a co-generation facility • Provides default fuel and national average electricity emission factors
	Mobile Combustion	• Calculates direct and indirect CO_2 emissions from fuel combustion in mobile sources • Provides calculations and emission factors for road, air, water, and rail transport
	HFC from Air Conditioning and Refrigeration Use	• Calculates direct HFC emissions during manufacture, use and disposal of refrigeration and air-conditioning equipment in commercial applications • Provides three calculation methodologies: a sales-based approach, a life cycle stage based approach, and an emission factor based approach
	Measurement and Estimation Uncertainty for GHG Emissions	• Introduces the fundamentals of uncertainty analysis and quantification • Calculates statistical parameter uncertainties due to random errors related to calculation of GHG emissions • Automates the aggregation steps involved in developing a basic uncertainty assessment for GHG inventory data
SECTOR-SPECIFIC TOOLS	Aluminum and other non-Ferrous Metals Production	• Calculates direct GHG emissions from aluminum production (CO_2 from anode oxidation, PFC emissions from the "anode effect," and SF_6 used in non-ferrous metals production as a cover gas)
	Iron and Steel	• Calculates direct GHG emissions (CO_2) from oxidation of the reducing agent, from the calcination of the flux used in steel production, and from the removal of carbon from the iron ore and scrap steel used
	Nitric Acid Manufacture	• Calculates direct GHG emissions (N_2O) from the production of nitric acid
	Ammonia Manufacture	• Calculates direct GHG emissions (CO_2) from ammonia production. This is for the removal of carbon from the feedstock stream only; combustion emissions are calculated with the stationary combustion module
	Adipic Acid Manufacture	• Calculates direct GHG emissions (N_2O) from adipic acid production
	Cement	• Calculates direct CO_2 emissions from the calcination process in cement manufacturing (WBCSD tool also calculates combustion emissions) • Provides two calculation methodologies: the cement-based approach and the clinker-based approach
	Lime	• Calculates direct GHG emissions from lime manufacturing (CO_2 from the calcination process)
	HFC-23 from HCFC-22 Production	• Calculates direct HFC-23 emissions from production of HCFC-22
	Pulp and Paper	• Calculates direct CO_2, CH_4, and N_2O emissions from production of pulp and paper. This includes calculation of direct and indirect CO_2 emissions from combustion of fossil fuels, bio-fuels, and waste products in stationary equipment
	Semi-Conductor Wafer Production	• Calculates PFC emission from the production of semi-conductor wafers
	Guide for Small Office-Based Organizations	• Calculates direct CO_2 emissions from fuel use, indirect CO_2 emissions from electricity consumption, and other indirect CO_2 emissions from business travel and commuting

In the automated worksheet section, it is only necessary to insert activity data into the worksheets and to select an appropriate emission factor or factors. Default emission factors are provided for the sectors covered, but it is also possible to insert customized emission factors that are more representative of the reporting company's operations. The emissions of each GHG (CO_2, CH_4, N_2O, etc.) are calculated separately and then converted to CO_2 equivalents on the basis of their global warming potential.

Some tools, such as the iron and steel sector tool and the HFC cross-sector tool, take a tiered approach, offering a choice between a simple and a more advanced calculation methodology. The more advanced methods are expected to produce more accurate emissions estimates but usually require collection of more detailed data and a more thorough understanding of a company's technologies.

Roll-up GHG emissions data to corporate level

To report a corporation's total GHG emissions, companies will usually need to gather and summarize data from multiple facilities, possibly in different countries and business divisions. It is important to plan this process carefully to minimize the reporting burden, reduce the risk of errors that might occur while compiling data, and ensure that all facilities are collecting information on an approved, consistent basis. Ideally, corporations will integrate GHG reporting with their existing reporting tools and processes, and take advantage of any relevant data already collected and reported by facilities to division or corporate offices, regulators or other stakeholders.

The tools and processes chosen to report data will depend upon the information and communication infrastructure already in place (i.e., how easy is it to include new data categories in corporate databases). It will also depend upon the amount of detail that corporate headquarters wishes to be reported from facilities. Data collection and management tools could include:

- Secure databases available over the company intranet or internet, for direct data entry by facilities
- Spreadsheet templates filled out and e-mailed to a corporate or division office, where data is processed further
- Paper reporting forms faxed to a corporate or division office where data is re-entered in a corporate database. However, this method may increase the likelihood of errors if there are not sufficient checks in place to ensure the accurate transfer of the data.

BP: A standardized system for internal reporting of GHGs

BP, a global energy company, has been collecting GHG data from the different parts of its operations since 1997 and has consolidated its internal reporting processes into one central database system. The responsibility for reporting environmental emissions lies with about 320 individual BP facilities and business departments, which are termed "reporting units." All reporting units have to complete a standard Excel pro-forma spreadsheet every quarter, stating actual emissions for the preceding three months and updates to forecasts for the current year and the next two years. In addition, reporting units are asked to account for all significant variances, including sustainable reductions. The reporting units all use the same BP GHG Reporting Guidelines "Protocol" (BP, 2000) for quantifying their emissions of carbon dioxide and methane.

All pro-forma spreadsheets are e-mailed automatically by the central database to the reporting units, and the completed e-mail returns are uploaded into the database by a corporate team, who check the quality of the incoming data. The data are then compiled, by the end of the month following each quarter end, to provide the total emission inventory and forecasts for analysis against BP's GHG target. Finally, the inventory is reviewed by a team of independent external auditors to provide assurance on the quality and accuracy of the data.

For internal reporting up to the corporate level, it is recommended that standardized reporting formats be used to ensure that data received from different business units and facilities is comparable, and that internal reporting rules are observed (see BP case study). Standardized formats can significantly reduce the risk of errors.

Approaches for rolling up GHG emissions data to corporate level

There are two basic approaches for gathering data on GHG emissions from a corporation's facilities (Figure 10):

- Centralized: individual facilities report activity/fuel use data (such as quantity of fuel used) to the corporate level, where GHG emissions are calculated.
- Decentralized: individual facilities collect activity/fuel use data, directly calculate their GHG emissions using approved methods, and report this data to the corporate level.

FIGURE 10. Approaches to gathering data

	SITE LEVEL	CORPORATE LEVEL
CENTRALIZED	Activity data →	Sites report activity data (GHG emissions calculated at corporate level: activity data x emissions factor = GHG emissions)
DECENTRALIZED	Activity data x emission factor = GHG emissions →	Sites report GHG emissions

The difference between these two approaches is in where the emissions calculations occur (i.e., where activity data is multiplied by the appropriate emission factors) and in what type of quality management procedures must be put in place at each level of the corporation. Facility-level staff is generally responsible for initial data collection under both approaches.

Under both approaches, staff at corporate and lower levels of consolidation should take care to identify and exclude any scope 2 or 3 emissions that are also accounted for as scope 1 emissions by other facilities, business units, or companies included in the emissions inventory consolidation.

CENTRALIZED APPROACH: INDIVIDUAL FACILITIES REPORT ACTIVITY/FUEL USE DATA

This approach may be particularly suitable for office-based organizations. Requesting that facilities report their activity/fuel use data may be the preferred option if:

- The staff at the corporate or division level can calculate emissions data in a straightforward manner on the basis of activity/fuel use data; and
- Emissions calculations are standard across a number of facilities.

DECENTRALIZED APPROACH: INDIVIDUAL FACILITIES CALCULATE GHG EMISSIONS DATA

Asking facilities to calculate GHG emissions themselves will help to increase their awareness and understanding of the issue. However, it may also lead to resistance, increased training needs, an increase in calculation errors, and a greater need for auditing of calculations. Requesting that facilities calculate GHG emissions themselves may be the preferred option if:

- GHG emission calculations require detailed knowledge of the kind of equipment being used at facilities;
- GHG emission calculation methods vary across a number of facilities;
- Process emissions (in contrast to emissions from burning fossil fuels) make up an important share of total GHG emissions;
- Resources are available to train facility staff to conduct these calculations and to audit them;
- A user-friendly tool is available to simplify the calculation and reporting task for facility-level staff; or
- Local regulations require reporting of GHG emissions at a facility level.

The choice of collection approach depends on the needs and characteristics of the reporting company. For example, United Technologies Corporation uses the centralized approach, leaving the choice of emission factors and calculations to corporate staff, while BP uses the decentralized approach and follows up with audits to ensure calculations are correct, documented, and follow approved methods. To maximize accuracy and minimize reporting burdens, some companies use a combination of the two approaches. Complex facilities with process emissions calculate their emissions at the facility level, while facilities with uniform emissions from standard sources only report fuel use, electricity consumption, and travel activity. The corporate database or reporting tool then calculates total GHG emissions for each of these standard activities.

The two approaches are not mutually exclusive and should produce the same result. Thus companies desiring a consistency check on facility-level calculations can follow both approaches and compare the results. Even when facilities calculate their own GHG emissions, corporate staff may still wish to gather activity/fuel use data to double-check calculations and explore opportunities for emissions reductions. These

data should be available and transparent to staff at all corporate levels. Corporate staff should also verify that facility-reported data are based on well defined, consistent, and approved inventory boundaries, reporting periods, calculation methodologies, etc.

Common guidance on reporting to corporate level

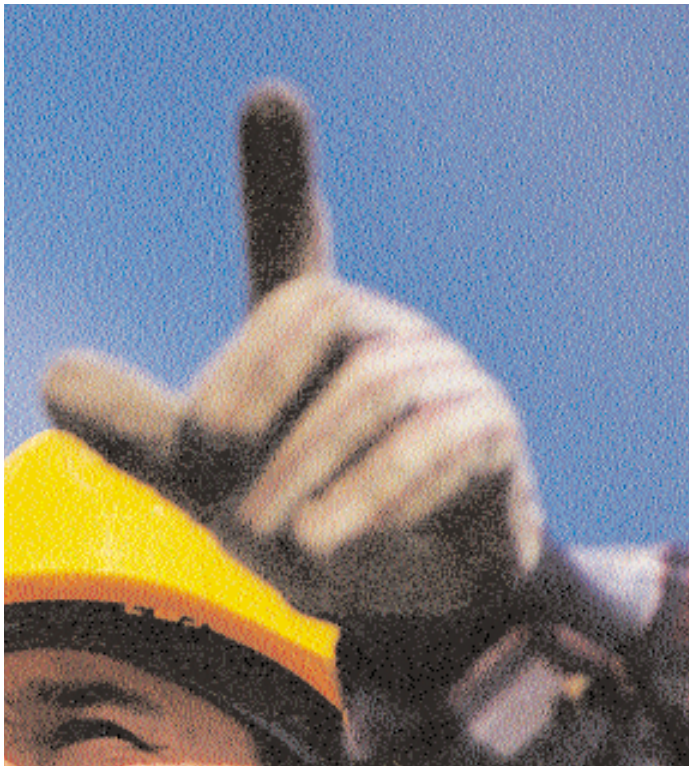
Reports from facility level to corporate or division offices should include all relevant information as specified in chapter 9. Some reporting categories are common to both the centralized and decentralized approaches and should be reported by facilities to their corporate offices. These include:

- A brief description of the emission sources
- A list and justification of specific exclusion or inclusion of sources
- Comparative information from previous years
- The reporting period covered
- Any trends evident in the data
- Progress towards any business targets
- A discussion of uncertainties in activity/fuel use or emissions data reported, their likely cause, and recommendations for how data can be improved
- A description of events and changes that have an impact on reported data (acquisitions, divestitures, closures, technology upgrades, changes of reporting boundaries or calculation methodologies applied, etc.).

REPORTING FOR THE CENTRALIZED APPROACH

In addition to the activity/fuel use data and aforementioned common categories of reporting data, facilities following the centralized approach by reporting activity/fuel use data to the corporate level should also report the following:

- Activity data for freight and passenger transport activities (e.g., freight transport in tonne-kilometers)
- Activity data for process emissions (e.g., tonnes of fertilizer produced, tonnes of waste in landfills)
- Clear records of any calculations undertaken to derive activity/fuel use data
- Local emission factors necessary to translate fuel use and/or electricity consumption into CO_2 emissions.



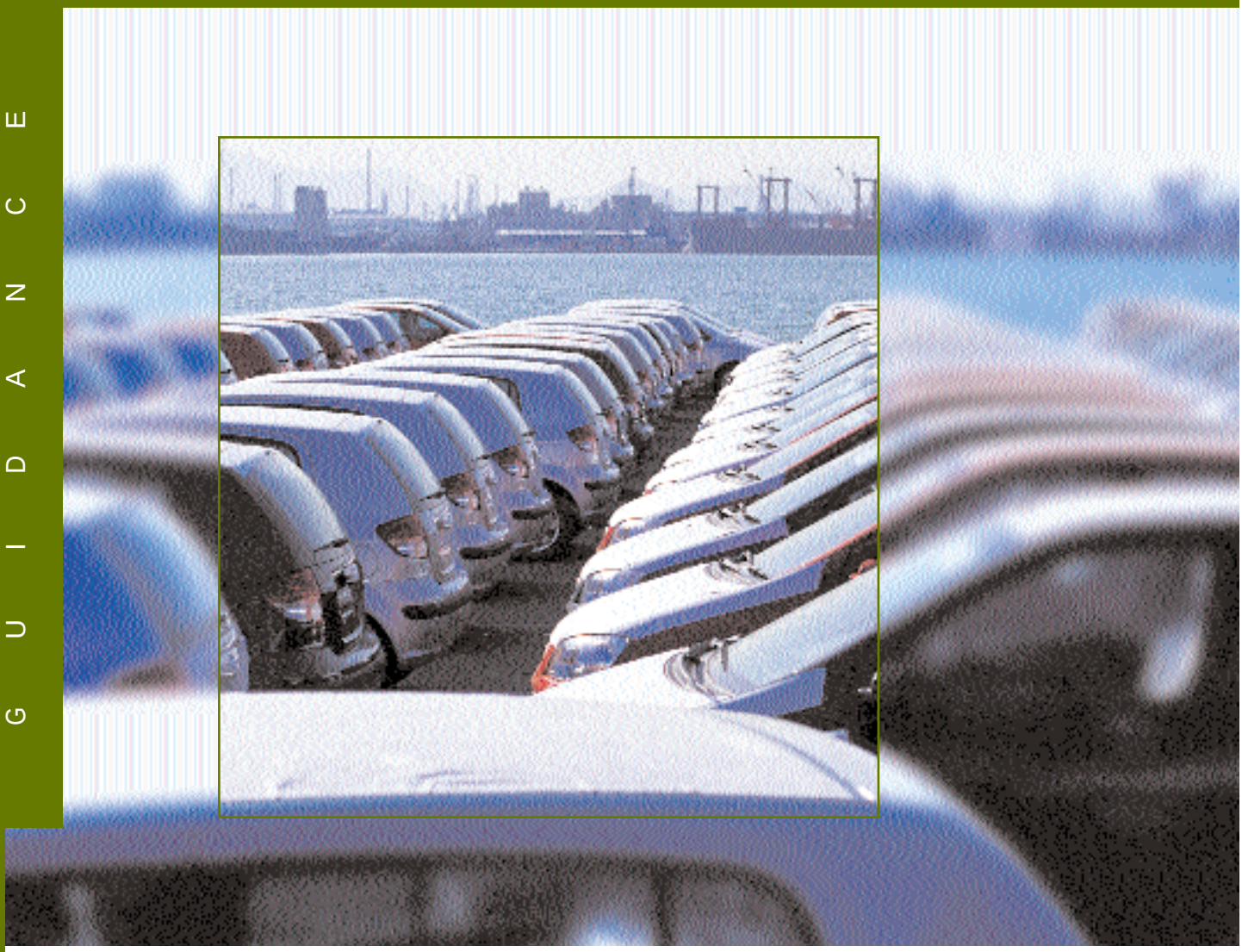
REPORTING FOR THE DECENTRALIZED APPROACH

In addition to the GHG emissions data and aforementioned common categories of reporting data, individual facilities following the decentralized approach by reporting calculated GHG emissions to the corporate level should also report the following:

- A description of GHG calculation methodologies and any changes made to those methodologies relative to previous reporting periods
- Ratio indicators (see chapter 9)
- Details on any data references used for the calculations, in particular information on emission factors used.

Clear records of calculations undertaken to derive emissions data should be kept for any future internal or external verification.

7 Managing Inventory Quality



Companies have different reasons for managing the quality of their GHG emissions inventory, ranging from identifying opportunities for improvement to stakeholder demand to preparation for regulation. The *GHG Protocol Corporate Standard* recognizes that these reasons are a function of a company's goals and its expectations for the future. A company's goals for and vision of the evolution of the GHG emissions issue should guide the design of its corporate inventory, the implementation of a quality management system, and the treatment of uncertainty within its inventory.

A corporate GHG inventory program includes all institutional, managerial, and technical arrangements made for the collection of data, preparation of the inventory, and implementation of steps to manage the quality of the inventory.[1] The guidance in this chapter is intended to help companies develop and implement a quality management system for their inventory.

Given an uncertain future, high quality information will have greater value and more uses, while low quality information may have little or no value or use and may even incur penalties. For example, a company may currently be focusing on a voluntary GHG program but also want its inventory data to meet the anticipated requirements of a future when emissions may have monetary value. A quality management system is essential to ensuring that an inventory continues to meet the principles of the *GHG Protocol Corporate Standard* and anticipates the requirements of future GHG emissions programs.

Even if a company is not anticipating a future regulatory mechanism, internal and external stakeholders will demand high quality inventory information. Therefore, the implementation of some type of quality management system is important. However, the *GHG Protocol Corporate Standard* recognizes that companies do not have unlimited resources, and, unlike financial accounting, corporate GHG inventories involve a level of scientific and engineering complexity. Therefore, companies should develop their inventory program and quality management system as a cumulative effort in keeping with their resources, the broader evolution of policy, and their own corporate vision.

A quality management system provides a systematic process for preventing and correcting errors, and identifies areas where investments will likely lead to the greatest improvement in overall inventory quality. However, the primary objective of quality management is ensuring the credibility of a company's GHG inventory information. The first step towards achieving this objective is defining inventory quality.

Defining inventory quality

The *GHG Protocol Corporate Standard* outlines five accounting principles that set an implicit standard for the faithful representation of a company's GHG emission through its technical, accounting, and reporting efforts (see chapter 1). Putting these principles into practice will result in a credible and unbiased treatment and presentation of issues and data. For a company to follow these principles, quality management needs to be an integral part of its corporate inventory program. The goal of a quality management system is to ensure that these principles are put into practice.

KPMG: The value of integrating GHG management with existing systems

KPMG, a global services company, found that a key factor in the derivation of reliable, verifiable GHG data is the integration of GHG data management and reporting mechanisms with companies' core operational management and assurance processes. This is because:

- It is more efficient to widen the scope of existing embedded management and assurance processes than to develop a separate function responsible for generating and reporting GHG information.
- As GHG information becomes increasingly monetized, it will attract the same attention as other key performance indicators of businesses. Therefore, management will need to ensure adequate procedures are in place to report reliable data. These procedures can most effectively be implemented by functions within the organization that oversee corporate governance, internal audit, IT, and company reporting.

Another factor that is often not given sufficient emphasis is training of personnel and communication of GHG objectives. Data generation and reporting systems are only as reliable as the people who operate them. Many well-designed systems fail because the precise reporting needs of the company are not adequately explained to the people who have to interpret a reporting standard and calculation tools. Given the complexity of accounting boundaries and an element of subjectivity that must accompany source inclusion and equity share, inconsistent interpretation of reporting requirements is a real risk. It is also important that those responsible for supplying input data are aware of its use. The only way to minimize this risk is through clear communication, adequate training and knowledge sharing.

An inventory program framework

A practical framework is needed to help companies conceptualize and design a quality management system and to help plan for future improvements. This framework focuses on the following institutional, managerial, and technical components of an inventory (Figure 11):

METHODS: These are the technical aspects of inventory preparation. Companies should select or develop methodologies for estimating emissions that accurately represent the characteristics of their source categories. The *GHG Protocol* provides many default methods and calculation tools to help with this effort. The design of an inventory program and quality management system should provide for the selection, application, and updating of inventory methodologies as new research becomes available, changes are made to business operations, or the importance of inventory reporting is elevated.

DATA: This is the basic information on activity levels, emission factors, processes, and operations. Although methodologies need to be appropriately rigorous and detailed, data quality is more important. No methodology can compensate for poor quality input data. The design of a corporate inventory program should facilitate the collection of high quality inventory data and the maintenance and improvement of collection procedures.

INVENTORY PROCESSES AND SYSTEMS: These are the institutional, managerial, and technical procedures for preparing GHG inventories. They include the team and processes charged with the goal of producing a high quality inventory. To streamline GHG inventory quality management, these processes and systems may be integrated, where appropriate, with other corporate processes related to quality.

DOCUMENTATION: This is the record of methods, data, processes, systems, assumptions, and estimates used to prepare an inventory. It includes everything employees need to prepare and improve a company's inventory. Since estimating GHG emissions is inherently technical (involving engineering and science), high quality, transparent documentation is particularly important to credibility. If information is not credible, or fails to be effectively communicated to either internal or external stakeholders, it will not have value.

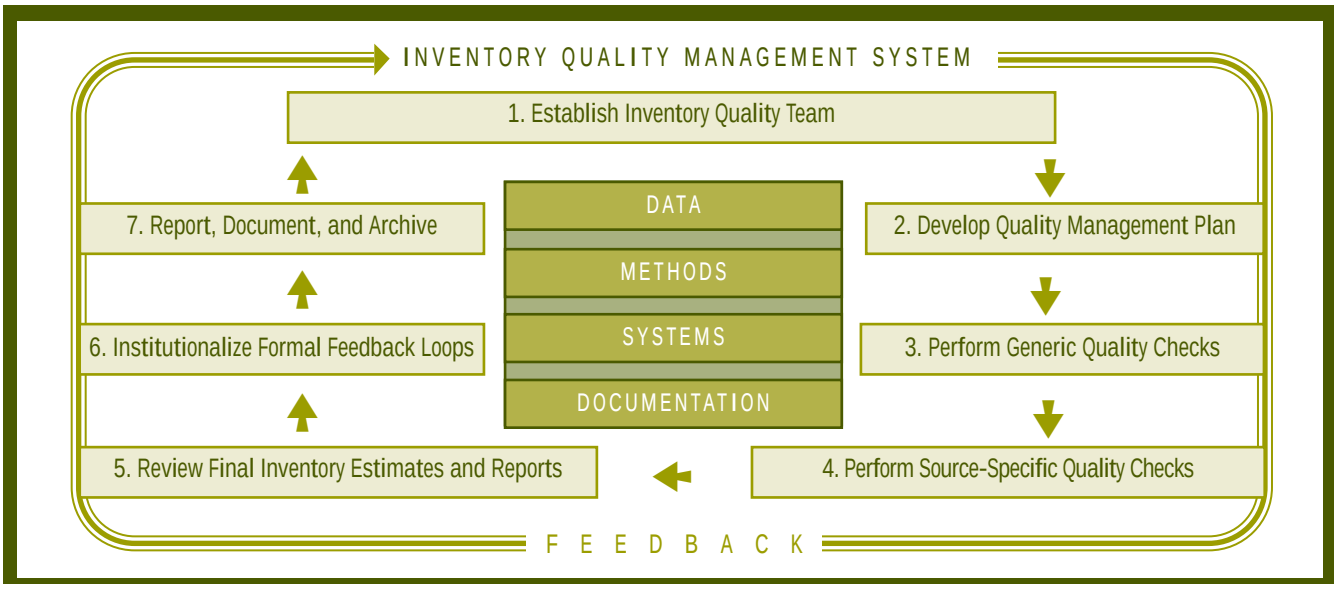
Companies should seek to ensure the quality of these components at every level of their inventory design.

Implementing an inventory quality management system

A quality management system for a company's inventory program should address all four of the inventory components described above. To implement the system, a company should take the following steps:

1. Establish an inventory quality team. This team should be responsible for implementing a quality management system, and continually improving inventory quality. The team or manager should coordinate interactions between relevant business units, facilities and external entities such as government agency programs, research institutions, verifiers, or consulting firms.

FIGURE 11: Inventory quality management system



2. Develop a quality management plan. This plan describes the steps a company is taking to implement its quality management system, which should be incorporated into the design of its inventory program from the beginning, although further rigor and coverage of certain procedures may be phased in over multiple years. The plan should include procedures for all organizational levels and inventory development processes—from initial data collection to final reporting of accounts. For efficiency and comprehensiveness, companies should integrate (and extend as appropriate) existing quality systems to cover GHG management and reporting, such as any ISO procedures. To ensure accuracy, the bulk of the plan should focus on practical measures for implementing the quality management system, as described in steps three and four.

3. Perform generic quality checks. These apply to data and processes across the entire inventory, focusing on appropriately rigorous quality checks on data handling, documentation, and emission calculation activities (e.g., ensuring that correct unit conversions are used). Guidance on quality checking procedures is provided in the section on implementation below (see table 4).

TABLE 4. Generic quality management measures

DATA GATHERING, INPUT, AND HANDLING ACTIVITIES
• Check a sample of input data for transcription errors
• Identify spreadsheet modifications that could provide additional controls or checks on quality
• Ensure that adequate version control procedures for electronic files have been implemented
• Others
DATA DOCUMENTATION
• Confirm that bibliographical data references are included in spreadsheets for all primary data
• Check that copies of cited references have been archived
• Check that assumptions and criteria for selection of boundaries, base years, methods, activity data, emission factors, and other parameters are documented
• Check that changes in data or methodology are documented
• Others
CALCULATING EMISSIONS AND CHECKING CALCULATIONS
• Check whether emission units, parameters, and conversion factors are appropriately labeled
• Check if units are properly labeled and correctly carried through from beginning to end of calculations
• Check that conversion factors are correct
• Check the data processing steps (e.g., equations) in the spreadsheets
• Check that spreadsheet input data and calculated data are clearly differentiated
• Check a representative sample of calculations, by hand or electronically
• Check some calculations with abbreviated calculations (i.e., back of the envelope calculations)
• Check the aggregation of data across source categories, business units, etc.
• Check consistency of time series inputs and calculations
• Others

4. Perform source-category-specific quality checks. This includes more rigorous investigations into the appropriate application of boundaries, recalculation procedures, and adherence to accounting and reporting principles for specific source categories, as well as the quality of the data input used (e.g., whether electricity bills or meter readings are the best source of consumption data) and a qualitative description of the major causes of uncertainty in the data. The information from these investigations can also be used to support a quantitative assessment of uncertainty. Guidance on these investigations is provided in the section on implementation below.

5. Review final inventory estimates and reports. After the inventory is completed, an internal technical review should focus on its engineering, scientific, and other technical aspects. Subsequently, an internal managerial review should focus on securing official corporate approval of and support for the inventory. A third type of review involving experts external to the company's inventory program is addressed in chapter 10.

6. Institutionalize formal feedback loops. The results of the reviews in step five, as well as the results of every other component of a company's quality management system, should be fed back via formal feedback procedures to the person or team identified in step one. Errors should be corrected and improvements implemented based on this feedback.

7. Establish reporting, documentation, and archiving procedures. The system should contain record keeping procedures that specify what information will be documented for internal purposes, how that information should be archived, and what information is to be reported for external stakeholders. Like internal and external reviews, these record keeping procedures include formal feedback mechanisms.

A company's quality management system and overall inventory program should be treated as evolving, in keeping with a company's reasons for preparing an inventory. The plan should address the company's strategy for a multi-year implementation (i.e., recognize that inventories are a long-term effort), including steps to ensure that all quality control findings from previous years are adequately addressed.

Practical measures for implementation

Although principles and broad program design guidelines are important, any guidance on quality management would be incomplete without a discussion of practical inventory quality measures. A company should implement these measures at multiple levels within the company, from the point of primary data collection to the final corporate inventory approval process. It is important to implement these measures at points in the inventory program where errors are mostly likely to occur, such as the initial data collection phase and during calculation and data aggregation. While corporate level inventory quality may initially be emphasized, it is important to ensure quality measures are implemented at all levels of disaggregation (e.g., facility, process, geographical, according to a particular scope, etc) to be better prepared for GHG markets or regulatory rules in the future.

Companies also need to ensure the quality of their historical emission estimates and trend data. They can achieve this by employing inventory quality measures to minimize biases that can arise from changes in the characteristics of the data or methods used to calculate historical emission estimates, and by following the standards and guidance of chapter 5.

The third step of a quality management system, as described above, is to implement generic quality checking measures. These measures apply to all source categories and all levels of inventory preparation. Table 4 provides a sample list of such measures.

The fourth step of a quality management system is source category-specific data quality investigations. The information gathered from these investigations can also be used for the quantitative and qualitative assessment of data uncertainty (see section on uncertainty). Addressed below are the types of source-specific quality measures that can be employed for emission factors, activity data, and emission estimates.

EMISSION FACTORS AND OTHER PARAMETERS

For a particular source category, emissions calculations will generally rely on emission factors and other parameters (e.g., utilization factors, oxidation rates, methane conversion factors).[2] These factors and parameters may be published or default factors, based on company-specific data, site-specific data, or direct emission or other measurements. For fuel consumption, published emission factors based on fuel energy content are generally more accurate than those based on mass or volume, except when mass or volume based factors have been measured at the company- or site-specific level. Quality investigations need to assess the representativeness and applicability of emission factors and other parameters to the specific characteristics of a company. Differences between measured and default values need to be qualitatively explained and justified based upon the company's operational characteristics.

ACTIVITY DATA

The collection of high quality activity data will often be the most significant limitation for corporate GHG inventories. Therefore, establishing robust data collection procedures needs to be a priority in the design of any company's inventory program. The following are useful measures for ensuring the quality of activity data:

- Develop data collection procedures that allow the same data to be efficiently collected in future years.
- Convert fuel consumption data to energy units before applying carbon content emission factors, which may be better correlated to a fuel's energy content than its mass.
- Compare current year data with historical trends. If data do not exhibit relatively consistent changes from year to year then the causes for these patterns should be investigated (e.g., changes of over 10 percent from year to year may warrant further investigation).
- Compare activity data from multiple reference sources (e.g., government survey data or data compiled by trade associations) with corporate data when possible. Such checks can ensure that consistent data is being reported to all parties. Data can also be compared among facilities within a company.

Interface: Integration of emissions and business data systems

Interface, Inc., is the world's largest manufacturer of carpet tiles and upholstery fabrics for commercial interiors. The company has established an environmental data system that mirrors its corporate financial data reporting. The Interface EcoMetrics system is designed to provide activity and material flow data from business units in a number of countries (the United States, Canada, Australia, the United Kingdom, Thailand and throughout Europe) and provides metrics for measuring progress on environmental issues such as GHG emissions. Using company-wide accounting guidelines and standards, energy and material input data are reported to a central database each quarter and made available to sustainability personnel. These data are the foundation of Interface's annual inventory and enable data comparison over time in the pursuit of improved quality.

Basing emissions data systems on financial reporting helps Interface improve its data quality. Just as financial data need to be documented and defensible, Interface's emissions data are held to standards that promote an increasingly transparent, accurate, and high-quality inventory. Integrating its financial and emissions data systems has made Interface's GHG accounting and reporting more useful as it strives to be a "completely sustainable company" by 2020.

- Investigate activity data that is generated for purposes other than preparing a GHG inventory. In doing so, companies will need to check the applicability of this data to inventory purposes, including completeness, consistency with the source category definition, and consistency with the emission factors used. For example, data from different facilities may be examined for inconsistent measurement techniques, operating conditions, or technologies. Quality control measures (e.g., ISO) may have already been conducted during the data's original preparation. These measures can be integrated with the company's inventory quality management system.
- Check that base year recalculation procedures have been followed consistently and correctly (see chapter 5).
- Check that operational and organizational boundary decisions have been applied correctly and consistently to the collection of activity data (see chapters 3 and 4).

- Investigate whether biases or other characteristics that could affect data quality have been previously identified (e.g., by communicating with experts at a particular facility or elsewhere). For example, a bias could be the unintentional exclusion of operations at smaller facilities or data that do not correspond exactly with the company's organizational boundaries.
- Extend quality management measures to cover any additional data (sales, production, etc.) used to estimate emission intensities or other ratios.

EMISSION ESTIMATES

Estimated emissions for a source category can be compared with historical data or other estimates to ensure they fall within a reasonable range. Potentially unreasonable estimates provide cause for checking emission factors or activity data and determining whether changes in methodology, market forces, or other events are sufficient reasons for the change. In situations where actual emission monitoring occurs (e.g., power plant CO_2 emissions), the data from monitors can be compared with calculated emissions using activity data and emission factors.

If any of the above emission factor, activity data, emission estimate, or other parameter checks indicate a problem, more detailed investigations into the accuracy of the data or appropriateness of the methods may be required. These more detailed investigations can also be utilized to better assess the quality of data. One potential measure of data quality is a quantitative and qualitative assessment of their uncertainty.

Vauxhall Motors: The importance of accuracy checks

The experience of the U.K. automotive manufacturer Vauxhal Motors illustrates the importance of attention to detail in setting up GHG information collection systems. The company wished to calculate GHG emissions from staff air travel. However, when determining the impact of flight travel, it is important to make sure that the round trip distance is used when calculating emissions. Fortunately, Vauxhall's review of its assumptions and calculation methodologies revealed this fact and avoided reporting emissions that were 50 percent lower than the actual value.

Inventory quality and inventory uncertainty

Preparing a GHG inventory is inherently both an accounting and a scientific exercise. Most applications for company-level emissions and removal estimates require that these data be reported in a format similar to financial accounting data. In financial accounting, it is standard practice to report individual point estimates (i.e., single value versus a range of possible values). In contrast, the standard practice for most scientific studies of GHG and other emissions is to report quantitative data with estimated error bounds (i.e., uncertainty). Just like financial figures in a profit and loss or bank account statement, point estimates in a corporate emission inventory have obvious uses. However, how would or should the addition of some quantitative measure of uncertainty to an emission inventory be used?

In an ideal situation, in which a company had perfect quantitative information on the uncertainty of its emission estimates at all levels, the primary use of this information would almost certainly be comparative. Such comparisons might be made across companies, across business units, across source categories, or through time. In this situation, inventory estimates could even be rated or discounted based on their quality before they were used, with uncertainty being the objective quantitative metric for quality. Unfortunately, such objective uncertainty estimates rarely exist.

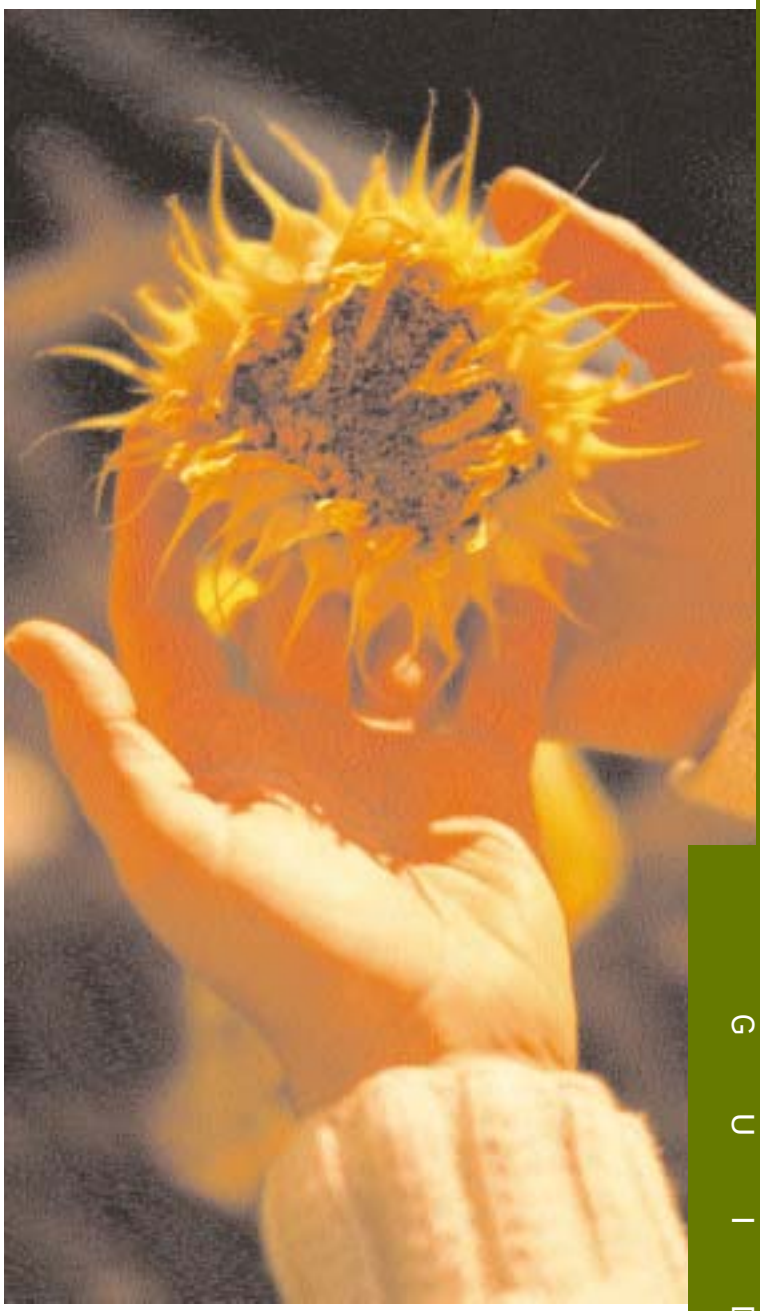
TYPES OF UNCERTAINTIES

Uncertainties associated with GHG inventories can be broadly categorized into *scientific uncertainty* and *estimation uncertainty*. Scientific uncertainty arises when the science of the actual emission and/or removal process is not completely understood. For example, many direct and indirect factors associated with global warming potential (GWP) values that are used to combine emission estimates for various GHGs involve significant scientific uncertainty. Analyzing and quantifying such scientific uncertainty is extremely problematic and is likely to be beyond the capacity of most company inventory programs.

Estimation uncertainty arises any time GHG emissions are quantified. Therefore all emissions or removal estimates are associated with estimation uncertainty. Estimation uncertainty can be further classified into two types: *model uncertainty* and *parameter uncertainty.*[3]

Model uncertainty refers to the uncertainty associated with the mathematical equations (i.e., models) used to characterize the relationships between various parameters and emission processes. For example, model uncertainty may arise either due to the use of an incorrect mathematical model or inappropriate input into the model. As with scientific uncertainty, estimating model uncertainty is likely to be beyond most company's inventory efforts; however, some companies may wish to utilize their unique scientific and engineering expertise to evaluate the uncertainty in their emission estimation models.

Parameter uncertainty refers to the uncertainty associated with quantifying the parameters used as inputs (e.g., activity data and emission factors) into estimation models. Parameter uncertainties can be evaluated through statistical analysis, measurement equipment precision determinations, and expert judgment. Quantifying parameter uncertainties and then estimating source category uncertainties based on these parameter uncertainties will be the primary focus of companies that choose to investigate the uncertainty in their emission inventories.



LIMITATIONS OF UNCERTAINTY ESTIMATES

Given that only parameter uncertainties are within the feasible scope of most companies, uncertainty estimates for corporate GHG inventories will, of necessity, be imperfect. Complete and robust sample data will not always be available to assess the statistical uncertainty[4] in every parameter. For most parameters (e.g., liters of gasoline purchased or tonnes of limestone consumed), only a single data point may be available. In some cases, companies can utilize instrument precision or calibration information to inform their assessment of statistical uncertainty. However, to quantify some of the systematic uncertainties[5] associated with parameters and to supplement statistical uncertainty estimates, companies will usually have to rely on expert judgment.[6] The problem with expert judgment, though, is that it is difficult to obtain in a comparable (i.e., unbiased) and consistent manner across parameters, source categories, or companies.

For these reasons, almost all comprehensive estimates of uncertainty for GHG inventories will be not only imperfect but also have a *subjective* component and, despite the most thorough efforts, are themselves considered highly uncertain. In most cases, uncertainty estimates cannot be interpreted as an objective measure of quality. Nor can they be used to compare the quality of emission estimates between source categories or companies.

Exceptions to this include the following cases in which it is assumed that either statistical or instrument precision data are available to objectively estimate each parameter's statistical uncertainty (i.e., expert judgment is not needed):

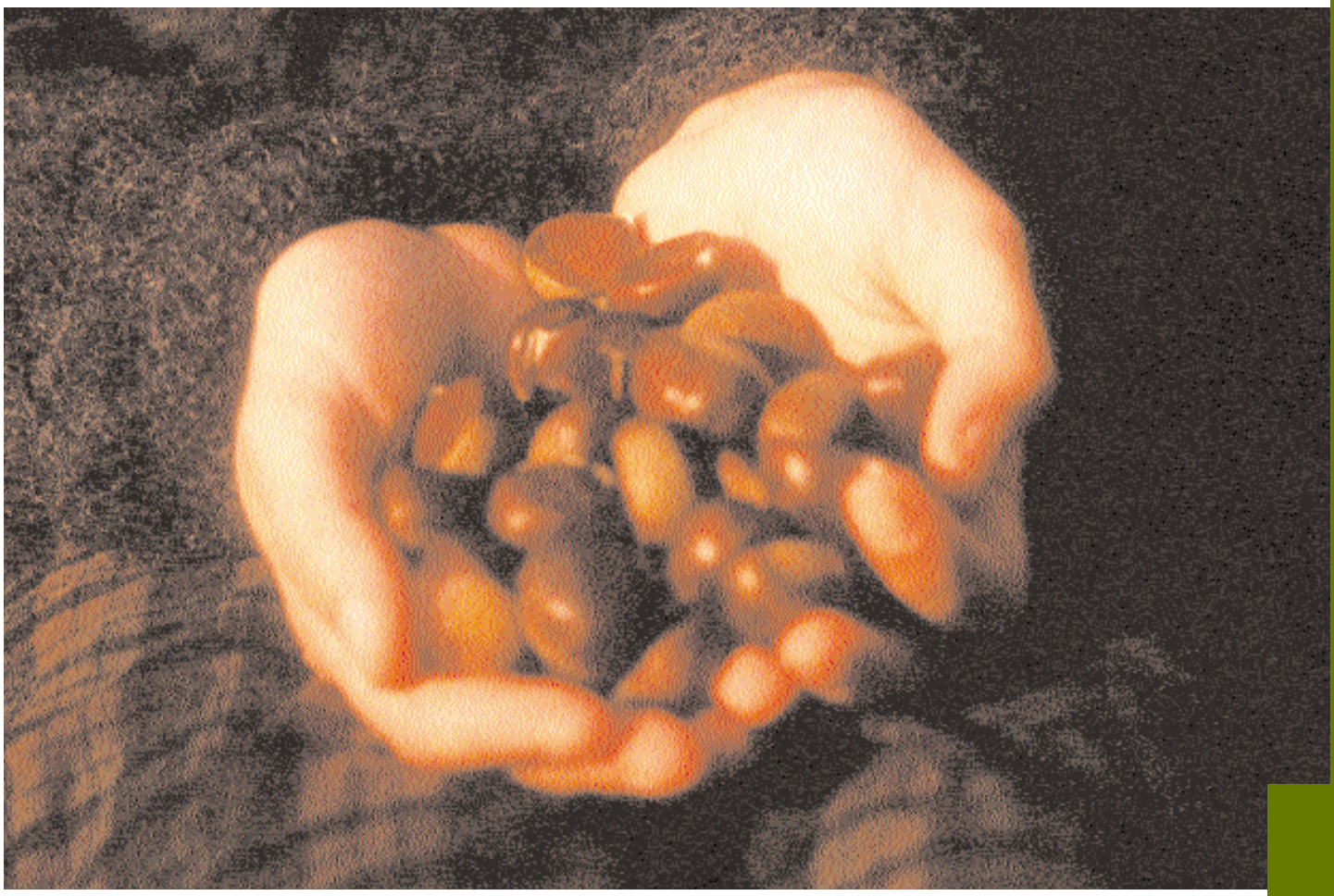
- When two operationally similar facilities use identical emission estimation methodologies, the differences in scientific or model uncertainties can, for the most part, be ignored. Then quantified estimates of statistical uncertainty can be treated as being comparable between facilities. This type of comparability is what is aimed for in some trading programs that prescribe specific monitoring, estimation, and measurement requirements. However, even in this situation, the degree of comparability depends on the flexibility that participants are given for estimating emissions, the homogeneity across facilities, as well as the level of enforcement and review of the methodologies used.
- Similarly, when a single facility uses the same estimation methodology each year, the systematic parameter uncertainties—in addition to scientific and model uncertainties—in a source's emission estimates for two years are, for the most part, identical.[7] Because the systematic parameter uncertainties then cancel out, the uncertainty in an emission trend (e.g., the difference between the estimates for two years) is generally less than the uncertainty in total emissions for a single year. In such a situation, quantified uncertainty estimates can be treated as being comparable over time and used to track relative changes in the quality of a facility's emission estimates for that source category. Such estimates of uncertainty in emission trends can also be used as a guide to setting a facility's emissions reduction target. Trend uncertainty estimates are likely to be less useful for setting broader (e.g., company-wide) targets (see chapter 11) because of the general problems with comparability between uncertainty estimates across gases, sources, and facilities.

Given these limitations, the role of qualitative and quantitative uncertainty assessments in developing GHG inventories include:

- Promoting a broader learning and quality feedback process.
- Supporting efforts to qualitatively understand and document the causes of uncertainty and help identify ways of improving inventory quality. For example, collecting the information needed to determine the statistical properties of activity data and emission factors forces one to ask hard questions and to carefully and systematically investigate data quality.
- Establishing lines of communication and feedback with data suppliers to identify specific opportunities to improve quality of the data and methods used.
- Providing valuable information to reviewers, verifiers, and managers for setting priorities for investments into improving data sources and methodologies.

The *GHG Protocol Corporate Standard* has developed a supplementary guidance document on uncertainty assessments ("Guidance on uncertainty assessment in GHG inventories and calculating statistical parameter uncertainty") along with an uncertainty calculation tool, both of which are available on the GHG Protocol website. The guidance document describes how to use the calculation tool in aggregating uncertainties. It also discusses in more depth different types of uncertainties, the limitations of quantitative uncertainty assessment, and how uncertainty estimates should be properly interpreted.

Additional guidance and information on assessing uncertainty—including optional approaches to developing quantitative uncertainty estimates and eliciting judgments from experts—can also be found in EPA's Emissions Inventory Improvement Program, Volume VI: Quality Assurance/Quality Control (1999) and in chapter 6 of the IPCC's Good Practice Guidance (2000a).



NOTES

[1] Although the term "emissions inventory" is used throughout this chapter, the guidance equally applies to estimates of removals due to sink categories (e.g., forest carbon sequestration).

[2] Some emission estimates may be derived using mass or energy balances, engineering calculations, or computer simulation models. In addition to investigating the input data to these models, companies should also consider whether the internal assumptions (including assumed parameters in the model) are appropriate to the nature of the company's operations.

[3] Emissions estimated from direct emissions monitoring will generally only involve parameter uncertainty (e.g., equipment measurement error).

[4] Statistical uncertainty results from natural variations (e.g., random human errors in the measurement process and fluctuations in measurement equipment). Statistical uncertainty can be detected through repeated experiments or sampling of data.

[5] Systematic parameter uncertainty occurs if data are systematically biased. In other words, the average of the measured or estimated value is always less or greater than the true value. Biases arise, for example, because emission factors are constructed from non-representative samples, all relevant source activities or categories have not been identified, or incorrect or incomplete estimation methods or faulty measurement equipment have been used. Because the true value is unknown, such systematic biases cannot be detected through repeated experiments and, therefore, cannot be quantified through statistical analysis. However, it is possible to identify biases and, sometimes, to quantify them through data quality investigations and expert judgments.

[6] The role of expert judgment can be twofold: First, it can provide the data necessary to estimate the parameter. Second, it can help (in combination with data quality investigations) identify, explain, and quantify both statistical and systematic uncertainties.

[7] It should be recognized, however, that biases may not be constant from year to year but instead may exhibit a pattern over time (e.g., may be growing or falling). For example, a company that continues to disinvest in collecting high quality data may create a situation in which the biases in its data get worse each year. These types of data quality issues are extremely problematic because of the effect they can have on calculated emission trends. In such cases, systematic parameter uncertainties cannot be ignored.

8 Accounting for GHG Reductions

As voluntary reporting, external GHG programs, and emission trading systems evolve, it is becoming more and more essential for companies to understand the implications of accounting for GHG emissions changes over time on the one hand, and, on the other hand, accounting for offsets or credits that result from GHG reduction projects. This chapter elaborates on the different issues associated with the term "GHG reductions."

The *GHG Protocol Corporate Standard* focuses on accounting and reporting for GHG emissions at the company or organizational level. Reductions in corporate emissions are calculated by comparing changes in the company's actual emissions inventory over time relative to a base year. Focusing on overall corporate or organizational level emissions has the advantage of helping companies manage their aggregate GHG risks and opportunities more effectively. It also helps focus resources on activities that result in the most cost-effective GHG reductions.

In contrast to corporate accounting, the forthcoming *GHG Protocol Project Quantification Standard* focuses on the quantification of GHG reductions from GHG mitigation projects that will be used as offsets. Offsets are discrete GHG reductions used to compensate for (i.e., offset) GHG emissions elsewhere, for example to meet a voluntary or mandatory GHG target or cap. Offsets are calculated relative to a baseline that represents a hypothetical scenario for what emissions would have been in the absence of the project.

Corporate GHG reductions at facility or country level

From the perspective of the earth's atmosphere, it does not matter where GHG emissions or reductions occur. From the perspective of national and international policymakers addressing global warming, the location where GHG reductions are achieved is relevant, since policies usually focus on achieving reductions within specific countries or regions, as spelled out, for example, in the Kyoto Protocol. Thus companies with global operations will have to respond to an array of state, national, or regional regulations and requirements that address GHGs from operations or facilities within a specific geographic area.

The *GHG Protocol Corporate Standard* calculates GHG emissions using a bottom-up approach. This involves calculating emissions at the level of an individual source or facility and then rolling this up to the corporate level. Thus a company's overall emissions may decrease, even if increases occur at specific sources, facilities, or operations and vice-versa. This bottom-up approach enables companies to report GHG emissions information at different scales, e.g., by individual sources or facilities, or by a collection of facilities within a given country. Companies can meet an array of government requirements or voluntary commitments by comparing actual emissions over time for the relevant scale. On a corporate-wide scale, this information can also be used when setting and reporting progress towards a corporate-wide GHG target (see chapter 11).

In order to track and explain changes in GHG emissions over time, companies may find it useful to provide information on the nature of these changes. For example, BP asks each of its reporting units to provide such information in an accounting movement format using the following categories (BP 2000):

- Acquisitions and divestments
- Closure
- Real reductions (e.g., efficiency improvements, material or fuel substitution)
- Change in production level
- Changes in estimation methodology
- Other

This type of information can be summarized at the corporate level to provide an overview of the company's performance over time.

Reductions in indirect emissions

Reductions in indirect emissions (changes in scope 2 or 3 emissions over time) may not always capture the actual emissions reduction accurately. This is because there is not always a direct cause-effect relationship between the activity of the reporting company and the resulting GHG emissions. For example, a reduction in air travel would reduce a company's scope 3 emissions. This reduction is usually quantified based on an average emission factor of fuel use per passenger. However, how this reduction actually translates into a change in GHG emissions to the atmosphere would depend on a number of factors, including whether another person takes the "empty seat" or whether this unused seat contributes to reduced air traffic over the longer term. Similarly, reductions in scope 2 emissions calculated with an average grid emissions factor may over- or underestimate the actual reduction depending on the nature of the grid.

Generally, as long as the accounting of indirect emissions over time recognizes activities that in aggregate change global emissions, any such concerns over accuracy should not inhibit companies from reporting their indirect emissions. In cases where accuracy is more important, it may be appropriate to undertake a more

detailed assessment of the actual reduction using a project quantification methodology.

Project based reductions and offsets/credits

Project reductions that are to be used as offsets should be quantified using a project quantification method, such as the forthcoming *GHG Protocol Project Quantification Standard,* that addresses the following accounting issues:

- SELECTION OF A BASELINE SCENARIO AND EMISSION. The baseline scenario represents what would have happened in the absence of the project. Baseline emissions are the hypothetical emissions associated with this scenario. The selection of a baseline scenario always involves uncertainty because it represents a hypothetical scenario for what would have happened without the project. The project reduction is calculated as the difference between the baseline and project emissions. This differs from the way corporate or organizational reductions are measured in this document, i.e., in relation to an actual historical base year.
- DEMONSTRATION OF ADDITIONALITY. This relates to whether the project has resulted in emission reductions or removals in addition to what would have happened in the absence of the project. If the project reduction is used as an offset, the quantification procedure should address additionality and demonstrate that the project itself is not the baseline and that project emissions are less than baseline emissions. Additionality ensures the integrity of the fixed cap or target for which the offset is used. Each reduction unit from a project used as an offset allows the organization or facility with a cap or target one additional unit of emissions. If the project were going to happen anyway (i.e., is non-additional), global emissions will be higher by the number of reduction units issued to the project.
- IDENTIFICATION AND QUANTIFICATION OF RELEVANT SECONDARY EFFECTS. These are GHG emissions changes resulting from the project not captured by the primary effect(s).[1] Secondary effects are typically the small, unintended GHG consequences of a project and include leakage (changes in the availability or quantity of a product or service that results in changes in GHG emissions elsewhere) as well as changes in GHG emissions up- and downstream of the project. If relevant, secondary effects should be incorporated into the calculation of the project reduction.
- CONSIDERATION OF REVERSIBILITY. Some projects achieve reductions in atmospheric carbon dioxide levels by capturing, removing and/or storing carbon or GHGs in biological or non-biological sinks (e.g., forestry, land use management, underground reservoirs). These reductions may be temporary in that the removed carbon dioxide may be returned to the atmosphere at some point in the future through intentional activities or accidental occurrences—such as harvesting of forestland or forest fires, etc.[2] The risk of reversibility should be assessed, together with any mitigation or compensation measures included in the project design.
- AVOIDANCE OF DOUBLE COUNTING. To avoid double counting, the reductions giving rise to the offset must occur at sources or sinks not included in the target or cap for which the offset is used. Also, if the reductions occur at sources or sinks owned or controlled by someone other than the parties to the project (i.e., they are indirect), the ownership of the reduction should be clarified to avoid double counting.

Offsets may be converted into credits when used to meet an externally imposed target. Credits are convertible and transferable instruments usually bestowed by an external GHG program. They are typically generated from an activity such as an emissions reduction project and then used to meet a target in an otherwise closed system, such as a group of facilities with an absolute emissions cap placed across them. Although a credit is usually based on the underlying reduction calculation, the conversion of an offset into a credit is usually subject to strict rules, which may differ from program to program. For example, a Certified Emission Reduction (CER) is a credit issued by the Kyoto Protocol Clean Development Mechanism. Once issued, this credit can be traded and ultimately used to meet Kyoto Protocol targets. Experience from the "pre-compliance" market in GHG credits highlights the importance of delineating project reductions that are to be used as offsets with a credible quantification method capable of providing verifiable data.

Reporting project based reductions

It is important for companies to report their physical inventory emissions for their chosen inventory boundaries separately and independently of any GHG trades they undertake. GHG trades[3] should be reported in its public GHG report under optional information—either in relation to a target (see chapter 11) or corporate

inventory (see chapter 9). Appropriate information addressing the credibility of purchased or sold offsets or credits should be included.

When companies implement internal projects that reduce GHGs from their operations, the resulting reductions are usually captured in their inventory's boundaries. These reductions need not be reported separately unless they are sold, traded externally, or otherwise used as an offset or credit. However, some companies may be able to make changes to their own operations that result in GHG emissions changes at sources not included in their own inventory boundary, or not captured by comparing emissions changes over time. For example:

- Substituting fossil fuel with waste-derived fuel that might otherwise be used as landfill or incinerated without energy recovery. Such substitution may have no direct effect on (or may even increase) a company's own GHG emissions. However, it could result in emissions reductions elsewhere by another organization, e.g., through avoiding landfill gas and fossil fuel use.
- Installing an on-site power generation plant (e.g., a combined heat and power, or CHP, plant) that provides surplus electricity to other companies may increase a company's direct emissions, while displacing the consumption of grid electricity by the companies supplied. Any resulting emissions reductions at the plants where this electricity would have otherwise been produced will not be captured in the inventory of the company installing the on-site plant.
- Substituting purchased grid electricity with an on-site power generation plant (e.g., CHP) may increase a company's direct GHG emissions, while reducing the GHG emissions associated with the generation of grid electricity. Depending on the GHG intensity and the supply structure of the electricity grid, this reduction may be over- or underestimated when merely comparing scope 2 emissions over time, if the latter are quantified using an average grid emission factor.

Alcoa: Taking advantage of renewable energy certificates

Alcoa, a global manufacturer of aluminum, is implementing a variety of strategies to reduce its GHG emissions. One approach has been to purchase renewable energy certificates, or RECs, to offset some of the company's GHG emissions. RECs, which represent the environmental benefits of renewable energy unbundled from the actual flow of electrons, are an innovative method of providing renewable energy to individual customers. RECs represent the unbundled environmental benefits, such as avoided CO_2 emissions, generated by producing electricity from renewable rather than fossil sources. RECs can be sold bundled with the electricity (as green power) or separately to customers interested in supporting renewable energy.

Alcoa found that RECs offer a variety of advantages, including direct access to the benefits of renewable energy for facilities that may have limited renewable energy procurement options. In October 2003, Alcoa began purchasing RECs equivalent to 100% of the electricity used annually at four corporate offices in Tennessee, Pennsylvania, and New York. The RECs Alcoa is purchasing effectively mean that the four corporate centers are now operating on electricity generated by projects that produce electricity from landfill gas, avoiding the emission of more than 6.3 million kilograms (13.9 million pounds) of carbon dioxide annually. Alcoa chose RECs in part because the supplier was able to provide RECs to all four facilities through one contract. This flexibility lowered the administrative cost of purchasing renewable energy for multiple facilities that are served by different utilities.

For more information on RECs, see the Green Power Market Development Group's Corporate Guide to Green Power Markets: Installment #5 (WRI, 2003).

These reductions may be separately quantified, for example using the *GHG Protocol Project Quantification Standard,* and reported in a company's public GHG report under optional information in the same way as GHG trades described above.

NOTES

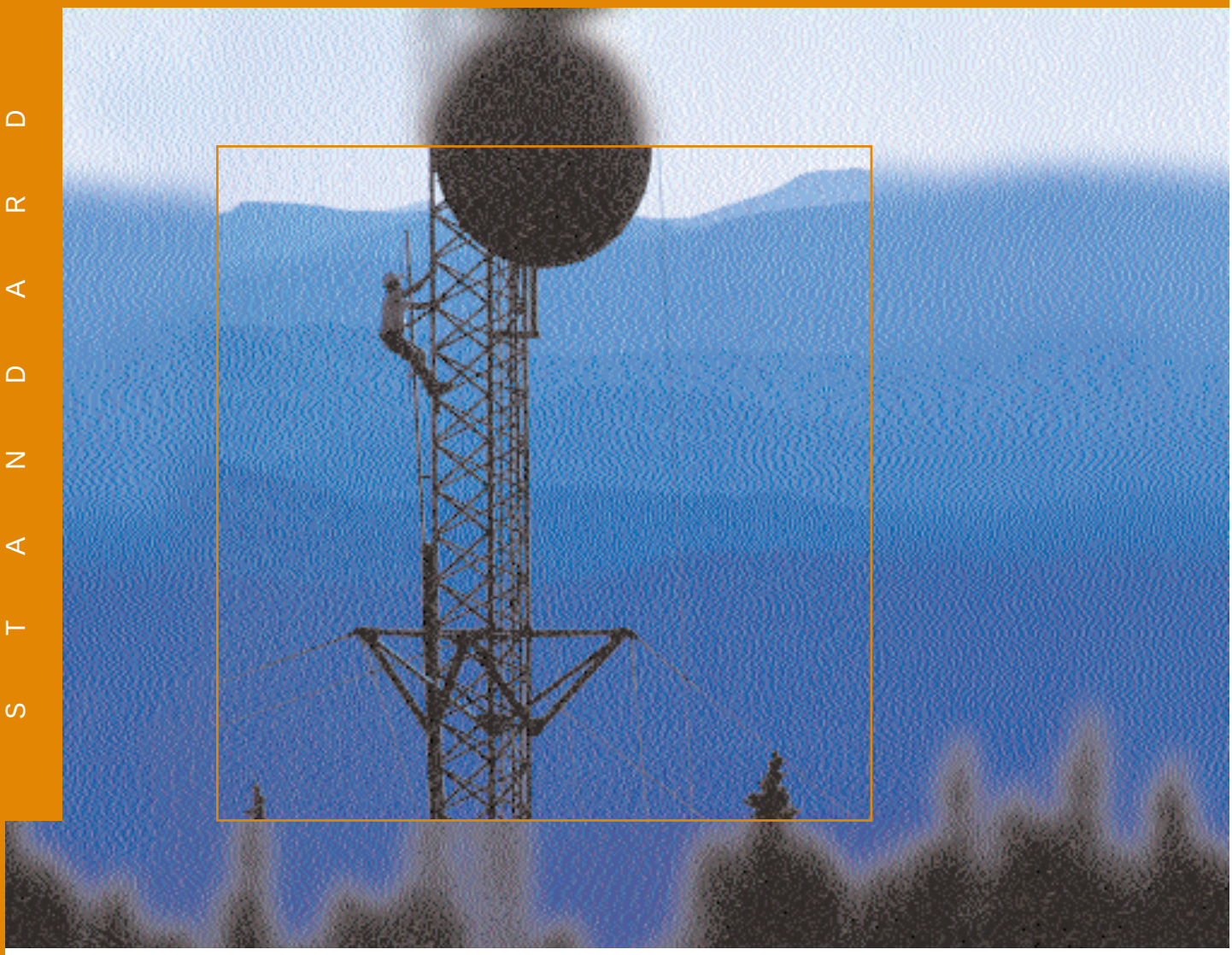
[1] Primary effects are the specific GHG reducing elements or activities (reducing GHG emissions, carbon storage, or enhancing GHG removals) that the project is intended to achieve.

[2] This problem with the temporary nature of GHG reductions is sometimes referred to as the "permanence" issue.

[3] The term "GHG trades" refers to all purchases or sales of allowances, offsets, and credits.

9 Reporting GHG Emissions

STANDARD



A credible GHG emissions report presents relevant information that is complete, consistent, accurate and transparent. While it takes time to develop a rigorous and complete corporate inventory of GHG emissions, knowledge will improve with experience in calculating and reporting data. It is therefore recommended that a public GHG report:

- Be based on the best data available at the time of publication, while being transparent about its limitations
- Communicate any material discrepancies identified in previous years
- Include the company's gross emissions for its chosen inventory boundary separate from and independent of any GHG trades it might engage in.

STANDARD GUIDANCE

Reported information shall be "relevant, complete, consistent, transparent and accurate." The *GHG Protocol Corporate Standard* requires reporting a minimum of scope 1 and scope 2 emissions.

Required information

A public GHG emissions report that is in accordance with the *GHG Protocol Corporate Standard* shall include the following information:

DESCRIPTION OF THE COMPANY AND INVENTORY BOUNDARY

- An outline of the organizational boundaries chosen, including the chosen consolidation approach.
- An outline of the operational boundaries chosen, and if scope 3 is included, a list specifying which types of activities are covered.
- The reporting period covered.

INFORMATION ON EMISSIONS

- Total scope 1 and 2 emissions independent of any GHG trades such as sales, purchases, transfers, or banking of allowances.
- Emissions data separately for each scope.
- Emissions data for all six GHGs separately (CO_2, CH_4, N_2O, HFCs, PFCs, SF_6) in metric tonnes and in tonnes of CO_2 equivalent.
- Year chosen as base year, and an emissions profile over time that is consistent with and clarifies the chosen policy for making base year emissions recalculations.
- Appropriate context for any significant emissions changes that trigger base year emissions recalculation (acquisitions/divestitures, outsourcing/insourcing, changes in reporting boundaries or calculation methodologies, etc.).
- Emissions data for direct CO_2 emissions from biologically sequestered carbon (e.g., CO_2 from burning biomass/biofuels), reported separately from the scopes.
- Methodologies used to calculate or measure emissions, providing a reference or link to any calculation tools used.
- Any specific exclusions of sources, facilities, and/or operations.

Optional information

A public GHG emissions report should include, when applicable, the following additional information:

INFORMATION ON EMISSIONS AND PERFORMANCE

- Emissions data from relevant scope 3 emissions activities for which reliable data can be obtained.
- Emissions data further subdivided, where this aids transparency, by business units/facilities, country, source types (stationary combustion, process, fugitive, etc.), and activity types (production of electricity, transportation, generation of purchased electricity that is sold to end users, etc.).
- Emissions attributable to own generation of electricity, heat, or steam that is sold or transferred to another organization (see chapter 4).
- Emissions attributable to the generation of electricity, heat or steam that is purchased for re-sale to non-end users (see chapter 4).
- A description of performance measured against internal and external benchmarks.
- Emissions from GHGs not covered by the Kyoto Protocol (e.g., CFCs, NO_x,), reported separately from scopes.
- Relevant ratio performance indicators (e.g. emissions per kilowatt-hour generated, tonne of material production, or sales).
- An outline of any GHG management/reduction programs or strategies.
- Information on any contractual provisions addressing GHG-related risks and obligations.
- An outline of any external assurance provided and a copy of any verification statement, if applicable, of the reported emissions data.

- Information on the causes of emissions changes that did not trigger a base year emissions recalculation (e.g., process changes, efficiency improvements, plant closures).
- GHG emissions data for all years between the base year and the reporting year (including details of and reasons for recalculations, if appropriate)
- Information on the quality of the inventory (e.g., information on the causes and magnitude of uncertainties in emission estimates) and an outline of policies in place to improve inventory quality. (see chapter 7).
- Information on any GHG sequestration.
- A list of facilities included in the inventory.
- A contact person.

INFORMATION ON OFFSETS

- Information on offsets that have been purchased or developed outside the inventory boundary, subdivided by GHG storage/removals and emissions reduction projects. Specify if the offsets are verified/certified (see chapter 8) and/or approved by an external GHG program (e.g., the Clean Development Mechanism, Joint Implementation).
- Information on reductions at sources inside the inventory boundary that have been sold/transferred as offsets to a third party. Specify if the reduction has been verified/certified and/or approved by an external GHG program (see chapter 8).

By following the *GHG Protocol Corporate Standard* reporting requirements, users adopt a comprehensive standard with the necessary detail and transparency for credible public reporting. The appropriate level of reporting of optional information categories can be determined by the objectives and intended audience for the report. For national or voluntary GHG programs, or for internal management purposes, reporting requirements may vary (Appendix C summarizes the requirements of various GHG programs).

For public reporting, it is important to differentiate between a summary of a public report that is, for example, published on the Internet or in Sustainability/Corporate Social Responsibility reporting (e.g., Global Reporting Initiative) and a full public report that contains all the necessary data as specified by the reporting standard spelled out in this volume. Not every circulated report must contain all information as specified by this standard, but a link or reference needs to be made to a publicly available full report where all information is available.

For some companies, providing emissions data for specific GHGs or facilities/business units, or reporting ratio indicators, may compromise business confidentiality. If this is the case, the data need not be publicly reported, but can be made available to those auditing the GHG emissions data, assuming confidentiality is secured.

Companies should strive to create a report that is as transparent, accurate, consistent and complete as possible. Structurally, this may be achieved by adopting the reporting categories of the standard (e.g., required description of the company and inventory boundary, required information on corporate emissions, optional information on emissions and performance, and optional information on offsets) as a basis of the report. Qualitatively, including a discussion of the reporting company's strategy and goals for GHG accounting, any particular challenges or tradeoffs faced, the context of decisions on boundaries and other accounting parameters, and an analysis of emissions trends may help provide a complete picture of the company's inventory efforts.

Double Counting

Companies should take care to identify and exclude from reporting any scope 2 or scope 3 emissions that are also reported as scope 1 emissions by other facilities, business units, or companies included in the emissions inventory consolidation (see chapter 6).

Use of ratio indicators

Two principal aspects of GHG performance are of interest to management and stakeholders. One concerns the overall GHG impact of a company—that is the absolute quantity of GHG emissions released to the atmosphere. The other concerns the company's GHG emissions normalized by some business metric that results in a ratio indicator. The *GHG Protocol Corporate Standard* requires reporting of absolute emissions; reporting of ratio indicators is optional.

Ratio indicators provide information on performance relative to a business type and can facilitate comparisons between similar products and processes over time. Companies may choose to report GHG ratio indicators in order to:

- Evaluate performance over time (e.g., relate figures from different years, identify trends in the data, and show performance in relation to targets and base years (see chapter 11).
- Establish a relationship between data from different categories. For example, a company may want to establish a relationship between the value that an action provides (e.g., price of a tonne of product) and its impact on society or on the environment (e.g., emissions from product manufacturing).
- Improve comparability between different sizes of business and operations by normalizing figures (e.g., by assessing the impact of different sized businesses on the same scale).

It is important to recognize that the inherent diversity of businesses and the circumstances of individual companies can result in misleading indicators. Apparently minor differences in process, product, or location can be significant in terms of environmental effect. Therefore, it is necessary to know the business context in order to be able to design and interpret ratio indicators correctly.

Companies may develop ratios that make most sense for their business and are relevant to their decision-making needs. They may select ratios for external reporting that improve the understanding and clarify the interpretation of their performance for their stakeholders. It is important to provide some perspective on issues such as scale and limitations of indicators in a way that users understand the nature of the information provided. Companies should consider what ratio indicators best capture the benefits and impacts of their business, i.e., its operations, its products, and its effects on the marketplace and on the entire economy. Some examples of different ratio indicators are provided here.

PRODUCTIVITY/EFFICIENCY RATIOS.
Productivity/efficiency ratios express the value or achievement of a business divided by its GHG impact. Increasing efficiency ratios reflect a positive performance improvement. Examples of productivity/efficiency ratios include resource productivity (e.g., sales per GHG) and process eco-efficiency (e.g., production volume per amount of GHG).

MidAmerican: Setting ratio indicators for a utility company

MidAmerican Energy Holdings Company, an energy company based in Iowa, wanted a method to track a power plant's GHG intensity, while also being able to roll individual plant results into a corporate "generation portfolio" GHG intensity indicator. MidAmerican also wanted to be able to take into account the GHG benefits from planned renewable generation, as well as measure the impacts of other changes to its generation portfolio over time (e.g., unit retirements or new construction). The company adopted a GHG intensity indicator that specifically measures pounds of direct emissions over total megawatt hours generated (lbs/MWh).

To measure its direct emissions, the company leverages data currently gathered to satisfy existing regulatory requirements and, where gaps might exist, uses fuel calculations. For coal-fired units, that means mainly using continuous emissions monitoring (CEM) data and the U.S. Environmental Protection Agency's emission factors for natural gas- and fuel oil-fired units. Using the *GHG Protocol Corporate Standard*, the company completes an annual emission inventory for each of its fossil-fired plants, gathering together a) fuel volume and heat input data, b) megawatt production data, c) CEMs data, and d) fuel calculations using appropriate emission factors.

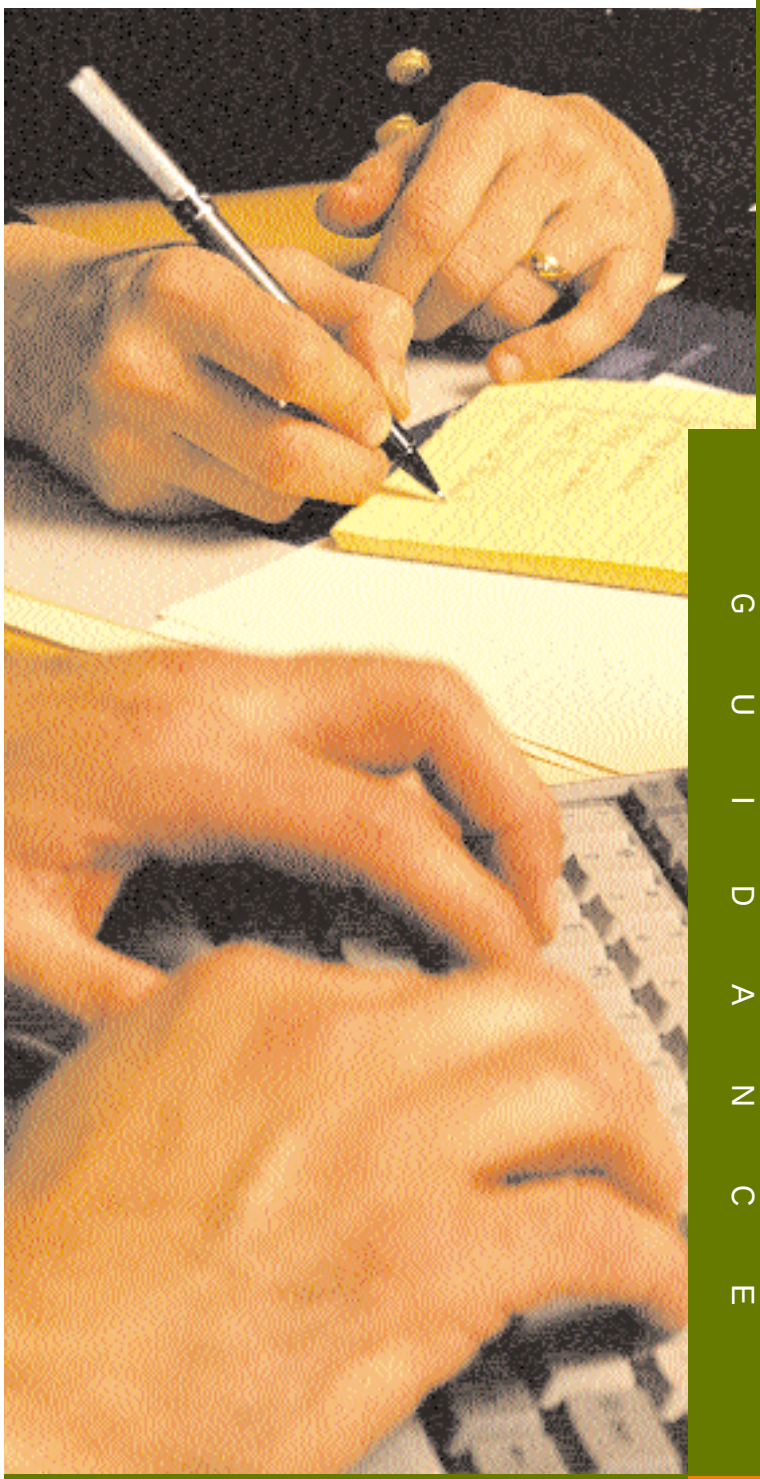
For example, in 2001, using CEM data and fuel calculations, the company's Iowa utility business emitted roughly 23 million tonnes of CO_2, while generating approximately 21 million megawatt hours. Its 2001 GHG intensity indicator calculates to approximately 2,177 lbs/MWh of CO_2, reflecting the Iowa utility company's reliance on traditional coal-fired generation.

By 2008, the Iowa utility company will have constructed a new 790 MW coal-fueled plant, a 540 MW combined-cycle natural gas plant, and a 310 MW wind-turbine farm and added them to its generation portfolio. The utility company's overall CO_2 emissions will increase, but so will its megawatt production. The combined emissions from the new coal- and gas-fired plants will be added to the GHG intensity indicator's numerator, while the megawatt production data from all three facilities will be added to the indicator's denominator. More importantly, and the ratio indicator illustrates this, over time MidAmerican's GHG intensity will decline as more efficient generation is brought online and older power plants are used less or retired altogether.

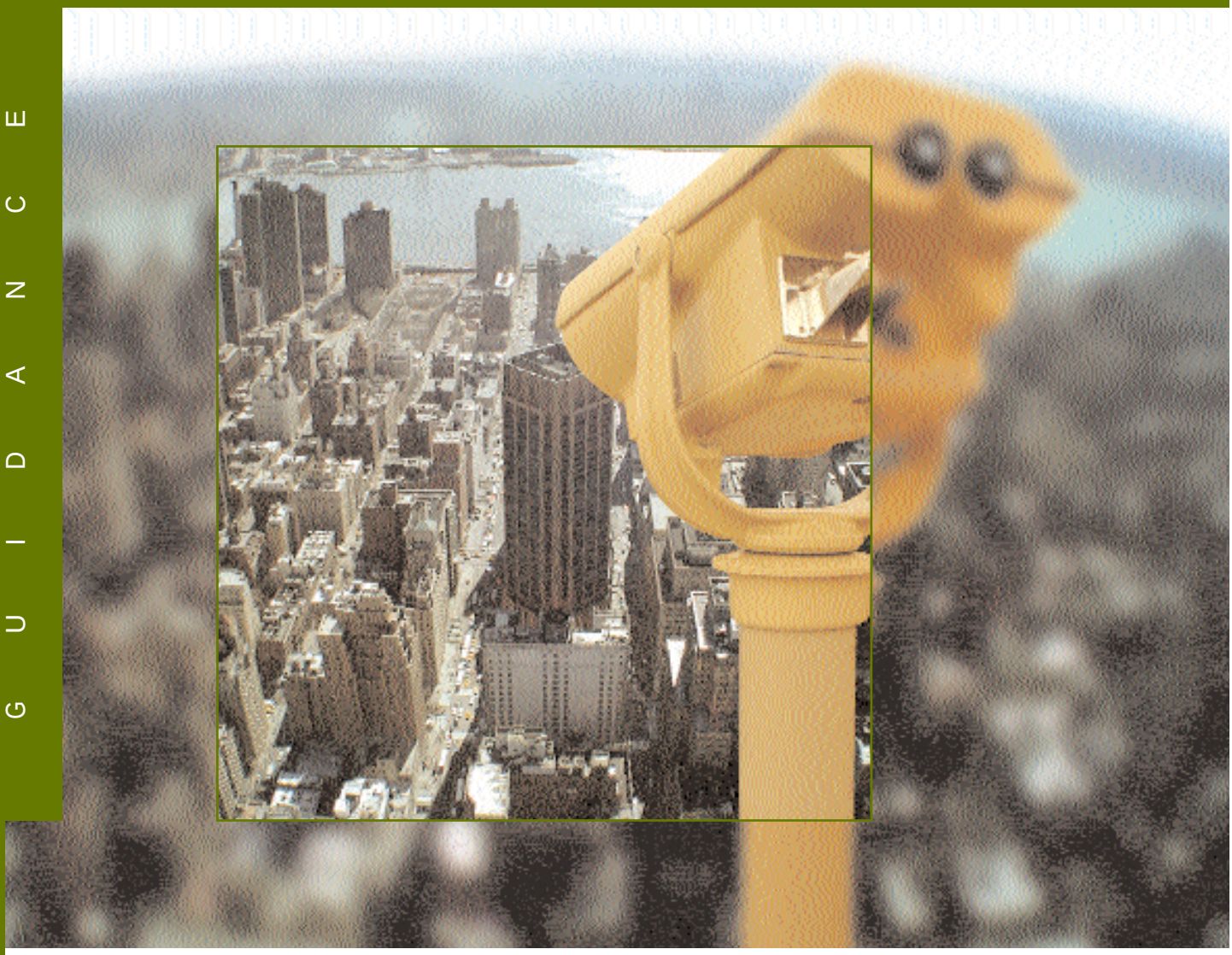
INTENSITY RATIOS. Intensity ratios express GHG impact per unit of physical activity or unit of economic output. A physical intensity ratio is suitable when aggregating or comparing across businesses that have similar products. An economic intensity ratio is suitable when aggregating or comparing across businesses that produce different products. A declining intensity ratio reflects a positive performance improvement. Many companies historically tracked environmental performance with intensity ratios. Intensity ratios are often called "normalized" environmental impact data. Examples of intensity ratios include product emission intensity (e.g., tonnes of CO_2 emissions per electricity generated); service intensity (e.g., GHG emissions per function or per service); and sales intensity (e.g., emissions per sales).

PERCENTAGES. A percentage indicator is a ratio between two similar issues (with the same physical unit in the numerator and the denominator). Examples of percentages that can be meaningful in performance reports include current GHG emissions expressed as a percentage of base year GHG emissions.

For further guidance on ratio indicators refer to CCAR, 2003; GRI, 2002; Verfaillie and Bidwell, 2000.



10 Verification of GHG Emissions



Verification is an objective assessment of the accuracy and completeness of reported GHG information and the conformity of this information to pre-established GHG accounting and reporting principles. Although the practice of verifying corporate GHG inventories is still evolving the emergence of widely accepted standards, such as the *GHG Protocol Corporate Standard* and the forthcoming *GHG Protocol Project Quantification Standard*, should help GHG verification become more uniform, credible, and widely accepted.

This chapter provides an overview of the key elements of a GHG verification process. It is relevant to companies who are developing GHG inventories and have planned for, or are considering, obtaining an independent verification of their results and systems. Furthermore, as the process of developing a verifiable inventory is largely the same as that for obtaining reliable and defensible data, this chapter is also relevant to all companies regardless of any intention to commission a GHG verification.

Verification involves an assessment of the risks of material discrepancies in reported data. Discrepancies relate to differences between reported data and data generated from the proper application of the relevant standards and methodologies. In practice, verification involves the prioritization of effort by the verifier towards the data and associated systems that have the greatest impact on overall data quality.

Relevance of GHG principles

The primary aim of verification is to provide confidence to users that the reported information and associated statements represent a faithful, true, and fair account of a company's GHG emissions. Ensuring transparency and verifiability of the inventory data is crucial for verification. The more transparent, well controlled and well documented a company's emissions data and systems are, the more efficient it will be to verify. As outlined in chapter 1, there are a number of GHG accounting and reporting principles that need to be adhered to when compiling a GHG inventory. Adherence to these principles and the presence of a transparent, well-documented system (sometimes referred to as an audit trail) is the basis of a successful verification.

Goals

Before commissioning an independent verification, a company should clearly define its goals and decide whether they are best met by an external verification. Common reasons for undertaking a verification include:

- Increased credibility of publicly reported emissions information and progress towards GHG targets, leading to enhanced stakeholder trust
- Increased senior management confidence in reported information on which to base investment and target-setting decisions
- Improvement of internal accounting and reporting practices (e.g., calculation, recording and internal reporting systems, and the application of GHG accounting and reporting principles), and facilitating learning and knowledge transfer within the company
- Preparation for mandatory verification requirements of GHG programs.

Internal assurance

While verification is often undertaken by an independent, external third party, this may not always be the case. Many companies interested in improving their GHG inventories may subject their information to internal verification by personnel who are independent of the GHG accounting and reporting process. Both internal and external verification should follow similar procedures and processes. For external stakeholders, external third part verification is likely to significantly increase the credibility of the GHG inventory. However, independent internal verifications can also provide valuable assurance over the reliability of information.

Internal verification can be a worthwhile learning experience for a company prior to commissioning an external verification by a third party. It can also provide external verifiers with useful information to begin their work.

The concept of materiality

The concept of "materiality" is essential to understanding the process of verification. Chapter 1 provides a useful interpretation of the relationship between the principle of completeness and the concept of materiality. Information is considered to be material if, by its inclusion or exclusion, it can be seen to influence any decisions or actions taken by users of it. A material discrepancy is an error (for example, from an oversight, omission or miscalculation) that results in a reported quantity or statement being significantly different to the true value or meaning. In order to express an opinion on data or information, a verifier would need to form a view on the materiality of all identified errors or uncertainties.

While the concept of materiality involves a value judgment, the point at which a discrepancy becomes material (materiality threshold) is usually pre-defined. As a rule of thumb, an error is considered to be materially misleading

if its value exceeds 5% of the total inventory for the part of the organization being verified.

The verifier needs to assess an error or omission in the full context within which information is presented. For example, if a 2% error prevents a company from achieving its corporate target then this would most likely be considered material. Understanding how verifiers apply a materiality threshold will enable companies to more readily establish whether the omissions of an individual source or activity from their inventory is likely to raise questions of materiality.

Materiality thresholds may also be outlined in the requirements of a specific GHG program or determined by a national verification standard, depending on who is requiring the verification and for what reasons. A materiality threshold provides guidance to verifiers on what may be an immaterial discrepancy so that they can concentrate their work on areas that are more likely to lead to materially misleading errors. A materiality threshold is not the same as de minimis emissions, or a permissible quantity of emissions that a company can leave out of its inventory.

Assessing the risk of material discrepancy

Verifiers need to assess the risk of material discrepancy of each component of the GHG information collection and reporting process. This assessment is used to plan and direct the verification process. In assessing this risk, they will consider a number of factors, including:

- The structure of the organization and the approach used to assign responsibility for monitoring and reporting GHG emissions
- The approach and commitment of management to GHG monitoring and reporting
- Development and implementation of policies and processes for monitoring and reporting (including documented methods explaining how data is generated and evaluated)
- Processes used to check and review calculation methodologies
- Complexity and nature of operations
- Complexity of the computer information system used to process the information
- The state of calibration and maintenance of meters used, and the types of meters used
- Reliability and availability of input data
- Assumptions and estimations applied
- Aggregation of data from different sources
- Other assurance processes to which the systems and data are subjected (e.g., internal audit, external reviews and certifications).

Establishing the verification parameters

The scope of an independent verification and the level of assurance it provides will be influenced by the company's goals and/or any specific jurisdictional requirements. It is possible to verify the entire GHG inventory or specific parts of it. Discrete parts may be specified in terms of geographic location, business units, facilities, and type of emissions. The verification process may also examine more general managerial issues, such as quality management procedures, managerial awareness, availability of resources, clearly defined responsibilities, segregation of duties, and internal review procedures.

The company and verifier should reach an agreement upfront on the scope, level and objective of the verification. This agreement (often referred to as the scope of work) will address issues such as which information is to be included in the verification (e.g., head office consolidation only or information from all sites), the level of scrutiny to which selected data will be subjected (e.g., desk top review or on-site review), and the intended use of the results of the verification). The materiality threshold is another item to be considered in the scope of work. It will be of key consideration for both the verifier and the company, and is linked to the objectives of the verification.

The scope of work is influenced by what the verifier actually finds once the verification commences and, as a result, the scope of work must remain sufficiently flexible to enable the verifier to adequately complete the verification.

A clearly defined scope of work is not only important to the company and verifier, but also for external stakeholders to be able to make informed and appropriate decisions. Verifiers will ensure that specific exclusions have not been made solely to improve the company's performance. To enhance transparency and credibility companies should make the scope of work publicly available.

Site visits

Depending on the level of assurance required from verification, verifiers may need to visit a number of sites to enable them to obtain sufficient, appropriate evidence over the completeness, accuracy and reliability of reported information. The sites visited should be representative of the organization as a whole. The selection of sites to be visited will be based on consideration of a number of factors, including:

- Nature of the operations and GHG sources at each site
- Complexity of the emissions data collection and calculation process
- Percentage contribution to total GHG emissions from each site
- The risk that the data from sites will be materially misstated
- Competencies and training of key personnel
- Results of previous reviews, verifications, and uncertainty analyses.

Timing of the verification

The engagement of a verifier can occur at various points during the GHG preparation and reporting process. Some companies may establish a semi-permanent internal verification team to ensure that GHG data standards are being met and improved on an on-going basis.

Verification that occurs during a reporting period allows for any reporting deficiencies or data issues to be addressed before the final report is prepared. This may be particularly useful for companies preparing high profile public reports. However, some GHG programs may require, often on a random selection basis, an independent verification of the GHG inventory following the submission of a report (e.g., World Economic Forum Global GHG Registry, Greenhouse Challenge program in Australia, EU ETS). In both cases the verification cannot be closed out until the final data for the period has been submitted.

PricewaterhouseCoopers: GHG inventory verification- lessons from the field

PricewaterhouseCoopers (PwC), a global services company, has been conducting GHG emissions verifications for the past 10 years in various sectors, including energy, chemicals, metals, semiconductors, and pulp and paper. PwC's verification process involves two key steps:

1. An evaluation of whether the GHG accounting and reporting methodology (e.g., *GHG Protocol Corporate Standard*) has been correctly implemented
2. Identification of any material discrepancies.

The *GHG Protocol Corporate Standard* has been crucial in helping PwC to design an effective GHG verification methodology. Since the publication of the first edition, PwC has witnessed rapid improvements in the quality and verifiability of GHG data reported. In particular the quantification on non-CO_2 GHGs and combustion emissions has dramatically improved. Cement sector emissions verification has been made easier by the release of the WBCSD cement sector tool. GHG emissions from purchased electricity are also easy to verify since most companies have reliable data on MWh consumed and emission factors are publicly available.

However, experience has shown that for most companies, GHG data for 1990 is too unreliable to provide a verifiable base year for the purposes of tracking emissions over time or setting a GHG target. Challenges also remain in auditing GHG emissions embedded in waste fuels, co-generation, passenger travel, and shipping.

Over the past 3 years PwC has noticed a gradual evolution of GHG verification practices from "customized" and "voluntary" to "standardized" and "mandatory." The California Climate Action Registry, World Economic Forum Global GHG Registry and the forthcoming EU ETS (covering 12,000 industrial sites in Europe) require some form of emissions verification. In the EU ETS GHG verifiers will likely have to be accredited by a national body. GHG verifier accreditation processes have already been established in the UK for its domestic trading scheme, and in California for registering emissions in the CCAR.

Selecting a verifier

Some factors to consider when selecting a verifier include their:

- previous experience and competence in undertaking GHG verifications
- understanding of GHG issues including calculation methodologies
- understanding of the company's operations and industry
- objectivity, credibility, and independence.

It is important to recognize that the knowledge and qualifications of the individual(s) conducting the verification can be more important than those of the organization(s) they come from. Companies should select organizations based on the knowledge and qualifications of their actual verifiers and ensure that the lead verifier assigned to them is appropriately experienced. Effective verification of GHG inventories often requires a mix of specialized skills, not only at a technical level (e.g., engineering experience, industry specialists) but also at a business level (e.g., verification and industry specialists).

Preparing for a GHG verification

The internal processes described in chapter 7 are likely to be similar to those followed by an independent verifier. Therefore, the materials that the verifiers need are similar. Information required by an external verifier is likely to include the following:

- Information about the company's main activities and GHG emissions (types of GHG produced, description of activity that causes GHG emissions)
- Information about the company/groups/organization (list of subsidiaries and their geographic location, ownership structure, financial entities within the organization)
- Details of any changes to the company's organizational boundaries or processes during the period, including justification for the effects of these changes on emissions data
- Details of joint venture agreements, outsourcing and contractor agreements, production sharing agreements, emissions rights and other legal or contractual documents that determine the organizational and operational boundaries
- Documented procedures for identifying sources of emissions within the organizational and operational boundaries
- Information on other assurance processes to which the systems and data are subjected (e.g. internal audit, external reviews and certifications)
- Data used for calculating GHG emissions. This might, for example, include:
  - Energy consumption data (invoices, delivery notes, weigh-bridge tickets, meter readings: electricity, gas pipes, steam, and hot water, etc.)
  - Production data (tonnes of material produced, kWh of electricity produced, etc.)
  - Raw material consumption data for mass balance calculations (invoices, delivery notes, weighbridge tickets, etc.)
  - Emission factors (laboratory analysis etc.).
- Description of how GHG emissions data have been calculated:
  - Emission factors and other parameters used and their justification
  - Assumptions on which estimations are based
  - Information on the measurement accuracy of meters and weigh-bridges (e.g., calibration records), and other measurement techniques
  - Equity share allocations and their alignment with financial reporting
  - Documentation on what, if any, GHG sources or activities are excluded due to, for example, technical or cost reasons.
- Information gathering process:
  - Description of the procedures and systems used to collect, document and process GHG emissions data at the facility and corporate level
  - Description of quality control procedures applied (internal audits, comparison with last year's data, recalculation by second person, etc.).

- Other information:
  - Selected consolidation approach as defined in chapter 3
  - list of (and access to) persons responsible for collecting GHG emissions data at each site and at the corporate level (name, title, e-mail, and telephone numbers)
  - information on uncertainties, qualitative and if available, quantitative.

Appropriate documentation needs to be available to support the GHG inventory being subjected to external verification. Statements made by management for which there is no available supporting documentation cannot be verified. Where a reporting company has not yet implemented systems for routinely accounting and recording GHG emissions data, an external verification will be difficult and may result in the verifier being unable to issue an opinion. Under these circumstances, the verifiers may make recommendations on how current data collection and collation process should be improved so that an opinion can be obtained in future years.

Companies are responsible for ensuring the existence, quality and retention of documentation so as to create an audit trail of how the inventory was compiled. If a company issues a specific base year against which it assesses its GHG performance, it should retain all relevant historical records to support the base year data. These issues should be born in mind when designing and implementing GHG data processes and procedures.

Using the verification findings

Before the verifiers will verify that an inventory has met the relevant quality standard, they may require the company to adjust any material errors that they identified during the course of the verification. If the verifiers and the company cannot come to an agreement regarding adjustments, then the verifier may not be able to provide the company with an unqualified opinion. All material errors (individually or in aggregate) need to be amended prior to the final verification sign off.

As well as issuing an opinion on whether the reported information is free from material discrepancy, the verifiers may, depending on the agreed scope of work, also issue a verification report containing a number of recommendations for future improvements. The process of verification should be viewed as a valuable input to the process of continual improvement. Whether verification is undertaken for the purposes of internal review, public reporting or to certify compliance with a particular GHG program, it will likely contain useful information and guidance on how to improve and enhance a company's GHG accounting and reporting system.

Similar to the process of selecting a verifier, those selected to be responsible for assessing and implementing responses to the verification findings should also have the appropriate skills and understanding of GHG accounting and reporting issues.

11 Setting a GHG Target

Setting targets is a routine business practice that helps ensure that an issue is kept on senior management's "radar screen" and factored into relevant decisions about what products and services to provide and what materials and technologies to use. Often, a corporate GHG emission reduction target is the logical follow-up to developing a GHG inventory.

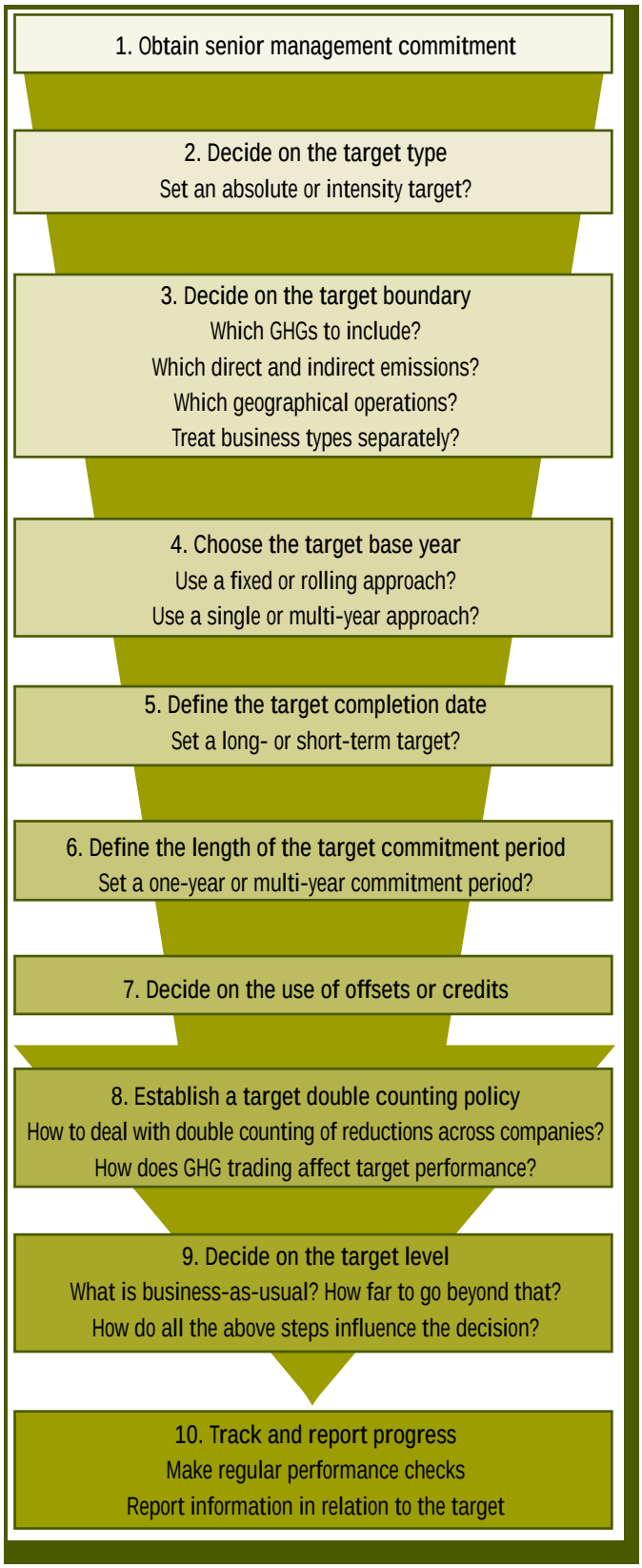
This chapter provides guidance on the process of setting and reporting on a corporate GHG target. Although the chapter focuses on emissions, many of the considerations equally apply to GHG sequestration (see Appendix B). It is not the purpose of this chapter to prescribe what a company's target should be, rather the focus is on the steps involved, the choices to be made, and the implications of those choices.

Why Set a GHG Target?

Any robust business strategy requires setting targets for revenues, sales, and other core business indicators, as well as tracking performance against those targets. Likewise, effective GHG management involves setting a GHG target. As companies develop strategies to reduce the GHG emissions of their products and operations, corporate-wide GHG targets are often key elements of these efforts, even if some parts of the company are or will be subject to mandatory GHG limits. Common drivers for setting a GHG target include:

- MINIMIZING AND MANAGING GHG RISKS
  While developing a GHG inventory is an important step towards identifying GHG risks and opportunities, a GHG target is a planning tool that can actually drive GHG reductions. A GHG target will help raise internal awareness about the risks and opportunities presented by climate change and ensure the issue is on the business agenda. This can serve to minimize and more effectively manage the business risks associated with climate change.
- ACHIEVING COST SAVINGS AND STIMULATING INNOVATION
  Implementing a GHG target can result in cost savings by driving improvements in process innovation and resource efficiency. Targets that apply to products can drive R&D, which in turn creates products and services that can increase market share and reduce emissions associated with the use of products.
- PREPARING FOR FUTURE REGULATIONS
  Internal accountability and incentive mechanisms that are established to support a target's implementation can also equip companies to respond more effectively to future GHG regulations. For example, some companies have found that experimenting with internal GHG trading programs has allowed them to better understand the possible impacts of future trading programs on the company.

FIGURE 12. Steps in setting a GHG target



- DEMONSTRATING LEADERSHIP AND CORPORATE RESPONSIBILITY

  With the emergence of GHG regulations in many parts of the world, as well as growing concern about the effects of climate change, a commitment such as setting a public corporate GHG target demonstrates leadership and corporate responsibility. This can improve a company's standing with customers, employees, investors, business partners, and the public, and enhance brand reputation.

- PARTICIPATING IN VOLUNTARY PROGRAMS

  A growing number of voluntary GHG programs are emerging to encourage and assist companies in setting, implementing, and tracking progress toward GHG targets. Participation in voluntary programs can result in public recognition, may facilitate recognition of early action by future regulations, and enhance a company's GHG accounting and reporting capacity and understanding.

Steps in Setting a Target

Setting a GHG target involves making choices among various strategies for defining and achieving a GHG reduction. The business goals, any relevant policy context, and stakeholder discussions should inform these choices.

The following sections outline the ten steps involved. Although presented sequentially, in practice target setting involves cycling back and forth between the steps. It is assumed that the company has developed a GHG inventory before implementing these steps. Figure 12 summarizes the steps.

1. Obtain senior management commitment

As with any corporate wide target, senior management buy-in and commitment particularly at the board/CEO level is a prerequisite for a successful GHG reduction program. Implementing a reduction target is likely to necessitate changes in behavior and decision-making throughout the organization. It also requires establishing an internal accountability and incentive system and providing adequate resources to achieve the target. This will be difficult, if not impossible, without senior management commitment.

BOX 4. Comparing absolute and intensity targets

ABSOLUTE TARGETS reduce absolute emissions over time (Example: reduce CO_2 by 25 percent below 1994 levels by 2010)

Advantages

- Designed to achieve a reduction in a specified quantity of GHGs emitted to the atmosphere
- Environmentally robust as it entails a commitment to reduce GHGs by a specified amount
- Transparently addresses potential stakeholder concerns about the need to manage absolute emissions

Disadvantages

- Target base year recalculations for significant structural changes to the organization add complexity to tracking progress over time
- Does not allow comparisons of GHG intensity/efficiency
- Recognizes a company for reducing GHGs by decreasing production or output (organic decline, see chapter 5)
- May be difficult to achieve if the company grows unexpectedly and growth is linked to GHG emissions

INTENSITY TARGETS reduce the ratio of emissions relative to a business metric over time (Example: reduce CO_2 by 12 percent per tonne of clinker between 2000 and 2008)

Advantages

- Reflects GHG performance improvements independent of organic growth or decline
- Target base year recalculations for structural changes are usually not required (see step 4)
- May increase the comparability of GHG performance among companies

Disadvantages

- No guarantee that GHG emissions to the atmosphere will be reduced—absolute emissions may rise even if intensity goes down and output increases
- Companies with diverse operations may find it difficult to define a single common business metric
- If a monetary variable is used for the business metric, such as dollar of revenue or sales, it must be recalculated for changes in product prices and product mix, as well as inflation, adding complexity to the tracking process

Royal Dutch/Shell: The target cascade

The Royal Dutch/Shell Group, a global energy corporation, discovered when implementing its voluntary GHG reduction target that one of the biggest challenges was to cascade the target down to the actions of all employees who influence target performance. It was concluded that successful implementation required different targets at different levels of the company. This is because each of the components that underlie absolute GHG emissions is influenced by decision-making at various management levels (from the corporate level down to individual businesses and facilities).

Absolute GHG emissions at a plant (tonnes of CO_2-e.) = Function (MP x BPE x PE)

MP — Quantity of product manufactured by a facility. This is fundamental to the need to grow and is therefore controlled at corporate level. GHG emissions are typically not managed by limiting this component.

BPE — Best process energy use per tonne. The optimal (or theoretical) energy consumed (translates to emissions) by a particular design of plant. The type of plant built is a business-level decision. Significant capital decisions may be involved in building a new plant incorporating new technology. For existing plants, BPE is improved by significant design change and retrofitting. This could also involve large capital expenditure.

PE — Plant efficiency index. An index that indicates how the plant is actually performing relative to BPE. PE is a result of day-to-day decisions taken by plant operators and technicians. It is improved also by the Shell Global Solutions Energise™ programme, which typically requires low capital expenditure to implement.

Royal Dutch/Shell found that while this model is probably an oversimplification when it comes to exploration and production facilities, it is suitable for manufacturing facilities (e.g., refineries and chemical plants). It illustrates that an absolute target could only be set at the corporate level, while lower levels require intensity or efficiency targets.

TYPE OF TARGET	ACTIONS THAT REDUCE EMISSIONS	LEVEL OF DECISION-MAKING (IN GENERAL AND ON TARGET)
Reduce absolute emissions	See below	Corporate
MP: not normally constrained	--------	All levels depending on scale (e.g. new venture, new plant, operational)
Reduce GHG intensity	See below	Business in consultation with corporate
Improve BPE (efficiency)	Building new plants with new technology	Business
	Retrofitting and changing design of plants	Business
Improve PE (efficiency)	Increase plant operating efficiency	Facility, supported by Shell Global Solutions Energise™

2. Decide on the target type

There are two broad types of GHG targets: absolute and intensity-based. An absolute target is usually expressed in terms of a reduction over time in a specified quantity of GHG emissions to the atmosphere, the unit typically being tonnes of CO_2-e. An intensity target is usually expressed as a reduction in the ratio of GHG emissions relative to another business metric.[1] The comparative metric should be carefully selected. It can be the output of the company (e.g. tonne CO_2-e per tonne product, per kWh, per tonne mileage) or some other metric such as sales, revenues or office space. To facilitate transparency, companies using an intensity target should also report the absolute emissions from sources covered by the target.

Box 4 summarizes the advantages and disadvantages of each type of target. Some companies have both an absolute and an intensity target. Box 5 provides examples of corporate GHG targets. The Royal Dutch/Shell case study illustrates how a corporate wide absolute target can be implemented by formulating a combination of intensity targets at lower levels of decision-making within the company.

3. Decide on the target boundary

The target boundary defines which GHGs, geographic operations, sources, and activities are covered by the target. The target and inventory boundary can be identical, or

the target may address a specified subset of the sources included in the company inventory. The quality of the GHG inventory should be a key factor informing this choice. The questions to be addressed in this step include the following:

- WHICH GHGS? Targets usually include one or more of the six major GHGs covered by the Kyoto Protocol. For companies with significant non-CO_2 GHG sources it usually makes sense to include these to increase the range of reduction opportunities. However, practical monitoring limitations may apply to smaller sources.
- WHICH GEOGRAPHICAL OPERATIONS? Only country or regional operations with reliable GHG inventory data should be included in the target. For companies with global operations, it makes sense to limit the target's geographical scope until a robust and reliable inventory has been developed for all operations. Companies that participate in GHG programs involving trading[2] will need to decide whether or not to include the emissions sources covered in the trading program in their corporate target. If common sources are included, i.e., if there is overlap in sources covered between the corporate target and the trading program, companies should consider how they will address any double counting resulting from the trading of GHG reductions in the trading program (see step 8).
- WHICH DIRECT AND INDIRECT EMISSION SOURCES? Including indirect GHG emissions in a target will facilitate more cost-effective reductions by increasing the reduction opportunities available. However, indirect emissions are generally harder to measure accurately and verify than direct emissions although some categories, such as scope 2 emissions from purchased electricity, may be amenable to accurate measurement and verification. Including indirect emissions can raise issues with regard to ownership and double counting of reductions, as indirect emissions are by definition someone else's direct emissions (see step 8).
- SEPARATE TARGETS FOR DIFFERENT TYPES OF BUSINESSES? For companies with diverse operations it may make more sense to define separate GHG targets for different core businesses, especially when using an intensity target, where the most meaningful business metric for defining the target varies across business units (e.g., GHGs per tonne of cement produced or barrel of oil refined).

BOX 5. Selected corporate GHG targets

ABSOLUTE TARGETS

- **ABB** Reduce GHGs by 1 percent each year from 1998 through 2005
- **Alcoa** Reduce GHGs by 25 percent from 1990 levels by 2010, and 50 percent from 1990 levels over same period, if inert anode technology succeeds
- **BP** Hold net GHGs stable at 1990 levels through 2012
- **Dupont** Reduce GHGs by 65 percent from 1990 levels by 2010
- **Entergy** Stabilize CO_2 from U.S. generating facilities at 2000 levels through 2005
- **Ford** Reduce CO_2 by 4 percent over 2003-2006 timeframe based upon average 1998-2001 baseline as part of Chicago Climate Exchange
- **Intel** Reduce PFCs by 10 percent from 1995 levels by 2010
- **Johnson & Johnson** Reduce GHGs by 7 percent from 1990 levels by 2010, with interim goal of 4 percent below 1990 levels by 2005
- **Polaroid** Reduce CO_2 emissions 20 percent below its 1994 emissions by year-end 2005; 25 percent by 2010
- **Royal Dutch/Shell** Manage GHG emissions so that they are still 5 percent or more below the 1990 baseline by 2010, even while growing the business
- **Transalta** Reduce GHGs to 1990 levels by 2000. Achieve zero net GHGs from Canadian operations by 2024

INTENSITY TARGETS

- **Holcim Ltd.** Reduce by the year 2010 the Group average specific[3] net CO_2 emissions by 20 percent from the reference year 1990
- **Kansai Electric Power Company** Reduce CO_2 emissions per kWh sold in fiscal 2010 to approx. 0.34 kg-CO_2/kWh
- **Miller Brewing Company** Reduce GHGs by 18 percent per barrel of production from 2001 to 2006
- **National Renewable Energy Laboratory** Reduce GHGs by 10 percent per square foot from 2000 to 2005

COMBINED ABSOLUTE & INTENSITY TARGETS

- **SC Johnson** GHG emissions intensity reduction of 23 percent by 2005, which represents an absolute or actual GHG reduction of 8 percent
- **Lafarge** Reduce absolute gross CO_2 emissions in Annex I countries 10 percent below 1990 levels by the year 2010. Reduce worldwide average specific net CO_2 emissions 20 percent below 1990 levels by the year 2010[3]

4. Choose the target base year

For a target to be credible, it has to be transparent how target emissions are defined in relation to past emissions. Two general approaches are available: a fixed target base year or a rolling target base year.

- USING A FIXED TARGET BASE YEAR. Most GHG targets are defined as a percentage reduction in emissions below a fixed target base year (e.g., reduce CO_2 emissions 25 percent below 1994 levels by 2010). Chapter 5 describes how companies should track emissions in their inventory over time in reference to a fixed base year. Although it is possible to use different years for the inventory base year and the target base year, to streamline the inventory and target reporting process, it usually makes sense to use the same year for both. As with the inventory base year, it is important to ensure that the emissions data for the target base year are reliable and verifiable. It is possible to use a multi-year average target base year. The same considerations as described for multi-year average base years in chapter 5 apply.

  Chapter 5 provides standards on when and how to recalculate base year emissions in order to ensure like-with-like comparisons over time when structural changes (e.g., acquisitions/divestitures) or changes in measurement and calculation methodologies alter the emissions profile over time. In most cases, this will also be an appropriate approach for recalculating data for a fixed target base year.

- USING A ROLLING TARGET BASE YEAR. Companies may consider using a rolling target base year if obtaining and maintaining reliable and verifiable data for a fixed target base year is likely to be challenging (for example, due to frequent acquisitions). With a rolling target base year, the base year rolls forward at regular time intervals, usually one year, so that emissions are always compared against the previous year.[4] However, emission reductions can still be collectively

TABLE 5. Comparing targets with rolling and fixed base years

	FIXED TARGET BASE YEAR	ROLLING TARGET BASE YEAR
How might the target be stated?	A target might take the form "we will emit X% less in year B than in year A"	A target might take the form of "over the next X years we will reduce emissions every year by Y% compared to the previous year"[5]
What is the target base year?	A fixed reference year in the past	The previous year
How far back is like-with-like comparison possible?	The time series of absolute emissions will compare like with like	If there have been significant structural changes the time series of absolute emissions will not compare like with like over more than two years at a time
What is the basis for comparing emissions between the target base year and completion year? (see also Figure 14)	The comparison over time is based on what is owned/controlled by the company in the target completion year.	The comparison over time is based on what was owned/controlled by the company in the years the information was reported[6]
How far back are recalculations made?	Emissions are recalculated for all years back to the fixed target base year	Emissions are recalculated only for the year prior to the structural change, or ex-post for the year of the structural change which then becomes the base year.
How reliable are the target base year emissions?	If a company with a target acquires a company that did not have reliable GHG data in the target base year; back-casting of emissions becomes necessary, reducing the reliability of the base year	Data from an acquired company's GHG emissions are only necessary for the year before the acquisition (or even only from the acquisition onwards), reducing or eliminating the need for back-casting
When are recalculations made?	The circumstances which trigger recalculations for structural changes etc. (see chapter 5) are the same under both approaches	

stated over several years. An example would be "from 2001 through 2012, emissions will be reduced by one percent every year, compared to the previous year." When structural or methodological changes occur, recalculations only need to be made to the previous year.[7] As a result, like-with-like comparisons of emissions in the "target starting year" (2001 in the example) and "target completion year" (2012) cannot be made because emissions are not recalculated for all years back to the target starting year.

The definition of what triggers a base-year emissions recalculation is the same as under the fixed base year approach. The difference lies in how far back emissions are recalculated. Table 5 compares targets using the rolling and fixed base year approaches while Figure 14 illustrates one of the key differences.

RECALCULATIONS UNDER INTENSITY TARGETS

While the standard in chapter 5 applies to absolute inventory emissions of companies using intensity targets, recalculations for structural changes for the purposes of the target are not usually needed unless the structural change results in a significant change in the GHG intensity. However, if recalculations for structural changes are made for the purposes of the target, they should be made for both the absolute emissions and the business metric. If the target business metric becomes irrelevant through a structural change, a reformulation of the target might be needed (e.g., when a company refocuses on a different industry but had used an industry-specific business metric before).

5. Define the target completion date

The target completion date determines whether the target is relatively short- or long-term. Long-term targets (e.g., with a completion year ten years from the time the target is set) facilitate long-term planning for large capital investments with GHG benefits. However, they might encourage later phase-outs of less efficient equipment. Generally, long-term targets depend on uncertain future developments, which can have opportunities as well as risks, which is illustrated in Figure 13. A five-year target period may be more practical for organizations with shorter planning cycles.

6. Define the length of the commitment period

The target commitment period is the period of time during which emissions performance is actually measured against the target. It ends with the target completion date. Many companies use single-year commitment periods, whereas the Kyoto Protocol, for example, specifies a multi-year "first commitment period" of five years (2008–2012). The length of the target commitment period is an important factor in determining a company's level of commitment. Generally, the longer the target commitment period, the longer the period during which emissions performance counts towards the target.

- EXAMPLE OF A SINGLE YEAR COMMITMENT PERIOD. Company Beta has a target of reducing emissions by 10 percent compared to its target base year 2000, by the commitment year 2010. For Beta to meet its target, it is sufficient for its emissions to be, in the year 2010, no more than 90 percent of year 2000 emissions.
- EXAMPLE OF A MULTI-YEAR COMMITMENT PERIOD. Company Gamma has a target of reducing emissions by 10 percent, compared to its target base year 2000, by the commitment period 2008–2012. For Gamma to meet its target, its sum total emissions from 2008–2012 must not exceed 90 percent of year 2000 emissions times five (number of years in the

FIGURE 13. Defining the target completion date

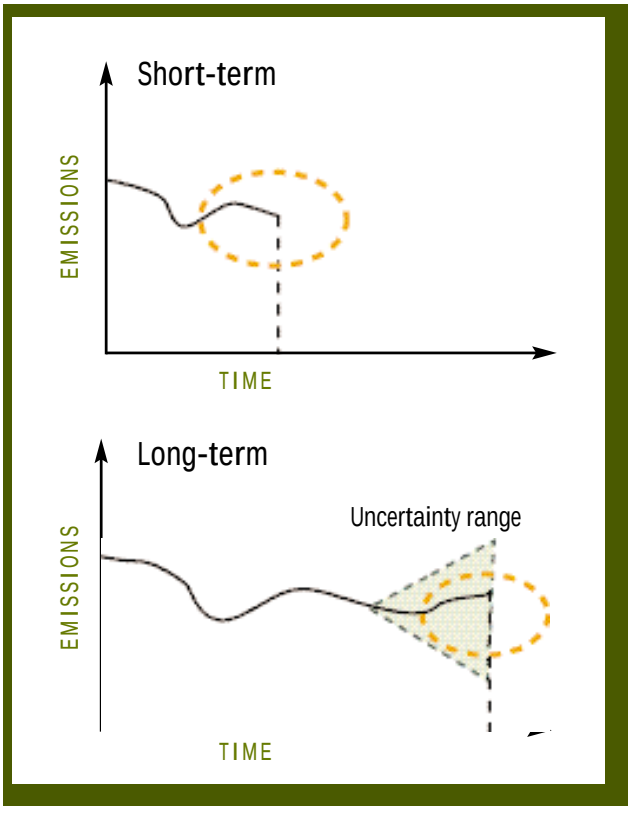
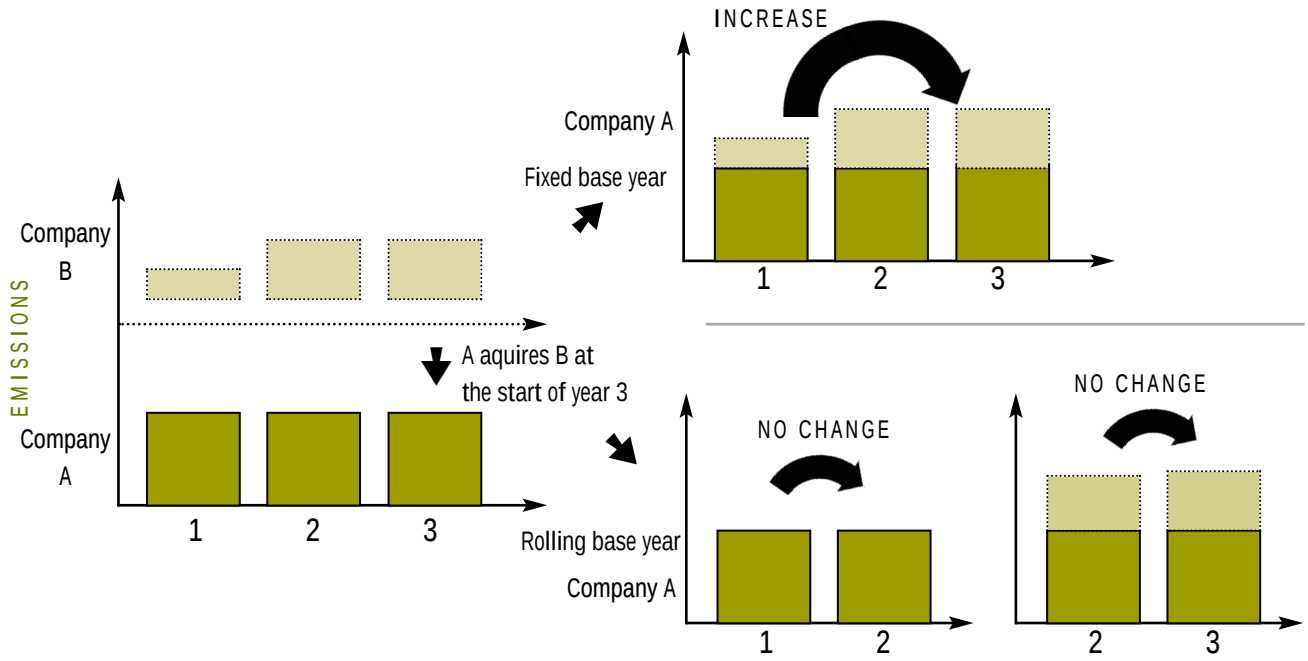


FIGURE 14. Comparing a stabilization target under the fixed and rolling target base year approach



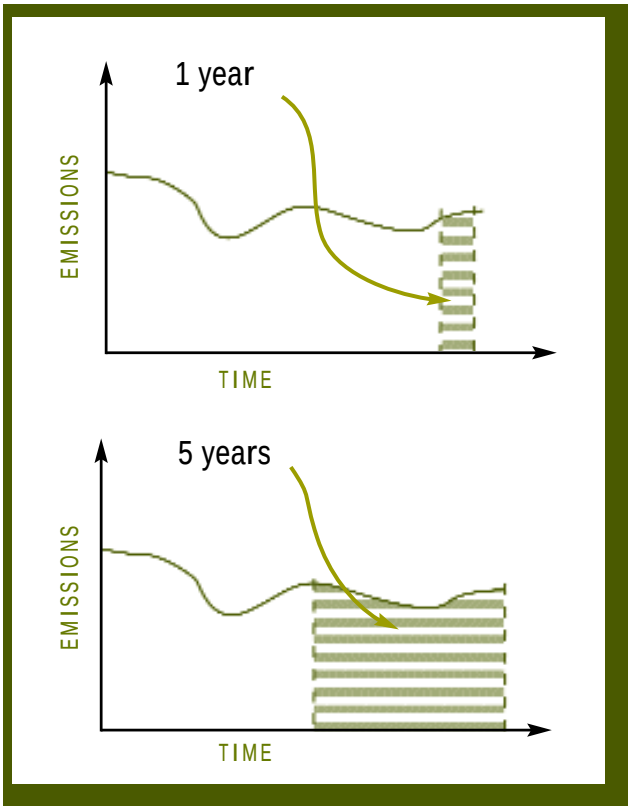
A stabilization target is one that aims to keep emissions constant over time. In this example, company A acquires company B, which has experienced organic GHG growth since the target base year (or "starting" year). Under the rolling approach, emissions growth in the acquired company (B) from year 1 to year 2 does not appear as an emissions increase in relation to the target of the acquiring company (A). Thus company A would meet its stabilization target when using the rolling approach but not when using the fixed approach. In parallel to the example in chapter 5, past GHG growth or decline in divested facilities (GHG changes before the divestment) would affect the target performance under the rolling approach, while it would not be counted under the fixed approach.

commitment period). In other words, its average emissions over those five years must not exceed 90 percent of year 2000 emissions.

Target commitment periods longer than one year can be used to mitigate the risk of unpredictable events in one particular year influencing performance against the target. Figure 15 shows that the length of the target commitment period determines how many emissions are actually relevant for target performance.

For a target using a rolling base year, the commitment period applies throughout: emission performance is continuously being measured against the target every year from when the target is set until the target completion date.

FIGURE 15. Short vs. long commitment periods



7. Decide on the use of GHG offsets or credits[8]

A GHG target can be met entirely from internal reductions at sources included in the target boundary or through additionally using offsets that are generated from GHG reduction projects that reduce emissions at sources (or enhance sinks) external to the target boundary.[9] The use of offsets may be appropriate when

the cost of internal reductions is high, opportunities for reductions limited, or the company is unable to meet its target because of unexpected circumstances. When reporting on the target, it should be specified whether offsets are used and how much of the target reduction was achieved using them.

CREDIBILITY OF OFFSETS AND TRANSPARENCY

There are currently no generally accepted methodologies for quantifying GHG offsets. The uncertainties that surround GHG project accounting make it difficult to establish that an offset is equivalent in magnitude to the internal emissions it is offsetting.[10] This is why companies should always report their own internal emissions in separate accounts from offsets used to meet the target, rather than providing a net figure (see step 10). It is also important to carefully assess the credibility of offsets used to meet a target and to specify the origin and nature of the offsets when reporting. Information needed includes:

- the type of project
- geographic and organizational origin
- how offsets have been quantified
- whether they have been recognized by external programs (CDM, JI, etc.)

One important way to ensure the credibility of offsets is to demonstrate that the quantification methodology adequately addresses all of the key project accounting challenges in chapter 8. Taking these challenges into account, the forthcoming *GHG Protocol Project Quantification Standard* aims to improve the consistency, credibility, and rigor of project accounting.

Additionally, it is important to check that offsets have not also been counted towards another organization's GHG target. This might involve a contract between the buyer and seller that transfers ownership of the offset. Step 8 provides more information on accounting for GHG trades in relation to a corporate target, including establishing a policy on double counting.

OFFSETS AND INTENSITY TARGETS

When using offsets under intensity targets, all the above considerations apply. In order to determine compliance with the target, the offsets can be subtracted from the figure used for absolute emissions (the numerator); the resulting difference is then divided by the corresponding metric. It is important, however, that absolute emissions are still reported separately both from offsets and the business metric (see step 9 below).

8. Establish a target double counting policy

This step addresses double counting of GHG reductions and offsets, as well as allowances issued by external trading programs. It applies only to companies that engage in trading (sale or purchase) of GHG offsets or whose corporate target boundaries interface with other companies' targets or external programs.

Given that there is currently no consensus on how such double counting issues should be addressed, companies should develop their own "Target Double Counting Policy." This should specify how reductions and trades related to other targets and programs will be reconciled with their corporate target, and accordingly which types of double counting situations are regarded as relevant. Listed here are some examples of double counting that might need to be addressed in the policy.

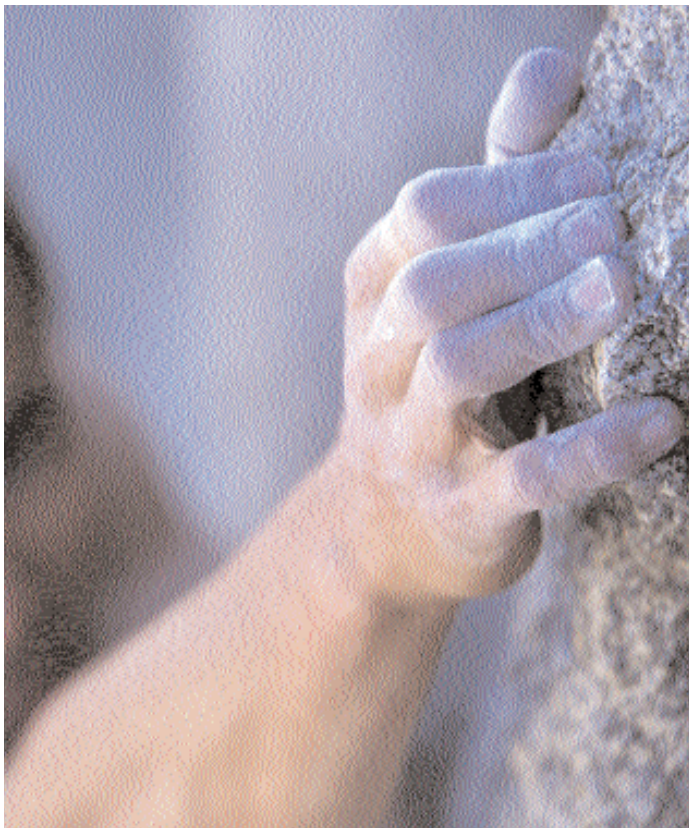
- DOUBLE COUNTING OF OFFSETS. This can occur when a GHG offset is counted towards the target by both the selling and purchasing organizations. For example, company A undertakes an internal reduction project that reduces GHGs at sources included in its own target. Company A then sells this project reduction to company B to use as an offset towards its target, while still counting it toward its own target. In this case, reductions are counted by two different organizations against targets that cover different emissions sources. Trading programs address this by using registries that allocate a serial number to all traded offsets or credits and ensuring the serial numbers are retired once they are used. In the absence of registries this could be addressed by a contract between seller and buyer.
- DOUBLE COUNTING DUE TO TARGET OVERLAP.[11] This can occur when sources included under a company's corporate target are also subject to limits by an external program or another company's target. Two examples:
  - Company A has a corporate target that includes GHG sources that are also regulated under a trading program. In this case, reductions at the common sources are used by company A to meet both its corporate target and the trading program target.

- Company B has a corporate target to reduce its direct emissions from the generation of electricity.[12] Company C who purchases electricity directly from company B also has a corporate target that includes indirect emissions from the purchase of electricity (scope 2). Company C undertakes energy efficiency measures to reduce its indirect emissions from the use of the electricity. These will usually show up as reductions in both companies' targets.[13]

These two examples illustrate that double counting is inherent when the GHG sources where the reductions occur are included in more than one target of the same or different organizations. Without limiting the scope of targets it may be difficult to avoid this type of double counting and it probably does not matter if the double counting is restricted to the organizations sharing the same sources in their targets (i.e., when the two targets overlap).

- DOUBLE COUNTING OF ALLOWANCES TRADED IN EXTERNAL PROGRAMS. This occurs when a corporate target overlaps with an external trading program and allowances that cover the common sources are sold in the trading program for use by another organization and reconciled with the regulatory target, but not reconciled with the corporate target. This example differs from the previous example in that double counting occurs across two targets that are not overlapping (i.e., they do not cover the same sources). This type of double counting could be avoided if the company selling the allowances reconciles the trade with its corporate target (see Holcim case study). Whatever the company decides to do in this situation, in order to maintain credibility, it should address buying and selling of allowances in trading programs in a consistent way. For example, if it decides not to reconcile allowances that it sells in a trading program with its corporate target, it should also not count any allowances of the same type that it purchases to meet its corporate target.

Ideally a company should try to avoid double counting in its corporate target if this undermines the environmental integrity of the target. Also, any prevented double counting between two organizations provides an additional incentive for one of these companies to further reduce emissions. However, in practice the avoidance of double counting can be quite challenging, particularly for companies subject to multiple external programs and when indirect GHG emissions are included in the target. Companies should therefore be transparent about their



double counting policy and state any reasons for choosing not to address some double counting situations.

The Holcim case study describes how one company has chosen to track performance towards its target and address double counting issues.

9. Decide on the target level

The decision on setting the target level should be informed by all the previous steps. Other considerations to take into account include:

- Understanding the key drivers affecting GHG emissions by examining the relationship between GHG emissions and other business metrics, such as production, square footage of manufacturing space, number of employees, sales, revenue, etc.
- Developing different reduction strategies based on the major reduction opportunities available and examining their effects on total GHG emissions. Investigate how emissions projections change with different mitigation strategies.
- Looking at the future of the company as it relates to GHG emissions.
- Factoring in relevant growth factors such as production plans, revenue or sales targets, and Return on Investment (ROI) of other criteria that drive investment strategy.

Holcim: Using a GHG balance sheet to track performance towards the target

Holcim, a global cement producer, tracks its performance in relation to its voluntary corporate target using a GHG balance sheet. This balance sheet shows, for each commitment period and for each country business, on one side the actual GHG emissions and on the other side the GHG "assets" and "instruments." These assets and instruments consist of the voluntary GHG target itself (the "voluntary cap"; in other words, the allowances that Holcim provides for itself), a regulatory target ("cap") if applicable, plus the CDM credits purchased (added) or sold (subtracted), and any regulatory emissions trading allowances purchased (added) or sold (subtracted). Thus if any country business sells CDM credits (generated at sources inside the voluntary target boundary), it is ensured that only the buying organization counts the credit (see first example of double counting in step 8).

At the end of the commitment period, every country business must demonstrate a neutral or positive balance towards Holcim's target. Those companies whose voluntary cap overlaps with a regulatory cap (e.g., in Europe) must also demonstrate a neutral or positive balance towards the regulatory cap. GHG reductions in Europe are thus reported towards both targets (see second example of double counting in step 8).

Both sides of the country business balance sheets are consolidated to group level. Credits and allowances traded within the group simply cancel out in the asset column of the consolidated corporate level GHG balance sheet. Any credits or allowances traded externally are reconciled with both the voluntary and regulatory caps at the bottom line of the asset column of the balance sheet. This ensures that any sold allowance is only counted by the buying organization (when Holcim's target and that of the buying organization do not overlap). A purchased allowance or credit is counted towards both the voluntary and regulatory targets of the European business (these two targets overlap).

GHG balance sheet (All values in tonnes CO_2-e/year)	
GHG ASSETS & INSTRUMENTS	GHG EMISSIONS
Holcim (country A in Europe)	
Voluntary cap (direct emissions)	Emissions, direct, indirect + biomass
Regulatory cap (direct emissions)	
Reg. allowances purchased (+) or sold (-)	
CDM credits purchased (+) or sold (-)	
Sum of voluntary cap, reg. allowances & credits	Sum of direct emissions
Sum of regulatory cap, reg. allowances & credits	Sum of direct emissions, according to EU ETS
Holcim (country X in Latin America)	
Voluntary cap	Emissions, direct, indirect + biomass
CDM credits purchased (+) or sold (-)	
Sum of voluntary cap & credits	Sum of direct emissions
Holcim Group	
Sum of voluntary cap, reg. allowances & credits	Sum of direct emissions

- Considering whether there are any existing environmental or energy plans, capital investments, product/service changes, or targets that will affect GHG emissions. Are there plans already in place for fuel switching, on site power generation, and/or renewable energy investments that affect the future GHG trajectory?
- Benchmarking GHG emissions with similar organizations. Generally, organizations that have not previously invested in energy and other GHG reductions should be capable of meeting more aggressive reduction levels because they would have more cost-effective reduction opportunities.

10. Track and report progress

Once the target has been set, it is necessary to track performance against it in order to check compliance, and also—in order to maintain credibility—to report emissions and any external reductions in a consistent, complete and transparent manner.

- CARRY OUT REGULAR PERFORMANCE CHECKS. In order to track performance against a target, it is important to link the target to the annual GHG inventory process and make regular checks of emissions in relation to the target. Some companies use interim targets for this purpose (a target using a rolling target base year automatically includes interim targets every year).
- REPORT INFORMATION IN RELATION TO THE TARGET. Companies should include the following information when setting and reporting progress in relation to a target:

1. Description of the target
   - Provide an outline of the target boundaries chosen
   - Specify target type, target base year, target completion date, and length of commitment period
   - Specify whether offsets can be used to meet the target; if yes, specify the type and amount
   - Describe the target double counting policy
   - Specify target level.
2. Information on emissions and performance in relation to the target
   - Report emissions from sources inside the target boundary separately from any GHG trades
   - If using an intensity target, report absolute emissions from within the target boundary separately, both from any GHG trades and the business metric
   - Report GHG trades that are relevant to compliance with the target (including how many offsets were used to meet the target)
   - Report any internal project reductions sold or transferred to another organization for use as an offset
   - Report overall performance in relation to the target.

NOTES

[1] Some companies may formulate GHG efficiency targets by formulating this ratio the other way around.

[2] Examples include the U.K. ETS, the CCX, and the EU ETS.

[3] Holcim's and Lafarge's target have been formulated using the terminology of the WBCSD Cement CO_2 Protocol (WBCSD, 2001), which uses"specific" to denote emissions per tonne of cement produced.

[4] It is possible to use an interval other than one year. However, the longer the interval at which the base year rolls forward, the more this approach becomes like a fixed target base year. This discussion is based on a rolling target base year that moves forward at annual intervals.

[5] Note that simply adding the yearly emissions changes under the rolling base year yields a different result from the comparison over time made with a fixed base year, even without structural changes. In absolute terms, an X% reduction every year over 5 years (compared to the previous year) is not the same as an (X times 5) reduction in year 5 compared to year 1.

[6] Depending on which recalculation methodology is used when applying the rolling base year, the comparison over time can include emissions that occurred when the company did not own or control the emission sources. However, the inclusion of this type of information is minimized. See also the guidance document "Base year recalculation methodologies for structural changes" on the GHG Protocol website (www.ghgprotocol.org).

[7] For further details on different recalculation methodologies, see the guidance document "Base year recalculation methodologies for structural changes" on the GHG Protocol website (www.ghgprotocol.org).

[8] As noted in chapter 8, offsets can be converted to credits. Credits are thus understood to be a subset of offsets. This chapter uses the term offsets as a generic term.

[9] For the purposes of this chapter, the terms "internal" and "external" refer to whether the reductions occur at sources inside (internal) or outside (external) the target boundary.

[10] This equivalence is sometimes referred to as "fungibility." However, "fungibility" can also refer to equivalence in terms of the value in meeting a target (two fungible offsets have the same value in meeting a target, i.e., they can both be applied to the same target).

[11] Overlap here refers to a situation when two or more targets include the same sources in their target boundaries.

[12] Similarly, company A in this example could be subject to a mandatory cap on its direct emissions under a trading program and engage in trading allowances covering the common sources it shares with company B. In this case, the example in the section "Double counting of allowances traded in external programs" is more relevant.

[13] The energy efficiency measures implemented by company C may not always result in an actual reduction of company B's emissions. See chapter 8 for further details on reductions in indirect emissions.

Accounting for Indirect Emissions from Purchased Electricity

This appendix provides guidance on how to account for and report indirect emissions associated with the purchase of electricity. Figure A–1 provides an overview of the transactions associated with purchased electricity and the corresponding emissions.

Purchased electricity for own consumption

Emissions associated with the generation of purchased electricity that is consumed by the reporting company are reported in scope 2. Scope 2 only accounts for the portion of the direct emissions from generating electricity that is actually consumed by the company. A company that purchases electricity and transports it in a transmission and distribution (T&D) system that it owns or controls reports the emissions associated with T&D losses under scope 2. However, if the reporting company owns or controls the T&D system but generates (rather than purchases) the electricity transmitted through its wires, the emissions associated with T&D losses are not reported under scope 2, as they would already be accounted for under scope 1. This is the case when generation, transmission, and distribution systems are vertically integrated and owned or controlled by the same company.

Purchased electricity for resale to end-users

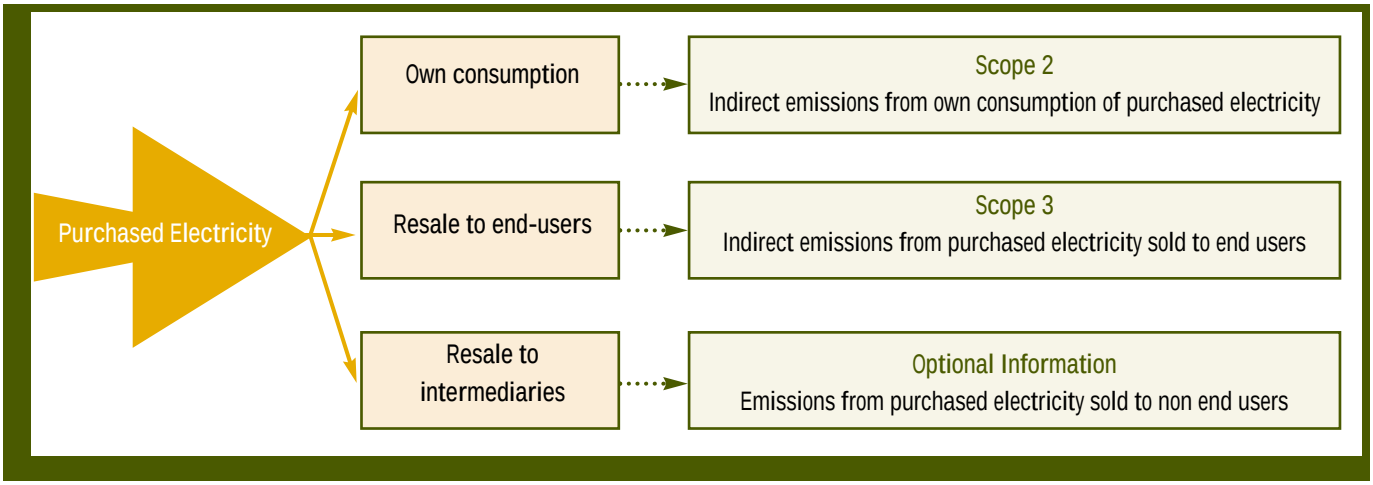
Emissions from the generation of purchased electricity for resale to end-users, for example purchases by a utility company, may be reported under scope 3 in the category "generation of purchased electricity that is sold to end-users." This reporting category is particularly relevant for utility companies that purchase wholesale electricity supplied by independent power producers for resale to their customers. Since utility companies and electricity suppliers often exercise choice over where they purchase electricity, this provides them with an important

GHG reduction opportunity (see Seattle City Light case study in chapter 4). Since scope 3 is optional, companies that are unable to track their electricity sales in terms of end users and non-end users can choose not to report these emissions in scope 3. Instead, they can report the total emissions associated with purchased electricity that is sold to both end- and non-end-users under optional information in the category "generation of purchased electricity, heat, or steam for re-sale to non-end users."

Purchased electricity for resale to intermediaries

Emissions associated with the generation of purchased electricity that is resold to an intermediary (e.g., trading transactions) may be reported under optional information under the category "Generation of purchased electricity, heat, or steam for re-sale to non-end users." Examples of trading transactions include brokerage/trading room transactions involving purchased electricity or any other transaction in which electricity is purchased directly from one source or the spot market and then resold to an intermediary (e.g., a non-end user). These emissions are reported under optional information separately from scope 3 because there could be a number of trading transactions before the electricity finally reaches the end-user. This may cause duplicative reporting of indirect emissions from a series of electricity trading transactions for the same electricity.

FIGURE A-1. Accounting for the indirect GHG emissions associated with purchased electricity



GHG emissions upstream of the generation of electricity

Emissions associated with the extraction and production of fuels consumed in the generation of purchased electricity may be reported in scope 3 under the category "extraction, production, and transportation of fuels consumed in the generation of electricity." These emissions occur upstream of the generation of electricity. Examples include emissions from mining of coal, refining of gasoline, extraction of natural gas, and production of hydrogen (if used as a fuel).

Choosing electricity emission factors

To quantify scope 2 emissions, the *GHG Protocol Corporate Standard* recommends that companies obtain source/supplier specific emission factors for the electricity purchased. If these are not available, regional or grid emission factors should be used. For more information on choosing emission factors, see the relevant GHG Protocol calculation tools available on the GHG Protocol website (www.ghgprotocol.org).

GHG emissions associated with the consumption of electricity in T&D

Emissions from the generation of electricity that is consumed in a T&D system may be reported in scope 3 under the category "generation of electricity that is consumed in a T&D system" by end-users. Published electricity grid emission factors do not usually include T&D losses. To calculate these emissions, it may be necessary to apply supplier or location specific T&D loss factors. Companies that purchase electricity and transport it in their own T&D systems would report the portion of electricity consumed in T&D under scope 2.

Accounting for indirect emissions associated with T&D losses

There are two types of electricity emission factors: Emission factor at generation (EFG) and Emissions factor at consumption (EFC). EFG is calculated from CO_2 emissions from generation of electricity divided by amount of electricity generated. EFC is calculated from CO_2 emissions from generation divided by amount of electricity consumed.

$$EFG = \frac{\text{TOTAL } CO_2 \text{ EMISSIONS FROM GENERATION}}{\text{ELECTRICITY GENERATED}}$$

$$EFC = \frac{\text{TOTAL } CO_2 \text{ EMISSIONS FROM GENERATION}}{\text{ELECTRICITY CONSUMED}}$$

EFC and EFG are related as shown below.

$$\text{EFC} \times \text{ELECTRICITY CONSUMED} = \text{EFG} \times (\text{ELECTRICITY CONSUMED} + \text{T\&D LOSSES})$$

$$EFC = EFG \times \left(1 + \frac{\text{T\&D LOSSES}}{\text{ELECTRICITY CONSUMED}}\right)$$

As these equations indicate, EFC multiplied by the amount of consumed electricity yields the sum of emissions attributable to electricity consumed during end use and transmission and distribution. In contrast, EFG multiplied by the amount of consumed electricity yields emissions attributable to electricity consumed during end use only.

Consistent with the scope 2 definition (see chapter 4), the *GHG Protocol Corporate Standard* requires the use of EFG to calculate scope 2 emissions. The use of EFG ensures internal consistency in the treatment of electricity related upstream emissions categories and avoids double counting in scope 2. Additionally, there are several other advantages in using EFG:

1) It is simpler to calculate and widely available in published regional, national, and international sources.
2) It is based on a commonly used approach to calculate emissions intensity, i.e., emissions per unit of production output.
3) It ensures transparency in reporting of indirect emissions from T&D losses.

The formula to account for emissions associated with T&D losses is the following:

$$\text{EFG} \times \text{ELECTRICITY CONSUMED DURING T\&D} = \text{INDIRECT EMISSIONS FROM CONSUMPTION OF ELECTRICITY DURING T\&D}$$

In some countries such as Japan, local regulations may require utility companies to provide both EFG and EFC to its consumers, and consumers may be required to use EFC to calculate indirect emissions from the consumption of purchased electricity. In this case, a company still needs to use EFG to report its scope 2 emissions for a GHG report prepared in accordance with *GHG Protocol Corporate Standard*.

Accounting for Sequestered Atmospheric Carbon

A key purpose of the *GHG Protocol Corporate Standard* is to provide companies with guidance on how to develop inventories that provide an accurate and complete picture of their GHG emissions both from their direct operations as well as those along the value chain.[1] For some types of companies, this is not possible without addressing the company's impacts on sequestered atmospheric carbon.[2]

Sequestered atmospheric carbon

During photosynthesis, plants remove carbon (as CO_2) from the atmosphere and store it in plant tissue. Until this carbon is cycled back into the atmosphere, it resides in one of a number of "carbon pools." These pools include (a) above ground biomass (e.g., vegetation) in forests, farmland, and other terrestrial environments, (b) below ground biomass (e.g., roots), and (c) biomass-based products (e.g., wood products) both while in use and when stored in a landfill.

Carbon can remain in some of these pools for long periods of time, sometimes for centuries. An increase in the stock of sequestered carbon stored in these pools represents a net removal of carbon from the atmosphere; a decrease in the stock represents a net addition of carbon to the atmosphere.

Why include impacts on sequestered carbon in corporate GHG inventories?

It is generally recognized that changes in stocks of sequestered carbon and the associated exchanges of carbon with the atmosphere are important to national level GHG emissions inventories, and consequently, these impacts on sequestered carbon are commonly addressed in national inventories (UNFCCC, 2000). Similarly, for companies in biomass-based industries, such as the forest products industry, some of the most significant aspects of a company's overall impact on atmospheric CO_2 levels will occur as a result of impacts on sequestered carbon in their direct operations as well as along their value chain. Some forest product companies have begun to address this aspect of their GHG footprint within their corporate GHG inventories (Georgia Pacific, 2002). Moreover, WBCSD's Sustainable Forest Products Industry Working Group—which represents a significant cluster of integrated forestry companies operating internationally—is developing a project that will further investigate carbon measurement, accounting, reporting, and ownership issues associated with the forest products value chain.

Information on a company's impacts on sequestered atmospheric carbon can be used for strategic planning, for educating stakeholders, and for identifying opportunities for improving the company's GHG profile. Opportunities may also exist to create value from reductions created along the value chain by companies acting alone or in partnership with raw material providers or customers.

Accounting for sequestered carbon in the context of the *GHG Protocol Corporate Standard*

Consensus methods have yet to be developed under the *GHG Protocol Corporate Standard* for accounting of sequestered atmospheric carbon as it moves through the value chain of biomass-based industries. Nonetheless, some issues that would need to be addressed when addressing impacts on sequestered carbon in corporate inventories can be examined in the context of existing guidance provided by the *GHG Protocol Corporate Standard* as highlighted below.

SETTING ORGANIZATIONAL BOUNDARIES

The *GHG Protocol Corporate Standard* outlines two approaches for consolidating GHG data—the equity share approach and the control approach. In some cases, it may be possible to apply these approaches directly to emissions/removals associated with sequestered atmospheric carbon. Among the issues that may need to be examined is the ownership of sequestered carbon under the different types of contractual arrangements involving land and wood ownership, harvesting rights, and control of land management and harvesting decisions. The transfer of ownership as carbon moves through the value chain may also need to be addressed. In some cases, as part of a risk management program for instance, companies may be interested in performing value chain assessments of sequestered carbon without regard to ownership or control just as they might do for scope 2 and 3 emissions.

SETTING OPERATIONAL BOUNDARIES

As with GHG emissions accounting, setting operational boundaries for sequestered carbon inventories would help companies transparently report their impacts on sequestered carbon along their value chain. Companies may, for example, provide a description of the value chain capturing impacts that are material to the results of the analysis. This should include which pools are

included in the analysis, which are not, and the rationale for the selections. Until consensus methods are developed for characterizing impacts on sequestered atmospheric carbon along the value chain, this information can be included in the "optional information" section of a GHG inventory compiled using the *GHG Protocol Corporate Standard.*

TRACKING REMOVALS OVER TIME

As is sometimes the case with accounting for GHG emissions, base year data for impacts on sequestered carbon may need to be averaged over multiple years to accommodate the year-to-year variability expected of these systems. The temporal scale used in sequestered carbon accounting will often be closely tied to the spatial scale over which the accounting is done. The question of how to recalculate base years to account for land acquisition and divestment, land use changes, and other activities also needs to be addressed.

IDENTIFYING AND CALCULATING GHG REMOVALS

The *GHG Protocol Corporate Standard* does not include consensus methods for sequestered carbon quantification. Companies should, therefore, explain the methods used. In some instances, quantification methods used in national inventories can be adapted for corporate-level quantification of sequestered carbon. IPCC (1997; 2000b) provides useful information on how to do this. In 2004, IPCC is expected to issue Good Practice Guidance for Land Use, Land Use Change and Forestry, with information on methods for quantification of sequestered carbon in forests and forest products. Companies may also find it useful to consult the methods used to prepare national inventories for those countries where significant parts of their company's value chain reside.

In addition, although corporate inventory accounting differs from project-based accounting (as discussed below), it may be possible to use some of the calculation and monitoring methods derived from project level accounting of sequestration projects.

ACCOUNTING FOR REMOVAL ENHANCEMENTS

A corporate inventory can be used to account for yearly removals within the corporate inventory boundary. In contrast, the forthcoming *GHG Protocol Project Quantification Standard* is designed to calculate project reductions that will be used as offsets, relative to a hypothetical baseline scenario for what would have happened without the project. In the forestry sector, projects take the form of removal enhancements.

Chapter 8 in this document addresses some of the issues that must be addressed when accounting for offsets from GHG reduction projects. Much of this guidance is also applicable to removal enhancement projects. One example is the issue of reversibility of removals — also briefly described in chapter 8.

REPORTING GHG REMOVALS

Until consensus methods are developed for characterizing impacts on sequestered atmospheric carbon along the value chain, this information can be included in the "optional information" section of the inventory (See chapter 9). Information on sequestered carbon in the company's inventory boundary should be kept separate from project-based reductions at sources that are not in the inventory boundary. Where removal enhancement projects take place within a company's inventory boundary they would normally show up as an increase in carbon removals over time, but can also be reported in optional information. However, they should also be identified separately to ensure that they are not double counted. This is especially important when they are sold as offsets or credits to a third party.

As companies develop experience using various methods for characterizing impacts on sequestered carbon, more information will become available on the level of accuracy to expect from these methods. In the early stages of developing this experience, however, companies may find it difficult to assess the uncertainty associated with the estimates and therefore may need to give special care to how the estimates are represented to stakeholders.

NOTES

[1] In this Appendix, "value chain" means a series of operations and entities, starting with the forest and extending through end-of-life management, that (a) supply or add value to raw materials and intermediate products to produce final products for the marketplace and (b) are involved in the use and end-of-life management of these products.

[2] In this Appendix the term "sequestered atmospheric carbon" refers exclusively to sequestration by biological sinks.

Overview of GHG Programs

NAME OF PROGRAM	TYPE OF PROGRAM	FOCUS (Organization, project, facility)	GASES COVERED	ORGANIZATIONAL PROJECT BOUNDARIES
California Climate Action Registry www.climateregisty.org	Voluntary registry	Organization (Projects possible in 2004)	Organizations report CO_2 for first three years of participation, all six GHGs thereafter.	Equity share or control for California or US operations
US EPA Climate Leaders www.epa.gov/climateleaders	Voluntary reduction program	Organization	Six	Equity share or control for US operations at a minimum
WWF Climate Savers www.worldwildlife.org/climatesavers	Voluntary registry	Organization	CO_2	Equity share or control for worldwide operations
World Economic Forum Global GHG Register www.weforum.org	Voluntary registry	Organization	Six	Equity share or control for worldwide operations
EU GHG Emissions Allowance Trading Scheme www.europa.eu.int/comm/environment/	Mandatory allowance trading scheme	Facility	Six	Facilities in selected sectors
European Pollutant Emission Registry www.europa.eu.int/comm/environment/ippc/eper/index.htm	Mandatory registry for large industrial facilities	Facility	Six Kyoto gases as well as other pollutants	Facilities that fall under EU IPPC directive
Chicago Climate Exchange www.chicagoclimateexchange.com	Voluntary allowance trading scheme	Organization and project	Six	Equity share
Respect Europe BLICC www.respecteurope.com/rt2/blicc/	Voluntary reduction program	Organization	Six	Equity share or control for worldwide operations

OPERATIONAL BOUNDARIES	NATURE/PURPOSE OF PROGRAM	BASE YEAR	TARGET	VERIFICATION
Scope 1 and 2 required, scope 3 to be decided	Baseline protection, public reporting, possible future targets	Specific to each organization, recalculation consistent with *GHG Protocol Corporate Standard* required	Encouraged but optional	Required through certified third party verifier
Scope 1 and 2 required, scope 3 optional	Public recognition, assistance setting targets and achieving reductions	Year that organization joins program, recalculation consistent with *GHG Protocol Corporate Standard* required	Required, specific to each organization	Optional, provides guidance and checklist of components that should be included if undertaken
Scope 1 and 2 required, scope 3 optional	Achieve targets, public recognition, expert assistance	Chosen year since 1990, specific to each organization, recalculation consistent with *GHG Protocol Corporate Standard* required	Required, specific to each organization	Third party verifier
Scope 1 and 2 required, scope 3 optional	Baseline protection, public reporting, targets encouraged but optional	Chosen year since 1990, specific to each organization, recalculation consistent with *GHG Protocol Corporate Standard* required	Encouraged but optional	Third party verifier or spot checks by WEF
Scope 1	Achieve annual caps through tradable allowance market, initial period from 2005 to 2007	Determined by member country for allowance allocation	Annual compliance with allocated and traded allowances, EU committed to 8% overall reduction below 1990	Third party verifier
Scope 1 required	Permit individual industrial facilities	Not applicable	Not applicable	Local permitting authority
Direct combustion and process emission sources and indirect emissions optional.	Achieve annual targets through tradable allowance market	Average of 1998 through 2001	1% below its baseline in 2003, 2% below baseline in 2004, 3% below baseline in 2005 and 4% below baseline in 2006	Third party verifier
Scope 1 and 2 required, scope 3 strongly encouraged	Achieve targets, public recognition, expert assistance	Specific to each organization, recalculation consistent with *GHG Protocol Corporate Standard* required	Mandatory, specific to each organization	Third party verifier

Industry Sectors and Scopes

SECTOR	SCOPE 1 EMISSION SOURCES	SCOPE 2 EMISSION SOURCES	SCOPE 3 EMISSION SOURCES[1]
ENERGY			
Energy Generation	• Stationary combustion (boilers and turbines used in the production of electricity, heat or steam, fuel pumps, fuel cells, flaring) • Mobile combustion (trucks, barges and trains for transportation of fuels) • Fugitive emissions (CH_4 leakage from transmission and storage facilities, HFC emissions from LPG storage facilities, SF_6 emissions from transmission and distribution equipment)	• Stationary combustion (consumption of purchased electricity, heat or steam)	• Stationary combustion (mining and extraction of fuels, energy for refining or processing fuels) • Process emissions (production of fuels, SF_6 emissions[2]) • Mobile combustion (transportation of fuels/waste, employee business travel, employee commuting) • Fugitive emissions (CH_4 and CO_2 from waste landfills, pipelines, SF_6 emissions)
Oil and Gas[3]	• Stationary combustion (process heaters, engines, turbines, flares, incinerators, oxidizers, production of electricity, heat and steam) • Process emissions (process vents, equipment vents, maintenance/turnaround activities, non-routine activities) • Mobile combustion (transportation of raw materials/products/waste; company owned vehicles) • Fugitive emissions (leaks from pressurized equipment, wastewater treatment, surface impoundments)	• Stationary combustion (consumption of purchased electricity, heat or steam)	• Stationary combustion (product use as fuel or combustion for the production of purchased materials) • Mobile combustion (transportation of raw materials/products/waste, employee business travel, employee commuting, product use as fuel) • Process emissions (product use as feedstock or emissions from the production of purchased materials) • Fugitive emissions (CH_4 and CO_2 from waste landfills or from the production of purchased materials)
Coal Mining	• Stationary combustion (methane flaring and use, use of explosives, mine fires) • Mobile combustion (mining equipment, transportation of coal) • Fugitive emissions (CH_4 emissions from coal mines and coal piles)	• Stationary combustion (consumption of purchased electricity, heat or steam)	• Stationary combustion (product use as fuel) • Mobile combustion (transportation of coal/waste, employee business travel, employee commuting) • Process emissions (gasification)
METALS			
Aluminum[4]	• Stationary combustion (bauxite to aluminum processing, coke baking, lime, soda ash and fuel use, on-site CHP) • Process emissions (carbon anode oxidation, electrolysis, PFC) • Mobile combustion (pre- and post-smelting transportation, ore haulers) • Fugitive emissions (fuel line CH_4, HFC and PFC, SF_6 cover gas)	• Stationary combustion (consumption of purchased electricity, heat or steam)	• Stationary combustion (raw material processing and coke production by second party suppliers, manufacture of production line machinery) • Mobile combustion (transportation services, business travel, employee commuting) • Process emissions (during production of purchased materials) • Fugitive emissions (mining and landfill CH_4 and CO_2, outsourced process emissions)
Iron and Steel[5]	• Stationary combustion (coke, coal and carbonate fluxes, boilers, flares) • Process emissions (crude iron oxidation, consumption of reducing agent, carbon content of crude iron/ferroalloys) • Mobile combustion (on-site transportation) • Fugitive emission (CH_4, N_2O)	• Stationary combustion (consumption of purchased electricity, heat or steam)	• Stationary combustion (mining equipment, production of purchased materials) • Process emissions (production of ferroalloys) • Mobile combustion (transportation of raw materials/products/waste and intermediate products) • Fugitive emissions (CH_4 and CO_2 from waste landfills)
CHEMICALS			
Nitric acid, Ammonia, Adipic acid, Urea, and Petrochemicals	• Stationary combustion (boilers, flaring, reductive furnaces, flame reactors, steam reformers) • Process emissions (oxidation/reduction of substrates, impurity removal, N_2O byproducts, catalytic cracking, myriad other emissions individual to each process) • Mobile combustion (transportation of raw materials/products/waste) • Fugitive emissions (HFC use, storage tank leakage)	• Stationary combustion (consumption of purchased electricity, heat or steam)	• Stationary combustion (production of purchased materials, waste combustion) • Process emissions (production of purchased materials) • Mobile combustion (transportation of raw materials/products/waste, employee business travel, employee commuting) • Fugitive emissions (CH_4 and CO_2 from waste landfills and pipelines)

SECTOR	SCOPE 1 EMISSION SOURCES	SCOPE 2 EMISSION SOURCES	SCOPE 3 EMISSION SOURCES
MINERALS			
Cement and Lime[6]	• Process emissions (calcination of limestone) • Stationary combustion (clinker kiln, drying of raw materials, production of electricity) • Mobile combustion (quarry operations, on-site transportation)	• Stationary combustion (consumption of purchased electricity, heat or steam)	• Stationary combustion (production of purchased materials, waste combustion) • Process emissions (production of purchased clinker and lime) • Mobile combustion (transportation of raw materials/products/waste, employee business travel, employee commuting) • Fugitive emissions (mining and landfill CH_4 and CO_2, outsourced process emissions)
WASTE[7]			
Landfills, Waste combustion, Water services	• Stationary combustion (incinerators, boilers, flaring) • Process emissions (sewage treatment, nitrogen loading) • Fugitive emissions (CH_4 and CO_2 emissions from waste and animal product decomposition) • Mobile combustion (transportation of waste/products)	• Stationary combustion (consumption of purchased electricity, heat or steam)	• Stationary combustion(recycled waste used as a fuel) • Process emissions (recycled waste used as a feedstock) • Mobile combustion (transportation of waste/products, employee business travel, employee commuting)
PULP & PAPER			
Pulp and Paper[8]	• Stationary combustion (production of steam and electricity, fossil fuel-derived emissions from calcination of calcium carbonate in lime kilns, drying products with infrared driers fired with fossil fuels) • Mobile combustion (transportation of raw materials, products, and wastes, operation of harvesting equipment) • Fugitive emissions (CH_4 and CO_2 from waste)	• Stationary combustion (consumption of purchased electricity, heat or steam)	• Stationary combustion (production of purchased materials, waste combustion) • Process emissions (production of purchased materials) • Mobile combustion (transportation of raw materials/products/waste, employee business travel, employee commuting) • Fugitive emissions (landfill CH_4 and CO_2 emissions)
HFC, PFC, SF_6 & HCFC 22 PRODUCTION[9]			
HCFC 22 production	• Stationary combustion(production of electricity, heat or steam) • Process emissions (HFC venting) • Mobile combustion (transportation of raw materials/products/waste) • Fugitive emissions (HFC use)	• Stationary combustion (consumption of purchased electricity, heat or steam)	• Stationary combustion (production of purchased materials) • Process emissions (production of purchased materials) • Mobile combustion (transportation of raw materials/products/waste, employee business travel, employee commuting) • Fugitive emissions(fugitive leaks in product use, CH_4 and CO_2 from waste landfills)
SEMICONDUCTOR PRODUCTION			
Semiconductor production	• Process emissions (C_2F_6, CH_4, CHF_3, SF_6, NF_3, C_3F_8, C_4F_8, N_2O used in wafer fabrication, CF_4 created from C_2F_6 and C_3F_8 processing) • Stationary combustion (oxidation of volatile organic waste, production of electricity, heat or steam) • Fugitive emissions (process gas storage leaks, container remainders/heel leakage) • Mobile combustion (transportation of raw materials/products/waste)	• Stationary combustion (consumption of purchased electricity, heat or steam)	• Stationary combustion (production of imported materials, waste combustion, upstream T&D losses of purchased electricity) • Process emissions (production of purchased materials, outsourced disposal of returned process gases and container remainder/heel) • Mobile combustion (transportation of raw materials/products/waste, employee business travel, employee commuting) • Fugitive emissions (landfill CH_4 and CO_2 emissions, downstream process gas container remainder /heel leakage)
OTHER SECTORS[10]			
Service sector/ Office based organizations[10]	• Stationary combustion (production of electricity, heat or steam) • Mobile combustion (transportation of raw materials/waste) • Fugitive emissions (mainly HFC emissions during use of refrigeration and air-conditioning equipment)	• Stationary combustion (consumption of purchased electricity, heat or steam)	• Stationary combustion (production of purchased materials) • Process emissions (production of purchased materials) • Mobile combustion (transportation of raw materials/products/waste, employee business travel, employee commuting)

Appendix D

NOTES

[1] Scope 3 activities of outsourcing, contract manufacturing, and franchises are not addressed in this table because the inclusion of specific GHG sources will depend on the nature of the outsourcing.

[2] Guidelines on unintentional SF_6 process emissions are to be developed.

[3] The American Petroleum Institute's Compendium of Greenhouse Gas Emissions Methodologies for the Oil and Gas Industry (2004) provides guidelines and calculation methodology for calculating GHG emissions from the oil and gas sector.

[4] The International Aluminum Institute's Aluminum Sector Greenhouse Gas Protocol (2003), in cooperation with WRI and WBCSD, provides guidelines and tools for calculating GHG emissions from the aluminum sector.

[5] The International Iron and Steel Institute's Iron and Steel sector guidelines, in cooperation with WRI and WBCSD, are under development.

[6] The WBCSD Working Group Cement: Toward a Sustainable Cement Industry has developed The Cement CO_2 Protocol: CO_2 Emissions Monitoring and Reporting Protocol for the Cement Industry (2002), which includes guidelines and tools to calculate GHG emissions from the cement sector.

[7] Guidelines for waste sector are to be developed.

[8] The Climate Change Working Group of the International Council of Forest and Paper Associations has developed Calculation Tools for Estimating Greenhouse Gas Emissions from Pulp and Paper Mills (2002), which includes guidelines and tools to calculate GHG emissions from the pulp and paper sector.

[9] Guidelines for PFC and SF_6 production are to be developed.

[10] Businesses in "other sectors" can estimate GHG emissions using cross-sectoral estimation tools—stationary combustion, mobile (transportation) combustion, HFC use, measurement and estimation uncertainty, and waste.

[11] WRI has developed Working 9 to 5 on Climate Change: An Office Guide (2002) and www.Safeclimate.net, which include guidelines and calculation tools for calculating GHG emissions from office-based organizations.

Acronyms

CDM	Clean Development Mechanism
CEM	Continuous Emission Monitoring
CH_4	Methane
CER	Certified Emission Reduction
CCAR	California Climate Action Registry
CCX	Chicago Climate Exchange
CO_2	Carbon Dioxide
CO_2-e	Carbon Dioxide Equivalent
EPER	European Pollutant Emission Register
EU ETS	European Union Emissions Allowance Trading Scheme
GHG	Greenhouse Gas
GAAP	Generally Accepted Accounting Principles
HFCs	Hydrofluorocarbons
IPCC	Intergovernmental Panel on Climate Change
IPIECA	International Petroleum Industry Environmental Conservation Association
ISO	International Standards Organization
JI	Joint Implementation
N_4O	Nitrous Oxide
NGO	Non-Governmental Organization
PFCs	Perfluorocarbons
SF_6	Sulfur Hexafluoride
T&D	Transmission and Distribution
UK ETS	United Kingdom Emission Trading Scheme
WBCSD	World Business Council for Sustainable Development
WRI	World Resources Institute

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Absolute target	A target defined by reduction in absolute emissions over time e.g., reduces CO_2 emissions by 25% below 1994 levels by 2010. (Chapter 11)
Additionality	A criterion for assessing whether a project has resulted in GHG emission reductions or removals in addition to what would have occurred in its absence. This is an important criterion when the goal of the project is to offset emissions elsewhere. (Chapter 8)
Allowance	A commodity giving its holder the right to emit a certain quantity of GHG. (Chapter 11)
Annex 1 countries	Defined in the International Climate Change Convention as those countries taking on emissions reduction obligations: Australia; Austria; Belgium; Belarus; Bulgaria; Canada; Croatia; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Iceland; Ireland; Italy; Japan; Latvia; Liechtenstein; Lithuania; Luxembourg; Monaco; Netherlands; New Zealand; Norway; Poland; Portugal; Romania; Russian Federation; Slovakia; Slovenia; Spain; Sweden; Switzerland; Ukraine; United Kingdom; USA.
Associated/affiliated company	The parent company has significant influence over the operating and financial policies of the associated/affiliated company, but not financial control. (Chapter 3)
Audit Trail	Well organized and transparent historical records documenting how an inventory was compiled.
Baseline	A hypothetical scenario for what GHG emissions, removals or storage would have been in the absence of the GHG project or project activity. (Chapter 8)
Base year	A historic datum (a specific year or an average over multiple years) against which a company's emissions are tracked over time. (Chapter 5)
Base year emissions	GHG emissions in the base year. (Chapter 5)
Base year emissions recalculation	Recalculation of emissions in the base year to reflect a change in the structure of the company, or to reflect a change in the accounting methodology used. This ensures data consistency over time, i.e., comparisons of like with like over time. (Chapter 5, 11)
Biofuels	Fuel made from plant material, e.g. wood, straw and ethanol from plant matter (Chapter 4, 9, Appendix B)
Boundaries	GHG accounting and reporting boundaries can have several dimensions, i.e. organizational, operational, geographic, business unit, and target boundaries. The inventory boundary determines which emissions are accounted and reported by the company. (Chapter 3, 4, 11)
Cap and trade system	A system that sets an overall emissions limit, allocates emissions allowances to participants, and allows them to trade allowances and emission credits with each other. (Chapter 2, 8, 11)
Capital Lease	A lease which transfers substantially all the risks and rewards of ownership to the lessee and is accounted for as an asset on the balance sheet of the lessee. Also known as a Financial or Finance Lease. Leases other than Capital/Financial/Finance leases are Operating leases. Consult an accountant for further detail as definitions of lease types differ between various accepted financial standards. (Chapter 4)
Carbon sequestration	The uptake of CO_2 and storage of carbon in biological sinks.
Clean Development Mechanism (CDM)	A mechanism established by Article 12 of the Kyoto Protocol for project-based emission reduction activities in developing countries. The CDM is designed to meet two main objectives: to address the sustainability needs of the host country and to increase the opportunities available to Annex 1 Parties to meet their GHG reduction commitments. The CDM allows for the creation, acquisition and transfer of CERs from climate change mitigation projects undertaken in non-Annex 1 countries.

Certified Emission Reductions (CERs)	A unit of emission reduction generated by a CDM project. CERs are tradable commodities that can be used by Annex 1 countries to meet their commitments under the Kyoto Protocol.
Co-generation unit/Combined heat and power (CHP)	A facility producing both electricity and steam/heat using the same fuel supply. (Chapter 3)
Consolidation	Combination of GHG emissions data from separate operations that form part of one company or group of companies. (Chapter 3, 4)
Control	The ability of a company to direct the policies of another operation. More specifically, it is defined as either operational control (the organization or one of its subsidiaries has the full authority to introduce and implement its operating policies at the operation) or financial control (the organization has the ability to direct the financial and operating policies of the operation with a view to gaining economic benefits from its activities). (Chapter 3)
Corporate inventory program	A program to produce annual corporate inventories that are in keeping with the principles, standards, and guidance of the *GHG Protocol Corporate Standard*. This includes all institutional, managerial and technical arrangements made for the collection of data, preparation of a GHG inventory, and implementation of the steps taken to manage the quality of their emission inventory.
CO_2 equivalent (CO_2-e)	The universal unit of measurement to indicate the global warming potential (GWP) of each of the six greenhouse gases, expressed in terms of the GWP of one unit of carbon dioxide. It is used to evaluate releasing (or avoiding releasing) different greenhouse gases against a common basis.
Cross-sector calculation tool	A GHG Protocol calculation tool that addresses GHG sources common to various sectors, e.g. emissions from stationary or mobile combustion. See also GHG Protocol calculation tools (www.ghgprotocol.org).
Direct GHG emissions	Emissions from sources that are owned or controlled by the reporting company. (Chapter 4)
Direct monitoring	Direct monitoring of exhaust stream contents in the form of continuous emissions monitoring (CEM) or periodic sampling. (Chapter 6)
Double counting	Two or more reporting companies take ownership of the same emissions or reductions. (Chapter 3, 4, 8, 11)
Emissions	The release of GHG into the atmosphere.
Emission factor	A factor allowing GHG emissions to be estimated from a unit of available activity data (e.g. tonnes of fuel consumed, tonnes of product produced) and absolute GHG emissions. (Chapter 6)
Emission Reduction Unit (ERU)	A unit of emission reduction generated by a Joint Implementation (JI) project. ERUs are tradable commodities which can be used by Annex 1 countries to help them meet their commitment under the Kyoto Protocol.
Equity share	The equity share reflects economic interest, which is the extent of rights a company has to the risks and rewards flowing from an operation. Typically, the share of economic risks and rewards in an operation is aligned with the company's percentage ownership of that operation, and equity share will normally be the same as the ownership percentage. (Chapter 3)
Estimation uncertainty	Uncertainty that arises whenever GHG emissions are quantified, due to uncertainty in data inputs and calculation methodologies used to quantify GHG emissions. (Chapter 7)
Finance lease	A lease which transfers substantially all the risks and rewards of ownership to the lessee and is accounted for as an asset on the balance sheet of the lessee. Also known as a Capital or Financial Lease. Leases other than Capital/Financial/Finance leases are Operating leases. Consult an accountant for further detail as definitions of lease types differ between various accepted accounting principles. (Chapter 4)

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Fixed asset investment	Equipment, land, stocks, property, incorporated and non-incorporated joint ventures, and partnerships over which the parent company has neither significant influence nor control. (Chapter 3)
Fugitive emissions	Emissions that are not physically controlled but result from the intentional or unintentional releases of GHGs. They commonly arise from the production, processing transmission storage and use of fuels and other chemicals, often through joints, seals, packing, gaskets, etc. (Chapter 4, 6)
Green power	A generic term for renewable energy sources and specific clean energy technologies that emit fewer GHG emissions relative to other sources of energy that supply the electric grid. Includes solar photovoltaic panels, solar thermal energy, geothermal energy, landfill gas, low-impact hydropower, and wind turbines. (Chapter 4)
Greenhouse gases (GHG)	For the purposes of this standard, GHGs are the six gases listed in the Kyoto Protocol: carbon dioxide (CO_2); methane (CH_4); nitrous oxide (N_2O); hydrofluorocarbons (HFCs); perfluorocarbons (PFCs); and sulphur hexafluoride (SF_6).
GHG capture	Collection of GHG emissions from a GHG source for storage in a sink.
GHG credit	GHG offsets can be converted into GHG credits when used to meet an externally imposed target. A GHG credit is a convertible and transferable instrument usually bestowed by a GHG program. (Chapter 8, 11)
GHG offset	Offsets are discrete GHG reductions used to compensate for (i.e., offset) GHG emissions elsewhere, for example to meet a voluntary or mandatory GHG target or cap. Offsets are calculated relative to a baseline that represents a hypothetical scenario for what emissions would have been in the absence of the mitigation project that generates the offsets. To avoid double counting, the reduction giving rise to the offset must occur at sources or sinks not included in the target or cap for which it is used.
GHG program	A generic term used to refer to any voluntary or mandatory international, national, sub-national, government or non-governmental authority that registers, certifies, or regulates GHG emissions or removals outside the company. e.g. CDM, EU ETS, CCX, and CCAR.
GHG project	A specific project or activity designed to achieve GHG emission reductions, storage of carbon, or enhancement of GHG removals from the atmosphere. GHG projects may be stand-alone projects, or specific activities or elements within a larger non-GHG related project. (Chapter 8, 11)
GHG Protocol calculation tools	A number of cross-sector and sector-specific tools that calculate GHG emissions on the basis of activity data and emission factors (available at www.ghgprotocol.org).
GHG Protocol Initiative	A multi-stakeholder collaboration convened by the World Resources Institute and World Business Council for Sustainable Development to design, develop and promote the use of accounting and reporting standards for business. It comprises of two separate but linked standards—the *GHG Protocol Corporate Accounting and Reporting Standard* and the *GHG Protocol Project Quantification Standard.*
GHG Protocol Project Quantification Standard	An additional module of the GHG Protocol Initiative addressing the quantification of GHG reduction projects. This includes projects that will be used to offset emissions elsewhere and/or generate credits. More information available at www.ghgprotocol.org. (Chapter 8, 11)
GHG Protocol sector specific calculation tools	A GHG calculation tool that addresses GHG sources that are unique to certain sectors, e.g., process emissions from aluminum production. (see also GHG Protocol Calculation tools)
GHG public report	Provides, among other details, the reporting company's physical emissions for its chosen inventory boundary. (Chapter 9)

GHG registry	A public database of organizational GHG emissions and/or project reductions. For example, the US Department of Energy 1605b Voluntary GHG Reporting Program, CCAR, World Economic Forum's Global GHG Registry. Each registry has its own rules regarding what and how information is reported. (Introduction, Chapter 2, 5, 8, 10)
GHG removal	Absorbtion or sequestration of GHGs from the atmosphere.
GHG sink	Any physical unit or process that stores GHGs; usually refers to forests and underground/deep sea reservoirs of CO_2.
GHG source	Any physical unit or process which releases GHG into the atmosphere.
GHG trades	All purchases or sales of GHG emission allowances, offsets, and credits.
Global Warming Potential (GWP)	A factor describing the radiative forcing impact (degree of harm to the atmosphere) of one unit of a given GHG relative to one unit of CO_2.
Group company/subsidiary	The parent company has the ability to direct the financial and operating policies of a group company/subsidiary with a view to gaining economic benefits from its activities. (Chapter 3)
Heating value	The amount of energy released when a fuel is burned completely. Care must be taken not to confuse higher heating values (HHVs), used in the US and Canada, and lower heating values, used in all other countries (for further details refer to the calculation tool for stationary combustion available at www.ghgprotocol.org).
Indirect GHG emissions	Emissions that are a consequence of the operations of the reporting company, but occur at sources owned or controlled by another company. (Chapter 4)
Insourcing	The administration of ancillary business activities, formally performed outside of the company, using resources within a company. (Chapter 3, 4, 5, 9)
Intensity ratios	Ratios that express GHG impact per unit of physical activity or unit of economic value (e.g. tonnes of CO_2 emissions per unit of electricity generated). Intensity ratios are the inverse of productivity/efficiency ratios. (Chapter 9, 11)
Intensity target	A target defined by reduction in the ratio of emissions and a business metric over time e.g., reduce CO_2 per tonne of cement by 12% between 2000 and 2008. (Chapter 11)
Intergovernmental Panel on Climate Change (IPCC)	International body of climate change scientists. The role of the IPCC is to assess the scientific, technical and socio-economic information relevant to the understanding of the risk of human-induced climate change (www.ipcc.ch).
Inventory	A quantified list of an organization's GHG emissions and sources.
Inventory boundary	An imaginary line that encompasses the direct and indirect emissions that are included in the inventory. It results from the chosen organizational and operational boundaries. (Chapter 3, 4)
Inventory quality	The extent to which an inventory provides a faithful, true and fair account of an organization's GHG emissions. (Chapter 7)
Joint Implementation (JI)	The JI mechanism was established in Article 6 of the Kyoto Protocol and refers to climate change mitigation projects implemented between two Annex 1 countries. JI allows for the creation, acquisition and transfer of "emission reduction units" (ERUs).
Kyoto Protocol	A protocol to the United Nations Framework Convention on Climate Change (UNFCCC). Once entered into force it will require countries listed in its Annex B (developed nations) to meet reduction targets of GHG emissions relative to their 1990 levels during the period of 2008–12.

Glossary

Leakage (Secondary effect)	Leakage occurs when a project changes the availability or quantity of a product or service that results in changes in GHG emissions elsewhere. (Chapter 8)
Life Cycle Analysis	Assessment of the sum of a product's effects (e.g. GHG emissions) at each step in its life cycle, including resource extraction, production, use and waste disposal. (Chapter 4)
Material discrepancy	An error (for example from an oversight, omission, or miscalculation) that results in the reported quantity being significantly different to the true value to an extent that will influence performance or decisions. Also known as material misstatement.(Chapter 10)
Materiality threshold	A concept employed in the process of verification. It is often used to determine whether an error or omission is a material discrepancy or not. It should not be viewed as a de minimus for defining a complete inventory. (Chapter 10)
Mobile combustion	Burning of fuels by transportation devices such as cars, trucks, trains, airplanes, ships etc. (Chapter 6)
Model uncertainty	GHG quantification uncertainty associated with mathematical equations used to characterize the relationship between various parameters and emission processes. (Chapter 7)
Non-Annex 1 countries	Countries that have ratified or acceded to the UNFCC but are not listed under Annex 1 and are therefore not under any emission reduction obligation (see also Annex 1 countries).
Operation	A generic term used to denote any kind of business, irrespective of its organizational, governance, or legal structures. An operation can be a facility, subsidiary, affiliated company or other form of joint venture. (Chapter 3, 4)
Operating lease	A lease which does not transfer the risks and rewards of ownership to the lessee and is not recorded as an asset in the balance sheet of the lessee. Leases other than Operating leases are Capital/Financial/Finance leases. Consult an accountant for further detail as definitions of lease types differ between various accepted financial standards. (Chapter 4)
Operational boundaries	The boundaries that determine the direct and indirect emissions associated with operations owned or controlled by the reporting company. This assessment allows a company to establish which operations and sources cause direct and indirect emissions, and to decide which indirect emissions to include that are a consequence of its operations. (Chapter 4)
Organic growth/decline	Increases or decreases in GHG emissions as a result of changes in production output, product mix, plant closures and the opening of new plants. (Chapter 5)
Organizational boundaries	The boundaries that determine the operations owned or controlled by the reporting company, depending on the consolidation approach taken (equity or control approach). (Chapter 3)
Outsourcing	The contracting out of activities to other businesses. (Chapter 3, 4, 5)
Parameter uncertainty	GHG quantification uncertainty associated with quantifying the parameters used as inputs to estimation models. (Chapter 7)
Primary effects	The specific GHG reducing elements or activities (reducing GHG emissions, carbon storage, or enhancing GHG removals) that the project is intended to achieve. (Chapter 8)
Process emissions	Emissions generated from manufacturing processes, such as the CO_2 that is arises from the breakdown of calcium carbonate ($CaCO_3$) during cement manufacture. (Chapter 4, Appendix D)
Productivity/efficiency ratios	Ratios that express the value or achievement of a business divided by its GHG impact. Increasing efficiency ratios reflect a positive performance improvement. e.g. resource productivity(sales per tonne GHG). Productivity/efficiency ratios are the inverse of intensity ratios. (Chapter 9)
Ratio indicator	Indicators providing information on relative performance such as intensity ratios or productivity/efficiency ratios. (Chapter 9)

Renewable energy	Energy taken from sources that are inexhaustible, e.g. wind, water, solar, geothermal energy, and biofuels.
Reporting	Presenting data to internal management and external users such as regulators, shareholders, the general public or specific stakeholder groups. (Chapter 9)
Reversibility of reductions	This occurs when reductions are temporary, or where removed or stored carbon may be returned to the atmosphere at some point in the future. (Chapter 8)
Rolling base year	The process of shifting or rolling the base year forward by a certain number of years at regular intervals of time. (Chapter 5, 11)
Scientific Uncertainty	Uncertainty that arises when the science of the actual emission and/or removal process is not completely understood. (Chapter 7)
Scope	Defines the operational boundaries in relation to indirect and direct GHG emissions. (Chapter 4)
Scope 1 inventory	A reporting organization's direct GHG emissions. (Chapter 4)
Scope 2 inventory	A reporting organization's emissions associated with the generation of electricity, heating/cooling, or steam purchased for own consumption. (Chapter 4)
Scope 3 inventory	A reporting organization's indirect emissions other than those covered in scope 2. (Chapter 4)
Scope of works	An up-front specification that indicates the type of verification to be undertaken and the level of assurance to be provided between the reporting company and the verifier during the verification process. (Chapter 10)
Secondary effects (Leakage)	GHG emissions changes resulting from the project not captured by the primary effect(s). These are typically the small, unintended GHG consequences of a project. (Chapter 8)
Sequestered atmospheric carbon	Carbon removed from the atmosphere by biological sinks and stored in plant tissue. Sequestered atmospheric carbon does not include GHGs captured through carbon capture and storage.
Significance threshold	A qualitative or quantitative criteria used to define a significant structural change. It is the responsibility of the company/verifier to determine the "significance threshold" for considering base year emissions recalculation. In most cases the "significance threshold" depends on the use of the information, the characteristics of the company, and the features of structural changes. (Chapter 5)
Stationary Combustion	Burning of fuels to generate electricity, steam, heat, or power in stationary equipment such as boilers, furnaces etc.
Structural change	A change in the organizational or operational boundaries of a company that result in the transfer of ownership or control of emissions from one company to another. Structural changes usually result from a transfer of ownership of emissions, such as mergers, acquisitions, divestitures, but can also include outsourcing/insourcing. (Chapter 5)
Target base year	The base year used for defining a GHG target, e.g. to reduce CO_2 emissions 25% below the target base year levels by the target base year 2000 by the year 2010. (Chapter 11)
Target boundary	The boundary that defines which GHG's, geographic operations, sources and activities are covered by the target. (Chapter 11)
Target commitment period	The period of time during which emissions performance is actually measured against the target. It ends with the target completion date. (Chapter 11)
Target completion date	The date that defines the end of the target commitment period and determines whether the target is relatively short- or long-term. (Chapter 11)

Target double counting policy	A policy that determines how double counting of GHG reductions or other instruments, such as allowances issued by external trading programs, is dealt with under a GHG target. It applies only to companies that engage in trading (sale or purchase) of offsets or whose corporate target boundaries interface with other companies' targets or external programs. (Chapter 11)
Uncertainty	1. Statistical definition: A parameter associated with the result of a measurement that characterizes the dispersion of the values that could be reasonably attributed to the measured quantity. (e.g., the sample variance or coefficient of variation). (Chapter 7) 2. Inventory definition: A general and imprecise term which refers to the lack of certainty in emissions-related data resulting from any causal factor, such as the application of non-representative factors or methods, incomplete data on sources and sinks, lack of transparency etc. Reported uncertainty information typically specifies a quantitative estimates of the likely or perceived difference between a reported value and a qualitative description of the likely causes of the difference. (Chapter 7).
United Nations Framework Convention on Climate Change (UNFCCC)	Signed in 1992 at the Rio Earth Summit, the UNFCCC is a milestone Convention on Climate Change treaty that provides an overall framework for international efforts to (UNFCCC) mitigate climate change. The Kyoto Protocol is a protocol to the UNFCCC.
Value chain emissions	Emissions from the upstream and downstream activities associated with the operations of the reporting company. (Chapter 4)
Verification	An independent assessment of the reliability (considering completeness and accuracy) of a GHG inventory. (Chapter 10)

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Philips & Yaming Co., Ltd.
Seattle City Light
Simplex Mills Co. Ltd.
Sony Corporation
STMicroelectronics
Tata Iron & Steel Company Ltd.
Tokyo Electric Power Company
Tokyo Gas Co. Ltd.
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CODELCO
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Ford Motor Company
Fortum Power and Heat
General Motors Corporation
Hindalco Industries
IBM Corporation
Maihar Cement
Nike, Inc.
Norsk Hydro
Ontario Power Generation
Petro-Canada
PricewaterhouseCoopers road tested with European companies in the non-ferrous metal sector
Public Service Electric and Gas
Shree Cement
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About WRI

World Resources Institute is an independent nonprofit organization with a staff of more than 100 scientists, economists, policy experts, business analysts, statistical analysts, mapmakers, and communicators working to protect the Earth and improve people's lives. The GHG Protocol Initiative is managed by WRI's Sustainable Enterprise Program which for more than a decade, has harnessed the power of business to create profitable solutions to environment and development challenges. WRI is the only organization that brings together four influential forces to accelerate change in business practice: corporations, entrepreneurs, investors, and business schools.

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GREENHOUSE GAS PROTOCOL

GHG Protocol Scope 2 Guidance

An amendment to the GHG Protocol
Corporate Standard

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1 Introduction

The Greenhouse Gas (GHG) Protocol is a multistakeholder partnership of businesses, nongovernmental organizations (NGOs), governments, and others convened by the World Resources Institute (WRI) and the World Business Council for Sustainable Development (WBCSD).

Launched in 1998, the GHG Protocol seeks to develop internationally accepted GHG accounting and reporting standards and tools to promote their adoption worldwide. To date, the GHG Protocol has released four standards that address how GHG emissions inventories should be prepared at the corporate, project, and product levels.

1.1 The GHG Protocol

- **Corporate-level.** The *GHG Protocol Corporate Accounting and Reporting Standard* (*Corporate Standard*) outlines a standard set of accounting and reporting rules for developing corporate inventories. The *Corporate Standard* identifies and categorizes the emissions from all of the operations that together comprise an organization (the term "company" is used to represent all types of organizations using the *Corporate Standard* and this *Scope 2 Guidance*).

  Building from the *Corporate Standard*, the *GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard* provides additional requirements and guidance on developing comprehensive inventories of other indirect (scope 3) emissions.

- **Project-level.** The *GHG Protocol for Project Accounting* (*Project Protocol*) describes how companies can quantify the GHG impacts of specific projects undertaken to reduce emissions, avoid emissions occurring in the future, or sequester carbon.

- **Product-level.** The GHG Protocol *Product Life Cycle Accounting and Reporting Standard* (*Product Standard*) describes how companies can develop GHG emissions inventories, including the entire life cycle of individual products or services—from raw material extraction to product disposal.

These publications, together with supplementary guidance for specific sectors or types of sources, are available from the GHG Protocol website (www.ghgprotocol.org).

1.2 The *Corporate Standard*'s approach to scope 2 emissions

The *Corporate Standard* requires organizations to quantify emissions from the generation of acquired and consumed electricity, steam, heat, or cooling (collectively referred to as "electricity"). These emissions are termed "scope 2" and are considered an indirect emissions source (along with scope 3), because the

emissions are a consequence of activities of the reporting organization but actually occur at sources owned or controlled by another organization (here, they are owned or controlled by an electricity generator or utility).

Scope 2 represents one of the largest sources of GHG emissions globally: the generation of electricity and heat now accounts for at least a third[1] of global GHG emissions. Electricity consumers have significant opportunities to reduce those emissions by reducing electricity demand, and increasingly play a role in shifting energy supply to alternative low-carbon resources.

The methods used to calculate and report scope 2 emissions critically impact how a company assesses its performance and what mitigation actions are incentivized. To calculate scope 2 emissions, the *Corporate Standard* recommends multiplying activity data (MWhs of electricity consumption) by source and supplier-specific emission factors to arrive at the total GHG emissions impact of electricity use. It also emphasizes the role of green power programs in reducing emissions from electricity use.[2] Only if these forms of information about electricity supply are unavailable are companies advised to use statistics such as local or national grid emission factors.

1.3 Key questions on scope 2 accounting and reporting

Since the publication of the *Corporate Standard* revised edition, companies and their stakeholders identified conceptual and technical challenges with the existing recommendations on scope 2 accounting and reporting, including the fundamental question:

- **How should renewable energy purchases be reflected in scope 2 reporting?** Previously, some companies (particularly in the U.S.) adjusted their scope 2 emissions by using an estimate of the avoided fossil fuel emissions from the grid associated with their purchase of renewable energy certificates (RECs) and deducting this from their scope 2 total calculated by grid-average emission factors. Others treated purchases as an emission factor conveying a "zero emission rate" in scope 2 calculations rather than using avoided grid emissions. Still others treated participation in green power programs effectively as a donation, with no impact on the GHG inventory. The variety of accounting methods made it difficult for a company to consistently account and report scope 2 emissions across multiple countries.

Underlying this accounting and reporting question were three main types of questions, relating to:

Instruments

- **What constitutes a renewable energy purchase?** In several countries and energy markets around the world, new instruments have been developed to track energy production information (or its "attributes") separately from actual energy delivery. These instruments—termed here "energy attribute certificates"—typically flow from energy generation facilities to energy suppliers and ultimately energy consumers in order to support consumer claims about the type of energy used and its related attributes—such as GHG emissions—produced at the point of generation.

  Some certificates, such as the Guarantee of Origin (GO) in Europe, were envisioned as a way to support energy supplier disclosure and inform consumer choice as energy markets were liberalized. The renewable energy certificate (REC) in the United States and Canada serves a regulatory role in states with renewable energy supplier quotas, as well as a voluntary role for consumers who want to purchase and support renewables. The *Corporate Standard* did not state which of these types of instruments could be appropriate for a scope 2 consumer claim, or whether other types of contractual instruments—such as direct contracts with a renewable energy generator—could fulfill a similar role.

- **What is included in a supplier-specific emission factor?** Electricity suppliers compile emission rates for a variety of purposes. Some supplier emission rates may reflect only the emissions from utility-owned assets, while others also reflect power purchased by the utility from an independent energy generation facility. Many green power programs have been offered directly by utilities, segmenting different emission rates for different consumer classes. Supplier disclosure requirements and calculation methodology differ, making it difficult for consumers to consistently use this type of information.

- **How comparable are green power programs?** Companies operating in multiple countries identified differences in the eligibility criteria used in different green power products—that is, the specifications regarding the age of a generation facility, the type of technology, whether it received public subsidy or was entirely funded by voluntary purchases, etc. While these differences do not impact the actual GHG emission rate from energy production represented in the green power product, they may matter for companies with other environmental or social goals associated with their energy procurement.

Concept

- **How can a company claim to use only renewable energy if it uses inherently untraceable grid-distributed energy?** Most energy grids provide energy for hundreds of thousands of consumers over the course of a day with a blend of energy generation facilities, including a heavy share of fossil fuel plants in most grids. By design, energy attribute certificates like RECs and GOs are separate from the physical distribution of energy. They act as a tool to convey claims and influence market dynamics by allowing the expression and aggregation of consumer preferences for specific low-carbon energy products, which would not otherwise be possible. Consumers cannot choose what energy is generated on their grid at a given point in time, but contractual instruments allow for energy attributes such as GHG emissions to be allocated along the lines of contractual relationships among producers, suppliers, and consumers.
- **If green power is used by some companies, how does that impact the emissions reported by other consumers?** The *Corporate Standard* does not address potential double counting between consumers of emissions associated with green power instruments. But implementing a credible and robust system for GHG emission rate calculation and claims based on contractual instruments—such as GOs, RECs, or supplier-specific emission rates—would require that only one consumer reports the emissions from a given quantity of generation.

Impact on global emissions

- **Do green power programs directly or indirectly reduce GHG emissions over time?** Emissions from a grid region decrease over time due to a combination of lowered energy demand and changes in supply to lower-emitting facilities. The *Corporate Standard* acknowledges that linking consumer behavior and choices with a grid system's emissions is complex and nonlinear.[3] When it comes to green power products, a single company's purchase via a supplier or through a direct contract may not itself change overall grid emissions at the time of purchase. This is because most green power products are based on instruments from existing energy generation facilities. Most voluntary green power programs are designed to translate consumer demand for certain types of energy into changes *over time* in the supply of that energy. When demand increases, it pushes up the price of these attributes, therefore creating an incentive to expand the supply of low-carbon generation facilities. Whether a market for attributes actually results in new low-carbon supply depends on several factors, including the level of consumer demand and the supply of attributes available.[4]

The lack of clear and consistent guidance on these questions created uncertainty about emission reduction strategies and prevent company inventories from reflecting a true and fair account of emissions.

1.4 Purpose of this Guidance

This guidance acts as an amendment to the *Corporate Standard,* providing updated requirements and best practices on scope 2 accounting and reporting. It aims to answer the questions articulated in section 1.3. The revisions in this guidance should enhance the relevance, completeness, consistency, transparency, and accuracy of reported scope 2 totals. Companies can use these reported totals to set targets, reduce GHG emissions, track progress, and inform their stakeholders.

1.5 Guidance overview

This guidance codifies two distinct methods for scope 2 accounting, each with a list of appropriate emission factors. Both methods are useful for different purposes; together, they provide a fuller documentation and assessment of risks, opportunities, and changes to emissions from electricity supply over time.

A *location-based method* reflects the average emissions intensity of grids on which energy consumption occurs (using mostly grid-average emission factor data). A *market-based method* reflects emissions from electricity that companies have purposefully chosen (or their lack of choice). It derives emission factors from contractual instruments, which include any type of contract between two parties for the sale and purchase of energy bundled with attributes about the energy generation, or for unbundled attribute claims. Markets differ as to what contractual instruments are commonly available or used by companies to purchase energy or claim specific attributes about it, but they can include energy attribute certificates (RECs, GOs, etc.), direct contracts (for both low-carbon, renewable, or fossil fuel generation), supplier-specific emission rates, and other default emission factors representing the untracked or unclaimed energy and emissions (termed the "residual mix") if a company does not have other contractual information that meets the Scope 2 Quality Criteria.

See Box 1.1 for an overview of key terms related to scope 2 in this guidance.

1.5.1 New reporting requirements

Companies with any operations in markets providing product or supplier-specific data in the form of contractual instruments **shall** report scope 2 emissions in two ways and label each result according to the method: one based on the location-based method, and one based on the market-based method. This is also termed "dual reporting."

Not having contractual data for every site will not cause noncompliance with the GHG Protocol *Corporate Standard* and *Scope 2 Guidance*. As with scope 3, a range of data may be available. Companies should consult the hierarchy of emission factors for both location-based and market-based methods. Any data on those hierarchies (including using location-based emission factors in the absence of contractual information) is acceptable.

1.5.2 Scope 2 Quality Criteria for the market-based method data

To make the market-based method globally consistent and capable of producing accurate results, this guidance establishes required Scope 2 Quality Criteria that all contractual instruments must meet. These Scope 2 Quality Criteria are policy-neutral and represent the minimum features necessary for instruments to function together as a complete market-based emission allocation system for consumers. Companies without contractual instruments that meet the Scope 2 Quality Criteria may use other emission factors (listed in Chapter 6).

1.5.3 Other disclosure

To encourage transparency and improve comparability of energy and energy attribute purchases from different markets, this guidance also recommends additional reporting disclosure about the energy generation features and policy contexts in which the purchase occurs. Separately disclosing total electricity, steam, heat, and cooling consumed per reporting period (in kWh, MWh, BTU, etc.) can also enhance transparency and clarify changes in consumption vs. changes in supply.

1.6 Who should use this Guidance?

This guidance acts as an amendment to the *Corporate Standard,* so all organizations compiling a corporate GHG inventory following the *Corporate Standard*—including companies, governments, NGOs, and other organizations—should use this guidance. The term "companies" is used throughout this document as shorthand for any organization compiling a corporate inventory.

In addition, energy suppliers, utilities, grid operators, and marketers offering voluntary green power programs providing product information to consumers should read this guidance to understand the type of information that customers may be requesting to calculate their scope 2 inventories following the market-based method.

Government entities involved in regulating energy and/or establishing frameworks and rules for consumer electricity choices should be informed about the requirements of this guidance. The relationships between regulatory programs (such as supplier quotas or public subsidies for renewable energy) and voluntary consumer programs are explored in Chapter 10.

Box 1.1 Key terms

Some terms used in this guidance are used for precision but are synonymous with other more familiar terms. For example:

Contractual instruments: Any type of contract between two parties for the sale and purchase of energy bundled with attributes about the energy generation, or for unbundled attribute claims. Markets differ as to what contractual instruments are commonly available or used by companies to purchase energy or claim specific attributes about it, but they can include energy attribute certificates (RECs, GOs, etc.), direct contracts (for both low-carbon, renewable, or fossil fuel generation), supplier-specific emission rates, and other default emission factors representing the untracked or unclaimed energy and emissions (termed the residual mix) if a company does not have other contractual information that meets the Scope 2 Quality Criteria.

Energy attribute certificate: A category of contractual instrument that represents certain information (or attributes) about the energy generated, but does not represent the energy itself. This category includes a variety of instruments with different names, including certificates, tags, credits, or generator declarations. For the purpose of this guidance, the term "energy attribute certificates" or just "certificates" will be used as the general term for this category of instruments.

Energy generation facility: Any technology or device that generates energy for consumer use, including everything from utility-scale fossil fuel power plants to rooftop solar panels.

Energy supplier: Also known as an electric utility, this is the entity that sells energy to consumers and can provide information regarding the GHG intensity of delivered electricity.

Generators: Here used to mean the entity that owns or operates an energy generation facility.

Green power product/green tariff: A consumer option offered by an energy supplier distinct from the "standard" offering. These are often renewables or other low-carbon energy sources, supported by energy attribute certificates or other contracts.

1.7 How should I use this Guidance?

This guidance replaces requirements and guidance on scope 2 in the *Corporate Standard.* It is divided into two parts:

- Chapters 1 through 9 provide requirements and practical recommendations on how to establish accounting boundaries, how to calculate emissions, and how to report emissions totals according to both methods in conformance with the guidance.
- Chapters 10 and 11 are optional background reading that addresses the broader concepts, principles, and examples of how energy markets worldwide have used contractual instruments to convey energy attributes (the basis of the market-based method). These chapters address how consumers can use their voluntary procurement power to accelerate the deployment of low-carbon energy to reduce overall emissions from the electricity system, while retaining the necessary instruments to make GHG claims in a market-based scope 2 total.
- Readers should also consult a supplemental compilation of case studies describing how a variety of organizations have implemented the new requirements of this Scope 2 Guidance. (Available at: ghgprotocol.org.)

The term "electricity" in this guidance is used to represent all purchased energy, but the guidance is primarily on electricity accounting. Appendix A indicates how these methods apply to heat/steam/cooling accounting as well.

1.7.1 Terminology: shall, should, may

This guidance uses precise language to indicate accounting and reporting requirements, recommendations, and allowable options that companies may choose to follow.

- The term **"shall"** is used throughout this document to indicate what is required in order for a GHG inventory to

be in conformance with the *Scope 2 Guidance* and by extension the GHG Protocol *Corporate Standard*.

- The term **"should"** is used to indicate a recommendation, but not a requirement.
- The term **"may"** is used to indicate an option that is permissible or allowable.

The term "required" is used in the guidance to refer to requirements. "Needs," "can," and "cannot" may be used to provide recommendations on implementing a requirement or to indicate when an action is or is not possible.

1.8 How was this Guidance developed?

This guidance represents a policy-neutral, collaborative solution guided by GHG Protocol principles. It was developed over four years of international consultation and discussion with participation from businesses, NGOs, GHG reporting programs, energy utilities and retailers, renewable energy certification programs, government agencies, and scientific and academic institutions from around the world. It included:

- **Scoping Workshops.** From December 2010 to May 2011, WRI and WBCSD launched this process through a series of workshops in Washington, London, and Mexico City using short discussion drafts.
- **A Technical Working Group (TWG).** Formed in summer 2011, the TWG contributed to discussion papers, conference presentations, and draft proposals on accounting and reporting solutions. Discussion papers included topics such as:
  - Defining the principles of market-based systems: attributes, ownership, eligibility (Winter 2011)
  - Identifying objectives, background, and challenges with scope 2 accounting (Summer 2012)
  - Analyzing the relationship between indirect emissions accounting and system-wide reductions (December 2012)
- **Public Comment Period.** Draft guidance was made available for public comment from March 2014–May 2014, including six webinars and three in-person workshops in London, Dusseldorf, and Washington.

1.9 Changes from the *Corporate Standard*

This guidance introduces accounting and reporting requirements related to scope 2 that replace and add to those in the *Corporate Standard.* It also sets Scope 2 Quality Criteria that contractual instruments **shall** meet in order to be used in the market-based method. To prepare an inventory in conformance with the *Corporate Standard,* companies **shall** follow all new requirements in this guidance. These changes are summarized in Table 1.1.

1.10 Relationship to the GHG Protocol *Corporate Standard* and *Scope 3 Standard*

To prepare an inventory in conformance with the *Corporate Standard,* companies **shall** follow all new requirements in this *Scope 2 Guidance*.

In turn, the *Scope 3 Standard* intersects with scope 2 in several ways:

- The *Scope 2 Guidance* impacts how companies will communicate their scope 2 emissions to other value chain partners downstream and what type of scope 2 data they may receive from its value chain partners.
- The *Scope 2 Guidance* impacts how a company assesses the upstream emissions associated with its energy use (category 3—upstream energy emissions not recorded in scope 1 and 2, scope 3).

In both cases, a company **shall** disclose whether a market-based or location-based scope 2 total is used as the basis for calculating scope 3, category 3 (fuel- and energy-related emissions not included in scope 1 or scope 2).

Table 1.1 Additions to scope 2 accounting introduced by Scope 2 Guidance

Topic	How addressed in the *Corporate Standard*	How addressed in the *Scope 2 Guidance*
Obtaining activity data (kWh)	Consult utility bills.	No change from *Corporate Standard*, but additional guidance for on-site consumption and sales including net metering programs (see Chapter 5).
Disclosing activity data (kWh)	No requirement.	Companies should disclose total consumed electricity within inventory boundary.
Emission factors	Hierarchy presented starting with source and supplier-specific, and then grid average.	Two distinct methods of scope 2 accounting required, each with their own hierarchy of emission factors.
Green power programs—which instruments can count?	Example of a company, IBM, working with a local electricity supplier, Austin Energy, to purchase renewable energy to reduce scope 2 emissions.[a] Example of a utility, Seattle City Light, providing emission rate information to customers.[b] Example of a company, Alcoa, purchasing RECs in the U.S. to reduce emissions, based on an avoided emissions estimation and deduction accounting approach.[c]	Market-based method goes beyond just green power programs and recognizes a category of contractual instruments that should be used when calculating a market-based scope 2 result. These instruments may not be for green power or even renewable energy. They include: • Energy attribute certificates (GOs, RECs) • Direct contracts such as power purchase agreements (PPAs), where other instruments or energy attribute certificates do not exist • Supplier-specific emission rates • Residual mix (e.g., the emissions rate left after the three other contractual information items are removed from the system) Guidance provides global examples of each contractual instrument type provided.
Contractual instrument requirements	No requirements given.	All contractual instruments shall meet Scope 2 Quality Criteria to be used in the market-based method calculation. If they do not meet the Scope 2 Quality Criteria, then other data (listed in Table 6.3) shall be used as an alternative in the market-based method total. In this way, all companies required to report according to the market-based method will have some type of data option.
Accounting of green power purchases	No direct requirement, but example of U.S. avoided emissions calculation and deduction approachto RECs.[d]	Any type of energy or energy attribute purchase via a contractual instrument shall be treated in scope 2 like all other product information—an emission rate in tons GHG/unit of output (here, kWh) rather than an avoided emissions estimation and deduction. Companies then apply the emission factor derived from the contractual instrument to a quantity of energy consumption (activity data), consistent with the usage boundaries of that instrument.

Table 1.1 Additions to scope 2 accounting introduced by Scope 2 Guidance (continued)

Topic	How addressed in *Corporate Standard*	How addressed in Scope 2 Guidance
Reporting requirements	Report one scope 2 result in CO_2e, as well as by GHG.	If companies have any operations in markets providing product or supplier-specific data in the form of contractual instruments, then companies shall account and report scope 2 emissions in two ways and label each result according to the method: one based on the location-based method, and one based on the market-based method meeting Scope 2 Quality Criteria are met. If companies only have operations in markets without product or supplier-specific data, then only one scope 2 result shall be reported, based on the location-based method. Companies shall specify which method is used for goal-setting, tracking, and goal-achievement claims, and for scope 3 or product-level communication. Companies should disclose key features of contractual instruments, including any certification labels, characteristics of the energy generation facilities themselves, and policy context.

Notes:
[a] See *Corporate Standard* (WRI/WBCSD 2004), p. 14.
[b] See *Corporate Standard* (WRI/WBCSD 2004), p. 30.
[c] See *Corporate Standard* (WRI/WBCSD 2004), p. 63.
[d] See *Corporate Standard* (WRI/WBCSD 2004), p. 63.

1.11 What does this Guidance not address?

The market-based method codified in this guidance inherently requires systems for tracking and allocating electricity attributes from energy generators to end consumers. Most of these systems are formed by local or national policies, or interact closely with them. This guidance recognizes the role of these systems in providing information that meets the objectives of corporate GHG accounting: that is, reflecting the risks and opportunities associated with acquiring and consuming electricity and informing internal and external decisions to manage those emissions. However, like the *Corporate Standard*, this guidance is designed to be policy neutral. This means that it does not:

- Require the development of markets where none exist
- Make requirements or express preferences about the design of markets
- Address the non-GHG accounting aspects of energy policy or market-based accounting systems for consumers, including (a) social impacts and (b) financial costs or effectiveness relative to other policies at achieving specific climate abatement or other outcomes
- Define what should constitute "green" energy
- Identify "eligibility criteria" that would determine which types of electricity facilities should produce certificates or contractual instruments. The Scope 2 Quality Criteria in this Guidance relate to features required of the instruments themselves in order to support accurate accounting; the Criteria do not address which generation facilities should produce those instruments
- Promote specific energy generation technologies (such as renewable energy), or specific electricity labels or programs.

This guidance also does not list all contractual instruments, energy attribute certificates, or tracking systems used to date.

Endnotes

1. IPCC (2014), based on global emissions from 2010.
2. See the *Corporate Standard* (WRI/WBCSD 2004), pp. 27–28, 42, and 61.
3. See *Corporate Standard* (WRI/WBCSD 2004), Chapter 8.
4. Some research (Gillenwater et al. 2014) has indicated that the voluntary REC market in the U.S., when evaluated based on the price of RECs as an incentive for project developers, has not itself driven new renewable energy projects.

Table 1.2 Which parts of the Guidance should I read?

Question	Reference
What are the changes this guidance introduces from the *Corporate Standard*?	Ch. 1
What terms should I be familiar with to navigate this document?	Ch. 1, 4, 7, 10 and Glossary
What are the business goals for accounting for scope 2 in a corporate GHG inventory?	Ch. 2
What principles should guide my approach to accounting and reporting scope 2 emissions?	Ch. 3
What is the location-based method?	Ch. 4
What is the market-based method?	Ch. 4
What is the decision-making value of the results from each method?	Ch. 4
How do I determine what energy uses should be included in the scope 2 boundary?	Ch. 5
What are the calculation methods I should use for scope 2?	Ch. 6
What kinds of emission factor data can I use for calculating scope 2 according to both methods?	Ch. 6
How do I perform calculations according to both methods?	Ch. 6
What are the criteria that instruments shall meet to be used as emission factors in the market-based method?	Ch. 7
What are the reporting requirements of this guidance?	Ch. 7
What else should I disclose about my purchases?	Ch. 8
How do I show changes over time under both methods?	Ch. 9
How do I set or track goals under one or both methods?	Ch. 9
What is the background on the use of contractual instruments in tracking energy attributes?	Ch. 10
What is the relationship between voluntary purchases and instruments used for mandatory compliance?	Ch. 10 and 11
What is the relationship between offsets and energy attribute instruments?	Ch. 10
How does my contractual purchasing drive change in low-carbon energy supply over time?	Ch. 11
How does this guidance apply to accounting and reporting emissions from purchased heat, steam, and cooling?	Appendix A
How does this new scope 2 accounting and reporting requirement affect accounting for energy-related emissions in scope 3?	Appendix B

2 Business Goals

Before accounting for scope 2 emissions, companies should consider which business goal or goals they intend to achieve.

2.1 Business goals of scope 2 accounting and reporting

Before accounting for scope 2 emissions, companies should consider which business goal or goals they intend to achieve. Consistent with the *Corporate Standard* and *Scope 3 Standard*, companies consuming electricity may seek to:

- Identify and understand the risks and opportunities associated with emissions from purchased and consumed electricity
- Identify internal GHG reduction opportunities, set reduction targets, and track performance
- Engage energy suppliers and partners in GHG management
- Enhance stakeholder information and corporate reputation through transparent public reporting.

Each of these is elaborated below.

2.2 Identify and understand risks and opportunities associated with emissions from purchased and consumed electricity

Electricity is a vital input and resource for most corporate operations, but increasingly poses GHG-related risks. These liabilities arise from climate regulations targeting the energy sector, changing energy technology and fuel costs, tradeoffs between low-carbon sector goals and other environmental objectives (such as country-level policies banning nuclear), and changing consumer preferences for low-carbon products, as well as scrutiny from investors and shareholders over what energy choices a company makes and how it purchases energy. Scope 2 GHG reporting also can introduce reputational risks from GHG claims that are unsubstantiated or unknown.

The results of each scope 2 calculation method highlight different risks and opportunities associated with electricity purchasing and use. Furthermore, the actual contractual instruments claimed in the market-based method will shield or expose companies to different risks associated with the changing cost of energy and related GHG

emissions. Therefore, both methods can improve overall risk assessment and the ability to identify different opportunities to reduce that risk. Likewise, the results of only one scope 2 method may obscure GHG risks associated with energy use and miss mitigation opportunities. Finally, the disclosure of other key information about a company's energy procurement and usage will provide stakeholders insight and context into these risks (see Chapter 8 for a list of these disclosure items).

Risks

Some of these risks include:

Regulatory. Corporate exposure to regulatory risks in the electricity sector depends on regulatory policy design. For instance, CO_2 taxes on electricity consumption may be levied equally on all consumers regardless of their supplier or product choice; based on CO_2 in a supplier's delivered product; or only to certain consumer classes where exemptions may exist (for example, the UK's Climate Change Levy for nonresidential consumers, where a levy exemption certificate can be used to avoid the levy). In these circumstances, a contractual instrument for specified power may or may not shield companies from these additional costs. Customers of an electric utility generally bear the cost of environmental compliance for the resources owned by their utility, or the energy purchased by the utility, which would be shown in a utility-specific emission factor in the market-based method. Conversely, these costs and risks are not necessarily shared among all consumers equally on the same grid, which would otherwise be suggested by the location-based method.

Energy costs and reliability. Electricity suppliers may pass on to their customers the fluctuating prices of fossil or other fuel. The emissions from this supplier mix may be represented in that supplier's specific emission factor, making the market-based method an aligned representation of emissions and costs. At the same time, certain overall costs related to grid operation and maintenance could be

allocated to all consumers regardless of their individual choice in electricity supplier, electricity product, or tariff. In addition, maintaining regional grid reliability often requires a mix of generation resources. The location-based method incorporates the GHG emissions of this mix into the grid average emissions factor, while the market-based method may allow users to only evaluate the GHG emissions associated with the energy generation represented in their purchased product—thereby missing some of the reliability risks faced by consumers in the entire grid.

Most companies reduce energy cost risks in part by reducing overall energy consumption. Some companies may be concerned that purchasing certificates annually allows for a "zero emissions" market-based total year-on-year, thereby lessening the impetus for companies to reduce their energy consumption. To mitigate this, the guidance recommends the separate reporting of overall energy consumption. Companies should also compare any additional costs associated with premiums for low-carbon energy supply documented in the market-based method, and compare how those can be reduced over time through decreased demand. In addition, purchasing and applying certificates to one year's inventory sets a precedent for continuing purchases in future years in order to report annual reductions, and cost ranges for certificates may vary each year.

Reputation. Prior to this guidance, companies may have reported scope 2 without fulfilling the Scope 2 Quality Criteria for the market-based method, leading to misleading claims and potential double counting between scope 2 inventories. Transparent disclosure about a company's energy procurement and its key attributes in the market-based method can help clarify the company's strategy and rationale.

Product and Technology. Companies may face decreased consumer demand for products made with high-GHG energy inputs. In turn, a company's competitors using low-GHG energy may see more competitive gains. Being able to compare companies' performances across similar scope 2 methods can help ensure that consumers understand the differences in a company's energy procurement choices.

Legal. Prior to this guidance, some companies with access to contractual information may have been only reporting location-based scope 2. However, many contractual instruments convey legally enforceable rights and claims that can affect how a company describes its purchases and its overall environmental performance. Neglecting to report a market-based scope 2 that aligns with those claims can expose companies to legal risks. In addition, if companies claim in scope 2 the use of instruments that do not meet the Scope 2 Quality Criteria (for example, not conveying an exclusive right to convey attribute claims), they may be inadvertently double-claiming emissions conveyed by other instruments to other parties.

Non-GHG environmental risks

Other environmental risks may be more localized than global GHG emissions affecting the world's climate. A company located in a grid with these types of energy production may also face operational or health/safety risks. A location-based result can help highlight a company's exposure to some of these geographic risks, including (a) air pollution such as sulfur dioxide (SO_x) or mercury from coal combustion; (b) the impact of hydropower on local waterways and aquatic life; and (c) the risks from nuclear waste disposal or emergencies.

Opportunities

Accounting and reporting scope 2 emissions will also highlight opportunities to improve performance and business operations. For many companies, energy use represents a significant cost. Reducing energy use is the "first" choice to reduce impact and costs. In most mixed-resource grids, reducing energy use also correlates with a decreased total in the location-based result (for example, smaller activity data value in the inventory year, while also contributing to lowering grid emissions over time).[1] Companies reducing energy consumption also pay proportionally less for any low-carbon supplier tariffs or premiums, or any unbundled certificates in the market-based method. Some examples of these opportunities are enumerated in Table 2.1.

Table 2.1 Examples of GHG-related opportunities related to scope 2 emissions

Example	Description
Efficiency and cost savings	A reduction in GHG emissions often corresponds to decreased costs and an increase in companies' operational efficiency.
Drive innovation	A comprehensive approach to GHG management provides new incentives for innovation in energy management and procurement.
Increase sales and customer loyalty	Low-emissions goods and services are increasingly more valuable to consumers, and demand will continue to grow for products made with low-carbon electricity.
Improve stakeholder relations	Improve stakeholder relationships through proactive disclosure and demonstration of environmental stewardship. Examples include demonstrating fiduciary responsibility to shareholders, informing regulators, building trust in the community, improving relationships with customers and suppliers, and increasing employee morale. *However, there may also be risks depending on whether company stakeholders are also invested in fossil fuel or high-GHG emitting resources.*
Company differentiation	External parties—including customers, investors, regulators, shareholders, and others—are increasingly interested in documented emissions reductions. Accounting and reporting scope 2 emissions with greater consistency and transparency about contractual instruments demonstrates a best practice that can differentiate companies in an increasingly environmentally conscious marketplace.

2.3 Identify GHG reduction opportunities, set reduction targets, and track performance

Comprehensive scope 2 accounting and reporting should serve as a consistent basis to set reduction targets and measure and track progress toward them over time. Companies should use the boundaries and definitions in scope 2 as a basis for setting GHG reduction targets as well as energy-use targets and renewable energy procurement targets (for example, a 100 percent renewable energy procurement goal). Each method's scope 2 total can provide an important indicator of performance and show the context in which emission totals are changing. For example, regional emission trends (shown in the location-based method) may change over time due to factors outside of a company's direct control, such as electricity supplier quotas for renewable energy, emission policies and regulations, the collective impact of energy efficiency or demand-side management, or voluntary demand for new renewables.

Transparent reporting also allows for a more consistent comparison of performance over time and comparison with other companies. This guidance's framework addresses and reduces double counting between scope 2 inventories when using the same method, improving the accuracy of reported results and ensuring every company can make progress toward its goals.

2.4 Engage energy suppliers and partners in GHG management

Reducing emissions from the energy sector requires the participation of all entities in the energy value chain, including energy generators, suppliers, retailers, and consumers. The two methods outlined in this guidance can help consumers engage with their energy value chain on key demand and supply issues. For instance, generators produce energy in response to local or regional aggregate demand, and individual scope 2 inventories (and recommended reporting of energy consumption separately) can help highlight how reductions in energy use can reduce both scope 2 emissions and contribute to reducing grid-wide demand.

On the supply side, new energy generation facilities require a combination of factors to be in place to come online, including siting appropriate for the technology and its capacity or size, financing, and a supplier or consumer to purchase the energy. Scope 2 accounting can provide a motivation for consumers to partner with suppliers offering low-carbon products, and to seek out opportunities to leverage a company's own financial resources to help develop new projects. Energy producers, suppliers, and consumers all account for GHG emissions based on organizational and operational boundaries (e.g. the scopes). Scope 2 accounting and reporting can help energy consumers identify the GHG emissions impact of different energy production and purchasing arrangements.

2.5 Enhance stakeholder information and corporate reputation through transparent public reporting

The markets for energy purchasing—as well as markets for energy attribute certificates—may be difficult to explain to stakeholders unfamiliar with attribute tracking, labeling, or claims systems. Reporting scope 2 according to both calculation methods can help describe the different dimensions of the grid more clearly. With the location-based method, consumers can represent that they are served by all the energy resources deployed on their regional grid. By contrast, a company's energy supply choices are shown in the market-based method total. This reflects the market for energy attribute claims which enables a choice of specific resources, and allocates emission attributes based on a company's contractual relationships, or what a company is paying for. Reporting both methods' results provides important information for assessing corporate performance.

Endnotes

1. For this reduction in a single company's consumption to impact grid generation and resulting emissions, this consumption would need to be significant and could not be offset by increases in energy consumption elsewhere in the grid. Therefore this guidance generally treats scope 2 reductions in energy consumption as part of the *collective* action that reduces emissions.

3 Accounting and Reporting Principles

As with financial accounting and reporting, generally accepted GHG accounting and reporting principles are intended to underpin and guide GHG accounting and reporting to ensure that the reported information represents a faithful, true, and fair account of a company's GHG emissions.

GHG accounting and reporting **shall** be based on the following principles:

- **Relevance.** Ensure the GHG inventory appropriately reflects the GHG emissions of the company and serves the decision-making needs of users—both internal and external to the company.
- **Completeness.** Account for and report on all GHG emission sources and activities within the inventory boundary. Disclose and justify any specific exclusion.
- **Consistency.** Use consistent methodologies to allow for meaningful performance tracking of emissions over time. Transparently document any changes to the data, inventory boundary, methods, or any other relevant factors in the time series.
- **Transparency.** Address all relevant issues in a factual and coherent manner, based on a clear audit trail. Disclose any relevant assumptions and make appropriate references to the accounting and calculation methodologies and data sources used.
- **Accuracy.** Ensure that the quantification of GHG emissions is systematically neither over nor under actual emissions, as far as can be judged, and that uncertainties are reduced as far as practicable. Achieve sufficient accuracy to enable users to make decisions with reasonable confidence as to the integrity of the reported information.

Guidance for applying the accounting and reporting principles

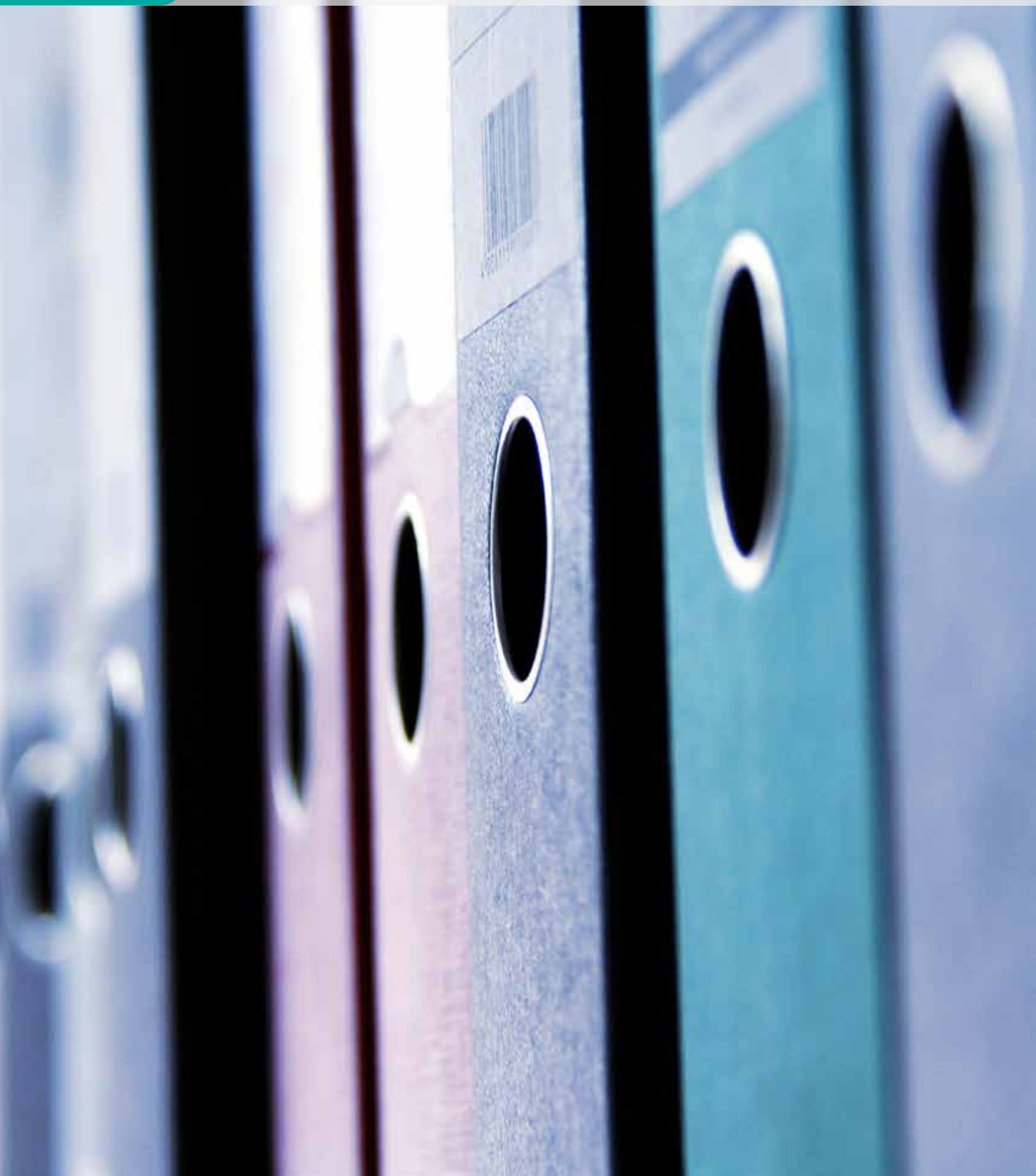
These five principles guide the implementation of the GHG Protocol *Scope 2 Guidance*, particularly when application of the guidance in specific situations proves ambiguous. Companies may encounter tradeoffs between principles when completing an inventory and should strike a balance between these principles based on their individual business goals. For instance, a company may find that achieving the most *complete* inventory requires the use of less accurate data, compromising overall accuracy. Over time, as the accuracy and completeness of data increase, the tradeoff between these accounting principles will likely diminish.

Companies should consider these requirements in the light of the overall principles to which they apply, such as:

- **Transparency.** A company may prepare a market-based scope 2 total and may not yet have access to a residual mix emission factor. If the company has contractual instruments such as energy attribute certificates or supplier-specific emission factors to cover all of its consumption, the absence of a residual mix may not impact the accuracy of the company's reported scope 2 total. But it can impact the overall accuracy of the emissions allocation within that market. Therefore, companies are required to disclose this absence transparently.
- **Relevance.** The guidance recommends that companies disclose key features of the contractual instruments they use, in order to enable a clear understanding of the market context of those purchases and a meaningful assessment of the company's procurement strategy (see Chapter 8). While this disclosure should support the principle of transparency, it should also focus on those purchases and features that are most relevant to the company and its goals, and can support its decision making.
- **Consistency.** The guidance seeks to ensure consistency in GHG reporting by requiring dual reporting, so that users of GHG information can track and compare GHG emissions information over time according to the same method assumptions. This better distinguishes trends and changes in performance. A company that begins reporting market-based method results for the first time may wish to provide additional transparent context for this total by indicating what percentage of their operations actually fall under this approach (based on energy usage) as compared with those where the same location-based method is used as a proxy.

- **Accuracy and Completeness.** Companies may identify contractual instruments in the market-based method—such as supplier-specific emission factors or energy purchase contracts—that do not meet the Scope 2 Quality Criteria. To maintain accuracy, companies **shall not** use these data to report a market-based scope 2 total, but should use other eligible data listed in the market-based method hierarchy. Companies may disclose the information separately. Working with electricity suppliers to clarify and ensure alignment of their data with the Scope 2 Quality Criteria will ensure both accuracy and a more complete market-based method result over time.
- **True and Fair.** Some policy makers or stakeholders using corporate GHG information may identify additional objectives for market-based electricity accounting in their national or subnational market. These objectives may reference concepts of social fairness or or equal treatment of different electricity consumer groups in the design of a voluntary low-carbon energy purchasing program. The GHG Protocol references that these five principles should help in developing fair and true inventories. The phrase "fair and true" is not intended to address these types of policies or objectives, but recommends that companies disclose key energy generation features about their contractual instruments in order to transparently disclose how its purchases reflect this policy context.

4 Scope 2 Accounting Methods



This chapter provides an overview of the two scope 2 accounting methods required by this guidance. It outlines how these methods' results can inform decisions that contribute to reductions in the electricity sector.

4.1 Approaches to accounting scope 2

Calculating scope 2 emissions requires a method of determining the emissions associated with electricity consumption. Primarily two methods have been used by companies, programs, and policy makers to "allocate" the GHG emissions created by electricity generation to the end consumers of a given grid. Consumer GHG accounting in scope 2 completes this allocation process through emission factors applied to each unit of energy consumption. This guidance terms these methods the (a) location-based and (b) market-based methods. In short, the market-based method reflects emissions from electricity that companies have purposefully chosen (or their lack of choice), while the location-based method reflects the average emissions intensity of grids on which energy consumption occurs.

Table 4.1 compares the methods in terms of their objectives and the aspects of corporate purchasing and consuming of electricity that are emphasized. Chapter 6 lists the emission factors associated with each method.

4.1.1 Location-based method

This method can apply in all locations since the physics of energy production and distribution functions the same way in almost all grids, with electricity demand causing the need for energy generation and distribution. It emphasizes the connection between collective consumer demand for electricity and the emissions resulting from local electricity production. This includes an overall picture of the mix of resources required to maintain grid stability (see Box 4.1). The location-based method is based on statistical emissions information and electricity output aggregated and averaged within a defined geographic boundary and during a defined time period.[1]

Grid average emission factors should be distinguished from supplier-specific emission factors. While utilities may be the sole energy provider in a region and produce a supplier-specific emission factor that closely resembles the overall regional grid average emissions factor, this utility-specific information should still be categorized as market-based method data due to the wide variation in utility service areas and structures. For instance, the utility service territory may

Table 4.1 Comparing market-based and location-based methods

	Market-Based Method	Location-Based Method
Definition	A method to quantify the scope 2 GHG emissions of a reporter based on GHG emissions emitted by the generators from which the reporter contractually purchases electricity bundled with contractual instruments, or contractual instruments on their own	A method to quantify scope 2 GHG emissions based on average energy generation emission factors for defined geographic locations, including local, subnational, or national boundaries
How method allocates emissions:	Emission factors derived from the GHG emission rate represented in the contractual instruments that meet Scope 2 Quality Criteria	Emission factors representing average emissions from energy generation occurring within a defined geographic area and a defined time period
Where method applies:	To any operations in markets providing consumer choice of differentiated electricity products or supplier-specific data, in the form of contractual instruments	To all electricity grids
Most useful for showing:	• Individual corporate procurement actions • Opportunities to influence electricity suppliers and supply • Risks/opportunities conveyed by contractual relationships, including sometimes legally enforceable claims rules	• GHG intensity of grids where operations occur, regardless of market type • The aggregate GHG performance of energy-intensive sectors (for example, comparing electric train transportation with gasoline or diesel vehicle transit) • Risks/opportunities aligned with local grid resources and emissions
What the method's results omit:	• Average emissions in the location where electricity use occurs	• Emissions from differentiated electricity purchases or supplier offerings, or other contracts

be a smaller region than the grid distribution area serving a given site of consumption; conversely, many utilities are in competitive markets where multiple suppliers can compete to serve consumers in the same region. Therefore, this method only looks at the broader energy generation profile for a region, regardless of supplier relationships.

4.1.2 Market-based method

The market-based method reflects the GHG emissions associated with the choices a consumer makes regarding its electricity supplier or product. These choices—such as choosing a retail electricity supplier, a specific generator, a differentiated electricity product, or purchasing unbundled energy attribute certificates—are conveyed through agreements between the purchaser and the provider.

Under the market-based method of scope 2 accounting, an energy consumer uses the GHG emission factor associated with the qualifying contractual instruments it owns. In contrast to the location-based method, this allocation pathway represents contractual information and claims flow, which may be different from underlying energy flows in the grid. The certificate does not necessarily represent the emissions caused by the purchaser's consumption of electricity. One company choosing to switch suppliers does not directly or in the short-term impact the entire operation of the grid and its emissions. Over time, the

Box 4.1 How scope 2 methods reflect variable energy

While renewable energy may be "zero emissions" at the point of generation, dispatchable fossil fuel resources are often required to maintain overall grid reliability when renewable resources like solar and wind are not available. Electricity system operators may be required to maintain "spinning reserves" to provide grid stability in the event of losses of production at major energy generation facilities or to regulate grid frequency. Most studies suggest that a balancing area can absorb up to 30 percent variable resources without special accommodation. Over time increases in variable renewable resources have led to the formation of larger balancing areas supported by expanded T&D infrastructure as well as increased grid flexibility and efficiency improvements. Improved short-term forecasting of variable resources and storage technologies will also minimize these challenges.

The location-based method reflects the role of these "balancing" resources and their emissions through grid average emission factors. These emission factors include emissions from all local energy generation. The market-based method may reflect these emissions in varying degrees: for instance a certificate for variable renewable energy will not likely report or show the GHG impacts of the other resources dispatched on the grid to complement that variability. However some utilities are designing certificates to be issued only from variable energy generated during periods when the "backup" resource is also zero emissions or when no back-up is needed. This requires the utility to be in a position to guarantee they inject at any moment enough zero emissions energy to cover demand (for instance, through hydropower). For example, TUV SUD certifies in their EE02 Standard that energy is supplied simultaneously to consumption.*

*See TUV SUD criteria: http://www.tuev-sued.de/plants-buildings-technical-facilities/fields-of-engineering/environmental-engineering/energy-certification/certification-criteria

collective consumer demand for particular energy types and their resulting attributes (e.g., zero GHG emissions from generation) can send a market signal to support building more of those types of generation facilities, just as purchasing any product sends the market signals to produce more of that product.

While only a few countries around the world have established markets for certificates that support this method, large electricity consumers in many other markets may find opportunities to purchase a differentiated product or enter into contracts directly. The market-based method has historically been associated with green power purchasing options. However, it is designed to integrate with, and include, existing systems for supplier portfolio disclosure and nonrenewable energy contract types as well. Since no market has instituted comprehensive energy tracking by contractual instruments,[2] this method uses some of the same energy production and emissions data from the location-based method for any energy not tracked by an instrument. The emissions from all untracked and unclaimed energy comprise a residual mix emission factor. Consumers who do not make specified purchases or who do not have access to supplier data should use the residual mix emission factor to calculate their market-based total.

With this method, individual energy consumers have the opportunity to make decisions about their product and supplier, which can then be reflected as a supplier or product-specific emission factor in scope 2.

4.2 Emission rate approach

These scope 2 accounting methods have several features in common, including:

- They use generation-only emission factors (e.g. emissions assessed at the point of energy generation), designed to label emissions associated with a quantity of electricity delivered and consumed. The emission factors do not include T&D losses or upstream life-cycle emissions associated with the technology or fuel used in generation. Instead, these other categories of upstream emissions should be quantified and reported in scope 3, category 3 (emissions from fuel- and energy-related activities not included in scope 1 or scope 2). In the case of supplier-specific emission factors, the emission factor should reflect emissions from all delivered energy, not just from generation facilities owned/operated by the utility.

- They represent emission rates that allocate emissions at generation to end-users. This type of treatment is consistent with corporate inventory approaches across other scopes, particularly with product-specific emission factors or labels. Both methods should be applied comprehensively to ensure all energy generation emissions within a defined region have been accounted for.
- This guidance does not support an "avoided emissions" approach for scope 2 accounting due to several important distinctions between corporate accounting and project-level accounting. However, companies can report avoided grid emissions from energy generation projects separately from the scopes using a project-level accounting methodology.

4.3 The decision-making value of each method's results

The *Corporate Standard* notes that reductions in indirect emissions (changes in scope 2 or 3 emissions over time) may not always capture the actual emissions reduction accurately. This is because there is not always a direct cause-effect relationship between the single activity of the reporting company (purchasing and consuming energy) and the resulting GHG emissions on the grid.[3] Generally, as long as the accounting of indirect emissions over time recognizes activities that in aggregate change global emissions, any such concerns over accuracy should not inhibit companies from reporting their indirect emissions.[4]

These two scope 2 accounting methods each provide a different "decision-making value" profile—that is, different indications of performance and risks, revealing different levers to reduce emissions and reduce risks. Ultimately, system-wide emission decreases are necessary over time to stay within safe climate levels. Achieving this requires clarity on what kinds of decisions individual consumers can make to reduce both their own reported emissions as well as contribute to emission reductions in the grid. Working backward from those decisions to the methods used to calculate emissions, there are three types of decisions companies can make that impact overall electricity grid emissions. These decisions include facility siting, the level and timing of demand, and supporting supply shifting.

While companies may make decisions related to these categories for non-GHG considerations, all the decisions carry GHG implications.

1. **Facility and operations-siting decisions**
   A company's decisions about where to locate its office buildings, industrial facilities, distribution centers, or data centers carries GHG implications. The physical location of these points of energy consumption impacts what existing, or future, energy resources may be able to be deployed to meet demand. For instance, locating new facilities on a GHG-intensive grid means that in the near term, energy demand will be met with a higher GHG emissions profile, assuming that the energy is consumed locally. By contrast, locating operations in areas with low-carbon natural resources, or additional benefits such as natural ambient cooling or heat, can reduce these GHG emissions risks (as shown in the location-based method).[5] Ambient heat/cooling will also be reflected in lower use of heat/cooling and will be seen in both the location-based and market-based methods. Companies considering electric transportation fleets also need to ensure the availability of charging infrastructure and the GHG-intensity of the grids where that transportation would occur.

   The physical location also aligns with a national or subnational set of regulatory rules governing what types of energy product or energy supplier choices a consumer can make. This location highlights different pathways and options for corporate influence over the energy supply mix over time (as shown in the market-based method).

   Therefore, a company's shift in facility location will result in changes in scope 2 based on:

   - **Location-based.** The use of a different grid average emission factor, and possibly a shift in energy supply overall, if the new location allows for on-site energy generation or is locating near an energy development where a direct line connection can be made.
   - **Market-based.** Changes in supplier (new utility service area), changes in other types of contractual instruments, actions of other consumers in the market, or the residual mix used in that location.

2. Decisions on the level and timing of demand

Once a company has established a location for its operations, it can reduce its emissions through energy demand reduction.[6] A company can reduce energy consumption through measures such as choosing an energy-efficient building, carrying out energy-efficient retrofits, using more efficient electronics or lighting, and making behavioral decisions. Increasingly, "smart grid"[7] information and systems are allowing more geographically and temporally precise data to support energy demand management at a consumer level, including end-use equipment timing (e.g., running dishwashers or washing machines during optimal times of day such as low-cost, or non-peak times). Utilities may also provide this type of data to energy-intensive consumers as part of demand-side management (DSM) programs and peak-shaving efforts. The location-based method assumes that local demand impacts local generation and distribution patterns, which ultimately impact total GHG emissions from the system (taking into account physical energy imports/exports). While demand is met with incremental resources, grid-average emission factors provide more readily available averages calculated over the course of a year.

Therefore, a company's shift in energy demand quantity and timing will entail changes in reported scope 2 primarily through activity data. In both methods, a decrease in electricity consumption can decrease total reported scope 2.

- **Location-based.** Collective changes in consumption contribute to changes in the the grid average emission factor over time. Shifting energy consumption to periods with of low-emissions generation on the grid (often non-peak hours) can further contribute to system-wide reductions. Advanced grid studies

can better highlight the emissions impacts of these individual consumption decisions (see Chapter 6).

- **Market-based.** Reducing electricity demand can minimize the additional costs associated with purchasing contractual instruments at a premium above standard electricity costs. However, the market-based method runs the risk of providing less visibility on energy demand reduction if the price of this premium (and therefore the price of achieving "zero emissions") is low. But efficiency can generally be pursued with financial gain regardless of the specific emissions associated with electricity consumption.

3. Decisions to influence grid mix of generation technologies

Many variables impact the mix of generation technologies on a given grid, including the historical regulatory, financial, and physical characteristics of the jurisdiction as well as the current market dynamics of supply/demand for particular resources. An electricity consumer can pursue a variety of actions to try to influence these factors directly or indirectly, conveying stronger or weaker market signals (see Chapter 11). If consumers want to support low-carbon technologies, they can:

- Create on-site low-carbon energy projects
- Establish contracts, that include certificates, such as PPAs directly with low-carbon generators
- Negotiate with their supplier or utility to supply low-carbon energy to the company
- Switch to a low-carbon electricity supplier or electricity product, where available
- Purchase certificates from low-carbon energy generation.

Substantially changing a grid's resource mix over time generally requires aggregate consumer decisions, or a large-scale corporate consumer representing a significant percentage of a utility's load. But all of these

interventions benefit from, and depend on, a contractual instrument (e.g. certificate) that confers specific GHG-emission attribute claims associated with purchases, functioning as a demand-signaling mechanism.

Therefore, efforts to shift grid supply through procurement will entail changes in reported scope 2 based on:

- **Location-based.** Cumulative effect of consumer or supplier choices over time that change the grid average emissions factor. (Other factors such as economics and environmental regulation can also impact this.) But individual corporate choices regarding electricity contracts, supplier choices, or certificate purchases are *not* directly reflected in an individual's scope 2 inventories using the location-based method.
- **Market-based.** Individual corporate choices of electricity product or supplier, or the lack of a differentiated choice, which requires the use of a residual mix. Many market-based tracking systems currently only reflect renewable generation contractual instruments, but the method should reflect any type of contract or supplier-specific emission factor that meets the Scope 2 Quality Criteria. Chapter 11 addresses how companies can use the market-based method to drive supply change.

Endnotes

1. The International Energy Agency provides grid average data per country and per year. In some countries grid average data are available for much shorter periods. RTE in France provides grid average figures in real time for every 30 minutes period (http://www.rte-france.com/en/eco2mix/eco2mix-co2-en).
2. Only the NEPOOL and PJM regions of the U.S. use all generation certificate tracking.
3. It is assumed here that direct emissions tracked in scope 1 do reflect absolute reductions. However, it should be noted that a company may see its scope 1 emissions change due to outsourcing or acquisition/divestment, activities which do not in themselves "change" global GHG emissions but which simply change what company has responsibility for them.
4. *Corporate Standard* (WRI/WBCSD 2004), p. 59–60.
5. However, emissions associated with the relocation of a facility (building materials, demolition, trucking, etc.) unrelated to the new or old site's purchase of electricity or steam would generally be accounted for in scope 3
6. This is not as relevant for a totally new facility whose energy use would still reflect an increase on the grid. However, efficiency and demand reduction can remain a priority for consumption occurring in established buildings.
7. See EPRI (2008).

5 Identifying Scope 2 Emissions and Setting the Scope 2 Boundary

This chapter describes the sources of scope 2 emissions and how to establish a boundary for scope 2 accounting under different generation and distribution models and scenarios.

5.1 Organizational boundaries

As detailed in the *Corporate Standard,* a company can choose one of three consolidation approaches for defining its organizational boundaries for the entire corporate inventory, including equity share, financial control, and operational control. Companies should use a consistent consolidation approach over time for their entire inventory.

5.2 Operational boundaries

After a consolidation approach has been determined to define the organizational boundary, it **shall** be applied consistently across the inventory. Companies can then identify emissions from included sources and categorize them into direct and indirect emissions, and further by "scopes." The *Corporate Standard* divides a company's emissions into direct and indirect emissions:

- **Direct emissions** are emissions from sources that are owned and controlled by the reporting company. These emissions are considered scope 1.
- **Indirect emissions** are emissions that are a consequence of the activities of the reporting company, but occur at sources owned or controlled by another company. These include scope 2 and scope 3 emissions. Scope 2 includes emissions from energy purchased or acquired and consumed by the reporting company (see Section 5.3 for expanded definition). Scope 3 emissions include upstream and downstream value chain emissions and are an optional reporting category in the *Corporate Standard.* The *Corporate Value Chain (Scope 3) Accounting and Reporting Standard* (2011) outlines how to conduct a comprehensive scope 3 inventory.

For many companies, scope 2 and scope 3 represent the largest sources of GHG emissions. By allowing for GHG accounting of direct and indirect emissions by multiple companies in a supply chain, multiple entities can work to reduce emissions where they have influence.

The underlying framework of direct and indirect corporate emissions reporting means that one company's scope 1 is another company's scope 2 and/or 3. This is an inherent part of the reporting framework that enables multiple entities along a value chain to consistently report those

emissions. However, as stated in the *Corporate Standard,* companies should avoid double counting the same emissions in multiple scopes in the same inventory. In addition, double counting the same emissions within the same scope by multiple companies should also be avoided (see Section 5.5).

5.2.1 Leased assets

Energy use in leased buildings or from leased electricity generation assets can be a significant emissions source. To determine whether the assets' emissions are included in the inventory boundary and how they should be categorized by scope, companies should determine the entity that owns, operates, or exerts control over certain leased assets.[1]

As noted in the *Corporate Standard* and its supplemental Appendix F (available at ghgprotocol.org), all leases confer operational control to the lessee or tenants, unless otherwise noted.[2] Therefore, if a company is a tenant in a leased space or using a leased asset and applies the operational control approach, any energy purchased or acquired from another entity (or the grid) **shall** be reported in scope 2. On-site heat generation equipment, such as a basement boiler, typically falls under the operational control of the landlord or building management company. Tenants therefore would report consumption of heat generated on-site as scope 2. If a tenant can demonstrate that they do not exercise operational control in their lease, they **shall** document and justify the exclusion of these emissions.

Emissions from assets a company owns and leases to another entity, but does not operate, can either be included in scope 3 or excluded from the inventory. For more information on organizational boundaries, see The *Corporate Standard,* Chapter 3: Setting Organizational Boundaries, and Appendix F at www.ghgprotocol.org.

5.3 Defining scope 2

Scope 2 is an indirect emission category that includes GHG emissions from the generation of purchased or acquired electricity, steam, heat, or cooling consumed by the reporting company.[3] GHG emissions from energy generation occur at discrete sources owned and operated by generators that account for direct emissions from generation in their scope 1 inventory. Scope 2 includes indirect emissions from generation only; other upstream emissions associated with the production and processing of upstream fuels, or transmission or distribution of energy within a grid, are tracked in scope 3, category 3 (fuel- and energy-related emissions not included in scope 1 or scope 2).

5.3.1 Forms of energy use tracked in scope 2

Scope 2 accounts for emissions from the generation of energy that is purchased or otherwise brought into the organizational boundary of the company. At least four types of purchased energy are tracked in scope 2, including the following:

Electricity. This type of energy is used by almost all companies. It is used to operate machines, lighting, electric vehicle charging, and certain types of heat and cooling systems.

Steam. Formed when water boils, steam is a valuable energy source for industrial processes. It is used for mechanical work, heat, or directly as a process medium.

Combined heat and power (CHP) facilities (also called cogeneration or trigeneration) may produce multiple energy outputs from a single combustion process. Reporting companies purchasing either electricity or heat/steam from a CHP plant should check with the CHP supplier to ensure that the allocation of emissions across energy outputs follows best practices, such as the *GHG Protocol Allocation of GHG Emissions from a Combined Heat and Power (CHP) Plant (2006).*

Heat. Most commercial or industrial buildings require heat to control interior climates and heat water. Many industrial processes also require heat for specific equipment. That heat may either be produced from electricity or through a non-electrical process such as solar thermal heat or thermal combustion processes (as with a boiler or a thermal power plant) outside the company's operational control.

Cooling. Similar to heat, cooling may be produced from electricity or through the distribution of cooled air or water.

This guidance focuses on electricity accounting. Differences in accounting for heat, cooling, and steam are treated in Appendix A.

5.4 Distinguishing scopes reporting by electricity production/distribution method

Once energy is generated, it is either consumed on-site, or distributed to another entity by direct line transfer or through the electricity grid. These pathways, along with any contractual and/or certificate sales from electricity generation from owned/operated equipment, determine how the emissions from energy generation are accounted for and reported by different entities in scope 1 and 2. (Scope 3 accounting is addressed in Appendix B.) Scope 2 emissions are accounted for when a company obtains its energy from another entity, or when a company sells an energy attribute certificate from owned and consumed generation. See Chapter 10 for background on energy attribute certificates.

Under all four scenarios identified below, companies should report electricity consumption separately from the scopes as part of reporting the total quantity of energy consumption in kWh, MWhs, TJ, BTUs or other relevant units.

1. If the consumed electricity comes from owned/operated equipment (Figure 5.1)

If energy is produced and consumed by the same entity (with no grid connection or exchanges), no scope 2 emissions are reported, as any emissions occurring during the power generation are already reported in scope 1. This scenario may apply to large industrial facilities that generate their own energy on-site in owned/operated equipment.

Figure 5.1 Energy production and consumption from owned/operated generation

2. If the consumed electricity comes from a direct line transfer (Figure 5.2)

In this example, energy production is fed directly and exclusively to a single entity—here, Company B. This applies to several types of direct line transfers, including:

- An industrial park or collection of facilities, where one facility creates electricity, heat, steam, or cooling and transfers it directly to a facility owned or operated by a different party.
- For energy produced by equipment installed on-site (e.g. on-site solar array or a fuel cell using natural gas) that is owned and operated by a third party.
- For electricity, heat, steam, or cooling produced within a multi-tenant leased building (by a central boiler, or on-site solar) and sold to individual tenants who do not own or operate the building or the equipment. Tenants may pay for this energy as part of a lump rental cost and the tenant may not receive a separate bill.

In any of these scenarios:

- The company with operational or financial control of the energy generation facility would report these emissions in their scope 1, following the operational control approach, while the consumer of the energy reports the emissions in scope 2.
- Any third-party financing institution that owns but does not operate the energy generation unit **would not** account for any scope 1, 2, or 3 emissions from energy generation under the operational control approach, since they do not exercise operational control. Only the equipment operator would report these emissions in their scope 1 following an operational control approach. Equipment owners would account for these generation emissions in scope 1 under a financial control or equity share approach, however.
- If all the energy generation is purchased and consumed, then Company B's scope 2 emissions will be the same as Company A's scope 1 emissions (minus any transmission and distribution losses, though in most cases of direct transfer there will be no losses).[4]

3. If the consumed electricity comes from the grid (Figure 5.3)

Most consumers purchase or acquire some or all of their electricity through the electric grid, a shared electricity distribution network. Depending on the design of the grid, there may be a small number of central generation facilities providing energy to many consumers, or there may be a large number of generation facilities representing different technology types (thermal power using coal or natural gas inputs, or wind turbines, solar photovoltaic cells, or solar thermal, etc.).

Figure 5.2 Direct line energy transfer

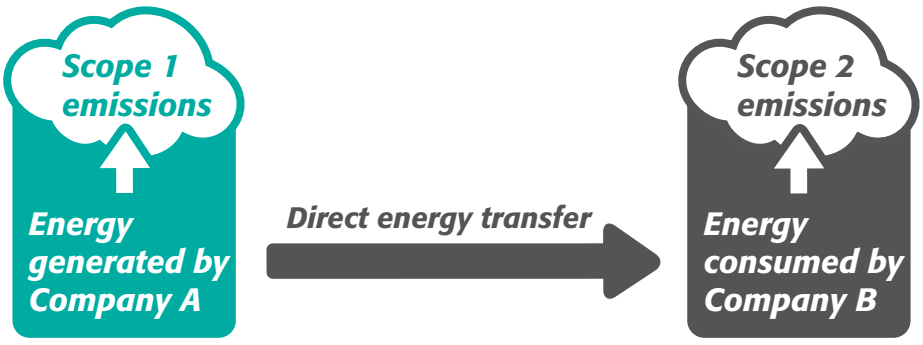
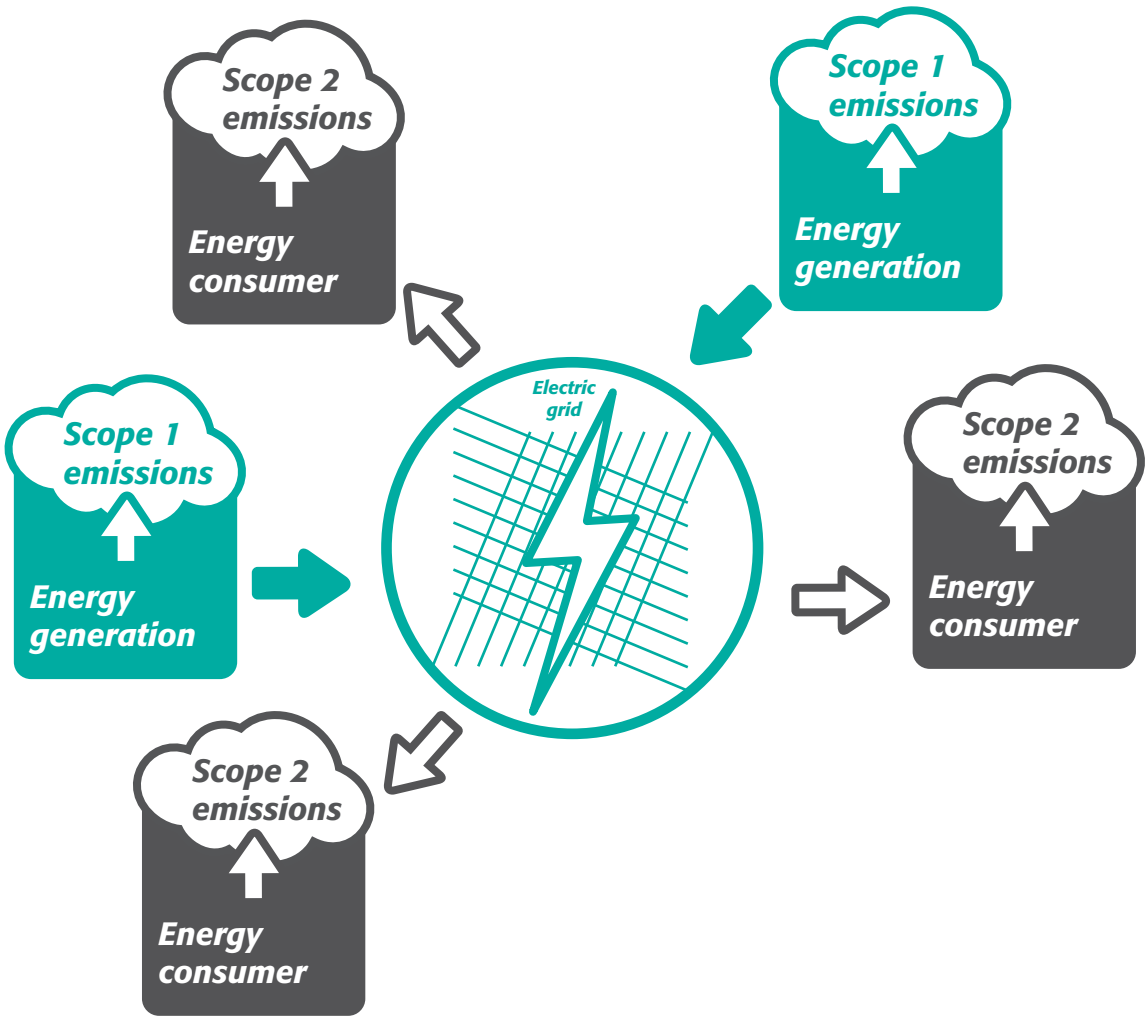


Figure 5.3 Electricity distribution on a grid



Electricity generators report any emissions from generation in scope 1, but most renewable or nuclear technology would report "zero" emissions from this generation. A grid operator or utility dispatches these generation units throughout the day on the basis of contracts, cost, and other factors. Because it is a shared network as opposed to a direct line, consumers may not be able to identify the specific power plant producing the energy they are using at any given time.[5] Use of specified generation on the grid can only be determined contractually. Energy on the grid moves to the nearest point it can be used, and multiple regions can exchange power depending on the capacity and needs of these regions. Steam, heat, and cooling can also be delivered through a grid, often called a district energy system. Such systems provide energy to multiple consumers, though they often have only one generation facility and serve a more limited geographic area than electricity grids.

4. If some consumed electricity comes from owned/operated equipment, and some is purchased from the grid (Figure 5.4).

Some companies own, operate, or host energy generation sources such as solar panels or fuel cells on the premises of their building or in close proximity to where the energy is consumed. This arrangement is often termed "distributed generation" or "on-site" consumption, as it consists of generation units across decentralized locations (often

on the site where the energy output will be consumed, as opposed to utility-scale centralized power plants). The company may consume some or all of the energy output from these generation facilities; sell excess energy output back to the grid; and purchase additional grid power to cover any remaining energy demand.

The owners/operator of a distributed generation facility may therefore have both scope 1 emissions from energy generation, as well as scope 2 emissions from any energy purchased from the grid, or consumed from on-site generation where attributes (e.g. certificates) are sold. This arrangement impacts activity data as follows:

Activity data. Determining the underlying activity data (in MWh or kWh) in these systems may be challenging given the flux of electricity coming in or flowing out. Many markets utilize "net metering" for these systems, which allows grid purchases to be measured only as *net* of any energy exported to the grid. This net number may also be the basis for how costs are assessed.

For accurate scope 2 GHG accounting, companies **shall** use the total—or gross—electricity purchases from the grid rather than grid purchases "net" of generation for the scope 2 calculation. A company's total energy consumption would therefore include self-generated energy (any emissions reflected in scope 1) and total electricity purchased from the grid (electricity). It would exclude generation sold back to the grid.

If a company cannot distinguish between its gross and net grid purchases, it should state and justify this in the inventory.

Table 5.1 illustrates the difference between total energy consumption and net energy consumption (if the reporter is a net grid consumer rather than producer). A negative

Figure 5.4 Facility consuming both energy generated on-site and purchased from the grid

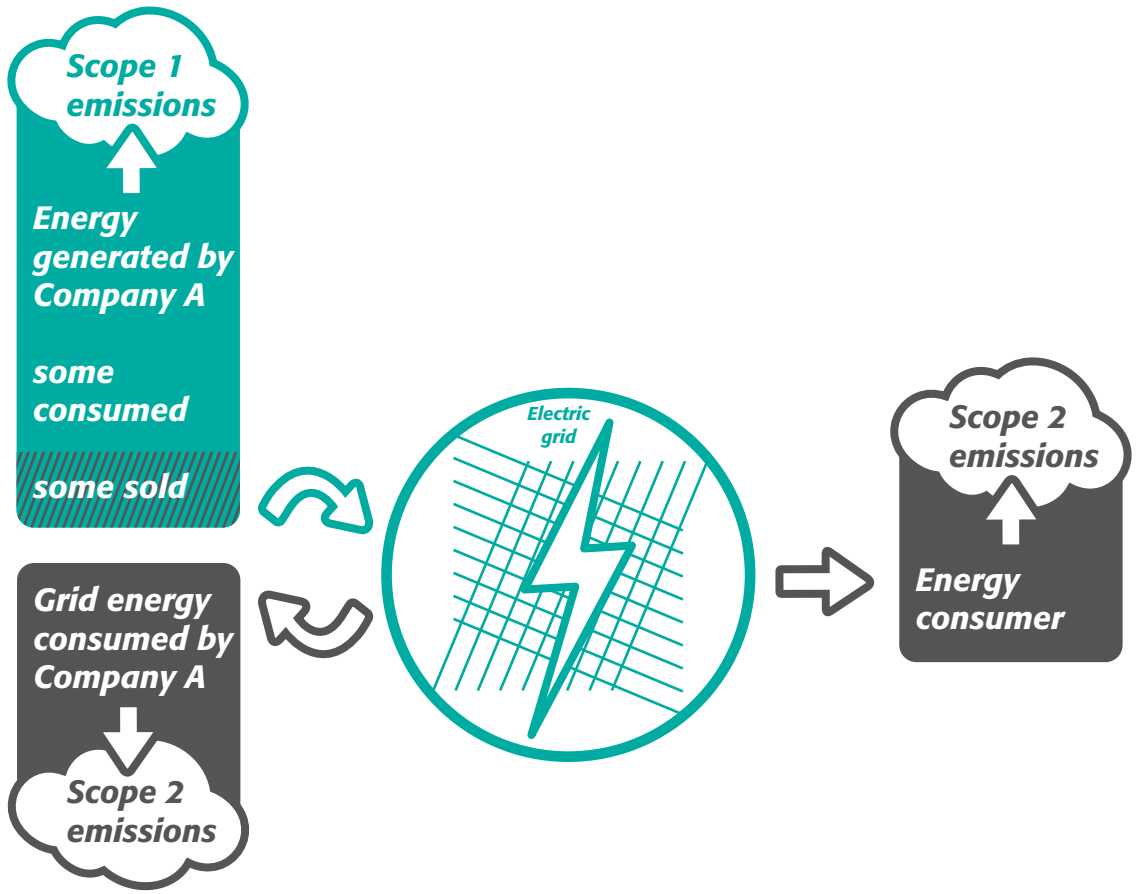


Table 5.1 Comparing gross and net energy consumption

Total energy production from on-site system	On-site energy consumption from on-site system	Energy exported from the on-site system to the grid	Energy imported from the grid
100 kWh	50 kWh	50 kWh	70 kWh
Total energy consumption (to be reported separately) = 120 kWh 50 kWh consumed from on-site system + 70 kWh imported from grid			
"Net" grid consumption= 20 kWh (70 kWh imported from grid - 50 kWh exported)			

consumption number for net energy exporters demonstrates the challenge of using net consumption information as activity data.

Because scope 2 reflects energy purchased from a separate entity outside the inventory boundary, energy consumed from owned/operated facilities may not be reported in scope 2, depending on the sale of attributes.

5.5 Avoiding double counting in scope 2

The dual reporting requirement in this guidance can complicate the understanding of whether double counting is occurring and whether it threatens an inventory's accuracy.

Table 5.2 details several scenarios of double counting, along with whether they introduce accuracy errors and how they are, or can be, addressed.

5.6 Avoiding double counting between owned energy generation assets (scope 1) and grid-delivered energy consumption in separate operations (scope 2)

Some companies such as electricity utilities or suppliers may own energy generation facilities that sell all their power into the local grid. Emissions from these generation facilities are reported in scope 1 of the utility's inventory. At the same time, the utility may have separate administrative, commercial, or industrial facilities or office buildings (apart from the generation facilities)[6] that consume electricity from the same grid to which the utility is supplying—which would be reported in scope 2. Following the *Corporate Standard* scopes framework, companies should avoid reporting the same emissions in scope 1 and 2 of the same company's inventory; but in the case of utilities, a scope 2 calculation according to *either* the location-based or market-based approach would likely include emissions from the generation assets reported in scope 1. This is because

Table 5.2 Additions to scope 2 accounting introduced by the *Scope 2 Guidance*

Type of double counting	Examples	How to prevent double counting
Between scope 1 and 2		
Between scope 1 and 2 in different inventories	A company reports emissions from grid-delivered energy use in scope 2, while a generation facility on the grid reports its facility's emissions in scope 1.	No double counting problem—this is an inherent part of the corporate reporting framework.
Between scope 1 and 2 in the same inventory	A company owns a natural gas fuel cell and consumes the output directly (with no grid transfers).	Depending on the consolidation approach chosen, emissions from owned/operated generation shall be reported under scope 1 (if any emissions occur). The emissions from consumed energy shall not be repeated in scope 2 since they have already been reported in scope 1.
Between multiple companies' scope 2 inventories		
Between multiple companies' scope 2 inventories based on different methods	In aggregate: The energy attribute certificates from a renewable generation facility are sold to a company who claims them and reports their emission rate in scope 2 (market-based). The grid emissions factor for the region will also reflect this facility's emission rate. Consumers using the grid emissions factor (location-based method) will be double counting the emission rate conveyed by the energy attribute certificate (market-based method).	This is an inherent condition of two methods. Each method's results shall not be added or netted. Each method represents a separate way of allocating energy generation emissions, so depending on geographic or market boundaries, each method's scope 2 result can reflect some of the same emissions reflected in the other method.
Between multiple companies' scope 2 inventories of the same method	May occur in the market-based method if energy attribute certificates are sold from an owned/operated solar panel, but owner also consumes the energy and claims zero emissions rate.	If energy attribute certificates are sold from energy generation, companies shall treat consumed electricity as though it were purchased from the grid—using the hierarchies of emission factors indicated for both methods (Table 6.2 and Table 6.3). Sold energy attribute certificates may be reported separately. Scope 1 reporting shall still reflect any emissions from the generator.
	May occur in the location-based method if grid emission factors reflect different geographic boundaries (e.g. local, regional, national). May occur in the market-based method if instrument claims are unclear (see instrument tracking below), or if residual mix is not available	This is a function of data rather than the accounting framework. Companies shall use the most accurate and appropriate emission factors listed in the emission factor hierarchy for each method (see Chapter 6).
	Two different certificate types are generated from a single MWh (one for supplier quotas, one for supplier disclosure). Neither certificate is clear on whether energy attribute claims are included. If users assume they are, different suppliers may count the same attributes in their mix.	This guidance's Scope 2 Quality Criteria require consumers to ensure that only one instrument conveys a GHG emission rate claim to consumers, and that that claim be clearly conveyed with the instrument, or if multiple instruments convey the GHG emission rate claim, that all such instruments be owned and retired to substantiate a usage and scope 2 claim.

the owned generation facilities will be supplying the same grid region where their electricity consumption occurs.

Therefore, to minimize double counting between scope 1 and 2 within the same inventory, companies in this situation should treat their grid consumption as though it were supplied by their own generation facilities (e.g. as though they were an "on-site" source), with no additional emissions reported in scope 2 (see row 2 of Table 6.1 for this scenario). The grid-consuming facility should secure a contract or other instrument with its own generation unit(s) to convey the claim following the Quality Criteria in the market-based method, including ensuring that there have not been any sales from that production conveying claims to other parties. If possible, utilities should also remove from any supplier-specific emission factor or third-party data collectors the quantity of energy (and its emissions) supplied to or associated with these commercial/industrial operations.

Any energy consumption not covered by contractual arrangements with owned/operated generation units should be treated as grid-consumed energy in scope 2, reported according to both the location-based and market-based method emission factor hierarchies.

Endnotes

1. See *Corporate Standard* (WRI/WBCSD 2004), p. 31.
2. In some leased building arrangements, tenants do not pay for electricity individually. However, this should not exempt tenants from reporting the emissions from that energy use. As defined in the next section, scope 2 includes energy that is acquired and consumed.
3. *Corporate Standard* (WRI/WBCSD 2004), p. 25. The word "acquired" was added in the *Scope 3 Standard* (p. 28) to reflect circumstances where a company may not directly purchase electricity (e.g., a tenant in a building), but where the energy is brought into the organization's facility for use.
4. Line losses in Figure 5.2 can be separately reported in Company B's scope 3. If Company A owns the line, it does not need to report these line-loss emissions separately since they have already been reported in scope 1.
5. In rare situations, such as islands with a single, small grid, it may be possible to determine which power station was operating and providing power to the grid users.
6. These administrative buildings should be distinguished from auxiliary operations adjacent to generation facilities. Auxiliary operations may use electricity directly from the generation facility even before distribution and sales to the grid.

6 Calculating Emissions

This chapter outlines key requirements, steps, and procedures involved in calculating scope 2 emissions according to each method.

Once the inventory boundary has been established, companies generally calculate GHG emissions using the following steps:

- Identify GHG emission sources for scope 2 emissions
- Determine whether the market-based approach applies
- Collect activity data and choose emission factors for each method
- Calculate emissions
- Roll up GHG emissions data to corporate level.

Additional guidance on general calculation procedures and GHG Protocol calculation tools can be found in Chapter 6 of the *Corporate Standard*.

6.1 Identify GHG emissions sources for scope 2

Scope 2 includes emissions from all purchased/acquired and consumed electricity, heat, steam, or cooling. Companies can identify these energy uses on the basis of utility bills or metered energy consumption at facilities within the inventory boundary.

6.2 Determine whether the market-based method applies for any operations

Companies can determine whether the market-based method for scope 2 calculation applies to their inventory by assessing whether differentiated energy products in the form of contractual instruments (including direct contracts, certificates, or supplier-specific information) are available in a given market. Markets are increasingly developing and refining purchasing options, and the list is not exhaustive. Currently this includes EU member states and economic area, the U.S., Australia, most Latin American countries, Japan, India, and many others. Figure 6.1 illustrates this determination.

- The presence of contractual information in any market where a company has operations triggers the requirement to report according to the market-based method. The contractual instruments themselves must be assessed for their conformance with Scope 2 Quality Criteria. If they do not meet the Scope 2 Quality Criteria, then other data (listed in Table 6.3) **shall** be used as an alternative in the market-based method total. In this way, all companies required to report according to the market-based method will have some type of data option.

- If a multi-regional company has any operations within the corporate inventory where the market-based method applies, then a market-based method total **shall** be calculated for the entire corporate inventory to ensure completeness and consistency. For any individual operations in the corporate inventory where market-based method data on the hierarchy is not applicable or available, data from the location-based method should be used to represent the emissions from the facility (see Table 6.3). For these operations, the calculated scope 2 according to the market-based method will be identical to the location-based.

If no facilities in the entire organizational boundary of the reporting entity are located in markets with contractual claims systems, or where *no* instruments within those systems meet Scope 2 Quality Criteria required by this document, then only the location-based method **shall** be used to calculate scope 2.

6.3 Collect activity data

For electricity use disclosure required by this guidance, activity data includes all electricity purchased/acquired and consumed during the reporting period, including from owned/operated generation facilities that may not be included as activity data for scope 2 calculation.

For scope 2 calculation, activity data includes all energy purchased/acquired and consumed from an entity outside of the organization or from owned/operated generation facilities where energy attributes (e.g. certificates) have been sold or transferred. Table 6.1 indicates how different energy distribution methods should be treated.

To determine activity data, metered electricity consumption or utility bills specifying consumption in MWh or kWh units can provide the most precise activity data. In some cases these may not be available, as with consumption occurring in a shared space without energy metering. In these cases, estimations may be used such as allocating an entire building's electricity usage to all tenants on the basis of the reporter's square footage and the building's occupancy rate (called the Area Method).[1]

6.4 Identify distribution scenarios and any certificate sales

All of the distribution scenarios identified in Section 5.4 can entail the generation and sale of energy attribute certificates or other contractual instruments. The sale or retention of these instruments impacts the accounting of the consumed energy, as shown in Table 6.1.

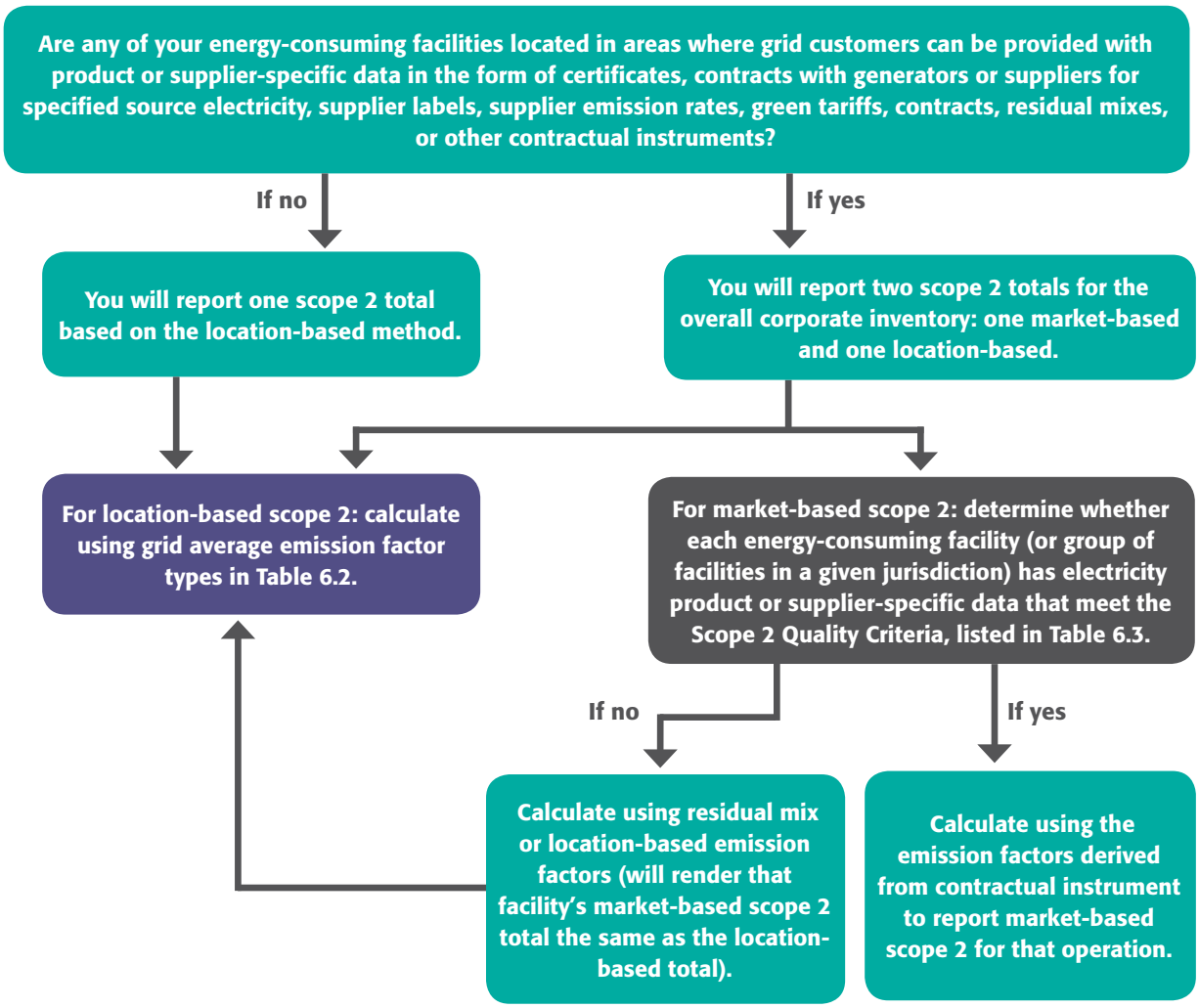
The creation of a certificate that conveys an energy generation attribute claim means that the underlying power—sometimes called "null power"—can no longer be considered to contain the energy attributes, including the type of energy (e.g., that it is "renewable") and its GHG emission rate (that it is zero emissions/MWh). By the conveyance of energy attributes or certificates to a third party separate from the electricity, users of the null power electricity cannot claim to be buying or using renewable energy in the absence of owning the certificate. Instead, companies consuming energy from owned/operated facilities or direct-line transfers where certificates are sold off, **shall** calculate that consumption using other market-based method emission factors such as "replacement" certificates, a supplier-specific emission rate, or residual mix (for the market-based method total) and the grid average emission factor (for the location-based total).

6.4.1 How certificate sales affect on-site energy consumption in the location-based method

Companies who are consuming energy directly from a generation facility that has sold certificates (either owned/operated equipment or a direct line) forfeit not only the right to claim those emissions in the market-based method (requiring the use of some other market-based data source such as other "replacement" certificates, a supplier-specific emission factor, or residual mix) but also the right to claim that emissions profile in the location-based method. Overall, the location-based method is designed to show emissions from the production supporting the local consumption without reference to any contractual relationships. However, the attributes contained in certificates usually carry legally enforceable claims, which should take precedence.

For instance, the U.S. Federal Trade Commission Green Guides[2] prevent any kind of claim about using, consuming,

Figure 6.1 Determining which accounting methods to use for scope 2



or hosting renewable energy or its attributes if the REC from that production has been sold off. This includes a claim in the form of location-based calculations of "zero emissions power consumption." Therefore, in the event of certificate sales from owned/operated energy production and consumption, companies should still use the location-based emission factor hierarchy (see Table 6.2).

Taken to its logical conclusion, these kind of legally enforceable rights and claims could call into question the validity of any kind of location-based reporting (since even a grid average will include a mix of power whose RECs have been claimed by someone else). However, for the purposes of a GHG inventory, location-based accounting and reporting are still required in order to improve comparability across multiple markets over time and to show risks/opportunities that are better evaluated based on average emissions in a grid. Companies should avoid using location-based totals for goal tracking where certificates convey these claims and/or carry legally enforceable claims.

6.5 Choose emission factors for each method

Companies should use the most appropriate, accurate, precise, and highest quality emission factors available for each method. Table 6.2 indicates these preferences for the location-based method, and Table 6.3 for the market-based method. Table 6.3 does *not* represent a preferred hierarchy

Table 6.1 Accounting for scope 2 with and without certificates sales

	Scope 2 with location-based method	Scope 2 with market-based method
Energy consumed from owned/operated generation (e.g. a company owns a solar panel and consumes the energy)		
No certificates generated or sold	No scope 2 reported for consumption from owned generation	
Certificates from generation facility retired/retained by the generation facility's owner who consumes the energy	Should report certificate retention separately, but no scope 2 reported for consumption of on-site generation	
Certificates sold to 3rd party	Use location-based emission factor hierarchy	Use market-based emission factor hierarchy
Direct line (e.g. a company receives power directly from a generator, with no grid transfers)		
No certificates generated or sold	Use source-specific emission factor from direct line	
Certificates from generation facility purchased and retired/retained by the energy consumer	Use source-specific emission factor from direct line (same as certificate emission factor)	Use certificate emission factor (same as source- specific emission factor)
Certificates sold to 3rd party	Use location-based emission factor hierarchy	Use market-based emission factor hierarchy
Grid-distributed		
No certificates generated or sold from any generation facilities on the grid	Use location-based emission factor hierarchy	Use market-based emission factor hierarchy
Certificates purchased from grid generation facilities, or included in a supplier-specific emission factor	Use location-based emission factor hierarchy	Use market-based emission factor hierarchy
Certificates from grid generation facilities sold to 3rd parties	Use location-based emission factor hierarchy	Use market-based emission factor hierarchy

of procurement methods (e.g., purchasing renewable energy from a supplier vs. through a contract with a generator), as these are dependent on local market options and company-specific conditions. Instead, it represents a hierarchy of instruments based on the most precise (e.g., energy attribute certificates issued in units that match consumption units, e.g. MWh) to least precise (averages of attributes representing all unclaimed production in a region).

Companies using the market-based method **shall** ensure that any contractual instrument from which an emission factor is derived meets the Scope 2 Quality Criteria listed in Chapter 7. Where contractual instruments do not meet the Scope 2 Quality Criteria requirements, and no other market-based method data are available, the location-based data should be used.

Table 6.2 Location-based method emission factor hierarchy

Data forms listed here should convey combustion-only (direct) GHG emission rates, expressed in metric tons per MWh or kWh.

Emission factors	Indicative examples
Regional or subnational emission factors *Average emission factors representing all electricity production occurring in a defined grid distribution region that approximates a geographically precise energy distribution and use area. Emission factors **should** reflect net physical energy imports/exports across the grid boundary.*	eGRID total output emission rates (U.S.)[a] Defra annual grid average emission factor (U.K.)[b]
National production emission factors *Average emission factors representing all electricity production information from geographic boundaries that are not necessarily related to dispatch region, such as state or national borders. No adjustment for physical energy imports or exports, not representative of energy consumption area.*	IEA national electricity emission factors[c]

Notes:

a Although eGRID output rates represent a production boundary, in many regions this approximates a consumption or delivery boundary, as eGRID regions are drawn to minimize energy imports/exports. See: http://www.epa.gov/cleanenergy/energy-resources/egrid/index.html.

b See Defra: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224437/pb13988-emission-factor-methodology-130719.pdf.

c IEA emisison factors do not adjust for imports/exports of energy across national boundaries. See: http://data.iea.org/ieastore/product.asp?dept_id=101&pf_id=304.

Table 6.3 Market-based scope 2 data hierarchy examples

Data forms listed here should convey combustion-only (direct) GHG emission rates, expressed in metric tons per MWh or kWh. Reporting entities should ensure that market-based method data sources meet Scope 2 Quality Criteria. Instruments listed here are not guaranteed to meet Scope 2 Quality Criteria, but are indicative of instrument type.

Emission factors	Indicative examples	Precision
Energy attribute certificates or equivalent instruments (unbundled, bundled with electricity, conveyed in a contract for electricity, or delivered by a utility)	• Renewable Energy Certificates (U.S., Canada, Australia and others) • Generator Declarations (U.K.) for fuel mix disclosure • Guarantees of Origin (EU) • Electricity contracts (e.g. PPAs) that also convey RECs or GOs • Any other certificate instruments meeting the Scope 2 Quality Criteria	Higher
Contracts for electricity, such as power purchase agreements (PPAs)[a] and contracts from specified sources, where electricity attribute certificates do not exist or are not required for a usage claim	• In the U.S., contracts for electricity from specified nonrenewable sources like coal in regions other than NEPOOL and PJM • Contracts that convey attributes to the entity consuming the power where certificates do not exist • Contracts for power that are silent on attributes, but where attributes are not otherwise tracked or claimed	
Supplier/Utility emission rates, such as standard product offer or a different product (e.g. a renewable energy product or tariff), and that are disclosed (preferably publicly) according to best available information	• Emission rate allocated and disclosed to retail electricity users, representing the entire delivered energy product (not only the supplier's owned assets) • Green energy tariffs • Voluntary renewable electricity program or product	
Residual mix (subnational or national) that uses energy production data and factors out voluntary purchases	• Calculated by EU country under RE-DISS project [b, c]	
Other grid-average emission factors (subnational or national) – see location-based data	• eGRID total output emission rates (U.S.).[d] In many regions this approximates a consumption-boundary, as eGRID regions are drawn to minimize imports/exports • Defra annual grid average emission factor (UK) • IEA national electricity emission factors[e]	Lower

Notes:

a Because PPAs are the primary example of this type of instrument used in the markets consulted in this TWG process, this class of instrument may be referred to in shorthand as "PPAs" with the recognition that other types of contracts that fulfill a similar function may go by different names.

b See: http://www.reliable-disclosure.org/static/media/docs/RE-DISS_2012_Residual_Mix_Results_v1_0.pdf.

c The Norwegian authority also publishes a residual mix emission factor that can be found here: http://www.nve.no/en/Electricity-market/Electricity-disclosure-2011/.

d See: http://www.epa.gov/cleanenergy/energy-resources/egrid/index.html.

e See: http://www.epa.gov/cleanenergy/energy-resources/egrid/index.html.

6.6 Match emission factors to each unit of electricity consumption

Each unit of electricity consumption should be matched with an emission factor appropriate for that consuming facility's location or market. For the market-based method, this means choosing a contractual instrument or information source for each unit of electricity. For instance, if a company has purchased certificates to apply to half of a given operation's electricity use, it will need to use other instruments or information on the emission factor hierarchy to calculate the emissions for the remaining half.

Companies centrally purchasing energy attribute certificates on behalf of all its operations in a single country or region should indicate how they match these purchases to individual site consumption.

Companies may also use certificates conveyed to them by their supplier, separately from the other supplier mix information. This ensures equivalent treatment of certificates regardless of how they are sourced. For example, a utility delivers 1,000 MWh in total to customers and 200 MWh of that (20 percent) comes from zero-emitting renewables for which the energy attribute certificates have been retired. Any customer of that utility would be able to claim that 20 percent of their electricity is renewable and substantiated with certificates. If Customer A of this utility consumes 2.5 MWh (of the total 1,000 MWh), they can claim 0.5 MWh of renewable energy (of the 200 MWh total) without double counting, but cannot claim any more than this. To cover all of their electricity consumption with zero-emission certificates, Customer A would only need to purchase 2 MWh of renewables on their own.

6.7 Calculate emissions

To calculate scope 2 emissions according to one or both methods, the following procedure applies:

1. Multiply activity data from each operation by the emission factor for that activity for each applicable GHG. Some electricity emission factor sets may include emission rates for CO_2, CH_4, and N_2O; others may only provide CO_2 emission rates (see Box 6.1)
2. Multiply global warming potential (GWP) values by the GHG emissions totals to calculate total emissions in CO_2 equivalent (CO_2e).
3. Report final scope 2 by each method in metric tons of each GHG (where available) and in metric tons of CO_2e.

Example calculations are provided for the location-based method and market-based method in Table 6.4 and Table 6.5, respectively.

Table 6.4 Example calculation for location-based method

Activity data per reporting period			**Emission factors**				**Calculated emissions**			
Facility	Location	Quantity of energy	CO_2 emission rate	CH_4 emission rate	N_2O emission rate	GHG emission factor source	CO_2 (mt)	CH_4 (kg)	N_2O (kg)	CO_2e (mt)
U.S. facilities	eGRID subregion NYUP	2,500 MWh	545.79 lb/MWh	16.3 lb/GWh	7.24 lb/GWh	eGRID year 2010	618.91	18.48	8.21	621.85
	eGRID subregion RFCE	2,500 MWh	1001.72 lbs/MWh	27.07 lb/GWh	15.33 lb/GWh	eGRID year 2010	1135.93	30.70	17.38	1141.96
EU facilities	Denmark	3,000 MWh	0.3152 $mtCO_2$/ MWh	*	*	IEA Denmark, 2011	945.63	*	*	945.63
	Belgium	2,000 MWh	0.1957 $mtCO_2$/ MWh	*	*	IEA Belgium, 2011	391.44	*	*	391.44
Total consumption		**10,000 MWh**								
Total scope 2 emissions for location-based method							**3091.908**	**49.179**	**25.596**	**3100.87**

* Non-CO_2 emission factors not available for IEA

Table 6.5 Example calculation for market-based method

Activity data per reporting period					**Emission factors**	**Calculated emissions**
Facility	Total energy consumption	Quantity of energy	Contractual instrument type	Meets Scope 2 Quality Criteria?	CO_2e emission rate	CO_2e (mt)
U.S. operations	5,000 MWh	1,000 MWh	PPA with REC retention	Yes Residual mix not available for U.S.	0 mt CO_2e / MWh	0 mt CO_2e
		2,000 MWh	REC purchase (bundled with energy)	Yes Residual mix not available for U.S.	0 mt CO_2e / MWh	0 mt CO_2e
		1,000 MWh	REC purchase (not bundled with energy)	Yes Residual mix not available for U.S.	0 mt CO_2e / MWh	0 mt CO_2e
		1,000 MWh (remaining energy without contractual instruments)	Grid Average (eGRID sub-region NYUP)	Yes Residual mix not available for U.S.	0.5 mt CO_2e / MWh*	500 mt CO_2e
EU operations	5,000 MWh	3,000 MWh	Supplier program	Yes	0.25 mt CO_2e / MWh	750 mt CO_2e
		2,000 MWh	Residual mix (RE-DIS II Belgium 2013)	Yes	0.5 mt CO_2e / MWh	1,000 mt CO_2e
Total energy consumption		**10,000 MWh**				
Total scope 2 emissions for market-based method						**2,250 mt CO_2e**

* Emission factors for CH_4 and N_2O not listed individually here for space considerations

6.8 Roll up GHG emissions data to corporate level

To report a corporation's total GHG emissions, companies will usually need to gather and summarize data from multiple facilities, possibly in different countries and business divisions. It is important to plan this process carefully to minimize the reporting burden, reduce the risk of errors that might occur while compiling data, and ensure that all facilities are collecting information on an approved, consistent basis. Ideally, corporations will integrate GHG reporting with their existing reporting tools and processes, and take advantage of any relevant data already collected and reported by facilities to division or corporate offices, regulators, or other stakeholders. The two basic approaches to gather data on GHG emissions from facilities include a centralized and decentralized approach. For more guidance on this process, see Chapter 6 of the *Corporate Standard.*

6.9 Optional: Calculate any avoided emissions and report separately

Companies can report the estimated grid emissions avoided by low-carbon energy generation and use, separately from the scopes. This type of analysis reflects the impacts of generation on the rest of the grid: for example, the emissions from fossil-fuel or other generation backed down or avoided due to the low-carbon generation. These avoided emissions estimations inherently represent impacts *outside* the inventory boundary. Avoided emissions estimations are not necessarily equivalent to global emissions reductions from additional projects and should therefore not be used to reduce a company's footprint. However, quantifying avoided emissions provide several technical and strategic benefits, including:

- Identifying where low-carbon energy generation can have the biggest GHG impact on system, based on the operating margin.
- Demonstrating that grid-connected generation provides a system-wide service in addition to conveying a specific emission rate at the point of production.

This estimation should follow project-level methodology; see GHG Protocol *Project Protocol* or *Guidelines for Grid-Connected Electricity Projects.* This may be most beneficial where a company has taken actions that avoid higher-carbon generation dispatch at the margins. These actions could include:

- Installing a low-carbon energy generation facility on-site that sells energy to the grid (any emissions from owned/operated facilities are reported in scope 1)
- Installing a cogeneration facility providing both heat and electricity outputs, which may increase a company's scope 1 reporting but reduce the electricity it needs to purchase from the grid
- Securing a contract to purchase power from a *new* low-carbon energy generation facility
- Undertaking a significant energy efficiency effort.

However, if the project operates in a jurisdiction with an emissions cap on the power sector, or comes from an energy generation facility also producing verified emission reductions (also termed a GHG offset), the company should not make public claims about avoided emissions. The avoided grid emissions will either be zero, in the case of a cap as regulated entities may emit up to the level of the cap,[3] or already represented in claims by the offset purchaser. Any offsets produced from the project, or any voluntary allowances retired on behalf of the purchase associated with the project, should be reported separately.

6.10 Location-based emission factors

The emission factors necessary to estimate location-based scope 2 emissions include GHG emission intensity factors for energy production in a defined local or national region. Where advanced studies or real-time information is available, companies may report scope 2 estimations separately as a comparison to location-based grid average estimation (see Box 6.2). Companies should be aware of the following caveats about location-based emission factors:

- **Location-based is not supplier-specific.**
  The location-based grid average emission factors should be distinguished from supplier-specific information, even if the electricity supplier is the sole energy provider in a region and produces a supplier-specific emission factor that closely resembles the overall regional grid average emission factor. In these cases, the service territory may still be a smaller region than the grid distribution area serving a given site of consumption; conversely, many utilities are in competitive markets where multiple suppliers can compete to serve consumers in the same region. Therefore, this method only looks at a broader grid emissions profile serving the local load, regardless of supplier relationships.
- **Grid average emission factors do not factor out contractual purchases.**
  Grid average emission factors in the location-based method should *not* reflect any adjustments or removals for market-based contractual claims by suppliers or end-users. By contrast, a residual mix in the market-based method should represent all unclaimed energy emissions, which is formulated by removing contractual claims data from energy production data (often the same as grid average data).
- **Grid average emission factors are different from marginal grid emission factors.**
  Grid average emission factors should represent all the emissions from energy generation occurring within a defined geographic region, and thereby best represent the purpose of the location-based method. By contrast, marginal emission factors only represent the emissions from those power plants operating "at the margin," which can be more useful for avoided emissions analyses. Companies **shall not** use marginal emission factors such as those provided by CDM for a location-based scope 2 calculation.

Box 6.2 Advanced grid studies

Companies may have access to detailed studies or software solutions linking their facility's time-of-day energy use patterns to the GHG emissions from local generation dispatching during those times. This emission data could be compiled over the course of a year for a consumer to record, match against temporal usage by location, and calculate scope 2 emissions. To date such studies or analyses have not been widely available or used, and have often been contained in proprietary databases with limited consumer access. However, the root components of this type of GHG emissions data, including facility-specific generation and emissions information, are becoming increasingly common as smart grid applications and distributed generation grow. This data can help inform specific demand-side actions more than grid-average emission factors, which may only incentivize overall demand reduction rather than targeted actions. For instance, while utilities may implement DSM measures in order to mitigate emissions, those consumers' demand-timing choices have not been commonly linked to that consumer's GHG emissions, even as those choices may be linked to pricing.

6.10.1 Grid average emission factors

The term "grid average" emission factors reflects a short-hand for a broad category of data sets that characterize all the GHG emissions associated with the quantity of electricity generation produced from facilities located within a specified geographic boundary. Many of these data sets have been compiled for purposes other than corporate accounting and can vary in their inclusion of energy-generation emissions (e.g., which GHG gases are included, and how biomass and CHP emissions are treated) and perhaps most significantly, in the spatial facility-inclusion boundaries. Greater consistency in grid average emission factors globally can improve location-based inventory results that encompass multiple global operations parameters. A simplified illustration of the

type of data aggregation and calculation that contributes to a grid average emission factor is shown in Table 6.6.

- **Spatial boundaries.**
  The most appropriate spatial boundaries for emission factors serving the location-based method are those that approximate regions of energy distribution and use, such as balancing areas. All generation and emissions data within this boundary should be aggregated and any net physical energy imports/exports and their related emissions should be taken into account. For multi-country regions with frequent and significant exchanges of energy throughout a year (as measured by percent of that country's total generation), a multi-country regional grid average may be a better estimate than a production-only national emission factor without energy imports/exports adjustments. In turn, in a country with multiple distribution or balancing areas, these subnational regions would be a more precise spatial boundary for grid average emissions.
- **Other data quality.**
  Companies can evaluate emission factor data based on quality indicators including their reliability, completeness, and geographic, temporal, and technological representativeness. Grid-average emission factors in particular may face challenges with temporal representativeness due to time delays between the year in which energy generation and resulting emissions occurred, and the year in which the data is published and made available to users. For U.S. eGRID or IEA, these delays can be 2–3 years. This delay can make grid average emissions factors a less relevant indication of corporate performance or risk assessment when analyzed in the inventory year. Companies should take this into account when analyzing location-based scope 2 results.

6.11 Market-based emission factors data

Under the market-based method, different contractual instruments become carriers of GHG-emission rate information that function as emission factors for consumers to use to calculate their GHG emissions. To ensure this, instruments **shall** include the GHG emission rate attribute. If companies have access to multiple market-based emission factors for each energy-consuming operation, they should use the most precise for each operation based on the list in Table 6.3.

6.11.1 Energy attribute certificates

Certificates form the basis of energy attribute tracking in the market-based method, often being conveyed with contracts for energy and integrating into supplier-specific emission rates. See Chapter 10 for more background on certificate types and treatment.

Table 6.6 Example of grid average emission factor calculation

	Emissions from generation	Total generation in MWh
Energy Facility A (coal)	50,000 metric tons CO_2e	55,000
Energy Facility B (natural gas)	10,000 metric tons CO_2e	30,000
Energy Facility C (wind farm)	0 metric tons CO_2e	15,000
Totals within defined boundary	60,000 metric tons CO_2e	100,000
Total system emission rate ("grid average")	60,000 metric tons CO_2e/100,000	**0.6 mt CO_2e /MWh**

6.11.2 Contracts such as power purchase agreements (PPAs)

These types of contracts allow a consumer, typically larger industrial or commercial entities, to form an agreement with a specific energy generator. The contract itself specifies the commercial terms, including delivery, price, payment, etc. In many markets, these contracts secure a long-term stream of revenue for an energy project.

Where certificates are issued: In these cases, the certificates themselves serve as the emission factor for the market-based method. If the certificates are bundled with the contract, the purchaser can claim the certificates. If the certificates are sold separately, the power recipient *cannot* claim the attributes of the specific generator.

When certificates are not used in the jurisdiction or for the technology/resource: Where certificates are not issued by a tracking system, a PPA may nevertheless convey generation attributes if the PPA includes language that confers attribute claims to the power recipient. This more explicitly renders the PPA a GHG attribute-claims carrier. Where the PPA is silent on attributes and where attributes are not otherwise conveyed or tracked, the contract for power can be used as a proxy for delivery of attributes. As shown in the Scope 2 Quality Criteria, an audit trail or other mechanism is needed to demonstrate that no other entity is claiming the attributes from this generation.

When the power received in the PPA is resold: If the power purchased in a PPA is resold to the wholesale or retail market, then the company receiving-and-reselling the power cannot claim the "use" of the attributes in markets where certificates are not used. In markets with certificates, the company may retain the certificates from the power generation to use for its own claims while it resells the power.

To avoid double counting, companies making claims based on contracts (where no certificate system exists) should report the quantity of MWh and the associated emissions acquired through contracts to the entity that calculates the residual mix, and request that their purchase be excluded from the residual mix. Certain third-party certifications of renewable energy may do this automatically.

6.11.3 Supplier-specific emission rate

Electricity suppliers or load-serving entities function differently across markets. In some deregulated markets, there may be retail competition within the group of entities that interface directly with customers. In other regulated monopoly markets, a single utility may supply an entire service territory. In all cases, an energy supplier can provide information to its consumers regarding the GHG intensity of delivered electricity. The utility or supplier-specific emission factor may be a standard product offer or a differentiated product (e.g. a renewable energy product or tariff). When using a supplier-specific emission factor, companies should seek to ensure that:

- The emission rate is disclosed, preferably publicly, according to best available information, and where

Box 6.3 How the UK implements EU supplier disclosure requirements

In the EU system, the Fuel Mix Disclosure regulations require all suppliers to disclose the emissions associated with the power that they supply. To do so, U.K. suppliers present renewable energy guarantees of origin (REGOs) and Generator Declarations to the regulator for the jurisdiction, the Department for Energy and Climate Change (DECC). DECC then removes all claimed generation from the overall national average, which leads to the production of a 'residual' energy mix—with an associated emissions factor. This is issued to all suppliers so that they can complete their calculations for any of their supply without certificates. This combination of verified supplier claims and allocation of the remaining emissions back to suppliers ensures consistency across suppliers and accounting for all generation emissions.

For more on U.K. requirements, see: https://www.ofgem.gov.uk/ofgem-publications/57972/12340-28205.pdf and https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82783/Fuelmixdisclosure2013.pdf.

possible using best practice methods such as The Climate Registry Electric Power Sector Protocol. Methods for calculating and disclosing the mix and related attributes may also be specified by regulation.

- That the utility or supplier discloses whether and how certificates are used in the emission factor calculation, unless there is third-party certification of the utility product. In particular, companies should seek to ensure that if the supplier has a differentiated product (e.g. a renewable energy product or tariff), the certificates or other contracts used for that product should be used only for that product and not counted in the standard product offer.
- That the supplier-specific emission factor includes emissions from all the energy delivered by the utility, not just the generation assets owned by the supplier (e.g. what is required by some fuel mix disclosure rules). Many suppliers purchase significant portions of their energy from other generators via contracts, or through the spot market. The emission factor should reflect the emissions from all of these purchases. A supplier-specific emission rate can also reflect certificates retired for compliance purposes (such as U.S. state RPS programs) which also convey attributes for public benefit and claims.

Consumers should not attempt to calculate a supplier-specific emission rate themselves based on a fuel mix disclosure due to the variations in fuel mix disclosure rules, which may reduce the accuracy of the resulting GHG emission factor.

If an electricity supplier purchases offsets on behalf of their customers, the reporting customers should report the offsets separately from the scopes. The supplier-specific emission rate used for scope 2 should reflect supply only, and not purchased offsets.

6.11.4 Residual mix

To prevent double counting of GHG emission rate claims tracked through contractual instruments, the market-based method requires an emission factor that characterizes the emission rate of untracked or unclaimed energy. This emission factor creates a complete data set under the market-based method, and represents the regional emissions data that consumers should use if they operate in a market with choice for consumers, differentiated products, and supplier specific data, but did not purchase certificates or a specified product, do not have a contract with a specified source, or do not have supplier-specific information.

Depending on the region and percentage of tracked electricity, this residual mix may closely resemble a "grid average" data set, or may be significantly different. In the U.S. overall, an estimation of the adjusted mix in 2009 did not differ significantly from the location-based grid average data. In fact, according to a paper by the Environmental Tracking Network of North America (ETNNA 2010), the difference is currently less than one half of one percent.[4]

Companies should not attempt to calculate their own residual mix.

- **If a residual mix is not available.** Other unadjusted grid average emission factors such as those used in the location-based method may be used. Companies

shall document in the inventory that a residual mix was not available.

6.12 Treatment of biofuel emissions

Biogenic materials—including biomass, biofuels, and biogas—are increasingly used as a resource for energy generation on-site and on the grid. While biomass can produce fewer GHG emissions than fossil fuels and may be grown and used on a shorter time horizon, it still produces GHG emissions and should not be treated with a "zero" emission factor. Based on the *Corporate Standard,* any CH_4 or N_2O emissions from biogenic energy sources use **shall** be reported in scope 2, while the CO_2 portion of the biofuel combustion **shall** be reported outside the scopes. In practice, this means that any market-based method data that includes biofuels should report the CO_2 portion of the biofuel combustion separately from the scopes.

For the location-based approach, most commonly used grid average emission factor—including those issued by EPA eGRID (U.S.), Defra (U.K.), and the International Energy Agency (for all countries worldwide)—do not note the percentage of biomass in the emission factor and do not separately report the biogenic CO_2, effectively treating it as "zero" emissions. Companies should document this omission in any grid average emission factors used.

Endnotes

1. See Chapter 14 of The Climate Registry's General Reporting Protocol.
2. See http://www.ftc.gov/news-events/media-resources/truth-advertising/green-guides.
3. See Chapter 10 on how to report this relationship. Allowance set-aside programs also allocate and retire allowances to restore an avoided emissions claim. In this case, where a set-aside for voluntary renewable energy is in place and where allowances have been retired, purchasers can make claims about avoided emissions.
4. ETNNA (2010). P. 14

7 Accounting and Reporting Requirements

This chapter identifies all the new accounting and reporting requirements introduced by this Guidance. Conformance with this Guidance is required in order to prepare an inventory in conformance with the *Corporate Standard*.

This Guidance provides a new set of requirements applied to the *Corporate Standard* in calculating and reporting scope 2 emissions. Therefore, conformance with this Guidance is required in order to prepare an inventory in conformance with the *Corporate Standard*. In addition to all existing *Corporate Standard* accounting and reporting requirements (see Chapter 9 of the *Corporate Standard*), companies **shall** calculate and report scope 2 in the following ways:

7.1 Required information for scope 2

For companies with operations only in markets that do not provide product or supplier-specific data or other contractual instruments:

- Only one scope 2 result **shall** be reported, based on the location-based method.

For companies with any operations in markets providing product or supplier-specific data in the form of contractual instruments (Markets are increasingly developing and refining purchasing options, and the list is not exhaustive. Currently this includes the EU Economic Area, the U.S., Australia, most Latin American countries, Japan, and India, among others.)

- Companies **shall** account and report scope 2 emissions in two ways and label each result according to the method: one based on the location-based method, and one based on the market-based method.
- Many companies' GHG inventories will include a mix of operations globally, some where the market-based method applies and some where it does not. Companies **shall** account for and report all operations' scope 2 emissions according to both methods.
    - To do so, emissions from any operations in locations that do *not* support a market-based method approach **shall** be calculated using the location-based method (making such operations' results identical for location-based and market-based

methods). Companies should note what percentage of their overall electricity consumption reported in the market-based method reflects actual markets with contractual information.

Scope 2 Quality Criteria. Companies **shall** ensure that any contractual instruments used in the market-based method total meet the Scope 2 Quality Criteria specified in Table 7.1. If instruments do not meet the Criteria, then other data (listed in Table 6.3) **shall** be used as an alternative in the market-based method total. In this way, *all* companies required to report according to the market-based method will have some type of data option.

- Companies **may** provide a reference to an internal or external third-party assurance process, or assurance of conformance provided by a certification program, supplier label, green power program, etc. An attestation form **may** be used to describe the chain of custody of purchased certificates or other contractual instruments.
- If a residual mix is not currently available, reporters **shall** note that an adjusted emissions factor is not available or has not been estimated to account for voluntary purchases and this may result in double counting between electricity consumers.

Inventory totals. For companies adding together scope 1 and scope 2 for a final inventory total, companies **may** either report two corporate inventory totals (one reflecting each scope 2 method), or **may** report a single corporate inventory total reflecting one of the scope 2 methods.

- If reporting a single corporate inventory total, the scope 2 method used should be the same as the one used for goal setting. Companies **shall** disclose which method was chosen for this purpose.

Table 7.1 Scope 2 Quality Criteria

Further explanation on select Scope 2 Quality Criteria can be found in Section 7.5.

All contractual instruments used in the market-based method for scope 2 accounting shall:
1. Convey the direct GHG emission rate attribute associated with the unit of electricity produced.
2. Be the only instruments that carry the GHG emission rate attribute claim associated with that quantity of electricity generation.
3. Be tracked and redeemed, retired, or canceled by or on behalf of the reporting entity.
4. Be issued and redeemed as close as possible to the period of energy consumption to which the instrument is applied.
5. Be sourced from the same market in which the reporting entity's electricity-consuming operations are located and to which the instrument is applied.
In addition, utility-specific emission factors shall:
6. Be calculated based on delivered electricity, incorporating certificates sourced and retired on behalf of its customers. Electricity from renewable facilities for which the attributes have been sold off (via contracts or certificates) shall be characterized as having the GHG attributes of the residual mix in the utility or supplier-specific emission factor.
In addition, companies purchasing electricity directly from generators or consuming on-site generation shall:
7.E nsure all contractual instruments conveying emissions claims be transferred to the reporting entity only. No other instruments that convey this claim to another end user shall be issued for the contracted electricity. The electricity from the facility shall not carry the GHG emission rate claim for use by a utility, for example, for the purpose of delivery and use claims.
Finally, to use any contractual instrument in the market-based method requires that:
8. An adjusted, residual mix characterizing the GHG intensity of unclaimed or publicly shared electricity shall be made available for consumer scope 2 calculations, or its absence shall be disclosed by the reporting entity.

Methodology disclosure. Companies **shall** disclose methods used for scope 2 accounting. For the market-based method, companies **shall** disclose the category or categories of instruments from which the emission factors were derived, where possible specifying the energy generation technologies.

Base-year information. Companies **shall** disclose the year chosen as the base year; the method used to calculate the base year's scope 2 emissions; whether historic location-based data is used as a proxy for a market-based method; and the context for any significant emission changes that trigger base-year emissions recalculation (acquisitions/divestitures, outsourcing/insourcing, changes in reporting boundaries or calculation methodologies, etc.)

Disclose basis for goal setting. If a company sets a corporate inventory reduction goal and/or a scope 2-specific reduction goal, the company **shall** clarify whether the goal is based on the location-based method total or market-based method total.

7.2 Recommended disclosure

Annual electricity consumption. Companies **should** report total electricity, steam, heat, and cooling per reporting period separately from the scopes totals (in kWh, MWh, BTU, etc.), which should include all scope 2 activity data as well as the quantity of energy consumed from owned/operated installations (which may be only reported in scope 1 and not in scope 2.)

Biogenic emissions. Companies **should** separately report the biogenic CO_2 emissions from electricity use (e.g. from biomass combustion in the electricity value chain) separately from the scopes, while any CH_4 and N_2O emissions should be reported in scope 2.

- Companies **should** document if any GHG emissions other than CO_2 (particularly CH_4 and N_2O) are not available for, or excluded from, location-based grid average emissions factors or with the market-based method information.

Other instrument retirement. Companies **should** disclose additional certificate or other instrument retirement performed in conjunction with their voluntary claim, such as with certificate multipliers or any pairing required by regulatory policy.

Basis for upstream scope 3. The reporting entity **should** identify which methodology has been used to calculate and report scope 3, category 3—upstream energy emissions not recorded in scope 1 and 2, scope 3.

Instrument features. Where relevant, companies **should** disclose key features associated with their contractual instruments claimed, including any instrument certification labels that entail their own set of eligibility criteria, as well as characteristics of the energy generation facility itself and the policy context of the instrument. These features are elaborated in Chapter 8.

Role of corporate procurement in driving new projects. Where relevant, companies **should** elaborate in narrative disclosure how any of the contractual instruments claimed in the market-based method reflect a substantive contribution by the company in helping implement new low-carbon projects.

7.3 Optional information

Scope 2 totals disaggregated by country. This can improve transparency on where market-based method totals differ from location-based.

Avoided emissions estimation. Consistent with Chapter 8 of the *Corporate Standard,* companies **may** separately report an estimation of GHG emissions avoided from a project or action (also see Section 6.9). This quantification should be based on project-level accounting, with methodologies and assumptions documented (including to what the reduction is being compared). See the *GHG Project Protocol* and *GHG Protocol Guidelines for Grid-Connected Electricity Projects* for example methodologies.

Advanced grid study estimations. Where advanced studies (or real-time information) are available, companies **may** report scope 2 estimations separately as a comparison to location-based grid average estimations, and companies can document where this data specifically informed efficiency decision making or time-of-day operations. Because these studies or analyses may be more difficult to use widely across facilities or to standardize/aggregate

consistently without double counting, companies should ensure that any data used for this purpose has addressed data sourcing and boundaries consistent with the location-based method.

Scope 2 results calculated by other methods. If companies are subject to mandatory corporate reporting requirements for facilities in a particular region/nation that specify methodologies other than the two required for dual reporting, these companies **may** report these results separately from the scopes.

Disclose purchases that did not meet Scope 2 Quality Criteria. If a reporting entity's energy purchases did *not* meet all Scope 2 Quality Criteria, the entity **may** note this separately. This note should detail which Criteria have been met, with details of why the remaining Criteria have not. This will provide external stakeholders with the information they require, and allow the reporting entity to disclose the efforts made to adhere to the guidance. (As noted in Chapter 6, location-based method data will be used as proxy emission factors in the market-based method total.)

See the *Corporate Standard* Chapter 9 for more information about optional information and how to use ratio indicators and other performance metrics in reporting.

7.4 Dual reporting

Dual reporting allows companies to compare their individual purchasing decisions to the overall GHG-intensity of the grids on which they operate. In addition, reporting two separate scope 2 figures using two different methods provides several benefits:

- Distinguishes changes in choices vs. changes in grid emissions intensity
- Provides for a more complete assessment of the GHG impact, risks, and opportunities associated with energy purchasing and consumption
- Provides transparency for stakeholders
- Improves comparability across operations (on location-based method) where the company's GHG inventory includes operations in markets *without* contractual instruments
- Facilitates participation in programs with different reporting requirements.

This guidance's framework addresses and reduces double counting between scope 2 inventories when using the same accounting method, improving the accuracy of reported results and ensuring clear performance tracking toward goals.

The UK represents an example of the differing demands of the various stakeholders, where organizations (especially those trading internationally) have complex demands from their stakeholders. The carbon inventory is often reviewed by investors based in the United States, where there is an expectation to report using the market-based approach. However, the prevailing guidance from the UK government is to report using the locational-based approach, in part due to concerns regarding subsidy levels for renewables and double counting concerns. For these organizations, dual reporting provides disclosure in a way that allows all stakeholders to be satisfied.

7.4.1 Other methods

Some jurisdictions may recommend methods other than the location-based or market-based method as the basis for its consumer claims and scope 2 accounting, in order to achieve specific policy objectives. For instance, Ademe[1] in France has calculated different grid GHG emission rates according to different end uses by consumers. This represents a different emissions allocation approach than the location-based method presented in this guidance, although it is derived from it. It recommends companies reporting to Ademe apply these end-use factors to the different types of energy end uses, in order to better estimate the average GHG impact of specific consumption activities.

Companies required by regulation to use a method other than those listed in this guidance should do so for those required reports. To maintain consistency with the GHG Protocol *Corporate Standard* and this *Scope 2 Guidance,* companies may additionally and separately report any scope 2 totals calculated for other mandatory reporting rules applying to that region/nation's facilities.

7.4.2 Gross/net reporting

The two method totals (location-based and market-based) should not be viewed as "gross/net," since a net calculation typically implies that external reductions such as offsets have been applied to the inventory. While many contractual instruments in the market-based method represent a zero emission rate from renewable energy and generally serve to lower the GHG intensity of the reporter's electricity use, the market-based method should also include other contractual instruments representing fossil fuel or mixed-resource emission factors as well. The method is designed to reflect a range of instruments that together allocate overall emissions across the grid. For instance, a supplier-specific emission rate that includes a mix of generation technologies also is a valid market-based method emission factor.

However, companies can report avoided emissions estimations from generation separately from the scopes and indicate if these have been used in program-specific gross/net reporting (such as Defra Corporate guidelines[2]).

7.5 Additional guidance on Scope 2 Quality Criteria

The environmental integrity of the market-based method depends on ensuring that contractual instruments reliably and uniquely convey GHG emission rate claims to consumers. Without this, a resulting market-based scope 2 total lacks the accuracy and consistency necessary to drive corporate energy procurement decisions. In addition, the lack of a reliable system for tracking or assuring claims poses risks of inaccurate consumer claims regarding a product's actual attributes, and weakens the ability for consumer decisions to influence market supply.

Therefore, this guidance identifies a set of minimum criteria that relate to the integrity of the contractual instruments as reliable conveyers of GHG emissions rate information and claims, as well as the prevention of double counting. They represent the *minimum* features necessary to implement a market-based method of scope 2 GHG accounting. *Programs or jurisdictions may have additional requirements that reporting entities should consult and follow.*

Criteria 1. Conveying GHG emission rate claims. Many instruments already include specific language about the ownership or ability to claim specific attributes about the product (energy) being generated. In the U.S., most states (and the Green-e Energy National Standard) define RECs as conveying "all environmental attributes" associated with the MWh of energy generation. This type of claim is considered "fully aggregated," meaning that no other instrument can be generated from that MWh which conveys consumer claims regarding any of the environmental attributes of the energy. (In specific cases of multipliers or issuance of multiple instruments from the same MWh, then all instruments **shall** be retired for a full claim on that MWh.) Tracking systems themselves support only fully aggregated certificates.

In some markets it may be possible for attribute claims about energy generation to be separated out explicitly into different certificates that could be used for different purposes. This guidance does not address program design elements in markets with multiple certificates, but requires that only one instrument (or discrete set of instruments applied all at once) convey attribute claims about the energy type and its GHG emission rate.

If certificates do not specify attributes: Certificates that do not currently specify what, if any, energy attribute claims are conveyed, may still convey a claim implicitly through proving the second point: that no consumer is claiming the same energy generation attributes. Evidence of this may be achieved through attestations from each owner in the chain of custody or equivalent procedures providing the same information.

If the attribute emission rate itself is not specified and the technology is not zero emissions, the reporting organization should seek from the generating entity a specific emission rate from that generation facility. Otherwise, a default factor from IPCC or other government publications may be used and disclosed.

Biofuel generation facilities producing certificates should specify the CO_2, CH_4, and N_2O emissions produced at the point of generation. The scope 2 reporter reports the CH_4 and N_2O emissions in scope 2, while the CO_2 from biofuel is reported separately from the scopes.

Criteria 2. Unique claims. If other instruments exist that can be used for attribute claims by other electricity consumers, companies must ensure that the one being used by the reporting entity for a GHG emission rate claim is the only and sole one that does so. Where multiple instruments carry the GHG emission rate attribute claim, some jurisdictions or programs may require acquisition and "pairing" of the multiple certificates to support a voluntary consumer GHG emission rate claim. Companies should check with their electricity supplier or relevant policy-making bodies to ensure that the certificates are claimed, paired, or retired in compliance with applicable jurisdictional or program requirements.

The underlying electricity (or megawatt-hour) minus the instrument, sometimes called "null power," **shall** also not reflect the same GHG emission rate, but should be assigned residual mix emissions for the purpose of delivery and/or use claims in the market-based method.

In some cases, ensuring unique GHG emission rate claims may require arbitration regarding the validity and enforceability of a claim where multiple instruments exist and remain unclear on attribute claims.

Criteria 3. Retirement for claims. Ensuring that instruments are retired, redeemed, or claimed to support a consumer claim can be done through a tracking system, an audit of contracts, third-party certification, or may be handled automatically through other disclosure registries, systems, or mechanisms. These practices help guarantee that only consumers make a claim, even as an instrument may change hands through trading.

Criteria 4. Vintage. Vintage reflects the date of energy generation from which the contractual instrument is derived. This is different from the age of the facility. In order to ensure temporal accuracy of scope 2 calculations, this criteria seeks to ensure that the generation on which the emission factors are based occurs close in time to the reporting period for which the certificates (or emissions) are claimed. This timing should be consistent with existing standards for the market where the contractual instruments exist. Contractual instruments should clearly display when the underlying electricity was generated.

Criteria 5. Market boundaries. The market boundary criteria address the geographic boundary from which certificates can be purchased and claimed for a given operation's scope 2 accounting and reporting.

Distinguishing other relevant electricity boundaries: The market for purchasing and selling electricity is typically a regional transmission organization, power pool, or balancing area, with exports and imports often broadening these markets. By definition, certificates are separated from underlying electricity flows, and markets for unbundled certificates have often been less constrained than those for electricity itself. This larger market boundary for certificate use promotes broader areas of consumer choice and the building of renewable energy resources in the most economically viable locations.

To determine market boundary: Companies should check whether the regulatory authorities and/or certification/issuing bodies responsible for certificates have established the boundaries in which certificates may be traded and redeemed, retired or canceled, and should follow these market boundaries.

If the market boundary is not specified or not clear: Markets for certificates are typically determined by political or regulatory boundaries rather than just physical grid interconnection. This means market boundaries can be limited to a single country or group of countries that recognize each other's certificates as fungible and available to any consumers located therein. The United States, for example—despite differences in state law, local regulatory policy, and variation in physical interconnection within these regions—operates under broad federal laws and regulations, and therefore has constituted a single market for use of certificates. The EU represents a multi-country market united by a set of common market rules and a regional connection.

Where multiple countries or jurisdictions form a single market, a consistent means of tracking and retiring certificates, and calculating a residual mix, needs to be present in order to prevent double counting of GHG emission rates among electricity consumers. Accurate residual mixes should take into account the energy and emission mixes of all geopolitical entities engaged in trading certificates.

Additional geographic sourcing considerations: In addition, if not already specified by regulation or program, contractual instruments should be sourced from regions reasonably linked to the reporting entity's electricity consumption. These regions may grow over time as more interconnections and larger balancing areas are formed to improve grid reliability and integrate intermittent renewables.

Criteria 6. Supplier or utility-specific emission factors. As part of the calculation, the utility or supplier should disclose whether and how certificates are used in the emission factor calculation, unless there is third-party certification of the utility product. The utility or supplier-specific emission factor may be for:

a. A standard product offer or
b. A differentiated product (e.g., a low-carbon power product or tariff).

The supplier-specific emission factor should be disclosed (preferably publicly) according to best available information. Where possible, this should also follow best practice methods, such as The Climate Registry Electric Power Sector Protocol.

Criteria 7. Direct contracts or purchasing. In the absence of energy attribute certificates, the contract and claim associated with it should be verified by a third party to convey a unique or sole ownership right to claim a GHG emission rate.

Criteria 8. Residual mix. To ensure unique claims by all electricity users, an adjusted, residual mix characterizing the GHG intensity of unclaimed or publicly shared electricity is necessary. This residual mix should be based on combining national or subnational energy and emissions production data with contractual instrument claims. If a residual mix is not currently available, companies **shall** disclose that an adjusted emissions factor is not available or has not been estimated to account for voluntary purchases and this may result in double counting between electricity consumers. Reporters may provide other information about the magnitude of this error, where it is available and where it puts the scale of the residual mix adjustment into a context of other sources of error in grid emission factor calculation.

Endnotes

1. See: http://www.basecarbone.fr/data/rapport_methodo_co2_elec_2012.pdf
2. See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/206392/pb13944-env- reporting-guidance.pdf

8 Recommended Reporting on Instrument Features and Policy Context

This chapter describes additional information that companies should disclose about the features and policy context of their energy purchases. This disclosure can improve transparency and inform stakeholders.

8.1 Instrument feature disclosure

Markets currently differ as to what types of energy generation facilities produce instruments that are recognized in the market-based method for corporate GHG inventories. Different programs establish their own *eligibility criteria* that determine what energy generation facilities can produce certificates that are recognized in the program. (See Chapter 10 for background on these differences).

This variation can make it difficult to compare and understand the procurement choices a company has made in different markets. However, when companies disclose information about the energy generation facilities and policy context reflected in their contractual instruments, company decision makers and stakeholders can get a clearer picture about how well the purchase aligns with other company goals. In particular, stakeholders evaluating a company's contribution to mitigating global emissions may be interested in how a company is driving change in supply.

If information on these features or policy context is not made available on or with the certificate, companies can ask the certification program, tracking system, or supplier for further information. Lacking other information, a company may disclose the overall criteria identified by the certificate program (e.g. Green-e Energy certified RECs are from facilities installed in the last fifteen years on a rolling basis).

8.1.1 Instrument feature disclosure formats

Companies can disclose features about their contractual instruments in a variety of formats depending on the intended audience, communication channel (summary report vs. full extended report), etc. Companies may find a checklist approach may help maintain clarity on the features associated with each contractual instrument, depending on the number of energy-consuming facilities and different instruments in the inventory. See Table 8.1 for a list of these features and policy contexts. In cases where companies have undertaken strategic or iconic projects, a more narrative format can be useful to highlight the project's features in the context of a larger history.

Table 8.1 Example instrument features and policy context

Instrument labels
Certification or label name (if applicable). This can include certification such as Green-e Energy (U.S.), EcoLogo (Canada), or labels such as EKOenergy and Naturemade in the EU. The certification or label name should also specify what is being certified, e.g. in the U.S. Green-e Energy certifies against a set of requirements described in their National Standard.
Incremental funding programs. This should specify whether the instrument is associated with a certification label or supplier program that contributes incremental funding to new projects, and if so what quantity of funding is included with the company's contractual purchase.
Energy generation facility features
Energy resource type. Instruments should clearly identify the resource generating the certificate. For supplier-specific emission rates, the resource type could be "mix" for standard offers, "multiple renewable" for certain green power products, or cite the specific resource used. Residual mix will typically be a "mix."
Facility location. Depending on the information available from the certificate, supplier, or contract, the generation facility location could be identified at a national or subnational level (either geopolitical such as a U.S. state, and/or a grid region such as a North American Electric Reliability Corporation (NERC) region.
Facility age. Stakeholders may wish to know whether the purchase consists largely of generation attributes from older facilities or more recently constructed projects. Companies should note the year the generation facility that created the certificate/contract was first operational or substantially repowered.
Policy context
Supplier quotas. The contractual instrument claimed will relate differently to instruments used for supplier quotas, depending on the market. Companies should note the relationship between their contractual instruments following the list of options in Table 10.2.

• **Cap and Trade.** Is the facility that produced the instruments you claim affected by a cap and trade policy? (Y/N)
  • If yes, does the cap and trade program allocate allowances for retirement on behalf of voluntary renewable electricity purchases from this facility? (Y/N)
  • If yes, were allowances retired on behalf of your voluntary purchase of instruments from this facility? (Y/N) If so, these allowances should be reported (in metric tons) separately from the scopes.

Funding/Subsidy Receipt. The funding disclosed here can highlight recent funding or subsidy policies directly and substantially affecting the generation facility.
Offsets. Is the facility producing offset credits from the same MWh reflected in the contractual instrument? (Not applicable to contractual instruments in most industrialized electricity markets).
Other policy instruments. This includes any other policy instruments bundled/retired voluntarily by the company itself, a certificate certification program, supplier label, etc.

8.2 Reporting on the relationship between voluntary purchases and regulatory policies

This guidance does not require contractual instruments claimed in scope 2 to be "in addition to," or independent from, regulatory policies such as subsidies, tax exemptions, or supplier quotas. Due to the design of renewable energy production targets, achieving "regulatory surplus" with voluntary purchases may not always be possible. For transparency, companies should disclose the relationships between instruments claimed in scope 2 and regulatory policies, as part of the disclosure of overall instrument features and policy context to improve transparency and stakeholder understanding of the voluntary purchase. Companies should also disclose additional certificates or other instrument retirement performed in conjunction with their voluntary claim. These relationships and reporting options are elaborated below.

8.2.1 Relationship to supplier quotas

Where relevant, companies should state the relationship between the energy claimed in the market-based method and any compliance instruments used for supplier quota regulations. Six example relationships can be found in Table 8.2.

8.2.2 Relationship to subsidy receipt

In some countries, renewable energy projects that receive a public subsidy such as a feed-in-tariff (FiT) must have the certificate from that project retired or canceled, preventing any individual consumer claim. For instance, in Germany if a generation facility receives subsidies, then all generation attributes must be either canceled or retired on behalf of all German consumers under the rationale these consumers have paid for the energy through taxes, and should therefore collectively own the attributes. (This is in contrast to other European member states, which allow for individual consumer attribute ownership in addition to national subsidies.) In Japan, once renewable electricity that receives a FiT is sold to utilities, voluntary renewable

Table 8.2 Relationships between voluntary and supplier quotas

Reporting Option	Example
If there is no supplier energy source quota in contractual instrument's market	
1. No supplier quota in instrument's market	
If there is a supplier quota in the jurisdiction of the contractual instrument:	
2. Energy from claimed instrument also used to meet supplier quota	Multiple certificates from same MWh conveying different attributes
If there is a quota and the energy from the claimed instrument is not directly used to meet it:	
3. Claimed instrument not directly reflecting quota	Fossil contract or residual mix
4. Claimed instrument includes the supplier quota	Supplier-specific emission factor that includes compliance instruments
5. Claimed instrument above and beyond supplier quota	Voluntary U.S. RECs
6. Claimed instrument paired with retired compliance instrument issued from same unit of energy generation	*No applied examples to date

energy certificates cannot be issued. Accordingly, for the purpose of achieving regional fairness, the value of zero emissions energy generated from FiT-supported renewable electricity is allocated to each utility in accordance with sales amounts because FiT represents a public subsidy. In practice, this leaves subsidized energy a "public good" whose attributes are included in a system mix used for supplier reporting.

Reporting options: In jurisdictions where energy supported by recent or substantial renewable energy production subsidies is not excluded from voluntary programs or claims, companies should disclose subsidy receipt (available on GO).

8.2.3 Relationship to emissions trading programs

In emissions-capped power programs such as the European Emissions Trading Scheme, low-carbon energy generation is incentivized through creating a limit (cap) on fossil-fuel emissions. But all energy attribute certificates, including voluntary energy attribute certificates and other contractual instruments can still convey emission rate claims under an emissions cap (e.g., renewable energy still produces zero emissions/MWh at the point of generation). The presence of a cap does not directly impact or prevent market-based accounting based on contractual instruments.

However, because the total system's emissions have been predetermined by the cap, these actions may simply "free up" allowances for other emitters to acquire, resulting in no net global GHG reductions. This means consumers cannot claim that the generation purchased resulted in global emission reductions on the grid; only by affecting the allowance cap by retiring or reducing available allowances would electricity consumers be able to support that claim. Voluntary low-carbon energy purchases (as well as other actions such as efficiency upgrades or energy conservation) without allowance retirement could be seen as an essential and expected means of contributing to meeting the system-wide cap, or as "subsidizing" the overall sector's costs for meeting the cap.

Allowance set-asides. Many states participating in the U.S. Regional Greenhouse Gas Initiative (RGGI) and the California cap-and-trade program have created an allowance set-aside program. These programs designate that a portion of total emission allowances available in a given compliance period be set aside and retired on behalf of voluntary REC purchases. This combined REC purchase and allowance retirement is designed to preserve or strengthen the global carbon benefits and impacts for voluntary renewable energy purchases. In theory, allowances could be retired by any entity trying to demonstrate environmental commitment, as a reduction in available allowances for emitting entities can create scarcity (and theoretically, behavior change) in the marketplace. Retiring allowances effectively lowers the cap.

Reporting options. Companies claiming contractual instruments in an emissions-capped power sector should disclose whether an allowance set-aside program is in place, and whether any allowances have been retired along with the voluntary certificates. The tons of GHG emissions represented in any retired allowances should be reported separately from the scopes.

Caveats. This guidance does not recommend treating allowances retired as part of a voluntary renewable energy set-aside as though they were offsets. Conceptually, allowances could be seen to function as offsets in that they represent tons of CO_2e that were avoided compared to what would have happened without the purchase and retirement of the allowance. While the reference case in this analysis would be the emissions cap for the sector, it has not always been clear that this cap inherently represents "what would have happened" and that the allowance retirement is therefore additional. On their own, most emission caps are intended to reduce emissions compared to what would have been occurring in the sector. But in oversupplied allowance markets, where the cap level closely follows or even exceeds what would have been occurring anyway (e.g. during a period of economic downturn), the value of retiring an allowance might be minimized.[1] Further, if allowance retirement becomes common practice and significantly increases the price of allowances, cost containment measures in cap-and-trade policies may be triggered so that regulators increase the total volume of available allowances (and therefore nullify the reduction impacts of the retirement).

8.2.4 Relationship to offset credits

Offsets generated from renewable energy facilities remain a popular project type in offset schemes such as the Clean Development Mechanism (CDM), as well as voluntary standards. These programs are designed to provide a revenue stream that enables a project to be built that—in the absence of the offset sales—would be unfeasible. The offset represents a quantity of global GHG emissions reduced or avoided by the project compared to a baseline scenario of what emissions would have occurred in the absence of the offset-funded project.

Distinguishing attributes and claims. Offsets, and their global avoided emissions claim, represent a different instrument and claim from the energy attributes associated with energy production.[2] Offsets convey tons of avoided CO_2 using project-level accounting, but they do *not* convey information about direct energy generation emissions occurring at the point of production, like contractual instruments do (see Box 4.3). An offset credit does *not* confer any claims about the use of electricity attributes applicable to scope 2. For example, to distinguish avoided emissions and emission rates, a natural gas facility newly established in a largely coal-based grid will *avoid* operating margin emissions as fossil fuel plants with higher operating costs are backed down. But the natural gas plant still emits at a fixed rate (emissions/MWh), which consumers of that energy can document in scope 2.

Box 8.1 Attributes and claims from renewable energy offsets

Offsets are designed to be fungible (or interchangeable) globally, derivable from a variety of project types (forestry, renewable energy, etc.) and should only convey metric tons of avoided GHG emissions to the purchaser. To date, offsets have not conveyed any other attributes about the project generating the offset or about the electricity—including a "renewable energy use" claim. While offset projects through CDM are designed to also provide a variety of social and sustainable development benefits, most offset standard methodologies do not quantify these other characteristics or benefits of the project, or transfer or convey them with the offset credit. Those social benefits are designed to "stay" within the community, even as the avoided carbon is sold globally. Users should not infer from the offset any unquantified, unverified, or unspecified other claims about the project.

Coexistence of offsets and scope 2 accounting. Unless otherwise adjusted by local rules, renewable energy generation facilities producing and selling offsets will inherently still provide energy attribute information—directly and indirectly—to other entities in the local energy supply system, including energy consumers reporting scope 2 emissions. For instance, the energy output from generation facilities producing offsets would still be subject to energy supply contracts between generators and suppliers, and still support the local grid's operation. This means that the zero emission rate from the generation facility will likely be reflected in several emission factors:

- Grid average emission factors (location-based)
- Supplier-specific emission factors (market-based)
- Any PPAs between the generator and consumer of the energy (market-based)

The contractual information such as PPAs and supplier-specific emission factors may meet the Scope 2 Quality Criteria and qualify as conveyers of energy generation emission rates under the market-based method. This can provide accurate scope 2 accounting independent of the fact that certain facilities associated with those contracts will have also produced offsets (reflecting the impact of that generation on the rest of the grid). Therefore, the zero emission rate from the project will likely be reflected in the local grid's data for both the location-based and market-based method for scope 2, as illustrated in Figure 8.1. However, in most industrialized energy markets, a given MWh of renewable energy generation can either produce energy attribute certificates or an offset credit (if certain criteria such as additionality are met), but could not produce both.

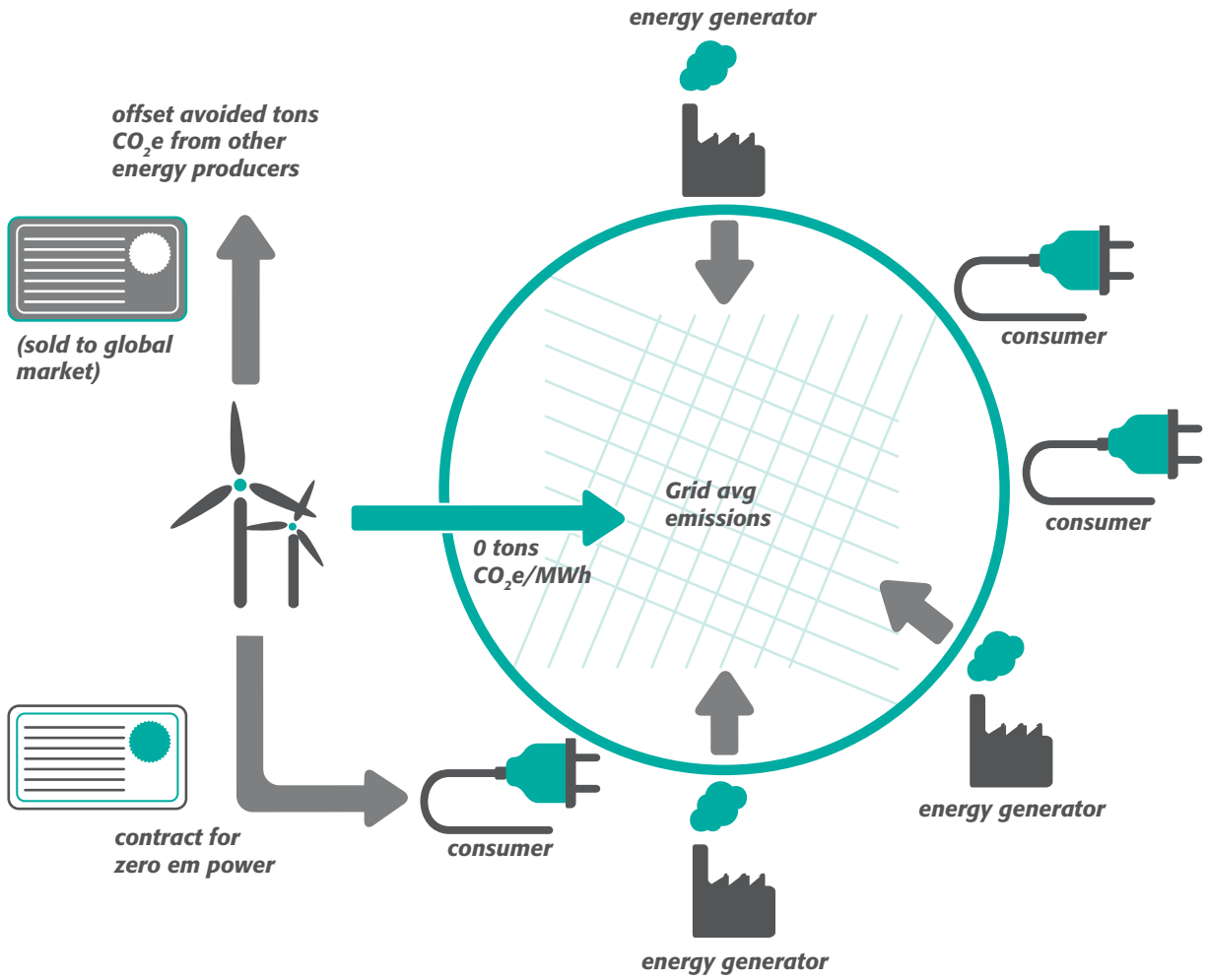
Reporting options: Companies should disclose whether their contractual instrument used in a market-based method (such as a supplier-specific emission rate or PPA) is generated from, or includes, the energy output of a facility that also produces GHG offsets. This may be most relevant in non-Annex I countries generating CDM offsets.

In turn, following the *Corporate Standard,* companies purchasing and claiming offsets should document these purchases outside of the scopes, ensuring that the offset meets offset quality criteria.

Caveats: The coexistence of offsets does not inherently prevent electricity suppliers or companies from reflecting the zero emissions attributes in their scope 2 reported totals. However, local or international regulation may preclude accounting for these emissions, either by:

- Adjusting a grid-average emissions factor to "add back in" the sold offset to the total emissions produced in the region. This increases the GHG intensity of the grid-average emission rate, effectively reflecting the business-as-usual (BAU) scenario of the offset.

Figure 8.1 Offsets and energy attribute certificates on a grid



- Requiring provisions in energy purchase contracts that the attributes associated with the energy generation, while not contained in the offset, should be retired from usage so that no consumer can use contractual instruments to make market-based scope 2 claims.

Historically, voluntary consumer green power purchasing programs have not been implemented in emerging economies generating offsets. This may change over time as local consumers demand low-carbon energy options from their suppliers. (Generally, offsets from the power sector are not possible where the emission caps or other significant low-carbon policies impact the sector.) Where voluntary green power consumer programs coexist with offset issuance, the offset additionality criteria requires that the offset be the decisive reason a project was developed.

Endnotes

1. See Kollmuss and Lazarus (2010).
2. It may appear that the GHG emissions benefit of the offset is "double counted" with any scope 2 allocation procedures for the project's grid, but the differences in methodology and the boundaries for evaluating reductions minimize this possibility.

9 Setting Reduction Targets and Tracking Emissions Over Time

This chapter provides guidance on setting GHG reduction targets for both methods' reported totals, tracking emissions over time, and how other energy goals can be set as part of a holistic approach to energy.

9.1 Setting a base year

A meaningful and consistent comparison of emissions over a GHG reduction goal period requires that companies establish a base year against which to track performance. When companies set a target relative to a base year, companies should specify their reasons for choosing that particular year. Companies reporting according to the market-based method should choose a year in which both market-based data and location-based data are available. Companies that have already set a base year for scope 2 **shall** specify which method was used to calculate it, in order to allow for clearer comparison over time.

For companies calculating a GHG inventory for the first time, the *Corporate Standard* guidance on choosing a base year applies (see Chapter 5 of the *Corporate Standard*).

Once a base year is selected, a reporting entity **shall** set a base-year recalculation policy and clearly articulate the basis and context for any recalculations. Whether base-year emissions are recalculated depends on the significance of the changes. A significance threshold is a qualitative and/or quantitative criterion used to define any significant change to the data, inventory boundaries, methods, or any other relevant factors.

9.2 Recalculating base-year emissions

The *Corporate Standard* notes that recalculation may be necessary when changes to base-year emissions would exceed the company's established significance threshold. This may occur when a company restructures its operations (acquisition/divestments/mergers), discovers calculation errors, or identifies changes in calculation methodology or improvements in data accuracy over time. This guidance's new requirement to report scope 2 according to two different methodologies—location-based and market-based—constitutes a change that could trigger base-year recalculation.

Companies should ensure that the base-year inventory includes both a location-based and market-based scope 2 total, if applicable and feasible. This ensures "like with like" comparison over time.

- If the scope 2 base year chosen was calculated only according to the location-based method, the reporting entity should also recalculate a market-based total if contractual information or residual mix totals are available for the base year. If not, companies should state that the location-based result has been used as a proxy since a market-based result cannot be calculated.
- If the scope 2 base year chosen was calculated only according to the market-based method, companies should ensure that the contractual instruments used in the base year meet the Scope 2 Quality Criteria. If not, this should be disclosed and a location-based total stated in place of the market-based method total. In addition, companies should calculate a location-based method total in the base year using emission factors appropriate for that year.

9.3 Setting GHG targets

A key component of effective GHG management is setting a GHG target. Companies are not required to set a scope 2 reduction target, but should consider setting a target in the context of their business goals, the decision-making value for each method's results and how to drive change through supply choices. As noted, reductions in reported scope 2 emissions can occur due to a change in emission factor unrelated to specific corporate action—for example, a reduced grid average emission factor, or reduced residual mix emission factor.

If setting a target, companies shall specify which method is used in the goal calculation and progress tracking, including the method used for the base-year calculation. Where certificates or contractual instruments convey legally enforceable claims, companies setting goals should use the market-based method total for goals. Two targets, one for each method's results, can help prioritize new low-carbon energy projects that will reduce both totals' emissions over time (if contractual instruments are retained from the project).

Several types of targets are possible and require consideration of:

- **Target type.** Whether to set an absolute or intensity target
- **Target completion date.** The duration of the target (e.g., short term or long term target and base year and goal year)
- **Target level.** The numerical value of the reduction target, framed as a change in emissions or absolute level of emissions to be achieved.

Companies seeking to drive change in the overall grid supply in a short period of time should consult the range of procurement options described in Chapter 11.

9.4 Energy targets

Some companies have energy use, procurement, or production targets in addition to GHG reduction targets. Energy targets can be useful in maintaining a focus on efficiency and isolating the role of consumption as compared with the changes in emissions resulting from supply changes.

- **Energy intensity goals**. Reducing the amount of energy per square foot of office/building space, or per product or output, can help maintain a focus on efficiency practices and set the overall energy performance of operations.
- **Renewable energy procurement goals**. Some companies have set the goal to be powered or supplied by 100 percent renewable energy. The framework for scope 2 emissions accounting, with a separation by method, can be applied here as well. This would require companies to clarify which method their renewable energy goal is based on: a location-based assessment of production on the grid, or a company's contractual procurement using instruments that convey a claim to consumers regarding the resource identity and use.

9.4.1 Achieving 100 percent renewable energy when supplier quotas apply

For utilities under a supplier quota requirement (such as an RPS in the U.S.), structuring a green power product that covers 100 percent of a customer's electricity load may combine voluntary and compliance instruments up to the level of the quota, provided those compliance instruments convey energy use claims. For example, if a utility is required to procure and deliver renewables

for 20 percent of its total retail load, then voluntary contractual instruments would be required to account for the remaining 80 percent of the delivered energy.

- **Renewable energy production goals**. Companies that own/operate energy generation facilities providing on-site power to their operations may wish to set goals around the amount of energy produced from these facilities (for example, to produce 100 percent renewable energy in X facilities). Emissions from these facilities would be reported in scope 1, but the production and its attributes may or may not be tracked in scope 2 depending on energy sold to the grid, or certificate sales from the energy which would preclude any consumption claims on the generation. Publicly communicated goals about on-site energy production should indicate the distinction between this metric and energy consumption reflected in scope 2.

10 Key Concepts and Background in Energy Attribute Certificates and Claims

This chapter provides an overview of the key concepts, theories, and uses of energy attribute tracking and claims, which underpins the market-based method for scope 2 accounting. It explains the interactions between voluntary consumer programs and policies directly or indirectly supporting low-carbon energy.

10.1 Introduction to energy attribute tracking

Consumers of grid-supplied electricity cannot link, force, or otherwise direct a specified unit of electricity from its point of generation to its point of final use. Consumers are reliant on grid operators to make decisions about dispatch throughout the day. In addition, grid-supplied electricity consumers cannot directly or physically distinguish the energy generation facilities that are supplying their consumption at any given point; once energy is generated and distributed in a grid system, it becomes physically indistinguishable. In these types of systems, where attributes are not clear at the point of usage, allocation of energy attribute information is necessary to facilitate product-specific consumer claims. Suppliers and consumers increasingly have demanded information about the sources producing their energy, and "attributes" about that production—that is, characteristics such as the GHG emissions, local air pollutants, nuclear waste quantities, etc.

10.1.1 Contractual instruments

Contracts and other contractual instruments have been used historically to transact energy and convey information about energy generation attributes throughout an energy supply system, separately from the underlying energy flows. Depending on the contractual instrument, suppliers or their customers may be able to make claims about the source and attributes of energy they have purchased. These contractual instruments are necessary in order to allocate attributes of production (including GHG emissions) to individual users. By contrast, the "location-based method" indirectly allocates these emissions based on statistical averages, which do not convey attributes or legally enforceable claims about those attributes, or support broader programs for consumer choice.

A range of contractual instruments may be used to convey these attributes directly or indirectly to consumers, including energy attribute certificates, direct contracts such as PPAs, and supplier-specific emission rates. Of all of these, energy attribute certificates underlie most transactions and

attribute claims. They can be used alone or can be bundled with PPAs, contracts, and supplier labels. Once attributes are codified and conveyed in a certificate, the underlying energy generation technically becomes "null power," or without attribute identity. Users of the null power electricity cannot claim to be buying or using renewable energy in the absence of owning the certificate. Instead, null power should be assigned residual mix emissions for the purpose of delivery and/or use claims in the market-based method.

10.2 Defining energy attribute certificates

Energy attribute certificates are a category of contractual instrument that represents certain information (or attributes) about the energy generated, but does not represent the energy itself (see Figure 10.1). This category includes instruments which may go by several different names, including certificates, tags, credits, or generator declarations. For the purpose of this guidance, the term "energy attribute certificates" or just "certificates" will be used as the general term for this category of instruments. Historically, most certificates for policies or consumer programs have been generated from renewable energy resources, driven by demand for these resources in particular, but depending on their intended purpose or usage certificates can be generated from any or all generation technology types. For example, all-generation certificate tracking exists in the northeast U.S.

10.2.1 Defining GHG attributes and claims

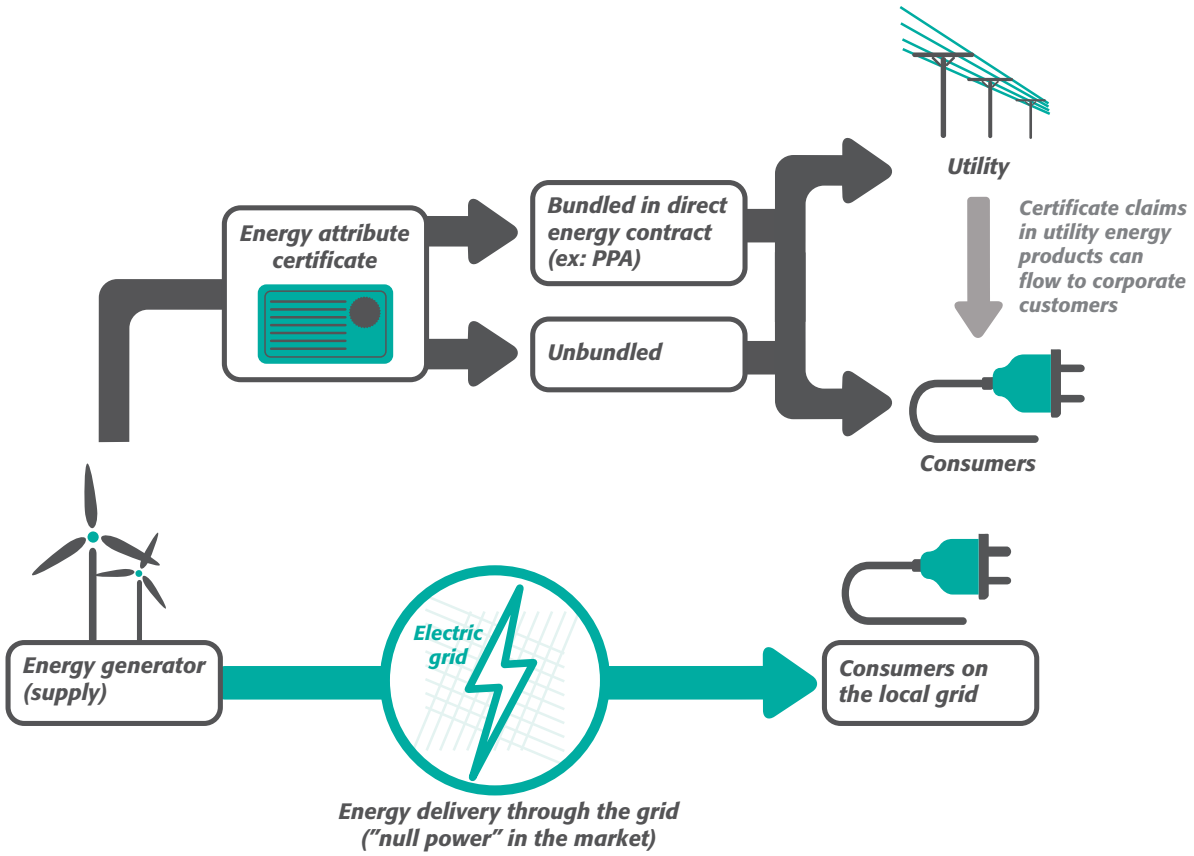
All energy generation has a GHG emission rate attribute, even if that attribute is "zero emissions/MWh" at the point of generation.

Attribute aggregation. It is theoretically possible to disaggregate different energy generation attributes across multiple certificates, where each certificate conveys different information and related claims. For example, one certificate could convey that the energy comes from a "renewable" resource, while another conveys a claim about the GHG emission rate associated with the production, or claims about the emissions of other pollutants like NO_x and SO_x (see Box 10.1). But attribute disaggregation has generally not occurred in the programs surveyed in this guidance. In the U.S., most states define RECs for RPS purposes as encompassing "all environmental attributes," including the attribute of the fuel type/generation technology as well as GHG emission rate, and U.S. tracking systems do not support separating individual attributes. This "all attributes" approach effectively prevents the same MWh being used to create multiple consumer claims from renewable energy projects in the U.S.

Where no attributes for consumer claims are conveyed. Some certificates designed for regulatory uses such as supplier quotas do not convey any generation attributes for consumer claims. These are not intended to support consumer claims; instead, they serve only as documentation that a specific quantity of energy has been generated pursuant to the policy's requirements. In this scenario, other certificates could be generated that do convey attributes about the energy generation to characterize consumption.

Claims about attributes. Ensuring the validity of consumer claims associated with certificates requires many of the same safeguards as other environmental commodities: accuracy, exclusivity, and enforceability. These form the basis of the Scope 2 Quality Criteria for

Figure 10.1 Energy attribute certificate pathways



claims regarding GHG emissions in the scope 2 market-based method (see Chapter 7). In many cases, there are independent standards and certifications available to enforce these safeguards. A certificate purchaser can make a claim about attributes when applied to a quantity of actual electricity consumption.

10.2.2 Steps in certificate issuance, tracking, and claiming

Most certificates follow the pathway from issuance to claims as follows:

1. **Certificates produced.**
   Certificates are generally produced for one unit of generation (a MWh).

   Energy generators generally produce a certificate directly through registering an account in a registry or other tracking system. Generators report production data (MWh) to the tracking system as well as data about energy attributes, which should meet whatever measurement and verification protocols are required by that system . In the U.S. a generator actually creates the REC, and it can be conveyed by bilateral contracts. If the generation data is reported to a tracking system, the tracking will formally issue a certificate. Each certificate has a unique tracking number. Entities that wish to participate in the market and trade and own certificates must also register with a tracking system and open one or more accounts. Trading can occur, but each certificate can reside in only one account at a time to avoid double counting.

   In some markets, a regulator or independent third party can serve as an "issuing body" that documents the creation of a certificate. See Box 10.1 on energy attribute tracking systems, and Figure 10.2 for an illustration of the different tracking systems in North America. See Box 10.2 for a discussion of the separation of roles in these systems to support independent issuance.

Box 10.1 Energy attribute tracking systems

A certificate tracking system or certificate registry is a tool to help execute energy attribute certificate issuance, retirement, and claims. It issues a uniquely numbered certificate for each unit of electricity (usually one MWh) generated by a generation facility registered in the system, tracks the ownership of certificates as they are traded among account holders in the tracking system, and records certificates that are redeemed or retired in order for users to make claims based on the certificate's attributes. Because each MWh has a unique identification number and can only be in one owner's account at any time, this reduces ownership disputes and the potential for double counting. Tracking systems are designed to ensure that no other entity is issuing certificates for the same MWh, and that all the attributes of that unit of generation remain with the certificate and are not sold as a separate instrument or right of ownership. Certificates may be imported to or exported from these tracking systems, and may also be retired within the tracking system on behalf of a purchaser whose corporate offices and facilities are located outside the footprint of the tracking system. They do not operate as exchanges or trading platforms for the certificates they issue, track, and redeem or retire.

2. **Third-party certification and labeling.**
   In some markets, a third party may also certify certificates based on an established standard that specifies what energy can produce certificates, an audit procedure to verify retail transactions, and other consumer protection features. Some examples of voluntary certification programs include Green-e (North America) EcoLogo (Canada), and GreenPower accreditation (Australia). Electricity labels such as EKOenergy serve a similar function by specifying a set of criteria that can be applied to determine which certificates can receive the label.

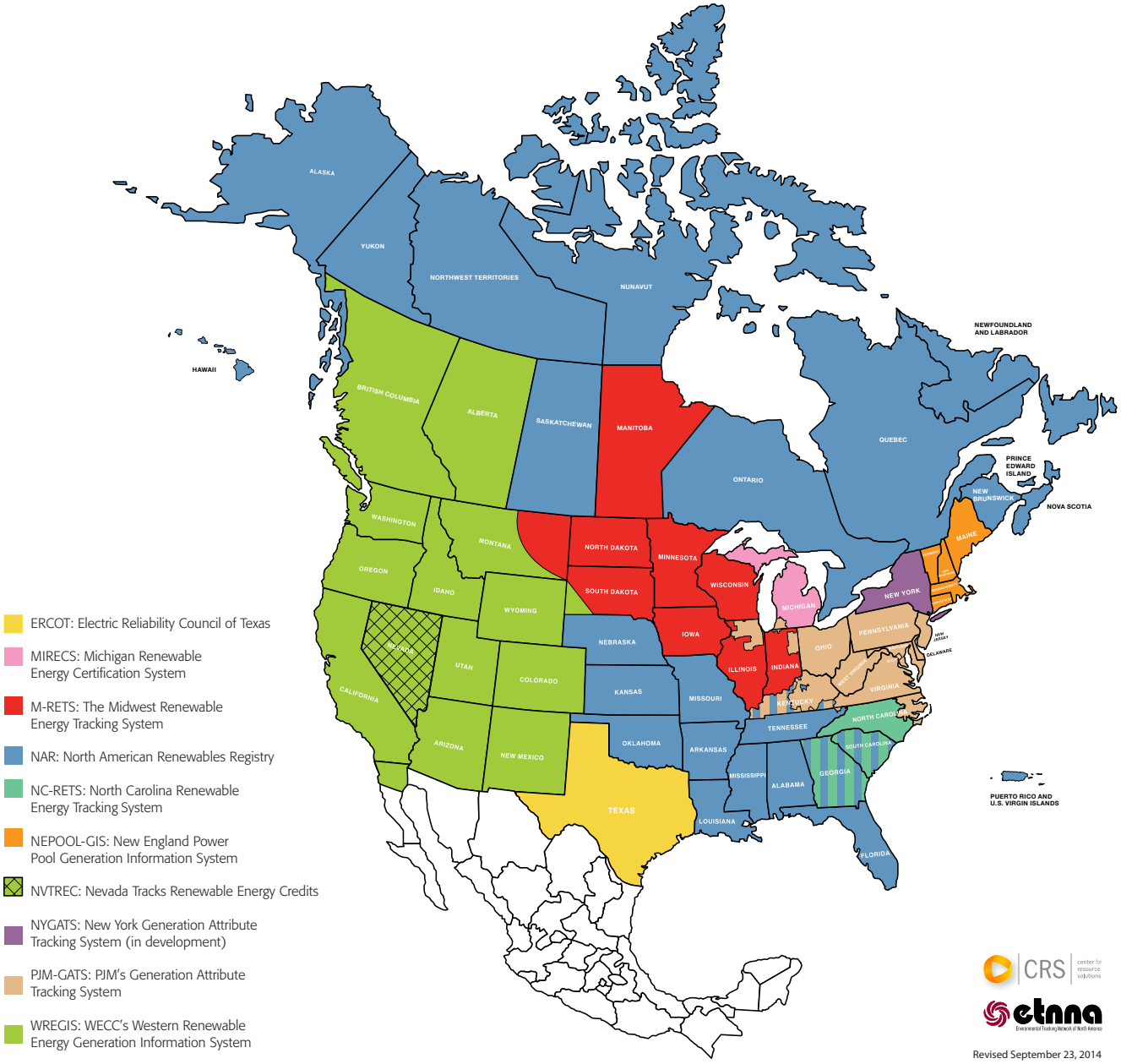
3. **Purchase and retirement by suppliers or consumers.**
   Certificates can be combined (or "bundled") with a contract for energy, or may be sold separately.[1] Certificates may be traded several times between the initial buyer and suppliers, or through open exchanges. For most certificates, the final purchaser or claimant will be an energy supplier or utility, or an end-consumer. If a certificate serves a regulatory purpose, the claimant (usually an electricity supplier) will submit and retire the certificate to regulatory authorities to substantiate delivery of specified electricity to its customers as required by law. If the certificate serves a voluntary consumer claims purpose, the claimant will retire the certificate in order to facilitate a claim on behalf of its consumers (if a supplier) or itself (if an energy consumer).

Box 10.2 Best practices to ensure independent issuance

In order to ensure the fair competition of issuance, redemption, and use of contractual instruments, most markets have established a clear distinction between the management and ownership of the tracking system and the market players and consumers using the instruments. The ability to transfer contractual instruments and redeem the contained attributes should be possible without direct intervention from the certificate issuer or registry owner. The production facility owner is typically in direct control of the creation of the contractual instruments and will be the single owners of the created instruments until they decide to release their ownership to another third party. The owners of the tracking system or contractual instrument registry **should not** also be active in the market for the same contractual instruments. The documentation of the tracking system should be publically available and open to public consultation.

Figure 10.2 Energy attribute tracking systems in North America

Renewable Energy Certificate Tracking Systems in North America



10.3 Certificate uses

Certificates generally serve four main purposes, including:

- Supplier disclosure
- Supplier quotas, for the delivery or sales of specific energy sources
- Levy exemption
- Voluntary consumer programs

Each program or policy will establish their own eligibility criteria. These criteria specify certain energy generation facility characteristics, such as type of technologies, facility ages, or facility locations. Certificates must come from facilities meeting these criteria in order to be eligible for use in that program. In addition, individual country markets or policy-making bodies (referred to in this guidance as "jurisdictions") may accomplish these different functions using a single certificate system or a multi-certificate system.

- **Single certificate systems**
  In a single certificate system, only one certificate can be issued for each MWh generated and contain attributes associated with that unit of energy generation. This means that a certificate could fulfill multiple purposes—for example, it could be the evidence of supply pursuant to a supplier energy source quota, or be part of standard supplier products as well as voluntary programs or tariff offerings. An example of a single certificate system is the U.S. REC, where a REC may be used for supplier quotas where present (requirements or "eligibility" varies by state), voluntary consumer programs, or in supplier disclosure where supplier quota or voluntary consumer programs or labels are included.
- **Multi-certificate systems**
  A multi-certificate system can have multiple certificates issued for the same unit of energy, each conveying different attributes or claims for each function they serve (see an example of this for the U.K. in Figure 10.3). However, program policies and rules still determine what certificates may be eligible for the program. For the purposes of market-based scope 2 accounting, consumers in multi-certificate systems **shall** identify which certificate, if any, conveys GHG emission attributes to end users, and ensure that only one certificate, or jurisdictionally defined combination of certificates, does so (following the Scope 2 Quality Criteria in Chapter 7). A system could not, however, have multiple certificates each conveying the same consumer claims attributes; this would constitute double counting.

10.4 Supplier disclosure

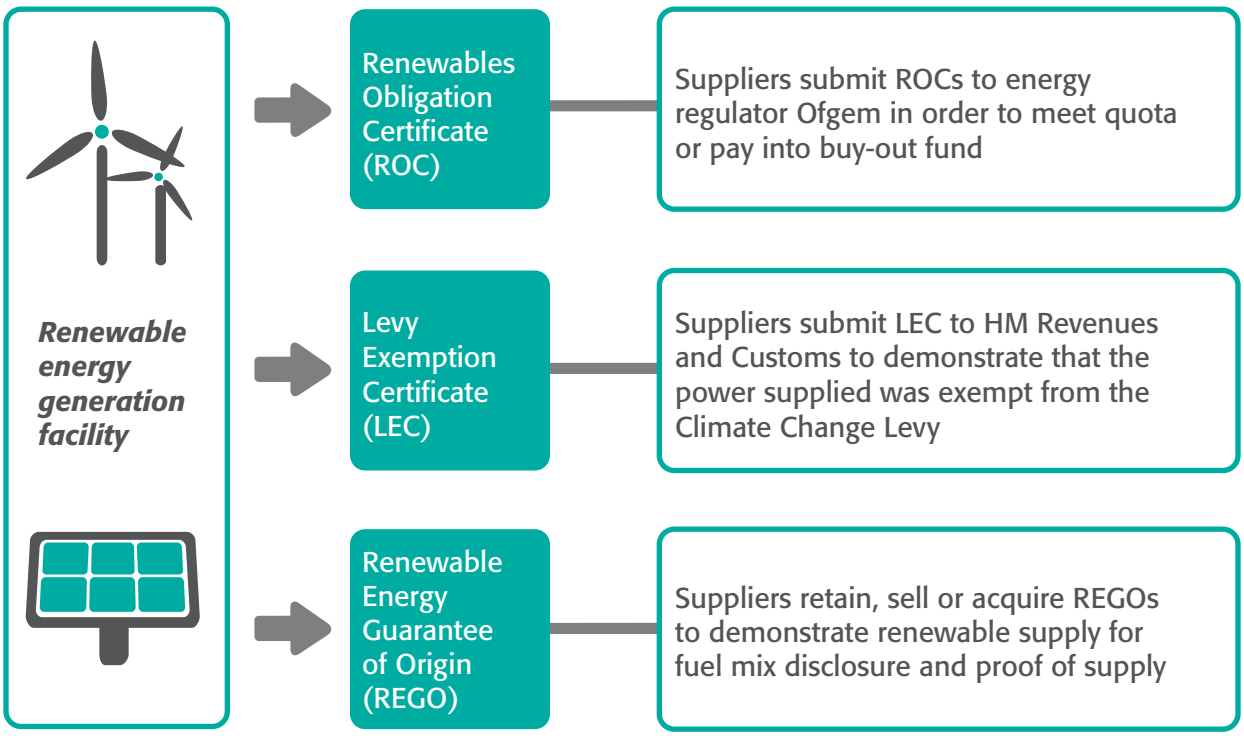
Energy suppliers may be required to disclose to consumers the fuel mix and related environmental attributes associated with delivered supply. Certificates have been used to track energy from production to the supplier, in order for a supplier to contractually demonstrate the source of the energy that is delivered to customers. Suppliers may disclose an emission rate associated with voluntary programs such as renewable or low-carbon energy products (often termed a green pricing program, green power tariff, or green power label), or other differentiated product offerings. In some countries, all consumers are required to make a choice about their electricity product, and information about the electricity product—including its resource mix, CO_2 emissions, and other environmental effects such as radioactive waste—is available on electricity bills.

Some supplier disclosure requirements may not explicitly require the use of certificates. For instance, in Japan power suppliers are obligated to report their supply mix and its associated emission factors to the Japanese government, and the government evaluates and publishes these emission factors.

Example of supplier disclosure

EU electricity market liberalization enabled consumers for the first time to choose their electricity supplier. This prompted the need for more standardized supplier disclosure about their energy supply and its attributes, allowing consumers to compare suppliers on metrics beyond just cost. The EU instituted requirements for all electricity suppliers to disclose their fuel mix to customers, along with the CO_2 quantity and radioactive waste. The Guarantee of Origin certificate has been used as the basis for suppliers to calculate and disclose the energy source and attributes associated with supply. It is also used as the basis for voluntary consumer labels.

Figure 10.3 UK: Example of multiple certificates for distinct purposes



10.5 Supplier quotas, for the delivery or sales of specific energy sources

To help incentivize growth in renewable energy resources, some nations or subnational entities have required electricity suppliers to source an increasing portion of their load from specified or "eligible" renewable energy resources by a specific date. Eligibility criteria may specify the age or location of generation facilities, specific technologies, etc. These supplier energy source quotas may require suppliers to obtain and submit energy attribute certificates to cover the specified portion of their overall supply. Suppliers not in compliance often pay a fine or fee. Some of these supplier energy source quota programs are called "support schemes" as they financially support generators who can sell compliance certificates to suppliers. But as a category, supplier energy source quota policies should be distinguished from other types of support policies such as tax credits or feed-in tariffs associated with production. The latter are direct payments to generators as opposed to revenue received by a generator from the sales of a certificate, and feed-in tariffs do not need to be tracked through certificates. The latter are thus not tied to quotas at a supplier level (for example, there is no "minimum" amount that must be produced). In addition, there is no delivery requirement and thus no need to track generation with certificates.

10.5.1 Certificate multipliers

Some jurisdictional compliance programs provide additional incentive for specific energy sources by providing a "credit multiplier" to a certificate when it is redeemed for compliance with program requirements. The multiplier is applied only when the certificate is redeemed for supplier quota compliance. For instance, a credit multiplier of 1.5 means that when a certificate is retired and claimed for compliance, it is counted toward compliance as if it were 1.5 certificates. Suppliers using certificates for disclosure should use the attributes stated in the certificate (per MWh) and not its multiplication for policy compliance.

Examples of supplier quotas

In the United States, states can set renewable energy portfolio (RPS) standards obligating suppliers to source a minimum share of renewable energy certificates (RECs) from qualifying sources that the policy identifies. For example, California requires that 20 percent of retail sales be supplied with renewable energy by 2013, 25 percent by 2016, and 33 percent by 2020. Policies identify what types of generation can achieve compliance. Policies can also identify a portion of the overall goal that must be met with specific resources (called a "carve out").

In the EU, Directive 2009/28 requires that member states meet renewable consumption targets by 2020 (called national targets). According to current EU law, GOs alone cannot be used as compliance instruments for suppliers to demonstrate fulfillment of national targets. Instead, other instruments such as Green Electricity Certificates in Belgium, Certificati Verdi in Italy, the Elcertifikat in Norway-Sweden, or Renewable Obligation Certificates (ROCs) in the UK, may be used by suppliers.

10.6 Tracking tax/levy exemptions

Tax credits or reductions for producers of specified energy sources (generally renewable or low-carbon) can improve the cost competitiveness of new projects that would otherwise face financial barriers. In addition, certain energy consumers may also be subject to taxes on their energy use relating to environmental externalities of conventional energy production (e.g., a CO_2 tax). Purchasers of renewable or other specified energy may be exempted from these taxes if they can prove their consumption through certificates.

Example of tracking tax/levy exemptions

In the UK, non-residential or "non-domestic" users—primarily large commercial or industrial energy users—are taxed for their energy use. But renewable electricity and electricity produced from coal mine methane are exempt from the tax. Renewable energy generation facilities are issued Levy Exemption Certificates (LECs), which suppliers must acquire on behalf of their non-domestic customers to avoid the tax (with LECs serving as evidence submitted to HM Revenue & Customs).

10.7 Voluntary consumer programs

Energy attribute certificates have been used as a means to promote voluntary consumer demand for the attributes of renewable or low-carbon energy and to support the consumer claims around those choices. These voluntary programs may be offered by an electricity supplier as a special tariff or product in addition to their standard offering; or, consumers in some jurisdictions may have competitive choice in their supplier and select a supplier offering exclusively specified energy products, such as an "all renewable" label. Consumers in all jurisdictions may also have the ability to directly purchase certificates (outside of their electricity delivery arrangement with local suppliers) to enable a claim. Voluntary consumer programs generally seek to both enhance consumer product choices and voluntarily leverage demand to increase the share of renewables on the grid over time.

Examples of voluntary consumer programs

- In the U.S., voluntary RECs can be obtained directly by a consumer ("unbundled" from energy purchases), or "bundled" through a supplier program or in an electricity contract such as a PPA.
- In the EU, GOs (rooted in disclosure laws) have also been used to support voluntary renewable energy purchases and claims.
- In Australia, the voluntary GreenPower program uses RECs in its accreditation label, which is supported and managed by state governments in Australia.
- Globally, The International REC Standard creates standardized attribute tracking certificates for the purposes of voluntary corporate disclosure. The legislative basis for the certificate issuance may be different in each country where the standard is active.

10.8 How jurisdictional policies affect the role and impact of voluntary programs

In most jurisdictions, voluntary consumer purchasing programs (and therefore market-based claims) will reflect attributes from energy generation that interacts with local or federal policies. This is consistent with the fact that in most markets, all energy—be it fossil, renewable, or low-carbon—is regulated to some extent and benefits from direct and indirect financial support. Renewable or low-carbon energy production and consumption in particular may benefit directly or indirectly through subsidies, cap-and-trade programs, supplier energy source quotas, etc.

However, the relationship between voluntary consumer purchasing programs and regulatory policy may be more sensitive or subject to stakeholder scrutiny. For instance, stakeholders may ask whether the purchased energy reflected in the voluntary certificate has "received a subsidy," or "helps lower the emissions cap on the power sector," or represents energy purchased in surplus of the electricity supplier's quota. These objectives can reflect a desire for voluntary consumer programs to ensure equal consumer benefit sharing—that is, that subsidized energy remains a publicly claimed benefit rather than one available for individual consumer claims. They can also reflect a desire for consumer action to have an impact on the market for low-carbon energy that goes beyond the incentives and trends dictated by policy.

Most of the relationships between voluntary programs and regulatory incentives or policies will be determined at the jurisdictional policy-making level, since regulators typically determine what types of certificates are issued for what policy purposes. The decision to use a single-instrument system may automatically address some of these voluntary policy interactions by ensuring the attributes of each unit of energy are only used for one purpose. The single-instrument scenario in the U.S. is sometimes termed "regulatory surplus,"[2] sincethe renewable energy claimed by voluntary purchasers cannot also be counted toward a state RPS program that delivers renewable energy to customers. Jurisdictions may also choose to:

- **Exclude voluntary claims from policy-supported energy generation.** This means that certificates used for voluntary claims may not also be used for supplier quota compliance targets, for claiming a direct subsidy, or for producing an offset.
- **Require pairing of the voluntary certificate with a regulatory certificate.** This means requiring multiple certificates to be "paired" together in order to enable voluntary consumer claims from certain types of power, even if a single instrument alone may technically convey the attributes necessary for claims. This could entail suppliers being required to retire both the certificate they use for disclosure along with the certificate used for levy exemption. Voluntary allowance set-aside programs in emissions-capped power sectors also serve as a type of "instrument pairing" to fulfill goals beyond scope 2 accounting.

Companies should check with their electricity supplier or relevant policy-making bodies to ensure that voluntary certificates are claimed, paired, or retired in compliance with jurisdictional requirements. Companies should report these relationships separately (see Chapter 8).

Endnotes

1. For example, the U.S. Federal Trade Commission (FTC) has not recognized a distinction with respect to marketing or consumer claims between purchasing a bundled product or unbundled certificates and electricity separately.
2. This has also been termed "regulatory additionality," though this Guidance distinguishes between the specific use of the term "additionality" in offset accounting and the diverse types of objectives and criteria that can be applied to energy attribute certificates.

11 How Companies Can Drive Electricity Supply Changes with the Market-Based Method

This chapter describes how market-based consumer actions and claims can drive change in electricity generation supply over time, and clarifies why this guidance does not establish requirements on policy relationships or "market impact" criteria. It elaborates how companies can use their procurement power to substantively contribute to new low-carbon energy supply.

11.1 Energy attribute supply and demand

The four certificate uses described in Chapter 10, though distinct, are all generally designed to support growth of low-carbon energy by increasing demand for specific attributes. As demand grows, it will push up the price of these attributes, which in turn can stimulate supply. This theory underlies the basis of market-based accounting in scope 2, as it reflects an allocation of consumer preferences (demand) for the GHG attributes from a given supply of attributes available for those claims. Because these energy attributes are finite, a voluntary energy purchase and attribute claim prevents others from making the same claim on those MWh and requires other consumers to source from the remaining unclaimed (and typically more GHG-intensive) energy attributes. In short, if demand for low-carbon energy, which on a shared grid can only be expressed using certificates and contracts, begins to approach existing supply, the pressure or incentive to build additional supply grows, with certificates also serving as an additional revenue stream to help signal that demand. This is the same theory that underlies all other markets and is also the basis of scope 3 accounting: all individual purchases contribute to overall demand for a product or type of product, and the more purchases are made, the more this demand will drive changes in production.

The market-based method for scope 2 accounting represents an internationally applicable framework allowing suppliers and consumers to express and aggregate demand for specific types of generation. It treats market-based accounting as an allocation procedure, with the understanding that the effect of the market on grid makeup will depend on the level of demand vs. supply of renewable energy, program eligibility, degree of uptake, policy interactions, and other variable factors. It provides several pathways by which corporate procurement can drive new low-carbon energy development.

11.2 Relationship between voluntary program impact and scope 2 accounting

Consumers who voluntarily claim low-carbon attributes in scope 2 may expect their individual purchase or program participation to result in new generation that lowers system-wide GHG emissions. However, like other markets and products, individual voluntary purchases and consumer programs may or may not result in changes in low-carbon supply, depending on supply and demand dynamics. For instance, one paper[1] suggests that the voluntary REC market in the U.S., when evaluated based on the price of RECs as an incentive for project developers, has not itself driven new renewable energy projects.

Another market analysis[2] indicates that the effect of voluntary demand on new renewable energy project development is not based on the price of those RECs so much as it is on the presence of long-term contracts for RECs and energy from projects as yet unbuilt.

Given that voluntary markets for renewable energy aggregate consumer demand in order to affect supply changes, some stakeholders and voluntary programs have incorporated additional specifications or criteria to stimulate growth of low-carbon supply. For example, these criteria could include requiring voluntary consumer claims to be above or in surplus to supplier energy source quotas, or to be independent from the receipt of public funds, or for market-based scope 2 accounting rules to be aligned with offset credit additionality requirements in order to ensure that each voluntary energy purchase claimed in scope 2 represents a unit of "additional" low-carbon generation or emission reductions. This could mean requiring that an individual voluntary purchase and claim, or a voluntary certificate program, be the decisive reason new low-carbon energy projects are built.

Even in the absence of such requirements, the market-based method accurately reflects an allocation of generation attributes among consumers, which is important for reflecting individual actions and purchase decisions as well as for recognizing action to affect demand-side change. In the absence of such requirements, and if there is insufficient demand to drive overall change on the grid, stakeholders may be concerned that the market-based method results only in a reallocation of attributes between those consumers who care about claiming low-carbon energy, and those who are unaware of or uninterested in the opportunity to make these claims.

11.3 The role of "additionality"

This guidance does *not* require that contractual instruments claimed in the market-based method fulfil criteria such as offset "additionality" or prove the overall market impact of individual purchases or supplier programs result in direct and immediate changes in overall supply. This follows the same reasoning applied to purchased products in scope 3 accounting, including that:

- **The market-based method for scope 2 accounting applies to all energy generation in a defined grid**, not just "low-carbon" or renewable energy from projects supported by a specific company's financial support. It concerns the larger allocation process of all energy emissions across all end users. All energy has a direct emissions factor associated with generation, and the use of that emissions factor does not depend on whether the generation facility is existing or new, or why the generation has occurred. This guidance lays out the policy-neutral mechanics of a market-based method for scope 2 accounting, so that regardless of what causes the project to be built, the energy attribute certificate still serves as the instrument conveying claims about the attributes of the underlying energy generation for consumers purchasing that generation.
- **Offset additionality criteria are not fundamental to, or largely compatible with, the underlying rules for market-based scope 2 accounting and allocation.** In GHG accounting, additionality is a term specifically associated with offsets and project-level accounting, which is distinct from corporate GHG accounting. The claim that X metric tons of GHG emissions have been avoided at a global level can only be credible if the offset credit was the "intervention"[3] that made the project happen—and that, without that intervention, that project would not have occurred. Such a claim requires proof of cause-and-effect and is critical to support the integrity of offset credits. However, offsets represent a different claim (avoided GHG emissions

compared to a baseline scenario) than energy generation attributes (X GHG emissions from Y unit of energy generation). Scope 2 reporting is a report of usage and as such is independent of issues associated with additionality.

In short, voluntary programs have been designed in different ways across jurisdictions, and with differing relationships to other policies promoting the growth of low-carbon energy supply. Maximizing the speed and efficacy of voluntary initiatives in driving new low-carbon development is an important, complex, dynamic, and evolving process for program implementers, regulators, and participants. Jurisdictional policy makers, certification programs, supplier labels or tariffs, or consumers are best situated to identify and execute policies in pursuit of these goals. The role of this guidance is to identify the core requirements of accurate market-based accounting (Scope 2 Quality Criteria) that can apply to any jurisdiction's range of contractual instruments, while ensuring sufficient transparency in corporate reports to allow internal and external stakeholders to assess performance and how effectively corporate energy procurement achieves broader company goals—including accelerating the growth of new low-carbon energy in a short period of time.

11.4 How can companies go further?

While not a part of criteria for market-based scope 2 accounting, suppliers and companies can make energy procurement choices that can shift a company's impact from "aggregate" to more directly spurring an increase in new, low-carbon energy generation facilities in a short period of time, consistent with the ambition needed to avoid dangerous climate change. Many of these choices are summarized in box 5.1, highlighting both the policy changes and the individual consumer choices that could, in the case of the U.S., strengthen the impact of voluntary REC products.

In effect, these choices can be framed as a range of stronger and weaker market signals, with the strongest signals being for *new* projects where a company can play a *substantive role* in helping a project go through. Companies can identify procurement choices aligned with new projects (helping to decrease system-wide emissions in a shorter period of time) where the company can bring to bear its financial resources, creditworthiness, scale of consumption, technical knowledge, collaboration, or other approaches in order to help overcome traditional barriers to scaling the development of low-carbon energy. Some of these choices are elaborated below; options for reporting on these efforts are discussed in Chapter 8.

1. **Contract directly with new low-carbon energy projects**
   Long-term power purchase agreements or other contracts for energy procurement often provide the stable revenue structure needed to help attract the additional financing to complete new projects. In order to make a claim on any purchased energy, companies **shall** retain any certificates associated with the energy production because they convey GHG emission rate attributes. In markets without certificates, the contracts themselves may be written to convey these attributes, provided that the energy is not resold to other entities who would make similar claims, and provided that the Scope 2 Quality Criteria are met.

2. **Work with electricity suppliers for new projects**
   Customers of a utility typically have standing in—and thus the ability to influence—proceedings that affect the generation resources owned and/or used by the utility from which they buy power. Consumers can demand low-carbon energy tariffs or purchasing options based on or supporting new low-carbon energy projects that also meet the reporting requirements for scope 2. This model can also allow for collaboration and aggregation of multiple consumers' demand. Customers that individually or collectively represent a large percentage of a utility's load may be most influential in these measures.

3. **Establish "eligibility criteria" for corporate energy procurement, relating to specific energy generation features or policy interactions that align with new low-carbon energy projects.**
   When consumer demand is targeted at a narrower set of criteria, that demand is more likely to meet existing supply and prompt stronger market signals for new facilities meeting specific criteria. For instance, companies can establish their own instrument featuring requirements around criteria such as

technology type, facility age or facility siting, the energy generation's relationship to supplier quotas, etc.

In addition to the certificate policies established by jurisdictional policy makers, other key actors in the energy supply system can also, through their voluntary choices, impact how claimed energy in voluntary programs interacts with policy instruments, depending on the jurisdiction. These key actors include issuing bodies, voluntary certificate standards, or electricity supplier labels or tariffs, or individual companies (see Figure 5.1).

4. Incremental funding or donations

Some voluntary certificate programs or supplier labels or tariffs may structure their product so that a dedicated portion of the revenue from the program is applied as "incremental funding" for new projects identified by the program. This type of fund model, exemplified by GO[2],[4] EKOenergy,[5] and TrackmyElectricity[6] in Europe, can help directly contribute to the growth of new low-carbon energy projects. Companies providing this type of donation can document this separately.

Box 11.1 Strengthening the role of RECs as a standalone product

A 2011 publication by the U.S. National Renewable Energy Laboratory (NREL)* noted that there are several ways that purchasers, marketers, and policy makers could "strengthen the role of RECs in both compliance and voluntary markets." Here, strengthening the role of RECs translates, in practice, to an improved ability of purchasers to, in aggregate, create change in global GHG emissions. Some of these options include:

- Encourage long-term contracts for RECs. Long-term contracts can offer the security and certainty that many projects need to obtain financing.
- Host periodic solicitations for medium- to long-term contracts with smaller projects. Smaller projects need a more standardized market, and auctions also increase REC market liquidity and price transparency.
- Adopt a REC price floor. This would ensure a minimum level of support and reliable revenues for new projects.
- Increase renewable energy targets. Increased demand would lead to stronger REC prices.
- Limit eligibility of supply (e.g. by limiting the eligible project age, project location, etc.). Restricting eligible supply also tends to increase REC prices.
- Support greater price transparency. Price transparency increases confidence in current and future REC prices and could lead to a greater recognition for RECs as a potential revenue stream.
- Contribute funds for project development. Primarily an option for the voluntary market, having incremental costs funded up front would reduce the risk for projects that are above-market price.
- Take an equity position in new projects. Direct investment in itself is strong evidence of making new projects happen and has several other advantages. This approach could work for utility-scale projects or for installation of on-site distributed generation.

Source: *Holt, Sumner, and Bird (2011).

Endnotes

1. Gillenwater, Lu, and Fischlein (2014).
2. Holt, Sumner, and Bird (2011).
3. Gillenwater (2012).
4. See GO2 product by ECOHZ at: http://www.ecohz.com/products/products/ecohz-go%C2%B2.
5. See EKOenergy label and criteria at: http://www.ekoenergy.org/our-results/climate-fund/.
6. See Bergen Energi product at: http:// www.trackmyelectricity.com.

Appendices

Appendix A
Accounting for Steam, Heat, and Cooling

The scope 2 accounting concepts, methods, and examples referenced in this guidance are drawn primarily from, and apply primarily to, electricity purchasing and use. However, steam, heat, and cooling energy systems may also use contractual instruments to convey attributes and claims. For instance, companies may have contracts to receive heat or steam from providers that specify the fuel source and emission rate associated with their received energy. In addition, "green heat" certificates generated from biogenic fuel sources may be issued and traded independently from the energy flows and injection into the distribution grid.

Companies **shall** report emissions from the purchase and use of these energy products the same as for electricity: according to a location-based and market-based method, if the contractual instruments used meet the Scope 2 Quality Criteria as appropriate for gas transactions. These may be the same total where direct line transfers of energy are used.

Companies should follow Table 6.1 accounting for scope 2 with and without certificates sales to determine the treatment of direct line energy transfers (e.g., receiving heat/steam/cooling directly from another facility) or energy used from local steam/heat/cooling distribution systems. A location-based emission factor for such systems should characterize the average GHG intensity of the fuels used to generate the heat/steam/cooling, as well as the efficiency of that generation.[1]

Steam, heat, and cooling as a "waste" product.

Emissions from steam, heat, or cooling that is received via direct line as "waste" from an industrial process should still be reported based on the underlying emissions from the original generation process. Some companies may wish to account for these as zero emissions because the steam/heat/cooling would have been vented instantaneously if not used. However, accurate emissions accounting requires the actual emissions associated with the production of this waste to be reported.

Endnotes

1. An emission factor per unit energy for purchased steam or heat is equal to the emission factor per unit energy of the fuel used divided by the thermal efficiency of the generation. An emission factor for purchased cooling that is generated by an electric chiller is equal to the emission factor for the electricity consumed in the chiller divided by the chiller's coefficient of performance (COP).
2. See EPA RFS2 Regulations Final Rule (2010).

Portland General Electric/Flickr


Tambako The Jaguar (Flickr)

Appendix B
Accounting for Energy-Related Emissions Throughout the Value Chain

Accounting in a grid-connected electricity value chain

For scope 2 reporting, differences in the regulatory structure of electricity supply chains can impact overall energy procurement options and what emissions are included in a supplier-specific emission factor. They also determine which entity reports which emissions in the energy value chain, as shown below.

The mechanics of electricity distribution on any grid function largely the same way, with the four supply chain phases including: (1) material or fuel extraction and processing; (2) generation; (3) transmission and distribution; and (4) sales to, and consumption by, end users. Different regulatory structures at a regional, national, and subnational level can influence what entities are involved throughout the phases of energy generation, transmission, distribution, and service. For instance:

- In some markets, the utility owns the generation assets, transmission and distribution (also known as T&D) infrastructure, and interfaces with the consumer to deliver energy. These entities would report all generation emissions in scope 1, and no T&D losses would be reported separately since the emissions would be already reported in scope 1.
- In others, power generators may be independent entities from which the utility buys power.
- In fully deregulated or competitive markets, each activity in the supply chain could be conducted by a different company. For instance, a customer may interface with energy retailers or suppliers who only sell electricity but who do not own generation assets or T&D equipment. Because these entities purchase and sell, but do not produce or consume the energy, they do not record either scope 1 or scope 2 emissions from the energy they sell.

Figure B.1 illustrates in which scope each entity in the electricity supply system (depicted in the rows) accounts for the emissions occurring during these different phases of electricity generation, distribution, and use (depicted as phases in the column).

See Appendix A of the *Corporate Standard* for more information on these relationships.

Accounting for energy-related emissions in scope 3

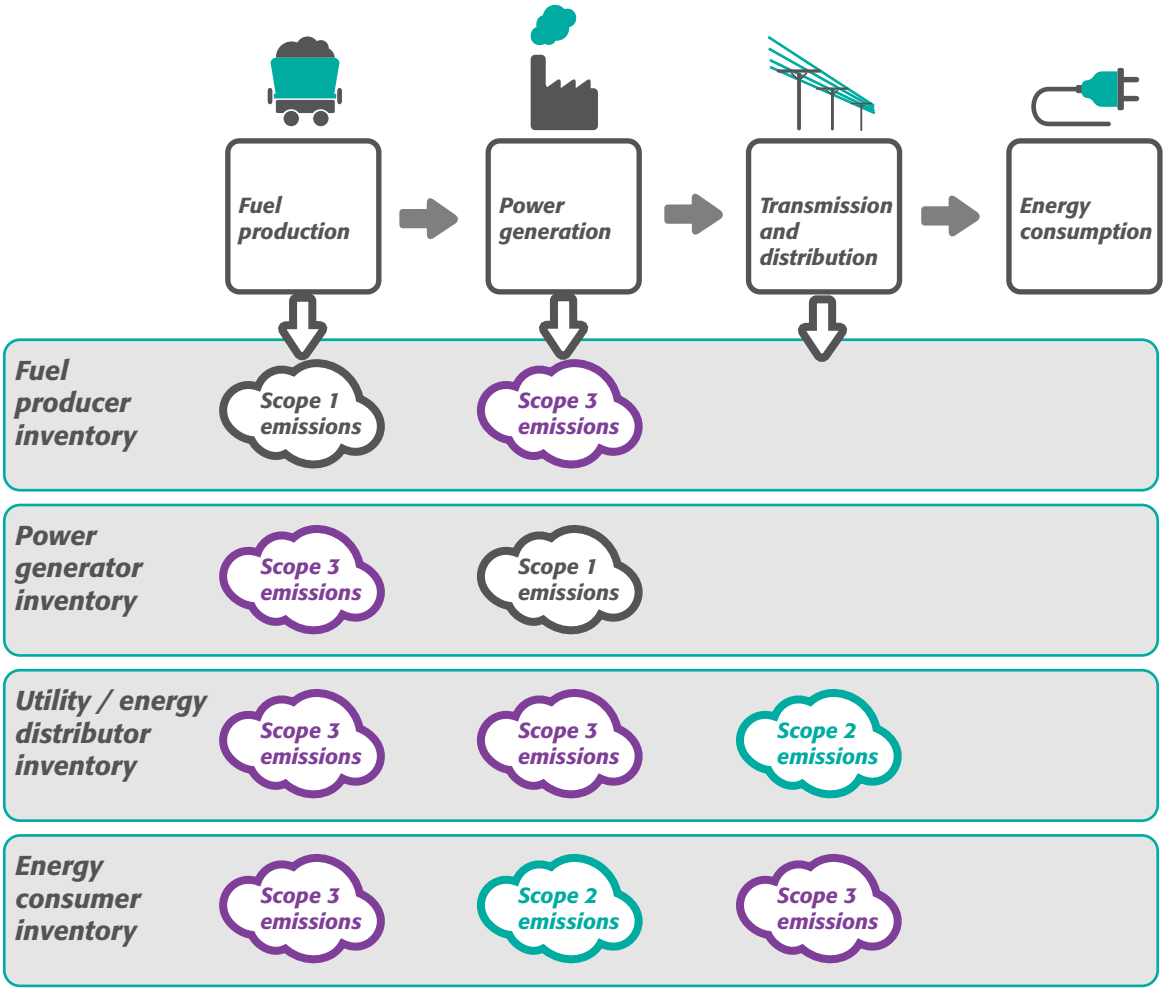
Scope 2 emissions from different value chain partners form the basis of almost all fifteen scope 3 categories. Therefore, companies obtaining energy emissions data from their suppliers to be used in scope 3 calculation should ask which scope 2 method was used to calculate the results. In turn, companies should be transparent about which scope 2 method total they share with others in their value chain.

Category 3: Upstream fuel and energy-related activities

For an energy consumer, category 3 includes upstream emissions from fuel extraction and processing prior to its combustion (known as the cradle-to-gate emissions) as well as the energy consumed (e.g. "lost") during transmission and distribution. Because of T&D losses, the actual amount of electricity generated at a power plant will be greater than the total electricity consumed by customers alone.[1] On-site generation does not incur T&D losses, as there is virtually no "line" in which transmission and energy losses occur.

The energy quantity consumed and reported in scope 2 serves as the basis for determining T&D activity data. One example of how this can be calculated is by applying the grid loss factor (ex: 7 percent grid loss rate for 100MWh consumption would mean 7MWh lost in T&D).Companies may also get information on line losses from the entity that controls the lines. Companies would need to apply an emissions factor to that line loss consumption to determine emissions associated with the loss. Companies should disclose which calculation method they are using to calculate and report T&D losses in scope 3 category 3, but do not need to "dual report" this. For instance, if companies, their suppliers, or other value chain partners have purchased energy attribute

Figure B.1 Accounting for electricity emissions throughout the supply system



certificates to cover the quantity of grid losses, they can report this calculation based on the market-based method procedures in this Guidance. If not, companies should use the location-based method emission factors.

Companies should also disclose which scope 2 results—location-based or market-based—they are using as the basis for calculating upstream fuel extraction and processing emissions. For example, a scope 3 category 3 assessment based on the results of a location-based scope 2 report could reflect the upstream profile of the mix of grid resources (natural gas, coal). A category 3 assessment based on the results of a market-based scope 2 report could reflect the upstream emissions associated with producing renewable energy.

Category 15. Investments.

Any investments in energy generation facilities or other projects not associated with a contractual arrangement reflected in scope 2 can report emissions from these investments in category 15.

For scope 3 calculation procedures, see GHG Protocol *Value Chain (Scope 3) Standard* and *Scope 3 Calculation Guidance.*

Endnotes

1. Companies are not required to account for line losses due to unauthorized connections or energy theft, which make up a significant percent of T&D losses in many jurisdictions.

Abbreviations

CH_4	Methane
CO_2	Carbon Dioxide
CO_2e	Carbon Dioxide Equivalent
GHG	Greenhouse Gas
GWP	Global Warming Potential
HFCs	Hydrofluorocarbons
IAS	International Accounting Standard
IPCC	Intergovernmental Panel on Climate Change
ISO	International Organization for Standardization
kg	Kilogram
km	Kilometer
kWh	Kilowatt-hour
LCA	Life Cycle Assessment
LFGTE	Landfill-gas-to-energy
MSW	Municipal Solid Waste
MWh	Megawatt-hour
NGO	Non-Governmental Organization
N_2O	Nitrous Oxide
PFCs	Perfluorocarbons
QA	Quality Assurance
QC	Quality Control
SF_6	Sulphur Hexafluoride
t	Metric tons
T&D	Transmission and Distribution
UNFCCC	United Nations Framework Convention on Climate Change
WBCSD	World Business Council for Sustainable Development
WRI	World Resources Institute

Glossary

Activity data	A quantitative measure of a level of activity that results in GHG emissions. Activity data is multiplied by an emissions factor to derive the GHG emissions associated with a process or an operation. Examples of activity data include kilowatt-hours of electricity used, quantity of fuel used, output of a process, hours equipment is operated, distance traveled, and floor area of a building.
Additionality	A criterion often applied to GHG project activities, stipulating that project-based GHG reductions should only be quantified if the project activity "would not have happened anyway"—i.e., that the project activity (or the same technologies or practices that it employs) would not have been implemented in its baseline scenario.
Allocation	The process of assigning responsibility for GHG emissions from a specific generating unit or other system (e.g., vehicle, business unit, corporation) among its various users of the product or service.
Allowance	A commodity issued by an emissions trading program that gives its holder the right to emit a certain quantity of GHG emissions.
Annex 1 countries	Defined in the International Climate Change Convention as those countries taking on emissions reduction obligations: Australia; Austria; Belgium; Belarus; Bulgaria; Canada; Croatia; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Iceland; Ireland; Italy; Japan; Latvia; Liechtenstein; Lithuania; Luxembourg; Monaco; Netherlands; New Zealand; Norway; Poland; Portugal; Romania; Russian Federation; Slovakia; Slovenia; Spain; Sweden; Switzerland; Ukraine; United Kingdom; and the United States.
Attribute	Descriptive or performance characteristics of a particular generation resource. For scope 2 GHG accounting, the GHG emission rate attribute of the energy generation is required to be included in a contractual instrument in order to make a claim.
Audit trail	Well-organized and transparent historical records documenting how the GHG inventory was compiled.
Avoided emissions	An assessment of emissions reduced or avoided compared to a reference case or baseline scenario.
Base year emissions	GHG emissions in the base year
Base year emissions recalculation	Recalculation of emissions in the base year to reflect a change in the structure of the company or a change in the accounting methodology used, to ensure data consistency over time.
Baseline scenario	A hypothetical description of what would have most likely occurred in the absence of any considerations about climate change mitigation. For grid-connected project activities, the baseline scenario is presumed to involve generation from the build margin, the operating margin, or a combination of the two.
Baseload	A type of power plant that operates continuously (or nearly continuously) to meet base levels of power demand that can be expected regardless of the time of day or year.

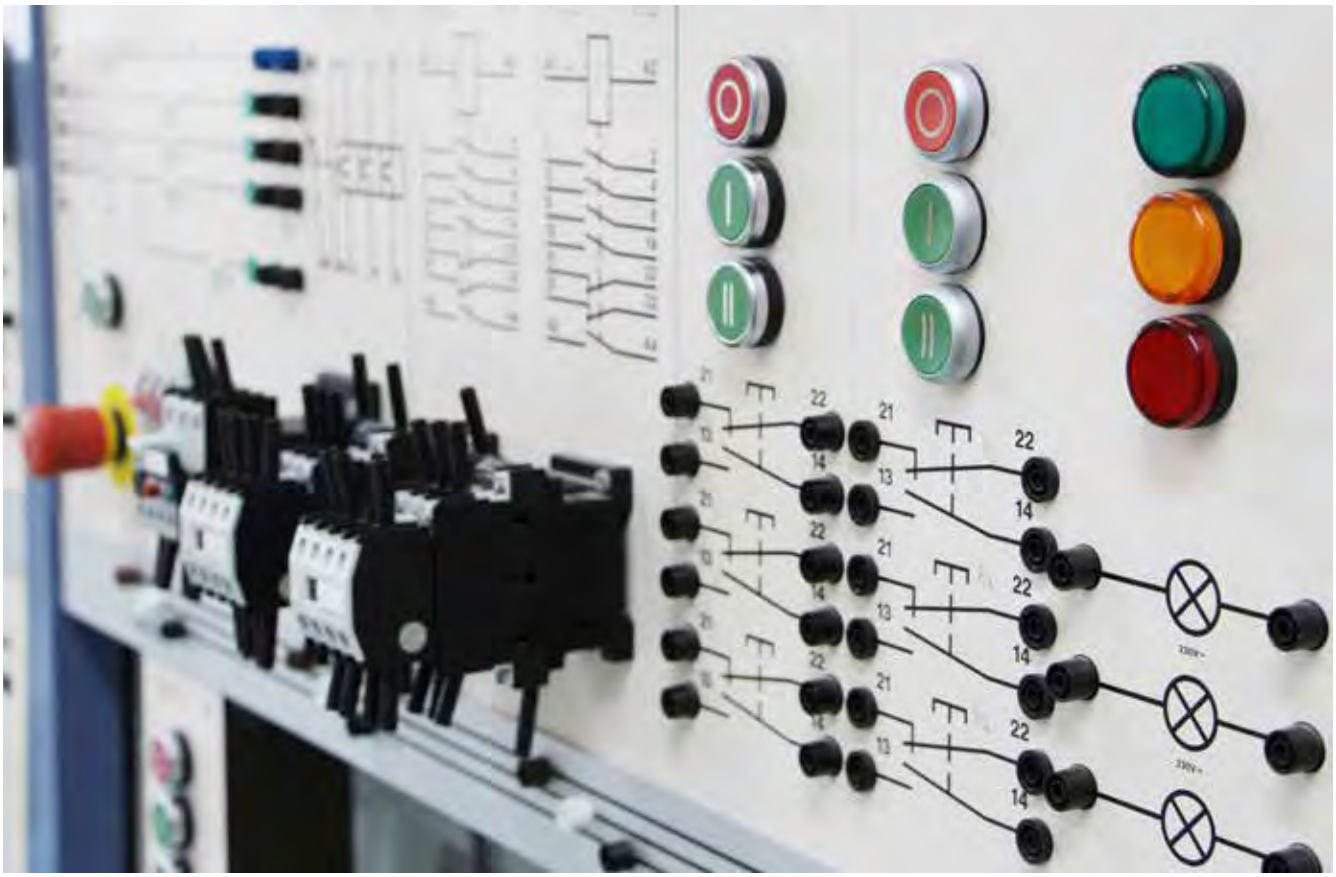
Biofuels	Fuel made from plant material, such as wood, straw, and ethanol from plant matter.
Biogenic CO_2 emissions	CO_2 emissions from the combustion or biodegradation of biomass.
Biogenic gas (biogas)	Methane that is produced from a biomass resource, such as animal waste, agricultural waste, landfill gas, municipal waste, or digester gas.
Biomass	Any material or fuel produced by biological processes of living organisms, including organic non-fossil material of biological origin (e.g., plant material), biofuels (e.g., liquid fuels produced from biomass feedstocks), biogenic gas (e.g., landfill gas), and biogenic waste (e.g., municipal solid waste from biogenic sources).
Build margin (BM)	The incremental new capacity displaced by a project activity. The build margin indicates the alternative type of power plant (or plants) that would have been built to meet demand for new capacity in the baseline scenario.
Bundled	An energy attribute certificate or other instrument that is traded with the underlying energy produced.
Cap-and-trade system	A system that sets an overall emissions limit, allocates emissions allowances to participants, and allows them to trade allowances and emission credits with each other.
Certificate	See energy attribute certificate
Certified Emission Reductions (CERs)	A unit of emission reduction generated by a CDM project. CERs are tradable commodities that can be used by Annex 1 countries to meet their commitments under the Kyoto Protocol.

Clean Development Mechanism(CDM)	A mechanism established by Article 12 of the Kyoto Protocol for project-based emission reduction activities in developing countries. The CDM is designed to meet two main objectives: to address the sustainability needs of the host country and to increase the opportunities available to Annex 1 Parties to meet their GHG reduction commitments. The CDM allows for the creation, acquisition, and transfer of CERs from climate change mitigation projects undertaken in non-Annex 1 countries.
CO_2 equivalent (CO_2e)	The universal unit of measurement to indicate the global warming potential (GWP) of each greenhouse gas, expressed in terms of the GWP of one unit of carbon dioxide. It is used to evaluate releasing (or avoiding releasing) different greenhouse gases against a common basis.
Cogeneration unit/Combined heat and power (CHP)	A facility producing both electricity and steam/heat using the same fuel supply.
Company	The term company is used in this standard as shorthand to refer to the entity developing a GHG inventory, which may include any organization or institution, either public or private, such as businesses, corporations, government agencies, nonprofit organizations, assurers and verifiers, universities, etc.
Consumer	The end consumer or final user of a product.
Contractual instrument	Any type of contract between two parties for the sale and purchase of energy bundled with attributes about the energy generation, or for unbundled attribute claims. Markets differ as to what contractual instruments are commonly available or used by companies to purchase energy or claim specific attributes about it, but they can include energy attribute certificates (RECs, GOs, etc), direct contracts (for both low-carbon, renewable or fossil fuel generation), supplier-specific emission rates, and other default emission factors representing the untracked or unclaimed energy and emissions (termed the residual mix) if a company does not have other contractual information that meet the Scope 2 Quality Criteria.
Control	The ability of a company to direct the policies of another operation. More specifically, it is defined as either operational control (the organization or one of its subsidiaries has the full authority to introduce and implement its operating policies at the operation) or financial control (the organization has the ability to direct the financial and operating policies of the operation with a view to gaining economic benefits from its activities).
Direct emissions	Emissions from sources that are owned or controlled by the reporting company.
Dispatch	The coordination of power plant operations in order to meet the load on a grid. A "dispatchable" power plant is one that can be directly called upon by grid operators to produce power, and whose output can be modulated in response to real-time fluctuations in demand for electricity.
Distributed generation	Decentralized, grid-connected, or off-grid energy facilities located in or near the place where energy is used.
Double counting	Two or more reporting companies claiming the same emissions or reductions in the same scope, or a single company reporting the same emissions in multiple scopes.

Electric utility	An electric power company whose operations may include generation, transmission, and distribution of electricity for sale. Also called electricity or energy supplier.
Eligibility criteria	Features or conditions defined by a policy or program that determine which energy generation facilities can participate in the program or whose certificates will fulfill programmatic requirements.
Emission factor	A factor that converts activity data into GHG emissions data (e.g., kg CO_2e emitted per liter of fuel consumed, kg CO_2e emitted per kilometer traveled, etc.).
Emissions	The release of greenhouse gases into the atmosphere.
Energy	Formally, energy is defined as the amount of work a physical system can do on another. In this Guidance, energy refers to electrical energy generated by power plants and delivered to energy users over a power grid.
Energy attribute certificate	A category of contractual instruments used in the energy sector to convey information about energy generation to other entities involved in the sale, distribution, consumption, or regulation of electricity. This category includes instruments that may go by several different names, including certificates, tags, credits, etc.
Energy generation facility	Any technology or device that generates energy for consumer use, including everything from utility-scale fossil fuel power plants to rooftop solar panels.
Equity investment	A share of equity interest in an entity. The most common form is common stock. Equity entitles the holder to a pro rata ownership in the company.
Equity share approach	A consolidation approach whereby a company accounts for GHG emissions from operations according to its share of equity in the operation. The equity share reflects economic interest, which is the extent of rights a company has to the risks and rewards flowing from an operation.
Feed-in tariff	A policy mechanism offering a fixed price to renewable energy producers for output.
Finance lease	A lease that transfers substantially all the risks and rewards of ownership to the lessee and is accounted for as an asset on the balance sheet of the lessee. Also known as a capital or financial lease. Leases other than capital/financial/finance leases are operating leases.
Financial control	The ability to direct the financial and operating policies of an entity with a view to gaining economic benefits from its activities.
Financial control approach	A consolidation approach whereby a company accounts for 100 percent of the GHG emissions over which it has financial control. It does not account for GHG emissions from operations in which it owns an interest but does not have financial control.
Fuel mix disclosure	A report by energy suppliers to their consumers disclosing the generation resources and associated attributes (such as GHG emissions and nuclear waste quantities) provided by that supplier. Disclosure laws often aim to enable informed customer choice in deregulated or liberalized markets.
Generation	The electrical energy produced by a power plant or project activity.

GHG program	A generic term for: (1) any voluntary or mandatory, government or nongovernment initiative, system, or program that registers, certifies, or regulates GHG emissions; or (2) any authorities responsible for developing or administering such initiatives, systems, or programs.
GHG project	A specific activity or set of activities intended to reduce GHG emissions, increase the storage of carbon, or enhance GHG removals from the atmosphere. A GHG project may be a standalone project or a component of a larger non-GHG project.
Global warming potential	A factor describing the radiative forcing impact (degree of harm to the atmosphere) of (GWP) one unit of a given GHG relative to one unit of CO_2.
Green power	A generic term for renewable energy sources and specific clean energy technologies that emit fewer GHG emissions relative to other sources of energy that supply the electric grid. Includes solar photovoltaic panels, solar thermal energy, geothermal energy, landfill gas, low-impact hydropower, and wind turbines. Resources included in a given certification, reporting, or recognition program may vary.
Green power product/ green tariff	A consumer option offered by an energy supplier distinct from the "standard" offering. These are often renewables or other low-carbon energy sources, supported by energy attribute certificates or other contracts.
Greenhouse gas inventory	A quantified list of an organization's GHG emissions and sources.
Greenhouse gases (GHG)	For the purposes of this standard, GHGs are the seven gases covered by the UNFCCC: carbon dioxide (CO_2); methane (CH_4); nitrous oxide (N_2O); hydrofluorocarbons (HFCs); perfluorocarbons (PFCs); sulphur hexafluoride (SF_6), and nitrogen triflouride (NF_3).
Grid	A system of power transmission and distribution (T&D) lines under the control of a coordinating entity or "grid operator," which transfers electrical energy generated by power plants to energy users—also called a "power grid." The boundaries of a power grid are determined by technical, economic, and regulatory-jurisdictional factors.
Grid operator	The entity responsible for implementing procedures to dispatch a set of power plants in a given area to meet demand for electricity in real time. The precise institutional nature of the grid operator will differ from system to system. The grid operator may be alternately referred to as a "system dispatcher," "control area operator," "independent system operator," or "regional transmission organization," etc.
Indirect GHG emissions	Emissions that are a consequence of the operations of the reporting company, but occur at sources owned or controlled by another company. This includes scope 2 and scope 3.
Intensity target	A target defined by reduction in the ratio of emissions and a business metric over time e.g., reduce CO_2 per metric ton of cement by 12 percent between 2000 and 2008.
Intergovernmental Panel on Climate Change (IPCC)	An international body of climate change scientists. The role of the IPCC is to assess the scientific, technical, and socioeconomic information relevant to the understanding of the risk of human-induced climate change
Inventory boundary	An imaginary line that encompasses the direct and indirect emissions included in the inventory. It results from the chosen organizational and operational boundaries.

Inventory quality	The extent to which an inventory provides a faithful, true, and fair account of an organization's GHG emissions.
Jurisdiction	A geopolitical region under a single legal and regulatory authority. For market boundaries for certificate use and trading described in this uidance, jurisdictions are typically countries but may be multi-country regions.
Levy Exemption Certificate (LEC)	Certificates used in the U.K. to provide energy suppliers with evidence needed to demonstrate to HMRC that electricity supplied to U.K. business customers is exempt from the Climate Change Levy.
Life cycle	Consecutive and interlinked stages of a product system, from raw material acquisition or generation of natural resources to end of life.
Life cycle assessment (LCA)	Compilation and evaluation of the inputs, outputs, and the potential environmental impacts of a product system throughout its life cycle.
Location-based method for scope 2 accounting	A method to quantify scope 2 GHG emissions based on average energy generation emission factors for defined locations, including local, subnational, or national boundaries.
Market-based method for scope 2 accounting	A method to quantify scope 2 GHG emissions based on GHG emissions emitted by the generators from which the reporter contractually purchases electricity bundled with instruments, or unbundled instruments on their own.



Megawatt (MW)	A unit of electrical power. One megawatt of power output is equivalent to the transfer of one million joules of electrical energy per second to the grid.
Megawatt-hour (MWh)	A unit of electrical energy equal to 3.6 billion joules; the amount of energy produced over one hour by a power plant with an output of 1 MW.
Net metering	A method for energy suppliers to credit customers for electricity that they generate on site in excess of their own electricity consumption and sell back to the grid. Any electricity purchases from the gird are deducted (or "netted") from the generation sent to the grid. The specific financial rules for net metering may vary by country and state.
Null power	Energy from which energy attribute certificates or other instruments have been separated and sold off, leaving the underlying power without specific attributes. Also called "commodity electricity."
Offset credit	Offset credits (also called offsets, or verified emission reductions) represent the reduction, removal, or avoidance of GHG emissions from a specific project that is used to compensate for GHG emissions occurring elsewhere, for example to meet a voluntary or mandatory GHG target or cap. Offsets are calculated relative to a baseline that represents a hypothetical scenario for what emissions would have been in the absence of the mitigation project that generates the offsets. To avoid double counting, the reduction giving rise to the offset must occur at sources or sinks not included in the target or cap for which it is used.
On-site generation	Electricity generated by a generation facility located where some or all of the energy is used. If the generation facility is owned and operated by the consuming company, it can be called "self-generation." On-site generation is a form of distributed energy generation.
Operating lease	A lease that does not transfer the risks and rewards of ownership to the lessee and is not recorded as an asset in the balance sheet of the lessee. Leases other than operating leases are capital/financial/finance leases.
Operating margin (OM)	The set of existing power plants whose output is reduced in response to a project activity. These power plants are the last to be switched on-line or first to be switched off-line during times when the project activity is operating, and which therefore would have provided the project activity's generation in the baseline scenario.
Operational boundaries	The boundaries that determine the direct and indirect emissions associated with operations owned or controlled by the reporting company.
Operational control	A consolidation approach whereby a company accounts for 100 percent of the GHG emissions over which it has operational control. It does not account for GHG emissions from operations in which it owns an interest but does not have operational control.
Organizational boundaries	The boundaries that determine the operations owned or controlled by the reporting company, depending on the consolidation approach taken (equity or control approach).

Power purchase agreement (PPA)	A type of contract that allows a consumer, typically large industrial or commercial entities, to form an agreement with a specific energy generating unit. The contract itself specifies the commercial terms including delivery, price, payment, etc. In many markets, these contracts secure a long-term stream of revenue for an energy project. In order for the consumer to say they are buying the electricity of the specific generator, attributes **shall** be contractually transferred to the consumer with the electricity.
Renewable energy	Energy taken from sources that are inexhaustible, e.g. wind, water, solar, geothermal energy, and biofuels.
Renewable energy certificate (REC)	A type of energy attribute certificate, used in the U.S. and Australia. In the U.S., a REC is defined as representing the property rights to the generation, environmental, social, and other non-power attributes of renewable electricity generation.
Renewable Portfolio Standards (RPS)	A state- or national-level policy that requires that a minimum amount (usually a percentage) of electricity supply provided by each supply company is to come from renewable energy.
Residual mix	The mix of energy generation resources and associated attributes such as GHG emissions in a defined geographic boundary left after contractual instruments have been claimed/retired/canceled. The residual mix can provide an emission factor for companies without contractual instruments to use in a market-based method calculation.
Retailer (also retail provider)	The entity selling energy to final consumers, representing final process in the delivery of electricity from generation to the consumer. Also known as electric service provider, competitive power supplier or power marketer depending on the national or subnational regulation.
Scope 1 emissions	Emissions from operations that are owned or controlled by the reporting company.
Scope 2 emissions	Indirect emissions from the generation of purchased or acquired electricity, steam, heat or cooling consumed by the reporting company.
Scope 2 Quality Criteria	A set of requirements that contractual instruments **shall** meet in order to be used in the market-based method for scope 2 accounting.
Scope 3 emissions	All indirect emissions (not included in scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions.
Scope 3 category	One of the 15 types of scope 3 emissions.
Self-generation	On-site generation owned or operated by the entity that consumes the power.
Significance threshold	A qualitative or quantitative criterion used to define a significant structural change. It is the responsibility of the company, GHG program to which the company is reporting, or the company's verifier to determine the "significance threshold" for considering base-year emissions recalculation. In most cases the "significance threshold" depends on the use of the information, the characteristics of the company, and the features of structural changes.
Supplier	An entity that provides or sells products to another entity (i.e., a customer). For this guidance, refers to electricity supplier.

Supplier quota	Regulations requiring electricity suppliers to source a percentage of their supply from specified energy sources, e.g. Renewable Portfolio Standards in U.S. states. Regulations generally defined eligibility criteria that energy facilities must fulfill in order to be used to demonstrate compliance.
Supplier-specific emission factor	An emission rate provided by an electricity supplier to its customers, reflecting the emissions associated with the energy it provides. Suppliers offering differentiated products (e.g. a renewable energy product) should provide specific emission rates for each product and ensure they are not double counted with standard power offers.
Supply chain	A network of organizations (e.g., manufacturers, wholesalers, distributors and retailers) involved in the production, delivery, and sale of a product to the consumer.
Tracking system	A database or registry that helps execute energy attribute certificate issuance and cancellation/retirement/claims between account holders in the system. It can track information on certificates or generation occurring throughout the defined system. They are typically tied to geopolitical or grid operational boundaries.
Unbundled	An energy attribute certificate or other instrument that is separate, and may be traded separately, from the underlying energy produced.
Utility	See electric utility.
Vintage	The date that electric generation occurs and/or was measured, from which an energy attribute certificate is issued. This should be distinguished from an energy facility's age (e.g. date that a generating unit commenced operation).

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GREENHOUSE GAS PROTOCOL

The Greenhouse Gas Protocol provides the foundation for sustainable climate strategies. GHG Protocol standards are the most widely used accounting tools to measure, manage and report greenhouse gas emissions.

GREENHOUSE GAS PROTOCOL

Corporate Value Chain (Scope 3) Accounting and Reporting Standard

Supplement to the GHG Protocol Corporate Accounting and Reporting Standard

WORLD RESOURCES INSTITUTE

wbcsd

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01 Introduction

Emissions of the anthropogenic greenhouse gases (GHG) that drive climate change and its impacts around the world are growing. According to climate scientists, global carbon dioxide emissions must be cut by as much as 85 percent below 2000 levels by 2050 to limit global mean temperature increase to 2 degrees Celsius above pre-industrial levels.[1] Temperature rise above this level will produce increasingly unpredictable and dangerous impacts for people and ecosystems. As a result, the need to accelerate efforts to reduce anthropogenic GHG emissions is increasingly urgent. Existing government policies will not sufficiently solve the problem. Leadership and innovation from business is vital to making progress.

Corporate action in this arena also makes good business sense. By addressing GHG emissions, companies can identify opportunities to bolster their bottom line, reduce risk, and discover competitive advantages. As impacts from climate change become more frequent and prominent, governments are expected to set new policies and provide additional market-based incentives to drive significant reductions in emissions. These new policy and market drivers will direct economic growth on a low-carbon trajectory. Businesses need to start planning for this transition now as they make decisions that will lock in their investments for years to come.

An effective corporate climate change strategy requires a detailed understanding of a company's GHG impact. A corporate GHG inventory is the tool to provide such an understanding. It allows companies to take into account their emissions-related risks and opportunities and focus company efforts on their greatest GHG impacts. Until recently, companies have focused their attention on emissions from their own operations. But increasingly companies understand the need to also account for GHG emissions along their value chains and product portfolios to comprehensively manage GHG-related risks and opportunities.

Through the development of the *GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard,* the GHG Protocol has responded to the demand for an internationally accepted method to enable GHG management of companies' value chains. Following the release of this standard, the GHG Protocol and its partners will proactively work with industry groups and governments to promote its widespread use – along with the entire suite of GHG Protocol standards and tools – to enable more effective GHG management worldwide.

1.1 The Greenhouse Gas Protocol

The Greenhouse Gas Protocol (GHG Protocol) is a multi-stakeholder partnership of businesses, non-governmental organizations (NGOs), governments, and others convened by the World Resources Institute (WRI) and the World Business Council for Sustainable Development (WBCSD). Launched in 1998, the mission of the GHG Protocol is to develop internationally accepted greenhouse gas (GHG) accounting and reporting standards and tools, and to promote their adoption in order to achieve a low emissions economy worldwide.

The GHG Protocol has produced the following separate but complementary standards, protocols, and guidelines:

- ***GHG Protocol Corporate Accounting and Reporting Standard* (2004):** A standardized methodology for companies to quantify and report their corporate GHG emissions. Also referred to as the *Corporate Standard*.
- ***GHG Protocol Product Life Cycle Accounting and Reporting Standard* (2011):** A standardized methodology to quantify and report GHG emissions associated with individual products throughout their life cycle. Also referred to as the *Product Standard*.
- ***GHG Protocol for Project Accounting* (2005):** A guide for quantifying reductions from GHG-mitigation projects. Also referred to as the *Project Protocol*.
- ***GHG Protocol for the U.S. Public Sector* (2010):** A step-by-step approach to measuring and reporting emissions from public sector organizations, complementary to the *Corporate Standard*.
- ***GHG Protocol Guidelines for Quantifying GHG Reductions from Grid-Connected Electricity Projects* (2007):** A guide for quantifying reductions in emissions that either generate or reduce the consumption of electricity transmitted over power grids, to be used in conjunction with the *Project Protocol*.
- ***GHG Protocol Land Use, Land-Use Change, and Forestry Guidance for GHG Project Accounting* (2006):** A guide to quantify and report reductions from land use, land-use change, and forestry, to be used in conjunction with the *Project Protocol*.
- ***Measuring to Manage: A Guide to Designing GHG Accounting and Reporting Programs* (2007):** A guide for program developers on designing and implementing effective GHG programs based on accepted standards and methodologies.

1.2 Purpose of this standard

The *GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard* (also referred to as the ***Scope 3 Standard***) provides requirements and guidance for companies and other organizations to prepare and publicly report a GHG emissions inventory that includes indirect emissions resulting from value chain activities (i.e., scope 3 emissions). The primary goal of this standard is to provide a standardized step-by-step approach to help companies understand their full value chain emissions impact in order to focus company efforts on the greatest GHG reduction opportunities, leading to more sustainable decisions about companies' activities and the products they buy, sell, and produce.

The standard was developed with the following objectives in mind:

- To help companies prepare a true and fair scope 3 GHG inventory in a cost-effective manner, through the use of standardized approaches and principles
- To help companies develop effective strategies for managing and reducing their scope 3 emissions through an understanding of value chain emissions and associated risks and opportunities
- To support consistent and transparent public reporting of corporate value chain emissions according to a standardized set of reporting requirements

Ultimately, this is more than a technical accounting standard. It is intended to be tailored to business realities and to serve multiple business objectives. Companies may find most value in implementing the standard using a phased approach, with a focus on improving the quality of the GHG inventory over time.

1.3 Relationship to the GHG Protocol Corporate Standard

The *GHG Protocol Scope 3 Standard* is a supplement to the *GHG Protocol Corporate Accounting and Reporting Standard, Revised Edition* (2004) and should be used in conjunction with it. The *Corporate Standard* – first launched in 2001 and revised in 2004 – has been widely adopted by businesses, NGOs, and governments around the world as the international standard for developing and reporting a company-wide GHG inventory.

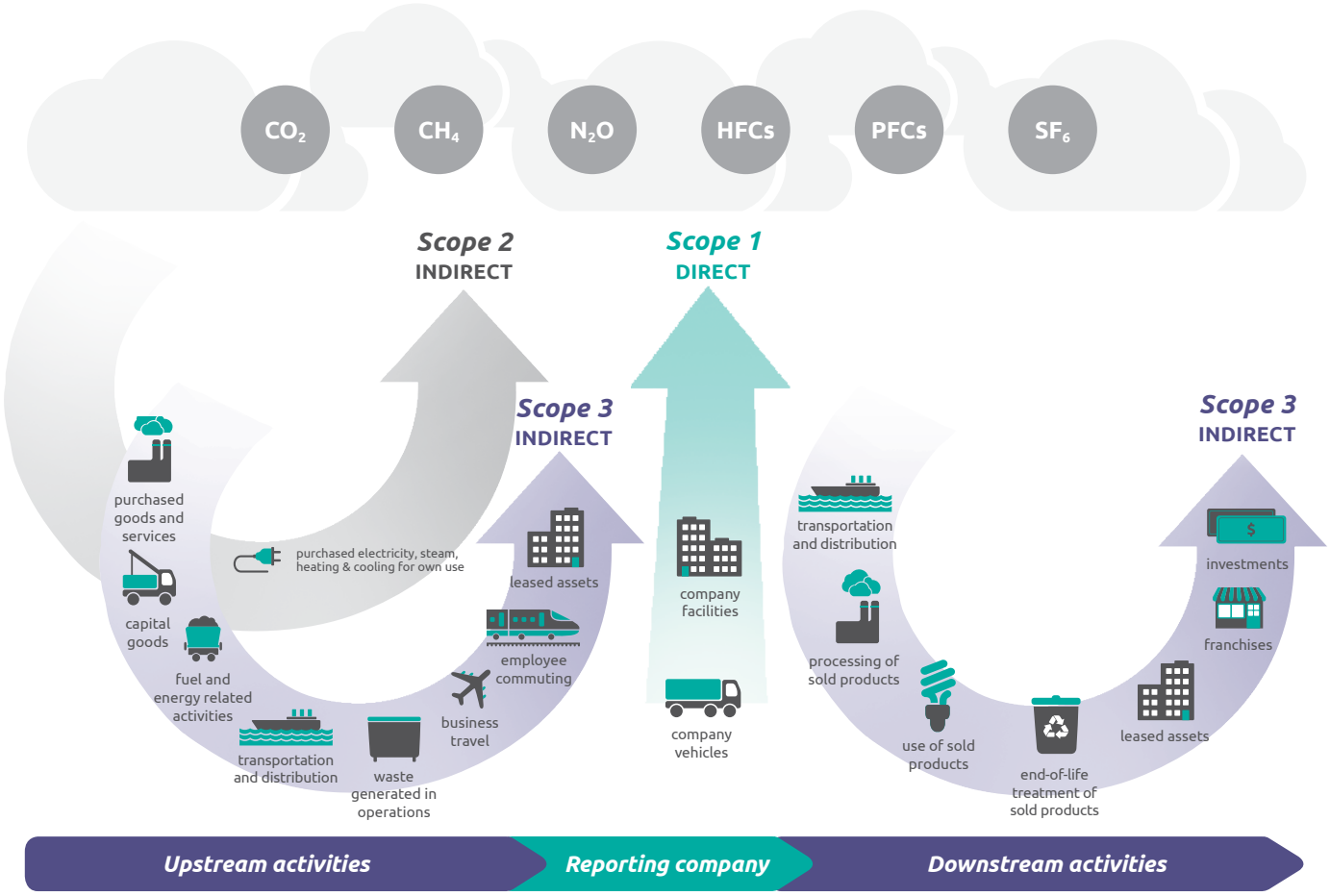
The *Scope 3 Standard* complements and builds upon the *Corporate Standard* to promote additional completeness and consistency in the way companies account for and report on indirect emissions from value chain activities.

The *Corporate Standard* classifies a company's direct and indirect GHG emissions into three "scopes," and requires that companies account for and report all scope 1 emissions (i.e., direct emissions from owned or controlled sources) and all scope 2 emissions (i.e., indirect emissions from the generation of purchased energy consumed by the reporting company). The *Corporate Standard* gives companies flexibility in whether and how to account for scope 3 emissions (i.e., all other indirect emissions that occur in a company's value chain). Figure 1.1 provides an overview of the three GHG Protocol scopes and categories of scope 3 emissions.

Since the *Corporate Standard* was revised in 2004, business capabilities and needs in the field of GHG accounting and reporting have grown significantly. Corporate leaders are becoming more adept at calculating scope 1 and scope 2 emissions, as required by the *Corporate Standard*. As GHG accounting expertise has grown, so has the realization that significant emissions – and associated risks and opportunities – result from value chain activities not captured by scope 1 and scope 2 inventories.

Scope 3 emissions can represent the largest source of emissions for companies and present the most significant opportunities to influence GHG reductions and achieve a variety of GHG-related business objectives (see chapter 2). Developing a full corporate GHG emissions inventory – incorporating scope 1, scope 2, and scope 3 emissions – enables companies to understand their full emissions

Figure [1.1] Overview of GHG Protocol scopes and emissions across the value chain



impact across the value chain and focus efforts where they can have the greatest impact.

Companies reporting their corporate GHG emissions have two reporting options (see table 1.1).

Under the *Corporate Standard,* companies are required to report all scope 1 and scope 2 emissions, while reporting scope 3 emissions is optional. The *Scope 3 Standard* is designed to create further consistency in scope 3 inventories through additional requirements and guidance for scope 3 accounting and reporting.

Companies should make and apply decisions consistently across both standards. For example, the selection of a consolidation approach (equity share, operational control or financial control) should be applied consistently across scope 1, scope 2, and scope 3. For more information, see section 5.2.

1.4 Who should use this standard?

This standard is intended for companies of all sizes and in all economic sectors. It can also be applied to other types of organizations and institutions, both public and private, such as government agencies, non-profit organizations, assurers and verifiers, and universities. Policymakers and designers of GHG reporting or reduction programs can use relevant parts of this standard to develop accounting and reporting requirements. Throughout this standard, the term "company" is used as shorthand to refer to the entity developing a scope 3 inventory.

1.5 Scope of the standard

This standard is designed to account for the emissions generated from corporate value chain activities during the reporting period (usually a period of one year), and covers the six main greenhouse gases: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF_6). This standard does not address the quantification of avoided emissions or GHG reductions from actions taken to compensate for or offset emissions. These types of reductions are addressed by the *GHG Protocol for Project Accounting.*

Use of this standard is intended to enable comparisons of a company's GHG emissions over time. It is not designed to support comparisons between companies based on their scope 3 emissions. Differences in reported emissions may be a result of differences in inventory methodology or differences in company size or structure. Additional measures are necessary to enable valid comparisons across companies. Such measures include consistency in methodology and data used to calculate the inventory, and reporting of additional information such as intensity ratios or performance metrics. Additional consistency can be provided through GHG reporting programs or sector-specific guidance (see section 1.9).

Table [1.1] Corporate-level GHG Protocol reporting options

Reporting Option	*Scope 1*	*Scope 2*	*Scope 3*
Report in conformance with the *GHG Protocol Corporate Standard*	**Required**	**Required**	**Optional**: Companies may report any scope 3 emissions the company chooses
Report in conformance with the *GHG Protocol Corporate Standard* and the *GHG Protocol Scope 3 Standard*	**Required**	**Required**	**Required**: Companies shall report scope 3 emissions following the requirements of the *Scope 3 Standard*

1.6 How was this standard developed?

The GHG Protocol follows a broad and inclusive multi-stakeholder process to develop greenhouse gas accounting and reporting standards with participation from businesses, government agencies, NGOs, and academic institutions from around the world.

In 2008, WRI and WBCSD launched a three-year process to develop the *GHG Protocol Scope 3 Standard*. A 25-member Steering Committee of experts provided strategic direction throughout the process. The first draft of the *Scope 3 Standard* was developed in 2009 by Technical Working Groups consisting of 96 members (representing diverse industries, government agencies, academic institutions, and non-profit organizations worldwide). In 2010, 34 companies from a variety of industry sectors road-tested the first draft and provided feedback on its practicality and usability, which informed a second draft. Members of a Stakeholder Advisory Group (consisting of more than 1,600 participants) provided feedback on each draft of the standard.

1.7 Relationship to the GHG Protocol Product Standard

The *GHG Protocol Scope 3 Standard* and *GHG Protocol Product Standard* both take a value chain or life cycle approach to GHG accounting and were developed simultaneously. The *Scope 3 Standard* accounts for value chain emissions at the corporate level, while the *Product Standard* accounts for life cycle emissions at the individual product level. Together with the *Corporate Standard,* the three standards provide a comprehensive approach to value chain GHG measurement and management.

The reporting company's business goals should drive the use of a particular GHG Protocol accounting standard. The *Scope 3 Standard* enables a company to identify the greatest GHG reduction opportunities across the entire corporate value chain, while the *Product Standard* enables a company to target individual products with the greatest potential for reductions. The *Scope 3 Standard* helps a company identify GHG reduction opportunities, track performance, and engage suppliers at a corporate level,

while the *Product Standard* helps a company meet the same objectives at a product level.

Common data is used to develop scope 3 inventories and product inventories, including data collected from suppliers and other companies in the value chain. Since there can be overlap in data collection, companies may find added business value and efficiencies in developing scope 3 and product inventories in parallel.

While each standard can be implemented independently, both standards are mutually supportive. Integrated use might include:

- Applying the *Scope 3 Standard,* using the results to identify products with the most significant emissions, then using the *Product Standard* to identify mitigation opportunities in the selected products' life cycles
- Using product-level GHG data based on the *Product Standard* as a source of data to calculate scope 3 emissions associated with selected product types
- Applying either the *Scope 3 Standard* or the *Product Standard* and using the results to inform GHG-reduction strategies that reduce both product and corporate level (scope 3) emissions

The sum of the life cycle emissions of each of a company's products, combined with additional scope 3 categories (e.g., employee commuting, business travel, and investments), should approximate the company's total corporate GHG emissions (i.e., scope 1 + scope 2 + scope 3). In practice, companies are not expected or required to calculate life cycle inventories for individual products when calculating scope 3 emissions.

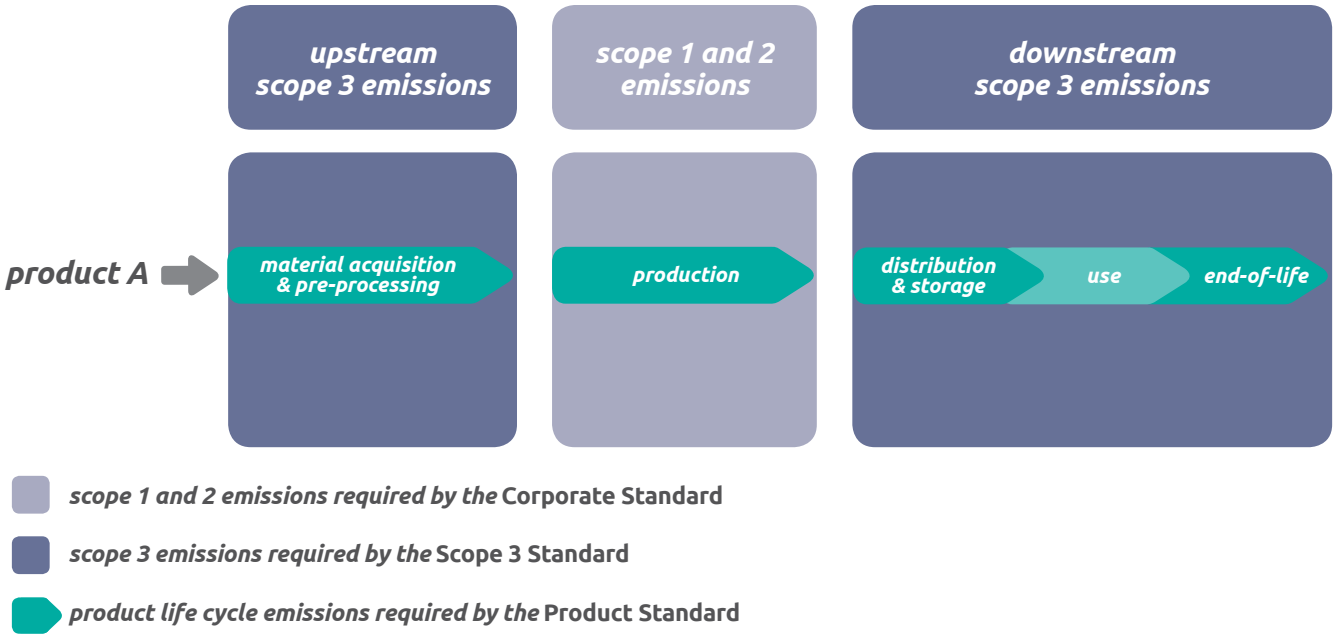
Figure 1.2 illustrates the relationship between the *Corporate Standard, Product Standard,* and *Scope 3 Standard.* In this simplified example, a company manufactures one product (Product A). The example shows how scopes of emissions at the corporate level correspond to life cycle stages[2] at the product level.

1.8 GHG calculation tools and guidance

To help companies implement the *Scope 3 Standard,* the GHG Protocol website provides a variety of useful GHG calculation tools and guidance, including:

- *Guidance for Calculating Scope 3 Emissions,* a companion document to the *Scope 3 Standard* that provides

Figure [1.2] Relationship between a scope 3 GHG inventory and a product GHG inventory (for a company manufacturing Product A)



detailed guidance for calculating scope 3 emissions, including calculation methods, data sources, and examples of calculating scope 3 emissions
- A list of available data sources for calculating scope 3 emissions, including over 80 emission factor databases covering a variety of sectors and geographic regions
- Several cross-sector and sector-specific calculation tools, which provide step-by-step guidance, together with electronic worksheets to help companies calculate GHG emissions from specific sources or sectors

All GHG calculation tools and guidance are available at www.ghgprotocol.org.

1.9 Sector guidance

The development of sector-specific implementation guidance and tools can drive more consistent corporate GHG measurement, reporting, and performance tracking practices for a particular sector. Helpful sector-level information could include guidance on interpreting the standard for a specific sector, guidance and tools for calculating emissions from sector-specific activities, recommended performance metrics, specific guidance for identifying the largest sector emissions sources, and suggested data sources and emissions factors.

Sectors should develop guidance through an inclusive multi-stakeholder process to ensure broad acceptance and facilitate increased consistency and credibility.

Endnotes

1 IPCC, Summary for Policymakers (Table SPM.5: Characteristics of post-TAR stabilization scenarios), in Climate Change 2007: Mitigation. Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, ed. B. Metz, O.R. Davidson, P.R. Bosch, R. Dave, L.A. Meyer (Cambridge, United Kingdom and New York, NY, USA: Cambridge University Press, 2007).

2 A life cycle stage is one of the interconnected steps in a product's life cycle.

02 Business Goals

Developing a scope 3 inventory strengthens companies' understanding of their value chain GHG emissions as a step towards effectively managing emissions-related risks and opportunities and reducing value chain GHG emissions.

Business goals of a scope 3 inventory

Before accounting for scope 3 emissions, companies should consider which business goal or goals they intend to achieve. See table 2.1 for a list of goals frequently cited by businesses as reasons for developing a scope 3 inventory.

Identify and understand risks and opportunities associated with value chain emissions

GHG emissions from corporate activities are increasingly becoming a mainstream management issue for businesses. Potential liabilities from GHG exposure arise from unstable resource and energy costs, future resource scarcity, environmental regulations, changing consumer preferences, scrutiny from investors and shareholders, as well as reputational risk from other stakeholders. (See table 2.2 for examples of risks related to scope 3 GHG emissions.) By developing a scope 3 inventory, companies can understand the overall emissions profile of their upstream and downstream activities. This information provides companies with an understanding of where potential emissions and associated risks and opportunities lie in the value chain, as well as the relative risks and opportunities of scope 3 emissions compared to companies' direct emissions.

For some companies, developing a scope 3 inventory may improve planning for potential future carbon regulations. For example, energy or emissions taxes or regulations in a company's supply chain may significantly increase the cost of goods or components purchased by a company. Understanding scope 3 emissions helps companies plan for potential regulations and can guide corporate procurement decisions and product design.

Additionally, companies may find that there is a reputational risk if they do not understand the impacts of their broader corporate value chain activities. By undertaking a scope 3 inventory and understanding where their emissions are, companies can credibly communicate to their stakeholders the potential impacts of these emissions and the actions planned or taken to reduce the associated risks.

Companies can also use the results of the scope 3 inventory to identify new market opportunities for producing and selling goods and services with lower GHG

Table [2.1] Business goals served by a scope 3 GHG inventory

Business goal	*Description*
Identify and understand risks and opportunities associated with value chain emissions	• Identify GHG-related risks in the value chain • Identify new market opportunities • Inform investment and procurement decisions
Identify GHG reduction opportunities, set reduction targets, and track performance	• Identify GHG "hot spots" and prioritize reduction efforts across the value chain • Set scope 3 GHG reduction targets • Quantify and report GHG performance over time
Engage value chain partners in GHG management	• Partner with suppliers, customers, and other companies in the value chain to achieve GHG reductions • Expand GHG accountability, transparency, and management in the supply chain • Enable greater transparency on companies' efforts to engage suppliers • Reduce energy use, costs, and risks in the supply chain and avoid future costs related to energy and emissions • Reduce costs through improved supply chain efficiency and reduction of material, resource, and energy use
Enhance stakeholder information and corporate reputation through public reporting	• Improve corporate reputation and accountability through public disclosure • Meet needs of stakeholders (e.g., investors, customers, civil society, governments), enhance stakeholder reputation, and improve stakeholder relationships through public disclosure of GHG emissions, progress toward GHG targets, and demonstration of environmental stewardship • Participate in government- and NGO-led GHG reporting and management programs to disclose GHG-related information

emissions. As more companies in the value chain measure and manage GHG emissions, demand will grow for new products that reduce emissions throughout the value chain. See table 2.2 for examples of opportunities related to scope 3 emissions.

Identify GHG reduction opportunities, set reduction targets, and track performance

The scope 3 inventory provides a quantitative tool for companies to identify and prioritize emissions-reduction opportunities along their value chain. Scope 3 inventories provide detailed information on the relative size and scale of emission-generating activities within and across the various scope 3 categories. This information may be used to identify the largest emission sources (i.e., "hot spots") in the value chain and focus efforts on the most effective emission-reduction opportunities, resulting in cost savings for companies.

For example, a company whose largest source of value chain emissions is contracted logistics may choose to optimize these operations through changes to product packaging to increase the volume per shipment, or by increasing the number of low-carbon logistics providers. Additionally, companies may utilize this information to change their procurement practices or improve product design or product efficiency, resulting in reduced energy use.

Table [2.2] **Examples of GHG-related risks and opportunities related to scope 3 emissions**

Type of risk	*Examples*
Regulatory	GHG emissions-reduction laws or regulations introduced or pending in regions where the company, its suppliers, or its customers operate
Supply chain costs and reliability	Suppliers passing higher energy- or emissions-related costs to customers; supply chain business interruption risk
Product and technology	Decreased demand for products with relatively high GHG emissions; increased demand for competitors' products with lower emissions
Litigation	GHG-related lawsuits directed at the company or an entity in the value chain
Reputation	Consumer backlash, stakeholder backlash, or negative media coverage about a company, its activities, or entities in the value chain based on GHG management practices, emissions in the value chain, etc.

Type of opportunity	*Examples*
Efficiency and cost savings	A reduction in GHG emissions often corresponds to decreased costs and an increase in companies' operational efficiency.
Drive innovation	A comprehensive approach to GHG management provides new incentives for innovation in supply chain management and product design.
Increase sales and customer loyalty	Low-emissions goods and services are increasingly more valuable to consumers, and demand will continue to grow for new products that demonstrably reduce emissions throughout the value chain.
Improve stakeholder relations	Improve stakeholder relationships through proactive disclosure and demonstration of environmental stewardship. Examples include demonstrating fiduciary responsibility to shareholders, informing regulators, building trust in the community, improving relationships with customers and suppliers, and increasing employee morale.
Company differentiation	External parties (e.g. customers, investors, regulators, shareholders, and others) are increasingly interested in documented emissions reductions. A scope 3 inventory is a best practice that can differentiate companies in an increasingly environmentally-conscious marketplace.

Conducting a GHG inventory according to a consistent framework is also a prerequisite for setting credible public GHG reduction targets. External stakeholders, including customers, investors, shareholders, and others, are increasingly interested in companies' documented emissions reductions. Therefore, identifying reduction opportunities, setting goals, and reporting on progress to stakeholders may help differentiate a company in an increasingly environmentally-conscious marketplace.

Engage value chain partners in GHG management

Developing a scope 3 inventory encourages the quantification and reporting of emissions from various partners across the value chain. For many companies, a primary goal of developing a scope 3 inventory is to encourage supplier GHG measurement and reduction, and to report on supplier performance. For example, a company may engage with their major suppliers to obtain emissions information on the products it purchases from them, as well as information on suppliers' GHG management plans. Successful engagement with suppliers often requires a company to work closely with its supply chain partners to build a common understanding of emissions-related information and the opportunities and benefits of achieving GHG reductions. Reporting on the progress of a company's engagement with its supply chain can be useful information for stakeholders external and internal to the reporting company.

Companies may also wish to engage with their customers by providing information on product use and disposal. For example, a company may want to work with stakeholders such as retailers, marketers or advertisers to convey information to customers on less energy intensive products, how to use a product more efficiently, or to encourage recycling. A scope 3 inventory enables companies to identify their downstream hot spots so that they can credibly engage with customers to reduce their value chain emissions.

By developing a scope 3 inventory, companies can identify where the largest energy, material and resource use is within the supply chain. This knowledge can inform cost savings through reducing material, energy and resource

National Grid: Business objectives for scope 3 accounting

National Grid is an international electricity and gas company and one of the largest investor-owned energy companies in the world. At the heart of National Grid's corporate vision is "safeguarding our environment for future generations." One of National Grid's strategic objectives is to ensure that National Grid is a sustainable low carbon business. National Grid recognized that in order to deliver a fully effective greenhouse gas reduction plan, all emissions need to be taken into account. Therefore, National Grid developed a strategy for quantifying and reducing its scope 3 emissions, with several specific objectives in mind:

To deliver a fully effective greenhouse gas reduction plan, all emissions need to be taken into account

- Understanding the risks and opportunities associated with emissions across the entire value chain
- Considering the environmental impact in investment and other business decisions through internalization of carbon costs and assessment of benefits
- Becoming agents for change by working with customers and supply chain partners to drive GHG reductions and providing transparency and accountability within the value chain
- Working with governments and regulators to encourage allowable investments through carbon-trading mechanisms and clear legislation

To help achieve these objectives, National Grid used the *GHG Protocol Scope 3 Standard* to inventory its scope 3 emissions. After developing the full scope 3 inventory, a clear picture appeared with emissions from the use of sold products emerging as by far the biggest source of scope 3 emissions. This valuable insight helped National Grid understand the full impact of its business operations and provided more focused direction for future strategies and targets.

use, improving overall efficiency of companies' supply chains, reducing regulatory risks, and strengthening supplier and customer relationships.

Enhance stakeholder information and corporate reputation through public reporting

As concerns over climate change grow, NGOs, investors, governments and other stakeholders are increasingly calling for greater disclosure of corporate activities and GHG information. They are interested in the actions companies are taking and in how companies are positioned relative to their competitors. For many companies, responding to this stakeholder interest by disclosing information on corporate emissions and reduction activities is a business objective of developing a scope 3 inventory.

Companies can improve stakeholder relationships through proactive disclosure and demonstration of environmental stewardship. Examples include demonstrating fiduciary responsibility to shareholders, informing regulators, building trust in the community, improving relationships with customers and suppliers, and increasing employee morale.

Companies have a variety of avenues for communicating with stakeholders. Companies can disclose information through stand-alone corporate sustainability reports, mandatory government registries, industry groups, or through stakeholder-led reporting programs. Mandatory and voluntary reporting programs often offer companies assistance in setting GHG targets, provide industry-specific benchmarking information, and provide information on corporate activities to a specific stakeholder audience. An example of a global voluntary reporting program is the Carbon Disclosure Project, which requests corporate GHG performance information on behalf of a community of investors. Companies may also find that public reporting through a voluntary GHG reporting program can strengthen their standing with customers and differentiate them from their competitors.

Abengoa: Business objectives of scope 3 supplier engagement

For Abengoa - a global technology and engineering company operating in over 70 countries - engaging with its suppliers to build its greenhouse gas inventory is a key component of the company's overall sustainability goals. Abengoa believes that working closely with its suppliers is the best way to encourage broader GHG measurement and management and to calculate its scope 3 GHG inventory.

Abengoa utilizes a number of methods that support the completion of their scope 3 inventory. All suppliers must agree to introduce a GHG reporting system for the products and services purchased by Abengoa. Abengoa then provides detailed guidelines for suppliers to determine emissions, based on the GHG Protocol standards, and includes calculation guidance, databases and guidance on emissions factors. The guidance also includes data collection templates for suppliers to send to their suppliers further upstream, which introduces GHG emissions management throughout the overall Abengoa value chain. Abengoa also requires that supplier emissions data are verified by a third party, or are accompanied by the data used for calculating the GHG inventory. Finally, the company requires that all suppliers adhere to its Social Responsibility Code of Conduct, to ensure suppliers' senior management is committed to Abengoa's sustainability practices and objectives.

Abengoa believes that working closely with its suppliers is the best way to encourage broader GHG measurement and management

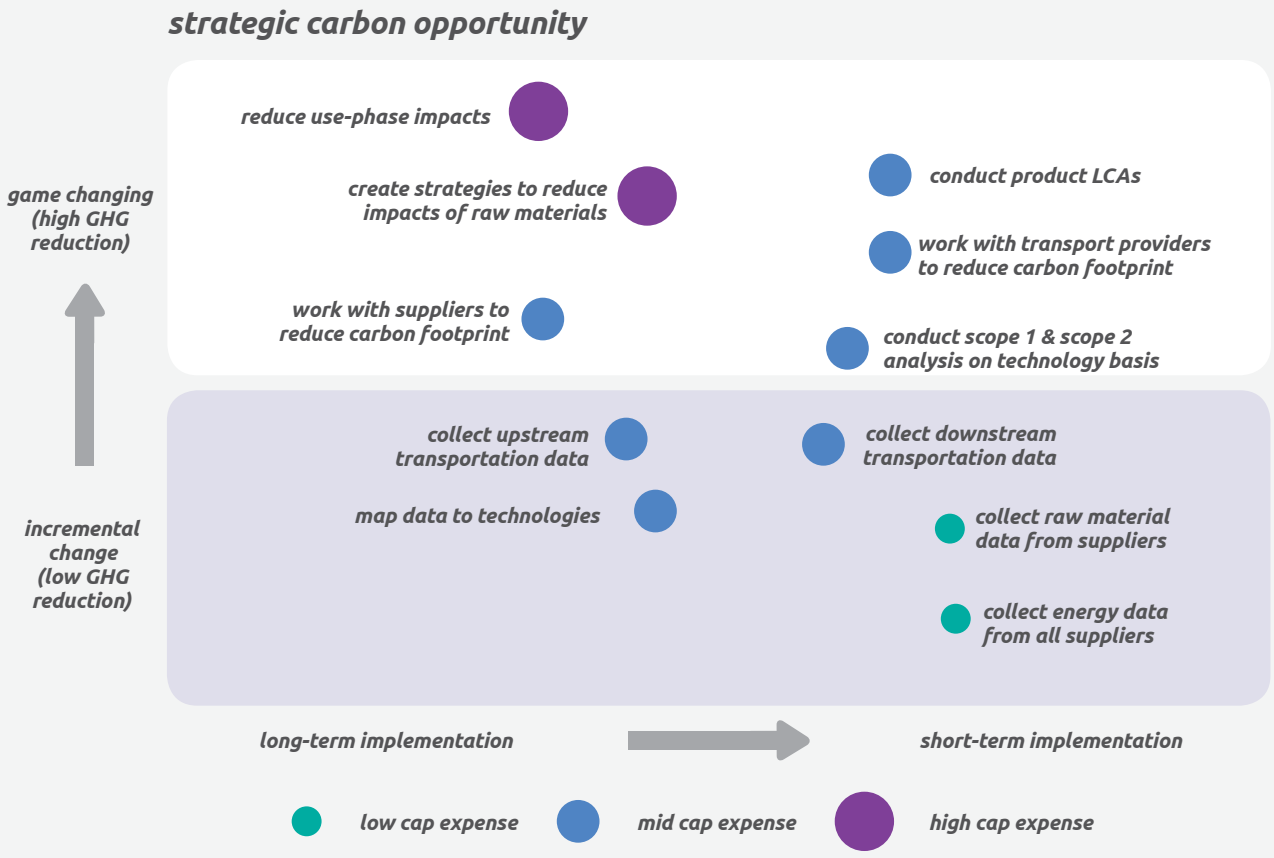
SC Johnson: Assessing scope 3 reduction opportunities

Making life better for people and the planet is a core mission at SC Johnson. The company completed a scope 3 inventory to better understand its scope 3 impacts and to provide input for the development of sustainability objectives in support of its core commitment to environmental leadership. Specific objectives of this effort were to:

- Gain a full understanding of the company's global carbon footprint to reveal potential hot spots and opportunities
- Provide a common carbon "currency" throughout the value chain to identify the highest-impact GHG reduction strategies and programs (see figure 2.1)
- Develop a framework to engage government, NGOs, supply chain partners, retailers, and consumers and to drive the innovation necessary to foster GHG improvements throughout the value chain

As a result of the scope 3 inventory effort, SC Johnson has initiated a process to incorporate scope 3 results into its sustainability program objective development, and has initiated outreach programs with its suppliers to help foster GHG improvements.

Figure [2.1] SC Johnson's framework to assess reduction opportunities along the value chain



03 Summary of Steps and Requirements

This chapter provides a summary of the steps involved in scope 3 accounting and reporting, as well as a list of the requirements that must be followed for a scope 3 inventory to be in conformance with this standard.

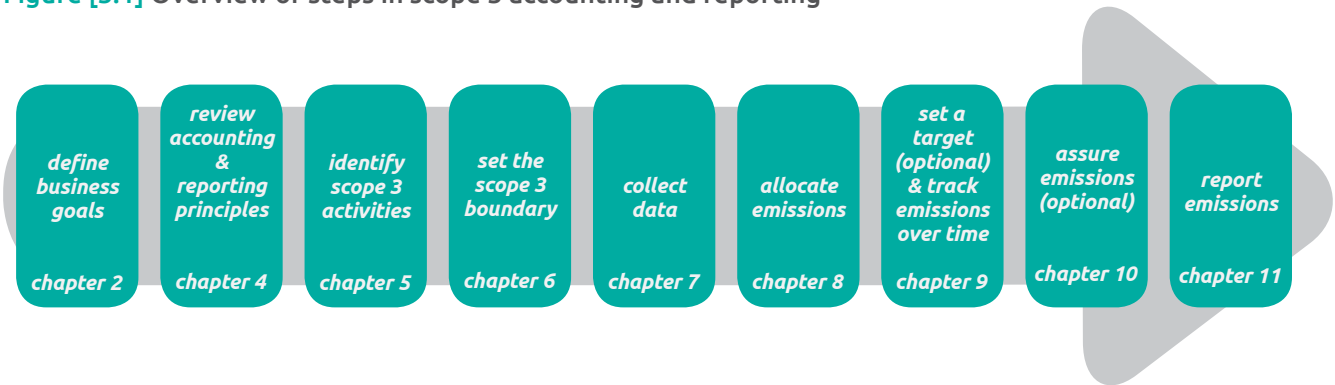
3.1 Scope 3 accounting and reporting steps

This standard is organized according to the steps a company should follow when developing a scope 3 inventory. Figure 3.1 provides an overview of the steps in scope 3 accounting and reporting. Each step is described in detail in the following chapters.

3.2 Terminology: shall, should, and may

This standard uses precise language to indicate which provisions of the standard are requirements, which are recommendations, and which are permissible or allowable options that companies may choose to follow. The term **"shall"** is used throughout this standard to indicate what is required in order for a GHG inventory

Figure [3.1] Overview of steps in scope 3 accounting and reporting



to be in conformance with the *GHG Protocol Scope 3 Standard*. The term **"should"** is used to indicate a recommendation, but not a requirement. The term **"may"** is used to indicate an option that is permissible or allowable. The term "required" is used in the guidance to refer to requirements in the standard. "Needs," "can," and "cannot" may be used to provide guidance on implementing a requirement or to indicate when an action is or is not possible.

3.3 Summary of requirements

This standard presents accounting and reporting requirements to help companies prepare a GHG inventory that represents a true and fair account of their scope 3 emissions. Standardized approaches and principles are designed to increase the consistency and transparency of scope 3 inventories. Table 3.1 provides a list of all the requirements included in this standard. Each requirement is further explained in the following chapters. Requirements are also presented in a box at the beginning of each chapter that contains requirements (chapters 4, 6, 9, and 11).

Table [3.1] List of requirements in this standard

Chapter	Requirements
Accounting and Reporting Principles **Chapter 4**	• GHG accounting and reporting of a scope 3 inventory shall be based on the following principles: relevance, completeness, consistency, transparency, and accuracy.
Setting the Scope 3 Boundary **Chapter 6**	• Companies shall account for all scope 3 emissions and disclose and justify any exclusions. • Companies shall account for emissions from each scope 3 category according to the minimum boundaries listed in table 5.4. • Companies shall account for scope 3 emissions of CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6, if they are emitted in the value chain. • Biogenic CO_2 emissions that occur in the value chain shall not be included in the scopes, but shall be included and separately reported in the public report.
Setting a GHG Target and Tracking Emissions over Time **Chapter 9**	When companies choose to track performance or set a reduction target, companies shall: • Choose a scope 3 base year and specify their reasons for choosing that particular year; • Develop a base year emissions recalculation policy that articulates the basis for any recalculations; and • Recalculate base year emissions when significant changes in the company structure or inventory methodology occur.
Reporting **Chapter 11**	Companies shall publicly report the following information: • A scope 1 and scope 2 emissions report in conformance with the *GHG Protocol Corporate Standard* • Total scope 3 emissions reported separately by scope 3 category • For each scope 3 category, total GHG emissions reported in metric tons of CO_2 equivalent, excluding biogenic CO_2 emissions and independent of any GHG trades, such as purchases, sales, or transfers of offsets or allowances • A list of scope 3 categories and activities included in the inventory • A list of scope 3 categories or activities excluded from the inventory with justification of their exclusion • Once a base year has been established: the year chosen as the scope 3 base year; the rationale for choosing the base year; the base year emissions recalculation policy; scope 3 emissions by category in the base year, consistent with the base year emissions recalculation policy; and appropriate context for any significant emissions changes that triggered base year emissions recalculations • For each scope 3 category, any biogenic CO_2 emissions reported separately • For each scope 3 category, a description of the types and sources of data, including activity data, emission factors and global warming potential (GWP) values, used to calculate emissions, and a description of the data quality of reported emissions data • For each scope 3 category, a description of the methodologies, allocation methods, and assumptions used to calculate scope 3 emissions • For each scope 3 category, the percentage of emissions calculated using data obtained from suppliers or other value chain partners

04 Accounting and Reporting Principles

As with financial accounting and reporting, generally accepted GHG accounting principles are intended to underpin and guide GHG accounting and reporting to ensure the reported inventory represents a faithful, true, and fair account of a company's GHG emissions. The five principles described below are adapted from the GHG Protocol Corporate Standard and are intended to guide the accounting and reporting of a company's scope 3 inventory.

Requirements in this chapter

GHG accounting and reporting of a scope 3 inventory shall be based on the following principles: relevance, completeness, consistency, transparency, and accuracy.

GHG accounting and reporting of a scope 3 inventory shall be based on the following principles:

Relevance: Ensure the GHG inventory appropriately reflects the GHG emissions of the company and serves the decision-making needs of users – both internal and external to the company.

Completeness: Account for and report on all GHG emission sources and activities within the inventory boundary. Disclose and justify any specific exclusions.

Consistency: Use consistent methodologies to allow for meaningful performance tracking of emissions over time. Transparently document any changes to the data, inventory boundary, methods, or any other relevant factors in the time series.

Transparency: Address all relevant issues in a factual and coherent manner, based on a clear audit trail. Disclose any relevant assumptions and make appropriate references to the accounting and calculation methodologies and data sources used.

Accuracy: Ensure that the quantification of GHG emissions is systematically neither over nor under actual emissions, as far as can be judged, and that uncertainties are reduced as far as practicable. Achieve sufficient accuracy to enable users to make decisions with reasonable confidence as to the integrity of the reported information.

Guidance for applying the accounting and reporting principles

The primary function of these five principles is to guide the implementation of the *GHG Protocol Scope 3 Standard* and the assurance of the scope 3 inventory, particularly when application of the standard in specific situations is ambiguous.

In practice, companies may encounter tradeoffs between principles when completing a scope 3 inventory. For example, a company may find that achieving the most complete scope 3 inventory requires using less accurate data, compromising overall accuracy. Conversely, achieving the most accurate scope 3 inventory may require excluding activities with low accuracy, compromising overall completeness.

Companies should balance tradeoffs between principles depending on their individual business goals (see chapter 2 for more information). For example, tracking performance toward a specific scope 3 reduction target may require more accurate data. Over time, as the accuracy and completeness of scope 3 GHG data increases, the tradeoff between these accounting principles will likely diminish.

Relevance

A relevant GHG report contains the information that users – both internal and external to the company – need for their decision making. Companies should use the principle of relevance when determining whether to exclude any activities from the inventory boundary (see description of "Completeness" below). Companies should also use the principle of relevance as a guide when selecting data sources. Companies should collect data of sufficient quality to ensure that the inventory is relevant (i.e., that it appropriately reflects the GHG emissions of the company and serves the decision-making needs of users). Selection of data sources depends on a company's individual business goals. More information on relevance and data collection is provided in chapter 7.

Completeness

Companies should ensure that the scope 3 inventory appropriately reflects the GHG emissions of the company, and serves the decision-making needs of users, both internal and external to the company. In some situations, companies may be unable to estimate emissions due to a lack of data or other limiting factors. Companies should not exclude any activities from the scope 3 inventory that would compromise the relevance of the reported inventory. In the case of any exclusions, it is important that all exclusions be documented and justified. Assurance providers can determine the potential impact and relevance of the exclusion on the overall inventory report. More information on completeness is provided in chapter 6.

Consistency

Users of GHG information typically track emissions information over time in order to identify trends and assess the performance of the reporting company. The consistent application of accounting approaches, inventory boundary, and calculation methodologies is essential to producing comparable GHG emissions data over time. If there are changes to the inventory boundary (e.g., inclusion of previously excluded activities), methods, data, or other factors affecting emission estimates, they need to be transparently documented and justified, and may warrant recalculation of base year emissions. More information on consistency when tracking performance over time is provided in chapter 9.

Transparency

Transparency relates to the degree to which information on the processes, procedures, assumptions and limitations of the GHG inventory are disclosed in a clear, factual, neutral, and understandable manner based on clear documentation (i.e., an audit trail). Information should be recorded, compiled, and analyzed in a way that enables internal reviewers and external assurance providers to attest to its credibility. Specific exclusions need to be clearly identified and

Companies should balance tradeoffs between principles depending on their individual business goals.

justified, assumptions disclosed, and appropriate references provided for the methodologies applied and the data sources used. The information should be sufficient to enable a party external to the inventory process to derive the same results if provided with the same source data. A transparent report will provide a clear understanding of the relevant issues and a meaningful assessment of emissions performance of the company's scope 3 activities. More information on reporting is provided in chapter 11.

Accuracy

Data should be sufficiently accurate to enable intended users to make decisions with reasonable confidence that the reported information is credible. It is important that any estimated data be as accurate as possible to guide the decision-making needs of the company and ensure that the GHG inventory is relevant. GHG measurements, estimates, or calculations should be systemically neither over nor under the actual emissions value, as far as can be judged. Companies should reduce uncertainties in the quantification process as far as practicable and ensure the data are sufficiently accurate to serve decision-making needs. Reporting on measures taken to ensure accuracy and improve accuracy over time can help promote credibility and enhance transparency. More information on accuracy when collecting data is provided in chapter 7.

05 Identifying Scope 3 Emissions

This chapter provides an overview of scope 3 emissions, including the list of scope 3 categories and descriptions of each category.

5.1 Overview of the scopes

The *GHG Protocol Corporate Standard* divides a company's emissions into direct and indirect emissions.

- **Direct emissions** are emissions from sources that are owned or controlled by the reporting company.
- **Indirect emissions** are emissions that are a consequence of the activities of the reporting company, but occur at sources owned or controlled by another company.

Emissions are further divided into three scopes (see table 5.1). Direct emissions are included in scope 1. Indirect emissions are included in scope 2 and scope 3. While a company has control over its direct emissions, it has influence over its indirect emissions. A complete GHG inventory therefore includes scope 1, scope 2, and scope 3.

Scope 1, scope 2, and scope 3 are mutually exclusive for the reporting company, such that there is no double counting of emissions between the scopes. In other words, a company's scope 3 inventory does not include any emissions already accounted for as scope 1 or scope 2 by the same company. Combined, a company's scope 1, scope 2, and scope 3 emissions represent the total GHG emissions related to company activities.

By definition, scope 3 emissions occur from sources owned or controlled by other entities in the value chain (e.g., materials suppliers, third-party logistics providers, waste management suppliers, travel suppliers, lessees and lessors, franchisees, retailers, employees, and customers). The scopes are defined to ensure that two or more companies do not account for the same emission within scope 1 or scope 2. By properly accounting for emissions as scope 1, scope 2, and scope 3, companies avoid double counting within scope 1 and scope 2. (For more information, see the *GHG Protocol Corporate Standard*, chapter 4, "Setting Operational Boundaries.")

In certain cases, two or more companies may account for the same emission within scope 3. For example, the scope 1 emissions of a power generator are the scope 2 emissions of an electrical appliance user, which are in turn the scope 3 emissions of both the appliance manufacturer and the appliance retailer. Each of these four companies has different and often mutually exclusive opportunities to reduce emissions. The power generator can generate power using lower-carbon sources. The electrical appliance user can use the appliance more efficiently. The appliance manufacturer can increase the efficiency of the

Table [5.1] Overview of the scopes

Emissions type	*Scope*	*Definition*	*Examples*
Direct emissions	Scope 1	Emissions from operations that are owned or controlled by the reporting company	Emissions from combustion in owned or controlled boilers, furnaces, vehicles, etc.; emissions from chemical production in owned or controlled process equipment
Indirect emissions	Scope 2	Emissions from the generation of purchased or acquired electricity, steam, heating, or cooling consumed by the reporting company	Use of purchased electricity, steam, heating, or cooling
	Scope 3	All indirect emissions (not included in scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions	Production of purchased products, transportation of purchased products, or use of sold products

appliance it produces, and the product retailer can offer more energy-efficient product choices.

By allowing for GHG accounting of direct and indirect emissions by multiple companies in a value chain, scope 1, scope 2, and scope 3 accounting facilitates the simultaneous action of multiple entities to reduce emissions throughout society. Because of this type of double counting, scope 3 emissions should not be aggregated across companies to determine total emissions in a given region. Note that while a single emission may be accounted for by more than one company as scope 3, in certain cases the emission is accounted for by each company in a different scope 3 category (see section 5.4). For more information on double counting within scope 3, see section 9.6.

5.2 Organizational boundaries and scope 3 emissions

Defining the organizational boundary is a key step in corporate GHG accounting. This step determines which operations are included in the company's organizational boundary and how emissions from each operation are consolidated by the reporting company. As detailed in the *GHG Protocol Corporate Standard*, a company has three options for defining its organizational boundaries as shown in table 5.2.

Companies should use a consistent consolidation approach across the scope 1, scope 2, and scope 3 inventories. The selection of a consolidation approach affects which activities in the company's value chain are categorized as direct emissions (i.e., scope 1 emissions) and indirect emissions (i.e., scope 2 and scope 3 emissions). Operations or activities that are excluded from a company's scope 1 and scope 2 inventories as a result of the organizational boundary definition (e.g., leased assets, investments, and

Table [5.2] Consolidation approaches

Consolidation approach	*Description*
Equity share	Under the equity share approach, a company accounts for GHG emissions from operations according to its share of equity in the operation. The equity share reflects economic interest, which is the extent of rights a company has to the risks and rewards flowing from an operation.
Financial control	Under the financial control approach, a company accounts for 100 percent of the GHG emissions over which it has financial control. It does not account for GHG emissions from operations in which it owns an interest but does not have financial control.
Operational control	Under the operational control approach, a company accounts for 100 percent of the GHG emissions over which it has operational control. It does not account for GHG emissions from operations in which it owns an interest but does not have operational control.

franchises) may become relevant when accounting for scope 3 emissions (see box 5.1).

Scope 3 includes:

- Emissions from activities in the value chain of the entities included in the company's organizational boundary
- Emissions from leased assets, investments, and franchises that are excluded from the company's organizational boundary but that the company partially or wholly owns or controls (see box 5.1)

For example, if a company selects the equity share approach, emissions from any asset the company partially or wholly owns are included in its direct emissions (i.e., scope 1), but emissions from any asset the company controls but does not partially or wholly own (e.g., a leased asset) are excluded from its direct emissions and should be included in its scope 3 inventory.[1]

Similarly, if a company selects the operational control approach, emissions from any asset the company controls are included in its direct emissions (i.e., scope 1), but emissions from any asset the company wholly or partially owns but does not control (e.g., investments) are excluded from its direct emissions and should be included in its scope 3 inventory.

See the *GHG Protocol Corporate Standard*, chapter 3, "Setting Organizational Boundaries" for more information on each of the consolidation approaches.

5.3 Upstream and downstream scope 3 emissions

This standard divides scope 3 emissions into upstream and downstream emissions. The distinction is based on the financial transactions of the reporting company.

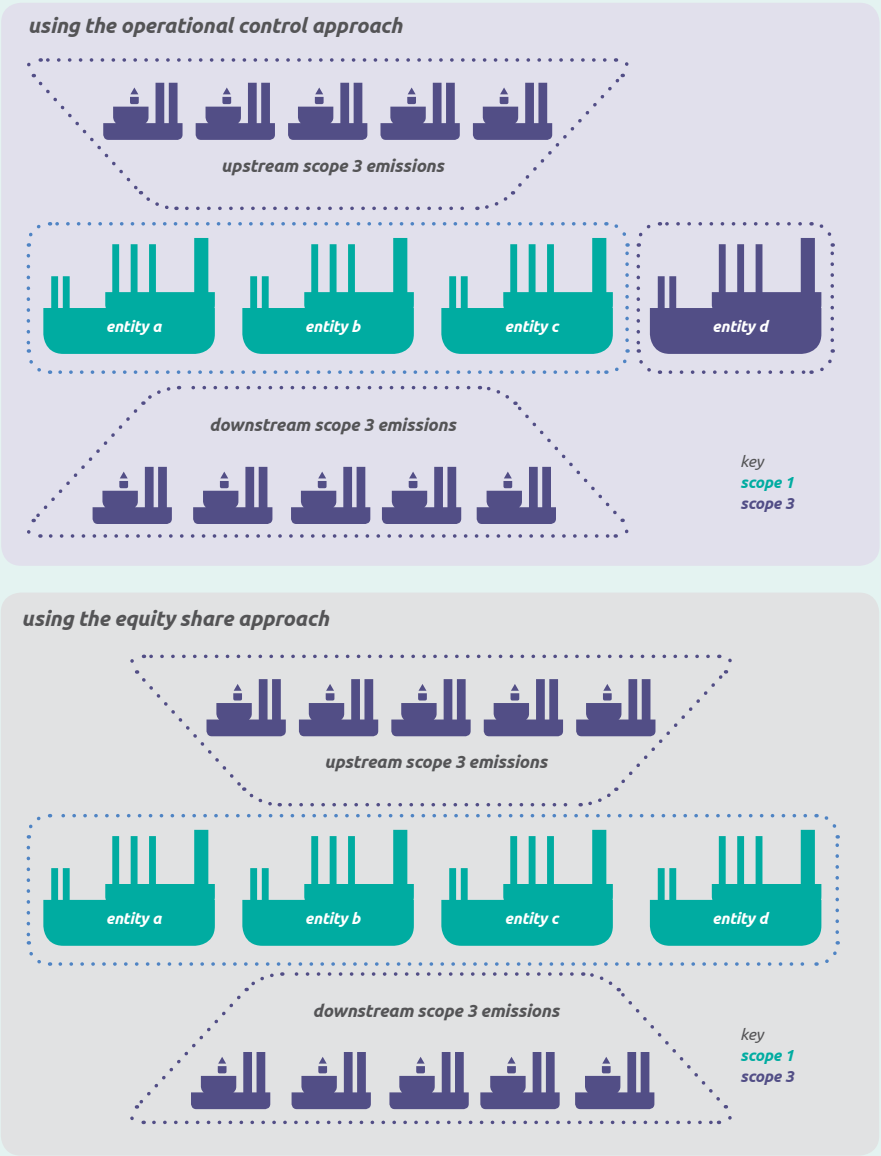
- **Upstream emissions** are indirect GHG emissions related to purchased or acquired goods and services.
- **Downstream emissions** are indirect GHG emissions related to sold[2] goods and services.

In the case of goods purchased or sold by the reporting company, upstream emissions occur up to the point of receipt by the reporting company, while downstream emissions occur subsequent to their sale by the reporting company and transfer of control from the reporting company to another entity (e.g., a customer). Emissions from activities under the ownership or control of the reporting company (i.e., direct emissions) are neither upstream nor downstream (see figure 5.2).

Box [5.1] Example of how the consolidation approach affects the scope 3 inventory

A reporting company has an equity share in four entities (Entities A, B, C and D) and has operational control over three of those entities (Entities A, B, and C). The company selects the operational control approach to define its organizational boundary. Emissions from sources controlled by Entities A, B, and C are included in the company's scope 1 inventory, while emissions from sources controlled by Entity D are excluded from the reporting company's scope 1 inventory. Emissions in the value chain of Entities A, B, and C are included in the company's scope 3 inventory. Emissions from the operation of Entity D are included in the reporting company's scope 3 inventory as an investment (according to the reporting company's share of equity in Entity D). If the company instead selects the equity share approach to define its organizational boundary, the company would instead include emissions from sources controlled by Entities A, B, C, and D in its scope 1 inventory, according to its share of equity in each entity. See figure 5.1.

Figure [5.1] Example of how the consolidation approach affects the scope 3 inventory



5.4 Overview of scope 3 categories

This standard categorizes scope 3 emissions into 15 distinct categories, as listed in figure 5.2 and table 5.3. The categories are intended to provide companies with a systematic framework to organize, understand, and report on the diversity of scope 3 activities within a corporate value chain. The categories are designed to be mutually exclusive, such that, for any one reporting company, there is no double counting of emissions between categories.[3] Each scope 3 category is comprised of multiple scope 3 activities that individually result in emissions.

Table 5.4 includes descriptions of each of the 15 categories that comprise scope 3 emissions. Each category is described in detail in section 5.5. Companies are required to report scope 3 emissions by scope 3 category. Any scope 3 activities not captured by the list of scope 3 categories may be reported separately (see chapter 11).

Minimum boundaries of scope 3 categories

Table 5.4 identifies the minimum boundaries of each scope 3 category in order to standardize the boundaries of each category and help companies understand which activities should be accounted for. The minimum boundaries are intended to ensure that major activities are included in the scope 3 inventory, while clarifying that companies need not account for the value chain emissions of each entity in its value chain, ad infinitum. Companies may include emissions from optional activities within each category. Companies may exclude scope 3 activities included in the minimum boundary of each category, provided that any exclusion is disclosed and justified. (For more information, see chapter 6.)

For some scope 3 categories (e.g., purchased goods and services, capital goods, fuel- and energy-related activities), the minimum boundary includes all upstream (cradle-to-gate[4]) emissions of purchased products to

Figure [5.2] Overview of GHG Protocol scopes and emissions across the value chain

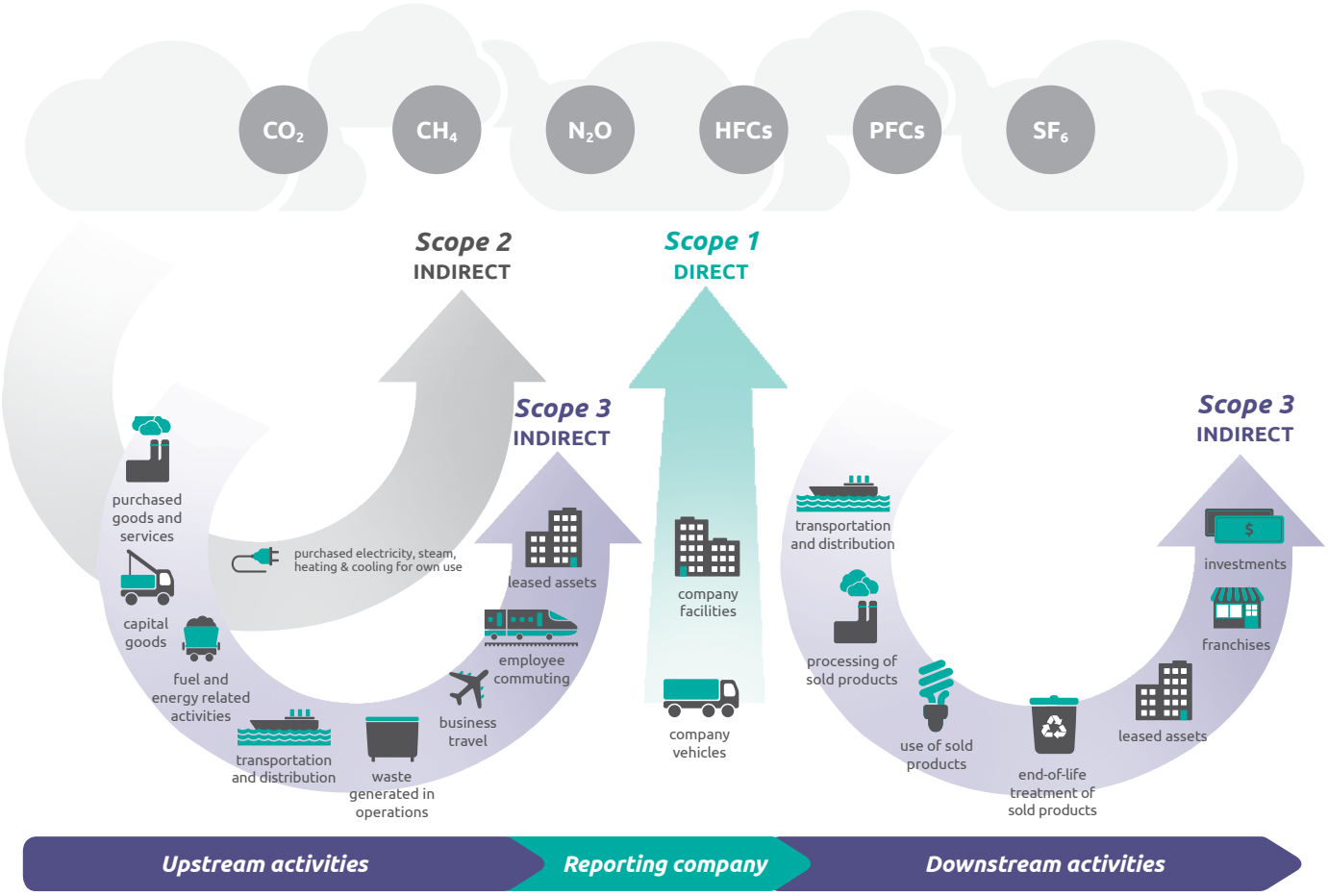


Table [5.3] List of scope 3 categories

Upstream or downstream	*Scope 3 category*
Upstream scope 3 emissions	**1.** Purchased goods and services **2.** Capital goods **3.** Fuel- and energy-related activities (not included in scope 1 or scope 2) **4.** Upstream transportation and distribution **5.** Waste generated in operations **6.** Business travel **7.** Employee commuting **8.** Upstream leased assets
Downstream scope 3 emissions	**9.** Downstream transportation and distribution **10.** Processing of sold products **11.** Use of sold products **12.** End-of-life treatment of sold products **13.** Downstream leased assets **14.** Franchises **15.** Investments

ensure that the inventory captures the GHG emissions of products wherever they occur in the life cycle, from raw material extraction through purchase by the reporting company. For other categories (e.g., transportation and distribution, waste generated in operations, business travel, employee commuting, leased assets, franchises, use of sold products, etc.), the minimum boundary includes the scope 1 and scope 2 emissions of the relevant value chain partner (e.g., the transportation provider, waste management company, transportation carrier, employee, lessor, franchisor, consumer, etc.). For these categories, the major emissions related to the scope 3 category result from scope 1 and scope 2 activities of the entity (e.g., the fuel consumed in an airplane for business travel), rather than the emissions associated with manufacturing capital goods or infrastructure (e.g., the construction of an airplane or airport for business travel). Companies may account for additional emissions beyond the minimum boundary where relevant.

Time boundary of scope 3 categories

This standard is designed to account for all emissions related to the reporting company's activities in the reporting year (e.g., emissions related to products purchased or sold in the reporting year). For some scope 3 categories, emissions occur simultaneously with the activity (e.g., from combustion of energy), so emissions occur in the same year as the company's activities (see figure 5.3). For some categories, emissions may have occurred in previous years. For other scope 3 categories, emissions are expected to occur in future years because the activities in the reporting year have long-term emissions impacts. For these categories, reported emissions have not yet happened, but are expected to happen as a result of the waste generated, investments made, and products sold in the reporting year. For these categories, the reported data should not be interpreted to mean that emissions have already occurred, but that emissions are expected to occur as a result of activities that occurred in the reporting year.

Figure [5.3] Time boundary of scope 3 categories

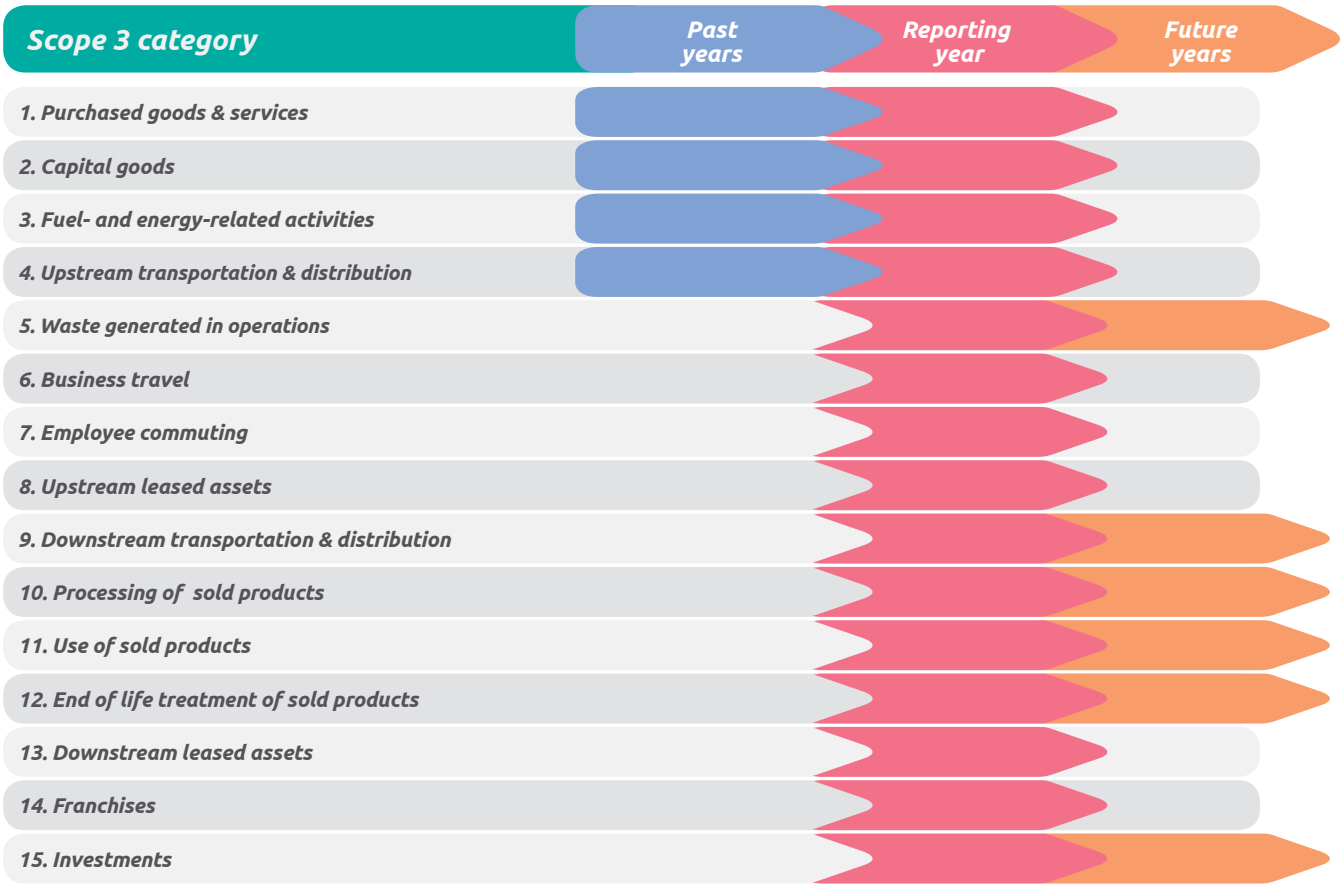


Table [5.4] **Description and boundaries of scope 3 categories**

Upstream scope 3 emissions

Category	*Category description*	*Minimum boundary*
1. Purchased goods and services	• Extraction, production, and transportation of goods and services purchased or acquired by the reporting company in the reporting year, not otherwise included in Categories 2 - 8	• All upstream (cradle-to-gate) emissions of purchased goods and services
2. Capital goods	• Extraction, production, and transportation of capital goods purchased or acquired by the reporting company in the reporting year	• All upstream (cradle-to-gate) emissions of purchased capital goods
3. Fuel- and energy-related activities (not included in scope 1 or scope 2)	• Extraction, production, and transportation of fuels and energy purchased or acquired by the reporting company in the reporting year, not already accounted for in scope 1 or scope 2, including: **a.** Upstream emissions of purchased fuels (extraction, production, and transportation of fuels consumed by the reporting company) **b.** Upstream emissions of purchased electricity (extraction, production, and transportation of fuels consumed in the generation of electricity, steam, heating, and cooling consumed by the reporting company) **c.** Transmission and distribution (T&D) losses (generation of electricity, steam, heating and cooling that is consumed (i.e., lost) in a T&D system) – reported by end user **d.** Generation of purchased electricity that is sold to end users (generation of electricity, steam, heating, and cooling that is purchased by the reporting company and sold to end users) – reported by utility company or energy retailer only	**a.** For upstream emissions of purchased fuels: All upstream (cradle-to-gate) emissions of purchased fuels (from raw material extraction up to the point of, but excluding combustion) **b.** For upstream emissions of purchased electricity: All upstream (cradle-to-gate) emissions of purchased fuels (from raw material extraction up to the point of, but excluding, combustion by a power generator) **c.** For T&D losses: All upstream (cradle-to-gate) emissions of energy consumed in a T&D system, including emissions from combustion **d.** For generation of purchased electricity that is sold to end users: Emissions from the generation of purchased energy

Table [5.4] **Description and boundaries of scope 3 categories (continued)**

Upstream scope 3 emissions

Category	*Category description*	*Minimum boundary*
4. Upstream transportation and distribution	• Transportation and distribution of products purchased by the reporting company in the reporting year between a company's tier 1 suppliers and its own operations (in vehicles and facilities not owned or controlled by the reporting company) • Transportation and distribution services purchased by the reporting company in the reporting year, including inbound logistics, outbound logistics (e.g., of sold products), and transportation and distribution between a company's own facilities (in vehicles and facilities not owned or controlled by the reporting company)	• The scope 1 and scope 2 emissions of transportation and distribution providers that occur during use of vehicles and facilities (e.g., from energy use) • ***Optional:*** The life cycle emissions associated with manufacturing vehicles, facilities, or infrastructure
5. Waste generated in operations	• Disposal and treatment of waste generated in the reporting company's operations in the reporting year (in facilities not owned or controlled by the reporting company)	• The scope 1 and scope 2 emissions of waste management suppliers that occur during disposal or treatment • ***Optional:*** Emissions from transportation of waste
6. Business travel	• Transportation of employees for business-related activities during the reporting year (in vehicles not owned or operated by the reporting company)	• The scope 1 and scope 2 emissions of transportation carriers that occur during use of vehicles (e.g., from energy use) • ***Optional:*** The life cycle emissions associated with manufacturing vehicles or infrastructure
7. Employee commuting	• Transportation of employees between their homes and their worksites during the reporting year (in vehicles not owned or operated by the reporting company)	• The scope 1 and scope 2 emissions of employees and transportation providers that occur during use of vehicles (e.g., from energy use) • ***Optional:*** Emissions from employee teleworking
8. Upstream leased assets	• Operation of assets leased by the reporting company (lessee) in the reporting year and not included in scope 1 and scope 2 – reported by lessee	• The scope 1 and scope 2 emissions of lessors that occur during the reporting company's operation of leased assets (e.g., from energy use) • ***Optional:*** The life cycle emissions associated with manufacturing or constructing leased assets

Table [5.4] **Description and boundaries of scope 3 categories (continued)**

Downtream scope 3 emissions

Category	*Category description*	*Minimum boundary*
9. Downstream transportation and distribution	• Transportation and distribution of products sold by the reporting company in the reporting year between the reporting company's operations and the end consumer (if not paid for by the reporting company), including retail and storage (in vehicles and facilities not owned or controlled by the reporting company)	• The scope 1 and scope 2 emissions of transportation providers, distributors, and retailers that occur during use of vehicles and facilities (e.g., from energy use) • ***Optional:*** The life cycle emissions associated with manufacturing vehicles, facilities, or infrastructure
10. Processing of sold products	• Processing of intermediate products sold in the reporting year by downstream companies (e.g., manufacturers)	• The scope 1 and scope 2 emissions of downstream companies that occur during processing (e.g., from energy use)
11. Use of sold products	• End use of goods and services sold by the reporting company in the reporting year	• The direct use-phase emissions of sold products over their expected lifetime (i.e., the scope 1 and scope 2 emissions of end users that occur from the use of: products that directly consume energy (fuels or electricity) during use; fuels and feedstocks; and GHGs and products that contain or form GHGs that are emitted during use) • ***Optional:*** The indirect use-phase emissions of sold products over their expected lifetime (i.e., emissions from the use of products that indirectly consume energy (fuels or electricity) during use)
12. End-of-life treatment of sold products	• Waste disposal and treatment of products sold by the reporting company (in the reporting year) at the end of their life	• The scope 1 and scope 2 emissions of waste management companies that occur during disposal or treatment of sold products
13. Downstream leased assets	• Operation of assets owned by the reporting company (lessor) and leased to other entities in the reporting year, not included in scope 1 and scope 2 – reported by lessor	• The scope 1 and scope 2 emissions of lessees that occur during operation of leased assets (e.g., from energy use). • ***Optional:*** The life cycle emissions associated with manufacturing or constructing leased assets

Table [5.4] **Description and boundaries of scope 3 categories (continued)**

Downtream scope 3 emissions

Category	*Category description*	*Minimum boundary*
14. Franchises	• Operation of franchises in the reporting year, not included in scope 1 and scope 2 – reported by franchisor	• The scope 1 and scope 2 emissions of franchisees that occur during operation of franchises (e.g., from energy use) • ***Optional:*** The life cycle emissions associated with manufacturing or constructing franchises
15. Investments	• Operation of investments (including equity and debt investments and project finance) in the reporting year, not included in scope 1 or scope 2	• See the description of category 15 (Investments) in section 5.5 for the required and optional boundaries

5.5 Descriptions of scope 3 categories

This section provides detailed descriptions of each scope 3 category.

Category 1: Purchased goods and services

This category includes all upstream (i.e., cradle-to-gate) emissions from the production of products purchased or acquired by the reporting company in the reporting year. Products include both goods (tangible products) and services (intangible products).

This category includes emissions from all purchased goods and services not otherwise included in the other categories of upstream scope 3 emissions (i.e., category 2 through category 8). Specific categories of upstream emissions are separately reported in category 2 through category 8 to enhance the transparency and consistency of scope 3 reports.

Cradle-to-gate emissions include all emissions that occur in the life cycle of purchased products, up to the point of receipt by the reporting company (excluding emissions from sources that are owned or controlled by the reporting company). Cradle-to-gate emissions may include:

- Extraction of raw materials
- Agricultural activities
- Manufacturing, production, and processing
- Generation of electricity consumed by upstream activities
- Disposal/treatment of waste generated by upstream activities
- Land use and land-use change[5]
- Transportation of materials and products between suppliers
- Any other activities prior to acquisition by the reporting company

Emissions from the use of products purchased by the reporting company are accounted for in either scope 1 (e.g., for fuel use) or scope 2 (e.g., for electricity use), rather than scope 3.

Companies may find it useful to differentiate between purchases of production-related and non-production-related products. Doing so may be aligned with existing procurement practices and therefore may be a useful way to more efficiently organize and collect data (see box 5.2).

Companies may also find it useful to differentiate between purchases of intermediate products, final products, and capital goods (see box 5.3).

Box [5.2] Production-related and non-production-related procurement

A company's purchases can be divided into two types:

- Production-related procurement
- Non-production-related procurement

Production-related procurement (often called direct procurement) consists of purchased goods that are directly related to the production of a company's products. Production-related procurement includes:

- Intermediate goods (e.g., materials, components, and parts) that the company purchases to process, transform, or include in another product
- Final goods purchased for resale (for retail and distribution companies only)
- Capital goods (e.g., plant, property, and equipment) that the company uses to manufacture a product, provide a service, or sell, store, and deliver merchandise

Non-production-related procurement (often called indirect procurement) consists of purchased goods and services that are not integral to the company's products, but are instead used to enable operations. Non-production-related procurement may include capital goods, such as furniture, office equipment, and computers. Non-production-related procurement includes:

- Operations resource management: Products used in office settings such as office supplies, office furniture, computers, telephones, travel services, IT support, outsourced administrative functions, consulting services, and janitorial and landscaping services
- Maintenance, repairs, and operations: Products used in manufacturing settings, such as spare parts and replacement parts

Box [5.3] Intermediate products, final products, and capital goods

Intermediate products are inputs to the production of other goods or services that require further processing, transformation, or inclusion in another product before use by the end consumer. Intermediate products are not consumed by the end user in their current form.

Final products are goods and services that are consumed by the end user in their current form, without further processing, transformation, or inclusion in another product. Final products include:

- Products consumed by end consumers
- Products sold to retailers for resale to end consumers (e.g., consumer products)
- Products consumed by businesses in their current form (e.g., office supplies)

Capital goods are final goods that are not immediately consumed or further processed by the company, but are instead used in their current form by the company to manufacture a product, provide a service, or sell, store, and deliver merchandise. Scope 3 emissions from capital goods are reported in category 2 (Capital goods), rather than category 1 (Purchased goods and services).

Intermediate goods and capital goods are both inputs to a company's operations. The distinction between intermediate goods and capital goods depends on the circumstances. For example, if a company includes an electrical motor in another product (e.g., a motor vehicle), the electrical motor is an intermediate good. If a company uses the electrical motor to produce other goods, it is a capital good consumed by the reporting company.

Category 2: Capital goods

This category includes all upstream (i.e., cradle-to-gate) emissions from the production of capital goods purchased or acquired by the reporting company in the reporting year. Emissions from the use of capital goods by the reporting company are accounted for in either scope 1 (e.g., for fuel use) or scope 2 (e.g., for electricity use), rather than scope 3.

Capital goods are final products that have an extended life and are used by the company to manufacture a product, provide a service, or sell, store, and deliver merchandise. In financial accounting, capital goods are treated as fixed assets or as plant, property, and equipment (PP&E). Examples of capital goods include equipment, machinery, buildings, facilities, and vehicles.

In certain cases, there may be ambiguity over whether a particular purchased product is a capital good (to be reported in category 2) or a purchased good (to be reported in category 1). Companies should follow their own financial accounting procedures to determine whether to account for a purchased product as a capital good in this category or as a purchased good or service in category 1. Companies should not double count emissions between category 1 and category 2.

Box [5.4] Accounting for emissions from capital goods

In financial accounting, capital goods (sometimes called "capital assets") are typically depreciated or amortized over the life of the asset. For purposes of accounting for scope 3 emissions companies should not depreciate, discount, or amortize the emissions from the production of capital goods over time. Instead companies should account for the total cradle-to-gate emissions of purchased capital goods in the year of acquisition, the same way the company accounts for emissions from other purchased products in category 1. If major capital purchases occur only once every few years, scope 3 emissions from capital goods may fluctuate significantly from year to year. Companies should provide appropriate context in the public report (e.g., by highlighting exceptional or non-recurring capital investments).

BASF: Scope 3 emissions from purchased goods and services

BASF, a global chemical company, is committed to acting responsibly throughout its entire value chain in order to build stable and sustainable relationships with business partners. When making decisions, BASF chooses carriers, service providers, and suppliers not just on the basis of price, but also on the basis of their performance in environmental and social responsibility. When calculating scope 3 emissions from category 1 (Purchased goods and services), BASF accounted for emissions from raw materials, components, packaging materials, and other goods and services not included in the other upstream scope 3 categories. BASF found that, in 2009, scope 3 emissions from category 1 (Purchased goods and services) accounted for 24 percent of its total scope 3 emissions and 20 percent of its combined scope 1, scope 2, and scope 3 emissions.

Calculating emissions from raw materials

BASF accounted for scope 3 emissions from 100 percent of its procured raw materials and component manufacturing at its suppliers' facilities (by weight). BASF calculated the cradle-to-gate emissions of raw materials, including all direct GHG emissions from raw material extraction, precursor manufacturing, and transport, as well as indirect emissions from energy use. To do so, BASF determined the quantity of each product purchased, then applied cradle-to-gate emission factors for about 90 percent of the purchased products (by weight), obtained from commercially and publically available data sources as well as from its own life cycle assessment database, which is based mainly on primary data. BASF multiplied the CO_2e emissions per kilogram of each product by the respective quantity of the product purchased to determine cradle-to-gate emissions. Finally, BASF extrapolated the resulting scope 3 emissions to 100 percent of total purchases in order to account for all procured raw materials and components.

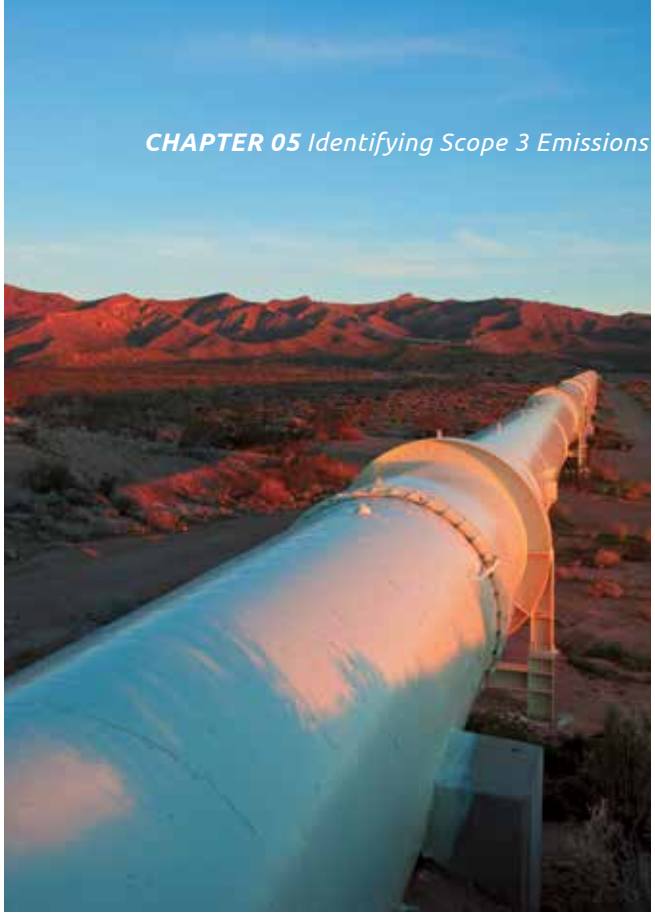
Calculating emissions from packaging

BASF first determined the types and quantities of packaging materials purchased in the reporting year (such as plastic, paper board, and steel) based on the number of containers purchased and the fractions of materials used in each container. BASF then calculated GHG emissions by multiplying the total amount of various materials by their respective cradle-to gate emission factors.

Results

BASF found that 93 percent of its category 1 GHG emissions result from the raw materials purchased, while packaging, services and, equipment account for only 7 percent. This finding suggests the need to prioritize future scope 3 accounting and reduction efforts on raw materials. Working with suppliers to improve GHG performance will help BASF reduce its scope 3 emissions from raw materials over time. The company's results could also inform the development of sector-specific guidance for the chemical industry, by focusing on raw materials and components for the chemical sector.

Scope 3 emissions from category 1 (Purchased goods and services) accounted for 24 percent of BASF's total scope 3 emissions and 20 percent of its combined scope 1, scope 2, and scope 3 emissions.



Category 3: Fuel- and energy-related emissions not included in scope 1 or scope 2

This category includes emissions related to the production of fuels and energy purchased and consumed by the reporting company in the reporting year that are not included in scope 1 or scope 2.

Category 3 excludes emissions from the combustion of fuels or electricity consumed by the reporting company, since they are already included in scope 1 or scope 2. Scope 1 includes emissions from the combustion of fuels by sources owned or controlled by the reporting company. Scope 2 includes the emissions from the combustion of fuels to generate electricity, steam, heating, and cooling purchased and consumed by the reporting company.

This category includes emissions from four distinct activities (see table 5.5).

Table [5.5] Activities included in category 3 (Fuel- and energy-related emissions not included in scope 1 or scope 2)

Activity	*Description*	*Applicability*
a. Upstream emissions of purchased fuels	Extraction, production, and transportation of fuels consumed by the reporting company • Examples include mining of coal, refining of gasoline, transmission and distribution of natural gas, production of biofuels, etc.	Applicable to end users of fuels
b. Upstream emissions of purchased electricity	Extraction, production, and transportation of fuels consumed in the generation of electricity, steam, heating, and cooling that is consumed by the reporting company • Examples include mining of coal, refining of fuels, extraction of natural gas, etc.	Applicable to end users of electricity, steam, heating and cooling
c. T&D losses	Generation of electricity, steam, heating, and cooling that is consumed (i.e., lost) in a T&D system – reported by end user	Applicable to end users of electricity, steam, heating and cooling
d. Generation of purchased electricity that is sold to end users	Generation of electricity, steam, heating, and cooling that is purchased by the reporting company and sold to end users – reported by utility company or energy retailer • Note: This activity is particularly relevant for utility companies that purchase wholesale electricity supplied by independent power producers for resale to their customers.	Applicable to utility companies and energy retailers

Box [5.5] Accounting for emissions from the production, transmission, and use of electricity

Figure [5.4] Emissions across an electricity value chain

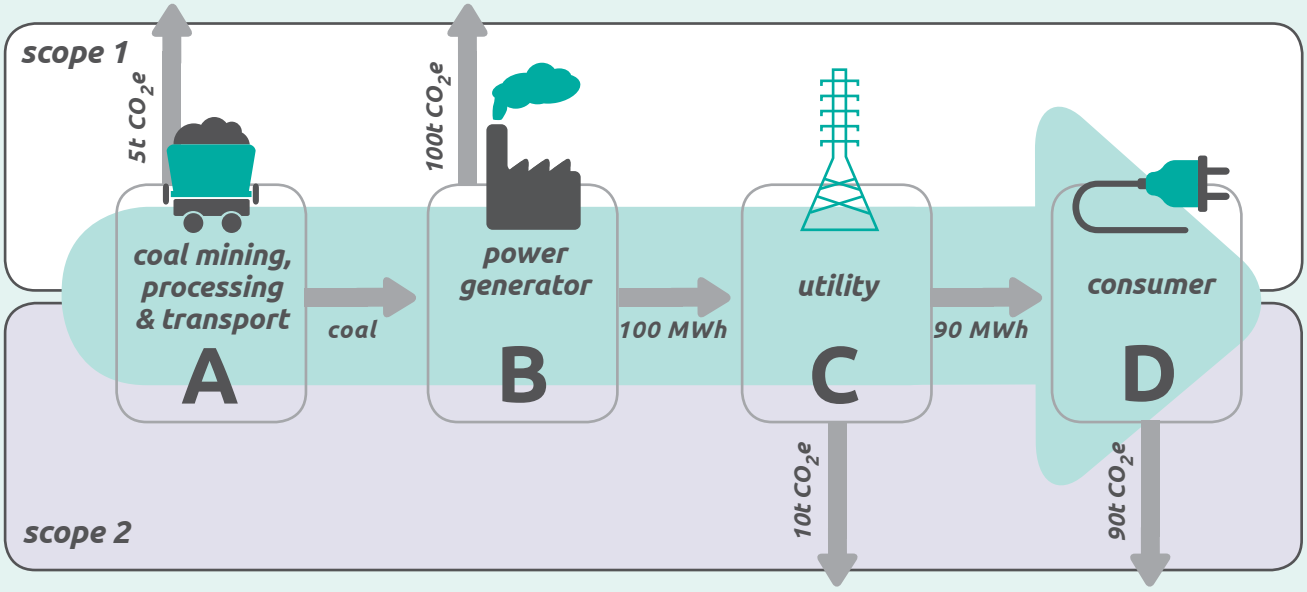


Figure 5.4 illustrates an electricity value chain. A coal mining and processing company (A) directly emits 5 metric tons of CO_2e per year from its operations and sells coal to a power generator (B), which generates 100 MWh of electricity and directly emits 100 metric tons of CO_2e per year. A utility (C) that owns and operates a T&D system purchases all of the generator's electricity. The utility consumes 10 MWh due to T&D losses (corresponding to 10 metric tons CO_2e of scope 2 emissions per year) and delivers the remaining 90 MWh to an end user (D), which consumes 90 MWh (corresponding to 90 metric tons CO_2e of scope 2 emissions per year).

Table 5.6 explains how each company accounts for GHG emissions. In this example, the emission factor of the electricity sold by Company B is 1 t CO_2e/MWh. All numbers are illustrative only.

Box [5.5] Accounting for emissions from the production, transmission, and use of electricity (continued)

Table [5.6] Accounting for emissions across an electricity value chain

Reporting company	*Scope 1*	*Scope 2*	*Scope 3*
Coal mining, processing, and transport (Company A)	5 t CO_2e	0 (unless electricity is used during coal mining and processing)	100 t CO_2e from the combustion of sold products (i.e., coal) *Reported in category 11 (Use of sold products)*
Power generator (Company B)	100 t CO_2e	0	5 t CO_2e from the extraction, production, and transportation of fuel (i.e., coal) consumed by the reporting company *Reported in Category 3 (Fuel- and energy-related activities)* Note: The generator does not account for scope 3 emissions associated with sold electricity because the emissions are already accounted for in scope 1.
Utility (Company C)	0 (unless SF_6 is released from the T&D system)	10 t CO_2e from the generation of electricity purchased and consumed by Company C	0.5 t CO_2e from the extraction, production, and transportation of fuels (i.e., coal) consumed in the generation of electricity consumed by Company C (5 tons from coal mining x 10 percent of electricity generated by B that is consumed by C) 94.5 t CO_2e from the generation of electricity purchased by Company C and sold to Company D *Both are reported in category 3 (Fuel- and energy-related activities)*
End consumer of electricity (Company D)	0	90 t CO_2e from the generation of electricity purchased and consumed by Company D	4.5 t CO_2e from the extraction, production, and transportation of coal consumed in the generation of electricity consumed by Company D 10.5 t CO_2e from the generation of electricity that is consumed (i.e., lost) in transmission and distribution *Both are reported in category 3 (Fuel- and energy-related activities)*

Category 4: Upstream transportation and distribution

This category includes emissions from the transportation and distribution of products (excluding fuel and energy products) purchased or acquired by the reporting company in the reporting year in vehicles and facilities not owned or operated by the reporting company, as well as other transportation and distribution services purchased by the reporting company in the reporting year (including both inbound and outbound logistics).

Specifically, this category includes:

- Transportation and distribution of products purchased by the reporting company in the reporting year, between a company's tier 1 suppliers[6] and its own operations (including multi-modal shipping where multiple carriers are involved in the delivery of a product)
- Third-party transportation and distribution services purchased by the reporting company in the reporting year (either directly or through an intermediary), including inbound logistics, outbound logistics (e.g., of sold products), and third-party transportation and distribution between a company's own facilities

Emissions may arise from the following transportation and distribution activities throughout the value chain:

- Air transport
- Rail transport
- Road transport
- Marine transport
- Storage of purchased products in warehouses, distribution centers, and retail facilities

Outbound logistics services purchased by the reporting company are categorized as upstream because they are a purchased service. Emissions from transportation and distribution of purchased products upstream of the reporting company's tier 1 suppliers (e.g., transportation between a company's tier 2 and tier 1 suppliers) are accounted for in scope 3, category 1 (Purchased goods and services). Table 5.7 explains the scope and scope 3 category where each type of transportation and distribution activity should be accounted for.

A reporting company's scope 3 emissions from upstream transportation and distribution include the scope 1 and scope 2 emissions of third-party transportation companies.

Category 5: Waste generated in operations

This category includes emissions from third-party disposal and treatment of waste that is generated in the reporting company's owned or controlled operations in the reporting year. This category includes emissions from disposal of both solid waste and wastewater. Only waste treatment in facilities owned or operated by third parties is included in scope 3. Waste treatment at facilities owned or controlled by the reporting company is accounted for in scope 1 and scope 2. Treatment of waste generated in operations is categorized as an upstream scope 3 category because waste management services are purchased by the reporting company.

This category includes all future emissions that result from waste generated in the reporting year. (See section 5.4 for more information on the time boundary of scope 3 categories.)

Waste treatment activities may include:

- Disposal in a landfill
- Disposal in a landfill with landfill-gas-to-energy (LFGTE) – i.e., combustion of landfill gas to generate electricity
- Recovery for recycling
- Incineration
- Composting
- Waste-to-energy (WTE) or energy-from-waste (EfW) – i.e., combustion of municipal solid waste (MSW) to generate electricity
- Wastewater treatment

Companies may optionally include emissions from transportation of waste.

See box 5.6 for guidance on accounting for emissions from recycling.

A reporting company's scope 3 emissions from waste generated in operations include the scope 1 and scope 2 emissions of solid waste and wastewater management companies.

Table [5.7] **Accounting for emissions from transportation and distribution activities in the value chain**

Transportation and distribution activity in the value chain	*Scope and scope 3 category*
Transportation and distribution in vehicles and facilities owned or controlled by the reporting company	**Scope 1 (for fuel use) or scope 2 (for electricity use)**
Transportation and distribution in vehicles and facilities leased by and operated by the reporting company (and not already included in scope 1 or scope 2)	**Scope 3, category 8 (Upstream leased assets)**
Transportation and distribution of purchased products, upstream of the reporting company's tier 1 suppliers (e.g., transportation between a company's tier 2 and tier 1 suppliers)	**Scope 3, category 1 (Purchased goods and services), since emissions from transportation are already included in the cradle-to-gate emissions of purchased products. These emissions are not required to be reported separately from category 1.**
Production of vehicles (e.g., ships, trucks, planes) purchased or acquired by the reporting company	**Account for the upstream (i.e., cradle-to-gate) emissions associated with manufacturing vehicles in Scope 3, category 2 (Capital goods)**
Transportation of fuels and energy consumed by the reporting company	**Scope 3, category 3 (Fuel- and energy-related emissions not included in scope 1 or scope 2)**
Transportation and distribution of products purchased by the reporting company, between a company's tier 1 suppliers and its own operations (in vehicles and facilities not owned or controlled by the reporting company)	**Scope 3, category 4 (Upstream transportation and distribution)**
Transportation and distribution services purchased by the reporting company in the reporting year (either directly or through an intermediary), including inbound logistics, outbound logistics (e.g., of sold products), and transportation and distribution between a company's own facilities (in vehicles and facilities not owned or controlled by the reporting company)	
Transportation and distribution of products sold by the reporting company between the reporting company's operations and the end consumer (if not paid for by the reporting company), including retail and storage (in vehicles and facilities not owned or controlled by the reporting company)	**Scope 3, category 9 (Downstream transportation and distribution)**

Box [5.6] Accounting for emissions from recycling

Companies (e.g., plastic bottle manufacturers) may both purchase materials with recycled content (e.g., plastic) and sell products that are recyclable (e.g., plastic bottles). In this case, accounting for emissions from the recycling processes both upstream and downstream would double count emissions from recycling. To avoid double counting of emissions from recycling processes by the same company, companies should account for upstream emissions from recycling processes in category 1 and category 2 when the company purchases goods or materials with recycled content. In category 5 and category 12, companies should account for emissions from recovering materials at the end of their life for recycling, but should not account for emissions from recycling processes themselves (these are instead included in category 1 and category 2 by purchasers of recycled materials).

Companies should not report negative or avoided emissions associated with recycling in category 5 or category 12. Any claims of avoided emissions associated with recycling should not be included in, or deducted from, the scope 3 inventory, but may instead be reported separately from scope 1, scope 2, and scope 3 emissions. Companies that report avoided emissions should also provide data to support the claim that emissions are avoided (e.g., that recycled materials are collected, recycled, and used) and report the methodology, data sources, system boundary, time period, and other assumptions used to calculate avoided emissions. For more information on avoided emissions, see section 9.5.

Category 6: Business travel

This category includes emissions from the transportation of employees for business-related activities in vehicles owned or operated by third parties, such as aircraft, trains, buses, and passenger cars.

Emissions from transportation in vehicles owned or controlled by the reporting company are accounted for in either scope 1 (for fuel use) or scope 2 (for electricity use). Emissions from leased vehicles operated by the reporting company not included in scope 1 or scope 2 are accounted for in scope 3, category 8 (Upstream leased assets). Emissions from transportation of employees to and from work are accounted for in scope 3, category 7 (Employee commuting).

Emissions from business travel may arise from:

- Air travel
- Rail travel
- Bus travel
- Automobile travel (e.g., business travel in rental cars or employee-owned vehicles other than employee commuting to and from work)
- Other modes of travel

Companies may optionally include emissions from business travelers staying in hotels.

A reporting company's scope 3 emissions from business travel include the scope 1 and scope 2 emissions of transportation companies (e.g., airlines).

Category 7: Employee commuting

This category includes emissions from the transportation of employees[7] between their homes and their worksites.

Emissions from employee commuting may arise from:

- Automobile travel
- Bus travel
- Rail travel
- Air travel
- Other modes of transportation

Companies may include emissions from teleworking (i.e., employees working remotely) in this category.

A reporting company's scope 3 emissions from employee commuting include the scope 1 and scope 2 emissions of employees and third-party transportation providers.

Even though employee commuting is not always purchased or reimbursed by the reporting company, it is categorized as an upstream scope 3 category because it is a service that enables company operations, similar to purchased or acquired goods and services.

Category 8: Upstream leased assets

This category includes emissions from the operation of assets that are leased by the reporting company in the reporting year and not already included in the reporting company's scope 1 or scope 2 inventories. This category is only applicable to companies that operate leased assets (i.e., lessees). For companies that own and lease assets to others (i.e., lessors), see category 13 (Downstream leased assets).

Leased assets may be included in a company's scope 1 or scope 2 inventory depending on the type of lease and the consolidation approach the company uses to define its organizational boundaries (see section 5.2).

If the reporting company leases an asset for only part of the reporting year, it should account for emissions for the portion of the year that the asset was leased. A reporting company's scope 3 emissions from upstream leased assets include the scope 1 and scope 2 emissions of lessors (depending on the lessor's consolidation approach).

See Appendix A for more information on accounting for emissions from leased assets.

Category 9: Downstream transportation and distribution

This category includes emissions from transportation and distribution of products sold by the reporting company in the reporting year between the reporting company's operations and the end consumer (if not paid for by the reporting company), in vehicles and facilities not owned or controlled by the reporting company. This category includes emissions from retail and storage. Outbound transportation and distribution services that are purchased by the reporting company are excluded from category 9 and included in category 4 (Upstream transportation and distribution) because the reporting company purchases the service. Category 9 only includes transportation- and distribution-related emissions that occur after the reporting company pays to produce and distribute its products. See table 5.7 for guidance on accounting for emissions from transportation and distribution in the value chain.

Emissions from downstream transportation and distribution can arise from:

- Storage of sold products in warehouses and distribution centers
- Storage of sold products in retail facilities
- Air transport
- Rail transport
- Road transport
- Marine transport

Companies may include emissions from customers traveling to retail stores in this category, which can be significant for companies that own or operate retail facilities. See section 5.6 for guidance on the applicability of category 9 to final products and intermediate products sold by the reporting company. A reporting company's scope 3 emissions from downstream transportation and distribution include the scope 1 and scope 2 emissions of transportation companies, distribution companies, retailers, and (optionally) customers.

Category 10: Processing of sold products

This category includes emissions from processing of sold intermediate products by third parties (e.g., manufacturers) subsequent to sale by the reporting company. Intermediate products are products that require further processing, transformation, or inclusion in another product before use (see box 5.3), and therefore result in emissions from processing subsequent to sale by the reporting company and before use by the end consumer. Emissions from processing should be allocated to the intermediate product.

In certain cases, the eventual end use of sold intermediate products may be unknown. For example, a company may produce an intermediate product with many potential downstream applications, each of which has a different GHG emissions profile, and be unable to reasonably estimate the downstream emissions associated with the various end uses of the intermediate product. See section 6.4 for guidance in cases where downstream emissions associated with sold intermediate products are unknown.

Companies may calculate emissions from category 10 without collecting data from customers or other value chain partners. For more information, see *Guidance for*

Calculating Scope 3 Emissions, available online at www.ghgprotocol.org. See also section 5.6 for guidance on the applicability of category 10 to final products and intermediate products sold by the reporting company. A reporting company's scope 3 emissions from processing of sold intermediate products include the scope 1 and scope 2 emissions of downstream value chain partners (e.g., manufacturers).

Category 11: Use of sold products

This category includes emissions from the use of goods and services sold by the reporting company in the reporting year. A reporting company's scope 3 emissions from use of sold products include the scope 1 and scope 2 emissions of end users. End users include both consumers and business customers that use final products.

This standard divides emissions from the use of sold products into two types:

- Direct use-phase emissions
- Indirect use-phase emissions

The minimum boundary of category 11 includes direct use-phase emissions of sold products. Companies may also account for indirect use-phase emissions of sold products, and should do so when indirect use-phase emissions are expected to be significant. See table 5.8 for descriptions and examples of direct and indirect use-phase emissions.

This category includes the total expected lifetime emissions from all relevant products sold in the reporting year across the company's product portfolio. By doing so, the scope 3 inventory accounts for a company's total GHG emissions associated with its activities in the reporting year. (Refer to section 5.4 for more information on the time boundary of scope 3 categories.) See box 5.7 for an example of reporting product lifetime emissions and box 5.8 for guidance related to product lifetime and durability. Refer to the *GHG Protocol Product Standard* for information on accounting for GHG emissions from individual products over their life cycle.

Companies may optionally include emissions associated with maintenance of sold products during use.

See section 5.6 for guidance on the applicability of category 11 to final products and intermediate products sold by the reporting company.

Companies may calculate emissions from category 11 without collecting data from customers or consumers.

Table [5.8] Emissions from use of sold products

Type of emissions	*Product type*	*Examples*
Direct use-phase emissions (*Required*)	Products that directly consume energy (fuels or electricity) during use	Automobiles, aircraft, engines, motors, power plants, buildings, appliances, electronics, lighting, data centers, web-based software
	Fuels and feedstocks	Petroleum products, natural gas, coal, biofuels, and crude oil
	Greenhouse gases and products that contain or form greenhouse gases that are emitted during use	CO_2, CH_4, N_2O, HFCs, PFCs, SF_6, refrigeration and air-conditioning equipment, industrial gases, fire extinguishers, fertilizers
Indirect use-phase emissions (*Optional*)	Products that indirectly consume energy (fuels or electricity) during use	Apparel (requires washing and drying), food (requires cooking and refrigeration), pots and pans (require heating), and soaps and detergents (require heated water)

Calculating emissions from category 11 typically requires product design specifications and assumptions about how consumers use products (e.g., use profiles, assumed product lifetimes, etc.). For more information, see *Guidance for Calculating Scope 3 Emissions*, available online at www.ghgprotocol.org. Companies are required to report a description of the methodologies and assumptions used to calculate emissions (see chapter 11).

Where relevant, companies should report additional information on product performance when reporting scope 3 emissions in order to provide additional transparency on steps companies are taking to reduce GHG emissions from sold products. Such information may include GHG intensity metrics, energy intensity metrics, and annual emissions from the use of sold products (see section 11.3). See section 9.3 for guidance on recalculating base year emissions when methodologies or assumptions related to category 11 change over time.

Any claims of avoided emissions related to a company's sold products must be reported separately from the company's scope 1, scope 2, and scope 3 inventories. (For more information, see section 9.5.)

Box [5.7] Example of reporting product lifetime emissions

An automaker sells one million cars in 2010. Each car has an expected lifetime of ten years. The company reports the anticipated use-phase emissions of the one million cars it sold in 2010 over their ten year expected lifetime. The company also reports corporate average fuel economy (km per liter) and corporate average emissions (kg CO_2e/km) as relevant emissions-intensity metrics.

Box [5.8] Product lifetime and durability

Because the scope 3 inventory accounts for total lifetime emissions of sold products, companies that produce more durable products with longer lifetimes could appear to be penalized because, as product lifetimes increase, scope 3 emissions increase, assuming all else is constant. To reduce the potential for emissions data to be misinterpreted, companies should also report relevant information such as product lifetimes and emissions intensity metrics to demonstrate product performance over time. Relevant emissions intensity metrics may include annual emissions per product, energy efficiency per product, emissions per hour of use, emissions per kilometer driven, emissions per functional unit, etc.

Category 12: End-of-life treatment of sold products

This category includes emissions from the waste disposal and treatment of products sold by the reporting company (in the reporting year) at the end of their life.

This category includes the total expected end-of-life emissions from all products sold in the reporting year. (See section 5.4 for more information on the time boundary of scope 3 categories.) End-of-life treatment methods (e.g. landfilling, incineration) are described in category 5 (Waste generated in operations). A reporting company's scope 3 emissions from end-of-life treatment of sold products include the scope 1 and scope 2 emissions of waste management companies.

See section 5.6 for guidance on the applicability of category 12 to final products and intermediate products sold by the reporting company and box 5.6 for guidance on accounting for emissions from recycling, which applies to both category 5 and category 12. Calculating emissions from category 12 requires assumptions about the end-of-life treatment methods used by consumers. For more information, see *Guidance for Calculating Scope 3 Emissions*, available online at www.ghgprotocol.org. Companies are required to report a description of the methodologies and assumptions used to calculate emissions (see chapter 11).

IKEA: Scope 3 emissions from the use of sold products

IKEA, an international home furnishings retailer, estimated its scope 3 emissions from all sold products that consume energy during the use-phase. The products included all types of appliances (e.g., refrigerators, freezers, stoves, and ovens) and lighting (e.g., incandescent light bulbs, compact fluorescent bulbs, and halogen lights) sold in approximately 25 countries. IKEA calculated GHG emissions by first grouping hundreds of products into 15 distinct product groups, then determining the average power demand (in watts), average annual use time, and average product lifetimes for each product group. IKEA obtained information on product-use profiles and lifetimes from IKEA's suppliers and other experts. IKEA calculated the products' expected lifetime energy use and applied an average electricity emission factor to calculate the expected lifetime GHG emissions.

IKEA has adopted a target that, by 2015, all products sold will be 50 percent more efficient on average than the products on the market in 2008.

The results showed that the use of sold products accounted for 20 percent of IKEA's combined scope 1, scope 2, and scope 3 emissions, or approximately 6 million metric tons of GHG emissions. With the help of the scope 3 inventory, IKEA realized that small changes in the efficiency of its sold products would have significant effects on IKEA's total GHG emissions. As a result, IKEA has adopted a target that, by 2015, all products sold will be 50 percent more efficient on average than the products on the market in 2008. IKEA expects this strategy to achieve annual GHG reductions of several million metric tons, significantly more than the company's total scope 1 and scope 2 emissions, which in 2010 was approximately 800,000 metric tons of CO_2e.

Category 13: Downstream leased assets

This category includes emissions from the operation of assets that are owned by the reporting company (acting as lessor) and leased to other entities in the reporting year that are not already included in scope 1 or scope 2. This category is applicable to lessors (i.e., companies that receive payments from lessees). Companies that operate leased assets (i.e., lessees) should refer to category 8 (Upstream leased assets).

Leased assets may be included in a company's scope 1 or scope 2 inventory depending on the type of lease and the consolidation approach the company uses to define its organizational boundaries. (See section 5.2 for more information.) If the reporting company leases an asset for only part of the reporting year, the reporting company should account for emissions from the portion of the year that the asset was leased. See Appendix A for more information on accounting for emissions from leased assets.

In some cases, companies may not find value in distinguishing between products sold to customers (accounted for in category 11) and products leased to customers (accounted for in category 13). Companies may account for products leased to customers the same way the company accounts for products sold to customers (i.e., by accounting for the total expected lifetime emissions from all relevant products leased to other entities in the reporting year). In this case, companies should report emissions from leased products in category 11 (Use of sold products), rather than category 13 (Downstream leased assets) and avoid double counting between categories.

A reporting company's scope 3 emissions from downstream leased assets include the scope 1 and scope 2 emissions of lessees (depending on the lessee's consolidation approach).

Category 14: Franchises

This category includes emissions from the operation of franchises not included in scope 1 or scope 2. A franchise is a business operating under a license to sell or distribute another company's goods or services within a certain location. This category is applicable to franchisors (i.e., companies that grant licenses to other entities to sell or distribute its goods or services in return for payments, such as royalties for the use of trademarks and other services). Franchisors should account for emissions that occur from the operation of franchises (i.e., the scope 1 and 2 emissions of franchisees) in this category.

Franchisees (i.e., companies that operate franchises and pay fees to a franchisor) should include emissions from operations under their control in this category if they have not included those emissions in scope 1 and scope 2 due to their choice of consolidation approach. Franchisees may optionally report upstream scope 3 emissions associated with the franchisor's operations (i.e., the scope 1 and scope 2 emissions of the franchisor) in category 1 (Purchased goods and services).

Category 15: Investments

This category includes scope 3 emissions associated with the reporting company's investments in the reporting year, not already included in scope 1 or scope 2. This category is applicable to investors (i.e., companies that make an investment with the objective of making a profit) and companies that provide financial services. Investments are categorized as a downstream scope 3 category because the provision of capital or financing is a service provided by the reporting company.[8]

Category 15 is designed primarily for private financial institutions (e.g., commercial banks), but is also relevant to public financial institutions (e.g., multilateral development banks, export credit agencies, etc.) and other entities with investments not included in scope 1 and scope 2.

Investments may be included in a company's scope 1 or scope 2 inventory depending on how the company defines its organizational boundaries. For example, companies that use the equity share approach include emissions from equity investments in scope 1 and scope 2. Companies that use a control approach account only for those equity investments that are under the company's control in scope 1 and scope 2. Investments not included in the company's scope 1 or scope 2 emissions are included in scope 3, in this category. A reporting company's scope 3 emissions from investments are the scope 1 and scope 2 emissions of investees.

For purposes of GHG accounting, this standard divides financial investments into four types:

- Equity investments
- Debt investments
- Project finance
- Managed investments and client services

Table 5.9 and table 5.10 provide GHG accounting guidance for each type of financial investment. Table 5.9 provides the types of investments included in the minimum boundary of this category. Table 5.10 identifies types of investments that companies may optionally report, in addition to those provided in table 5.9.

Emissions from investments should be allocated to the reporting company based on the reporting company's proportional share of investment in the investee. Because investment portfolios are dynamic and can change frequently throughout the reporting year, companies should identify investments by choosing a fixed point in time, such as December 31 of the reporting year, or using a representative average over the course of the reporting year.

Table [5.9] Accounting for emissions from investments (required)
(Additional guidance on italicized terms is provided on the next page)

Financial investment/ service	*Description*	*GHG accounting approach (Required)*
Equity investments	Equity investments made by the reporting company using the company's own capital and balance sheet, including: • Equity investments in **subsidiaries** (or group companies), where the reporting company has financial control (typically more than 50 percent ownership) • Equity investments in **associate companies** (or affiliated companies), where the reporting company has significant influence but not financial control (typically 20-50 percent ownership) • Equity investments in **joint ventures** (Non-incorporated joint ventures/ partnerships/ operations), where partners have joint financial control	In general, companies in the financial services sector should account for emissions from equity investments in scope 1 and scope 2 by using the equity share consolidation approach to obtain representative scope 1 and scope 2 inventories. If emissions from equity investments are not included in scope 1 or scope 2 (because the reporting company uses either the operational control or financial control consolidation approach and does not have control over the investee), account for *proportional scope 1 and scope 2 emissions* of equity investments that occur in the reporting year in scope 3, category 15 (Investments).
	• Equity investments made by the reporting company using the company's own capital and balance sheet, where the reporting company has **neither financial control nor significant influence** over the emitting entity (and typically has less than 20 percent ownership)	If not included in the reporting company's scope 1 and scope 2 inventories: Account for *proportional scope 1 and scope 2 emissions* of equity investments that occur in the reporting year in scope 3, category 15 (Investments). Companies may establish a threshold (e.g., equity share of 1 percent) below which the company excludes equity investments from the inventory, if disclosed and justified.
Debt investments (with known use of proceeds)	Corporate debt holdings held in the reporting company's portfolio, including corporate debt instruments (such as bonds or convertible bonds prior to conversion) or commercial loans, **with known use of proceeds** (i.e., where the use of proceeds is identified as going to a particular project, such as to build a specific power plant)	For each year during the term of the investment, companies should account for *proportional scope 1 and scope 2 emissions* of *relevant projects* that occur in the reporting year in scope 3, category 15 (Investments). In addition, if the reporting company is an initial sponsor or lender of a project: Also account for the *total projected lifetime scope 1 and scope 2 emissions* of *relevant projects* financed during the reporting year and report those emissions separately from scope 3.
Project finance	Long-term financing of projects (e.g., infrastructure and industrial projects) by the reporting company as either an equity investor (sponsor) or debt investor (financier)	

Additional guidance on key concepts italicized in table 5.9 is provided below.

- **Proportional** emissions from equity investments should be allocated to the investor based on the investor's proportional share of equity in the investee. Proportional emissions from project finance and debt investments with known use of proceeds should be allocated to the investor based on the investor's proportional share of total project costs (total equity plus debt). Companies may separately report additional metrics, such as total emissions of the investee, the investor's proportional share of capital investment in the investee, etc.
- **Scope 1 and scope 2 emissions** include the direct (scope 1) emissions of the investee or project, as well as the indirect scope 2 emissions from the generation of electricity consumed by the investee or project. Where relevant, companies should also account for the scope 3 emissions of the investee or project. For example, if a financial institution provides equity or debt financing to a light bulb manufacturer, the financial institution is required to account for the scope 1 and scope 2 emissions of the light bulb manufacturer (i.e., direct emissions during manufacturing and indirect emissions from electricity consumed during manufacturing). The financial institution should account for the scope 3 emissions of the light bulb producer (e.g., scope 3 emissions from consumer use of light bulbs sold by the manufacturer) when scope 3 emissions are significant compared to other source of emissions or otherwise relevant.
- **Relevant projects** include those in GHG-intensive sectors (e.g., power generation), projects exceeding a specified emissions threshold (developed by the company or industry sector), or projects that meet other criteria developed by the company or industry sector. Companies should account for emissions from the GHG-emitting project financed by the reporting company, regardless of any financial intermediaries involved in the transaction.
- **Total projected lifetime** emissions are reported in the initial year the project is financed, not in subsequent years. Where there is uncertainty around a project's anticipated lifetime, companies may report a range of likely values (e.g., for a coal-fired power plant, a company may report a range over a 30- to 60-year time period). Companies should report the assumptions used to estimate total anticipated lifetime emissions. If project financing occurs only once every few years, emissions from project finance may fluctuate significantly from year to year. Companies should provide appropriate context in the public report (e.g., by highlighting exceptional or non-recurring project financing). See section 5.4 for more information on the time boundary of scope 3 categories.

Citi: Scope 3 emissions from project finance

Citi, a global financial services company, annually reports GHG emissions from power plants it finances through its project finance business worldwide. Citi reports these emissions to provide transparency in GHG emissions from its project finance portfolio. Citi's reporting includes emissions from closed (i.e., completed) project financings of new capacity only, including expansions of existing plants, but not re-financings of existing plants. Emissions data are derived from the power plant's capacity and heat rate, the carbon content of the fuel, and projected capacity utilization. Citi accounts for the total estimated lifetime emissions of projects financed in the reporting year, and calculates project-specific emissions for both a 30- and 60-year assumed plant lifetime. To allocate power plant emissions to Citi, total emissions are multiplied by the ratio of Citi's project finance loan to total project costs (total debt plus equity).

In 2009, Citi financed one thermal power project via project finance with an estimated lifetime emissions of 8.7 to 17.4 million metric tons of CO_2e. (The lower end of the range represents a 30-year plant life and the higher number represents a 60-year plant life.) In 2008, Citi reported zero emissions from power plants, since Citi did not finance any fossil-fuel fired power plants in 2008.

Table [5.10] Accounting for emissions from investments (optional)

Financial investment/ service	*Description*	*GHG accounting approach (Optional)*
Debt investments (without known use of proceeds)	General corporate purposes debt holdings (such as bonds or loans) held in the reporting company's portfolio where the use of proceeds is not specified	Companies may account for scope 1 and scope 2 emissions of the investee that occur in the reporting year in scope 3, category 15 (Investments)
Managed investments and client services	Investments managed by the reporting company on behalf of clients (using clients' capital) or services provided by the reporting company to clients, including: • Investment and asset management (equity or fixed income funds managed on behalf of clients, using clients' capital) • Corporate underwriting and issuance for clients seeking equity or debt capital • Financial advisory services for clients seeking assistance with mergers and acquisitions or requesting other advisory services	Companies may account for emissions from managed investments and client services in scope 3, category 15 (Investments)
Other investments or financial services	Other investments, financial contracts, or financial services not included above (e.g., pension funds, retirement accounts, securitized products, insurance contracts, credit guarantees, financial guarantees, export credit insurance, credit default swaps, etc.)	Companies may account for emissions from other investments in scope 3, category 15 (Investments)

5.6 Applicability of downstream scope 3 categories to final and intermediate products

Upstream emissions are applicable for all types of purchased products. The applicability of downstream scope 3 categories depends on whether products sold by the reporting company are final products or intermediate products. (See box 5.3 for descriptions of final and intermediate products.) If a company produces an intermediate product (e.g., a motor), which becomes part of a final product (e.g., an automobile), the company accounts for downstream emissions associated with the intermediate product (the motor), not the final product (the automobile). Table 5.11 explains the applicability of downstream scope 3 categories to final and intermediate products sold by the reporting company. See section 6.4 for guidance on disclosing and justifying exclusions of downstream emissions from sold intermediate goods when their eventual end use is unknown.

Table [5.11] Applicability of downstream scope 3 categories to final and intermediate products sold by the reporting company

Scope 3 category	*Applicability to final products*	*Applicability to intermediate products*
9. Downstream transportation and distribution	Transportation and distribution of ***final*** products, between the point of sale by the reporting company to the end consumer, including retail and storage	Transportation and distribution of ***intermediate*** products between the point of sale by the reporting company and either 1) the end consumer (if the eventual end use of the intermediate product is known) or 2) business customers (if the eventual end use of the intermediate product is unknown)
10. Processing of sold products	Not applicable to final products	Processing of sold intermediate products by customers (e.g., manufacturers)
11. Use of sold products	The direct use-phase emissions of sold ***final*** products by the end user (i.e., emissions resulting from the use of sold ***final*** products that directly consume fuel or electricity during use, fuels and feedstocks, and GHGs or products that contain GHGs that are released during use). Companies may optionally include the indirect use-phase emissions of sold final products (see table 5.8)	The direct use-phase emissions of sold ***intermediate*** products[9] by the end user (i.e., emissions resulting from the use of sold ***intermediate*** products that directly consume fuel or electricity during use, fuels and feedstocks, and GHGs or products that contain GHGs that are released during use). Companies may optionally include the indirect use-phase emissions of sold intermediate products (see table 5.8)
12. End-of-life treatment of sold products	Emissions from disposing of sold ***final*** products at the end of their life	Emissions from disposing of sold ***intermediate*** products at the end of their life
13. Downstream leased assets	*Unrelated to product type:* Applicable to all companies with downstream leased assets	
14. Franchises	*Unrelated to product type*: Applicable to all companies with franchises	
15. Investments	*Unrelated to product type*: Applicable to all companies with investments	

Endnotes

1 In certain cases, assets controlled by the reporting company that are excluded from its organizational boundary may not be captured by the list of scope 3 categories. In such a case, emissions from these assets should be reported separately as an "other" scope 3 activity.

2 Downstream emissions also include emissions from products that are distributed but not sold (i.e., without receiving payment).

3 If a company identifies any potential double counting of emissions between scope 3 categories or within a scope 3 category, the company should avoid double counting by only reporting scope 3 emissions from the activity once, clearly explaining where the emissions are reported, and providing cross-references, if needed.

4 Cradle-to-gate emissions include all emissions that occur in the life cycle of purchased products, up to the point of receipt by the reporting company (excluding emissions from sources that are owned or controlled by the reporting company).

5 For more information on land use and land-use change, refer to Appendix B of the *GHG Protocol Product Standard*.

6 Tier 1 suppliers are companies with which the reporting company has a purchase order for goods or services (e.g., materials, parts, components, etc.). Tier 2 suppliers are companies with which Tier 1 suppliers have a purchase order for goods and services (see figure 7.3).

7 "Employees" refers to employees of entities and facilities owned, operated, or leased by the reporting company. Companies may include employees of other relevant entities (e.g., franchises or outsourced operations) in this category, as well as consultants, contractors, and other individuals who are not employees of the company, but commute to facilities owned and operated by the company.

8 Equity investments do not easily fit into the upstream and downstream definitions, but are included along with other types of investments in Category 15 so that all investments are included in a single category.

9 In the case of a motor (an intermediate product) that becomes part of an automobile (a final product), the direct use phase emissions of the intermediate product by the end consumer are the emissions resulting from use of the motor, not the emissions resulting from use of the automobile. This estimation involves allocating emissions (see chapter 8).

06 Setting the Scope 3 Boundary

Determining which scope 3 emissions to include in the inventory (i.e., setting the boundary) is a critical decision in the inventory process. The GHG Protocol Corporate Standard allows companies flexibility in choosing which, if any, scope 3 activities to include in the GHG inventory when the company defines its operational boundaries. The GHG Protocol Scope 3 Standard is designed to create additional completeness and consistency in scope 3 accounting and reporting by defining scope 3 boundary requirements.

Requirements in this chapter

- ***Companies shall account for all scope 3 emissions and disclose and justify any exclusions.***
- ***Companies shall account for emissions from each scope 3 category according to the minimum boundaries provided in table 5.4.***
- ***Companies shall account for scope 3 emissions of CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6, if they are emitted in the value chain.***
- ***Biogenic CO_2 emissions that occur in the reporting company's value chain shall not be included in the scopes, but shall be included and separately reported in the public report.***

6.1 Mapping the value chain

Companies should map the value chain as a first step toward identifying the scope 3 activities that are included in the inventory. This step is a useful internal exercise to help companies identify scope 3 activities. To the extent possible, companies should create a complete value chain map and/or a complete list of activities in the company's value chain that includes:

- Each of the scope 3 categories and activities included in table 5.4
- A list of purchased goods and services and a list of sold goods and services
- A list of suppliers and other relevant value chain partners (either by name, type, or spend category)

Because supply chains are dynamic and a company's supply chain partners can change frequently throughout the reporting year, companies may find it useful to choose a fixed point in time (such as December 31 of the reporting year) or use a representative average of products and suppliers over the course of the reporting year.

Companies should strive for completeness in mapping the value chain, but it is acknowledged that achieving 100 percent completeness may not be feasible. Companies may establish their own policy for mapping the value chain, which may include creating representative, rather than exhaustive, lists of purchased products, sold products, suppliers, and other value chain partners.

6.2 Boundary requirements

Companies shall account for all scope 3 emissions as defined in this standard and disclose and justify any exclusions. Companies shall account for emissions from each scope 3 category according to the minimum boundaries provided in table 5.4. Companies may include emissions from optional activities within each category. Companies shall account for scope 3 emissions of carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF_6), if they are emitted in the value chain. Companies may exclude scope 3 activities from the inventory, provided that any exclusion is disclosed and justified.

Biogenic CO_2 emissions (e.g., CO_2 from the combustion of biomass) that occur in the reporting company's value chain shall not be included in the scopes, but shall be included and separately reported in the public report. Any GHG removals (e.g., biological GHG sequestration) shall not be included in scope 3, but may be reported separately. (For more information, see section 6.5 and chapter 11.)

6.3 Disclosing and justifying exclusions

Companies should strive for completeness, but it is acknowledged that accounting for all scope 3 emissions may not be feasible. Some categories may not be applicable to all companies. For example, some companies may not have leased assets or franchises. In such cases, companies should report zero emissions or "not applicable" for any categories that are not applicable.

In some situations, companies may have scope 3 activities, but be unable to estimate emissions due to a lack of data or other limiting factors. For example, companies may find that based on initial estimates, some scope 3 activities are expected to be insignificant in size (compared to the company's other sources of emissions) and that for these activities, the ability to collect data and influence GHG reductions is limited. In such cases, companies may exclude scope 3 activities from the report, provided that any exclusion is disclosed and justified.

Companies should follow the principles of relevance, completeness, accuracy, consistency, and transparency when deciding whether to exclude any activities from the scope 3 inventory. Companies should not exclude any activity that would compromise the relevance of the reported inventory. (See table 6.1 for a list of criteria for determining relevance.) Companies should ensure that the scope 3 inventory appropriately reflects the GHG emissions of the company, and serves the decision-making needs of users, both internal and external to the company.

In particular, companies should not exclude any activity that is expected to contribute significantly to the company's total scope 3 emissions. (See section 7.1 for guidance on prioritizing emissions.)

Companies are required to disclose and justify any exclusions in the public report (see chapter 11).

See box 6.1 for an example of disclosing and justifying exclusions.

6.4 Accounting for downstream emissions

The applicability of downstream scope 3 categories depends on whether products sold by the reporting company are final products or intermediate products (see section 5.6). In certain cases, the eventual end use of sold intermediate products may be unknown. For example, a company may produce an intermediate product with many potential downstream applications, each of which has a different GHG emissions profile, and be unable to reasonably estimate the downstream emissions associated with the various end uses of the intermediate product. In such a case, companies may disclose and justify the exclusion of downstream emissions from categories 9, 10, 11, and 12 in the report (but should not selectively exclude a subset of those categories).

Table [6.1] Criteria for identifying relevant scope 3 activities

Criteria	*Description*
Size	They contribute significantly to the company's total anticipated scope 3 emissions (see section 7.1 for guidance on using initial estimation methods)
Influence	There are potential emissions reductions that could be undertaken or influenced by the company (see box 6.2)
Risk	They contribute to the company's risk exposure (e.g., climate change related risks such as financial, regulatory, supply chain, product and customer, litigation, and reputational risks) (see table 2.2)
Stakeholders	They are deemed critical by key stakeholders (e.g., customers, suppliers, investors, or civil society)
Outsourcing	They are outsourced activities previously performed in-house or activities outsourced by the reporting company that are typically performed in-house by other companies in the reporting company's sector
Sector guidance	They have been identified as significant by sector-specific guidance
Other	They meet any additional criteria for determining relevance developed by the company or industry sector

Box [6.1] Example of disclosing & justifying exclusions

After mapping its value chain, a company uses initial GHG estimation methods to estimate the emissions from the various spend categories within category 1 (Purchased goods and services). The company finds that emissions from production-related procurement are significant compared to its other sources of scope 3 emissions. The company determines that emissions from non-production-related procurement are difficult to calculate and are not expected to contribute significantly to total scope 3 emissions. The company uses more accurate methods to calculate emissions from production-related procurement, but decides to exclude emissions from non-production-related procurement. The company discloses and justifies the exclusion of non-production-related procurement based on limited data availability and its expected insignificant contribution to total scope 3 emissions.

Box [6.2] Influence

By definition, scope 3 emissions occur from sources that are not owned or controlled by the reporting company, but occur from sources owned and controlled by other entities in the value chain (e.g., contract manufacturers, materials suppliers, third-party logistics providers, waste management suppliers, travel suppliers, lessees and lessors, franchisees, retailers, employees, and customers). Nevertheless, scope 3 emissions can be influenced by the activities of the reporting company, such that companies often have the ability to influence GHG reductions upstream and downstream of their operations. Companies should prioritize activities in the value chain where the reporting company has the potential to influence GHG reductions. See table 9.7 for illustrative examples of actions to influence scope 3 reductions.

6.5 Accounting for emissions and removals from biogenic sources

The *GHG Protocol Corporate Standard* requires that direct CO_2 emissions from the combustion of biomass be included in the public report, but reported separately from the scopes, rather than included in scope 1. The separate reporting requirement also applies to scope 3. Biogenic CO_2 emissions (e.g., CO_2 from the combustion of biomass) that occur in the reporting company's value chain are required to be included in the public report, but reported separately from scope 3 (see chapter 11).

The requirement to report biogenic CO_2 emissions separately refers to CO_2 emissions from combustion or biodegradation of biomass only, not to emissions of any other GHGs (e.g., CH_4 and N_2O), or to any GHG emissions that occur in the life cycle of biomass other than from combustion or biodegradation (e.g., GHG emissions from processing or transporting biomass).

Scope 1, scope 2, and scope 3 inventories include only emissions, not removals. Any removals (e.g., biological GHG sequestration) may be reported separately from the scopes. See examples 6.1 and 6.2.

Example [6.1] Accounting for biogenic emissions

A manufacturing company contracts with a third-party transportation provider that uses both diesel and biodiesel in its vehicle fleet. The manufacturer accounts for upstream GHG emissions from the combustion of diesel fuel in scope 3, category 4 (Upstream transportation and distribution), since emissions from diesel fuel are of fossil origin. The manufacturer reports biogenic CO_2 emissions from the combustion of biodiesel separately. The manufacturer does not report any removals associated with the production of biodiesel in scope 3.

PSEG: Setting the scope 3 boundary

Public Service Enterprise Group (PSEG), a diversified energy company and one of the ten largest electric companies in the U.S., developed a scope 3 inventory to understand its climate-related risks and opportunities along the value chain and to communicate this information transparently to stakeholders.

To set the inventory boundary, PSEG first identified all company assets and operations and developed detailed process maps to define all upstream and downstream activities that could emit GHGs. PSEG included all activities in each of the fifteen scope 3 categories, with the exception of certain types of financial investments and health-care expenses, which were determined to be immaterial. PSEG disclosed and justified exclusions consistent with the completeness and transparency principles.

To develop the inventory, PSEG used higher quality primary data for all activities that were significant in size, where data could easily be attained, or where having higher quality data was otherwise important. For activities that were small or immaterial, or where data was hard to obtain, PSEG relied upon secondary or proxy data to estimate scope 3 emissions.

The scope 3 inventory gave PSEG greater clarity on its emissions risks and opportunities throughout the entire value chain. PSEG found significant downstream scope 3 emissions from category 11 (Use of sold products), which helped PSEG better understand the GHG emissions embedded in the electricity and natural gas that it delivers to its customers and the need to help customers reduce these emissions by investing in renewable energy and energy-efficiency programs. PSEG also found significant upstream scope 3 emissions in its fossil fuel supply chain. These insights provide business value by informing PSEG's strategy to provide safe, reliable, economic, and green energy well into the 21st century.

The scope 3 inventory gave PSEG greater clarity on its emissions risks and opportunities throughout the entire value chain.

Example [6.2] Accounting for biogenic emissions and removals

A paper manufacturer purchases wood pulp from suppliers and sells finished paper products to consumers. The company accounts for GHG emissions from the production of wood pulp in scope 3, category 1 (Purchased goods and services). The company does not account for upstream CO_2 removals from biological carbon sequestration that occurs in trees in scope 3, but instead may report CO_2 removals separately. The company also does not account for downstream biogenic CO_2 emissions from the incineration of sold paper products at the end of their life in scope 3, but instead reports those emissions separately.

Ocean Spray: Setting the scope 3 boundary

Ocean Spray, a leading producer of bottled juice drinks and dried fruit in North America, developed its first scope 3 inventory with the goal of informing an effective GHG-reduction strategy. At the outset, Ocean Spray identified a tension between the completeness of the inventory and the specificity of data used to calculate emissions. Ocean Spray decided that to best inform the company's GHG-reduction strategy, it should develop a scope 3 inventory by focusing on completeness over precision, and to disclose the sources and uncertainty of data used. A complete inventory showed Ocean Spray the full picture of its value chain GHG emissions, revealed the greatest reduction opportunities, and enabled effective decision making, which would have been hindered by excluding scope 3 activities from the inventory.

A complete inventory showed Ocean Spray the full picture of its value chain GHG emissions, revealed the greatest reduction opportunities, and enabled effective decision making

To develop a complete inventory, Ocean Spray first identified all scope 3 activities, such as growing and processing fruit, transforming fruit into food and beverage products, distributing products to customers, and use and disposal by consumers. Ocean Spray then collected primary data for activities such as the economic value of upstream ingredients, materials, and services. The company used economic input-output assessment to calculate emissions using the cost data on upstream suppliers. Where primary data was not available, the company calculated estimates based on assumptions, especially for downstream activities such as consumer disposal.

Through the scope 3 inventory process, Ocean Spray learned that scope 3 emissions account for most of its total scope 1, scope 2, and scope 3 emissions. The company's largest source of GHG emissions came from category 1 (Purchased goods and services) which accounted for more than half of combined scope 1, scope 2, and scope 3 emissions, driven primarily by raw material inputs.

07 Collecting Data

After a company has identified the activities to include in its scope 3 boundary, the next step is to collect the necessary data to calculate the company's scope 3 emissions.

Collecting scope 3 emissions data is likely to require wider engagement within the reporting company, as well as with suppliers and partners outside of the company, than is needed to collect scope 1 and scope 2 emissions data. Companies may need to engage several internal departments, such as procurement, energy, manufacturing, marketing, research and development, product design, logistics, and accounting.

This chapter provides a four-step approach to collecting and evaluating data (see figure 7.1).

Guidance for calculating scope 3 emissions from each scope 3 category is provided in a separate document, *Guidance for Calculating Scope 3 Emissions*, which is available at www.ghgprotocol.org.

7.1 Guidance for prioritizing data collection efforts

Companies should prioritize data collection efforts on the scope 3 activities that are expected to have the most significant GHG emissions, offer the most significant GHG reduction opportunities, and are most relevant to the company's business goals. Collecting higher quality data for priority activities allows companies to focus resources on the most significant GHG emissions in the value chain, more effectively set reduction targets, and track and demonstrate GHG reductions over time (see chapter 9).

Companies may use a combination of approaches and criteria to identify priority activities. For example, companies may seek higher quality data for all activities

Figure [7.1] Iterative process for collecting and evaluating data

that are significant in size, activities that present the most significant risks and opportunities in the value chain, and activities where more accurate data can be easily obtained. Companies may choose to rely on relatively less accurate data for activities that are expected to have insignificant emissions or where accurate data is difficult to obtain. (See Appendix C for guidance on developing a data management plan, including strategies for obtaining more accurate data over time).

Prioritizing activities based on the magnitude of GHG emissions

The most rigorous approach to identifying priority activities is to use initial GHG estimation (or screening) methods to determine which scope 3 activities are expected to be most significant in size. A quantitative approach gives the most accurate understanding of the relative magnitudes of various scope 3 activities. To prioritize activities based on their expected GHG emissions, companies should:

- use initial GHG estimation (or screening) methods to estimate the emissions from each scope 3 activity (e.g., by using industry-average data, environmentally-extended input output data (see box 7.1), proxy data, or rough estimates); and
- rank all scope 3 activities from largest to smallest according to their estimated GHG emissions to determine which scope 3 activities have the most significant impact.

Calculation methods for each scope 3 category that can be used for screening are provided in a separate document, *Guidance for Calculating Scope 3 Emissions*, which is available at www.ghgprotocol.org.

Prioritizing activities based on financial spend or revenue

As an alternative to ranking scope 3 activities based on their estimated GHG emissions, companies may choose to prioritize scope 3 activities based on their relative financial significance. Companies may use a financial spend analysis to rank upstream types of purchased products by their contribution to the company's total spend or expenditure (for an example, see the AkzoNobel case study). For downstream emissions, companies may likewise rank types of sold products by their contribution to the company's total revenue.

Companies should use caution in prioritizing activities based on financial contribution, because spend and revenue may not correlate well with emissions. For example, some activities have a high market value, but have relatively low emissions. Conversely, some activities have a low market value, but have relatively high emissions. As a result, companies should also prioritize activities that do not contribute significantly to financial spend or revenue, but are expected to have a significant GHG impact.

Prioritizing activities based on other criteria

In addition to prioritizing data collection efforts on activities expected to contribute significantly to total scope 3 emissions or to spend, companies may prioritize any other activities expected to be most relevant for the company or its stakeholders, including activities that:

- the company has influence over;
- contribute to the company's risk exposure;
- stakeholders deem critical;
- have been identified as significant by sector-specific guidance; or
- meet any additional criteria developed by the company or industry sector (see table 6.1 for more information).

Box [7.1] Environmentally-extended input output (EEIO) models

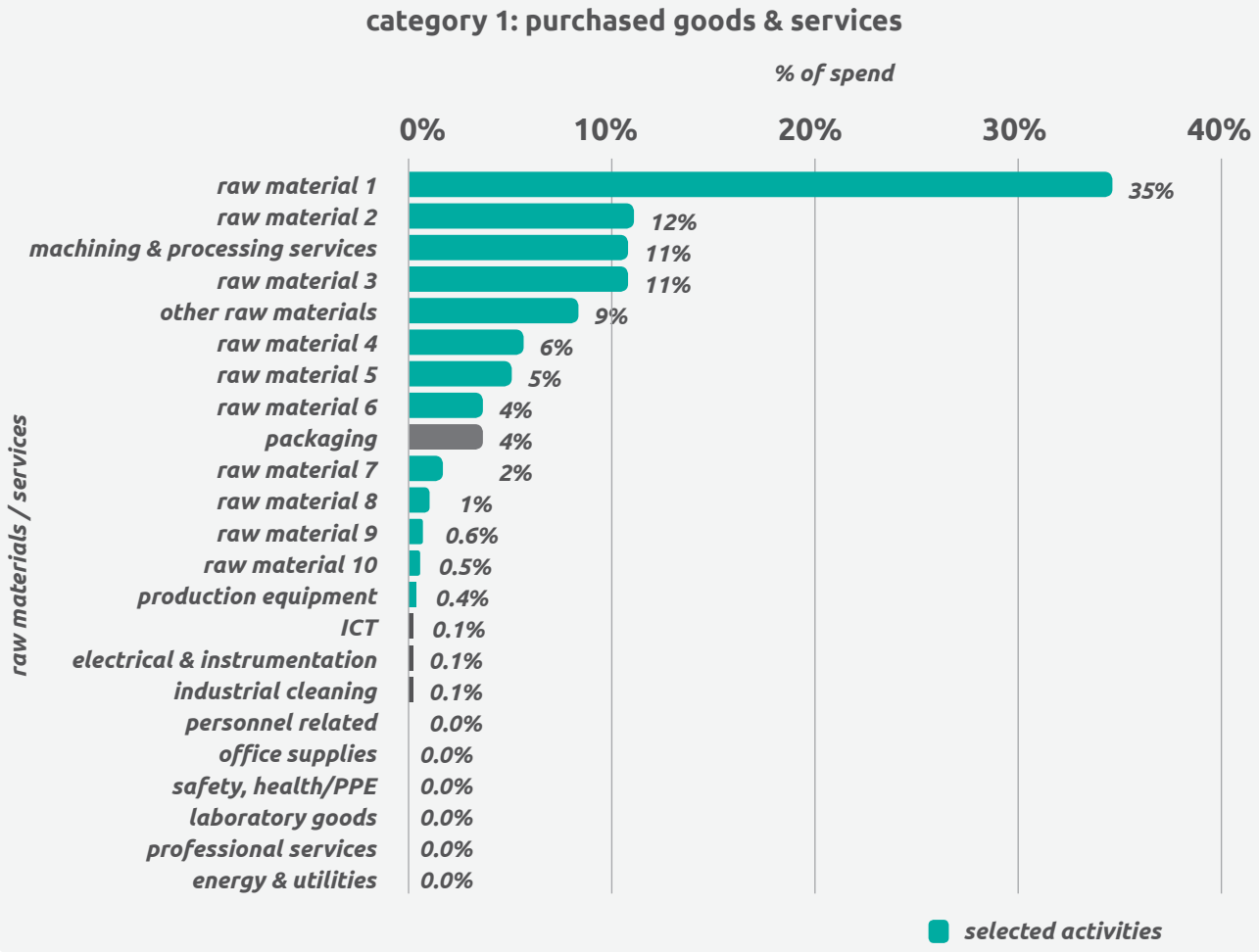
Environmentally-extended input output (EEIO) models estimate energy use and/or GHG emissions resulting from the production and upstream supply chain activities of different sectors and products within an economy. The resulting EEIO emissions factors can be used to estimate GHG emissions for a given industry or product category. EEIO data are particularly useful in screening emission sources when prioritizing data collection efforts.

EEIO models are derived by allocating national GHG emissions to groups of finished products based on economic flows between industry sectors. EEIO models vary in the number of sectors and products included and how often they are updated. EEIO data are often comprehensive, but the level of granularity is relatively low compared to other sources of data.

AkzoNobel: Prioritizing scope 3 emissions from purchased goods and services

AkzoNobel, the largest global paints and coatings company and a major producer of specialty chemicals, applied a financial spend analysis to prioritize its purchased goods and services before collecting data for category 1. In three representative businesses used, AkzoNobel set out to identify the purchased goods and services that collectively accounted for at least 80% of the total spend, as well as any category in the remaining 20% that was individually more than 1% of total spend. The graph below illustrates the results of a financial spend analysis for one of AkzoNobel's businesses. Based on the analysis, AkzoNobel focused data collection efforts on the raw materials that represented over 95% of total spend, marked in the graph.

AkzoNobel focused data collection efforts on the raw materials that represented over 95 percent of total spend.



To prioritize scope 3 activities, companies may also assess whether any GHG- or energy-intensive materials or activities appear in the value chain of purchased and sold products.

7.2 Overview of quantification methods and data types

There are two main methods to quantify emissions: direct measurement and calculation (see table 7.1). Each requires different types of data.

In practice, calculation will be used most often to quantify scope 3 emissions, which requires the use of two types of data: activity data and emission factors.

Activity data

Activity data is a quantitative measure of a level of activity that results in GHG emissions. Examples of activity data are provided in table 7.2.

Emission factors

An emission factor is a factor that converts activity data into GHG emissions data. Examples of emission factors are provided in table 7.2.

Companies are required to report a description of the types and sources of activity data and emission factors used to calculate the inventory (see chapter 11).

Table [7.1] Quantification methods

Quantification method	*Description*	*Relevant data types*
Direct measurement	Quantification of GHG emissions using direct monitoring, mass balance or stoichiometry **GHG = Emissions Data x GWP**	Direct emissions data
Calculation	Quantification of GHG emissions by multiplying activity data by an emission factor **GHG = Activity Data x Emission Factor x GWP**	Activity data Emission factors

Table [7.2] Examples of activity data and emission factors

Examples of activity data	*Examples of emission factors*
• Liters of fuel consumed	• kg CO_2 emitted per liter of fuel consumed
• Kilowatt-hours of electricity consumed	• kg CO_2 emitted per kWh of electricity consumed
• Kilograms of material consumed	• kg PFC emitted per kg of material consumed
• Kilometers of distance traveled	• t CO_2 emitted per kilometer traveled
• Hours of time operated	• kg SF_6 emitted per hour of time operated
• Square meters of area occupied	• g N_2O emitted per square meter of area
• Kilograms of waste generated	• g CH_4 emitted per kg of waste generated
• Kilograms of product sold	• kg HFC emitted per kg of product sold
• Quantity of money spent	• kg CO_2 emitted per unit of currency spent

Energy emission factors

Two types of emission factors are used to convert energy activity data into emissions data:

- Combustion emission factors, which include only the emissions that occur from combusting the fuel
- Life cycle emission factors, which include not only the emissions that occur from combusting the fuel, but all other emissions that occur in the life cycle of the fuel such as emissions from extraction, processing, and transportation of fuels

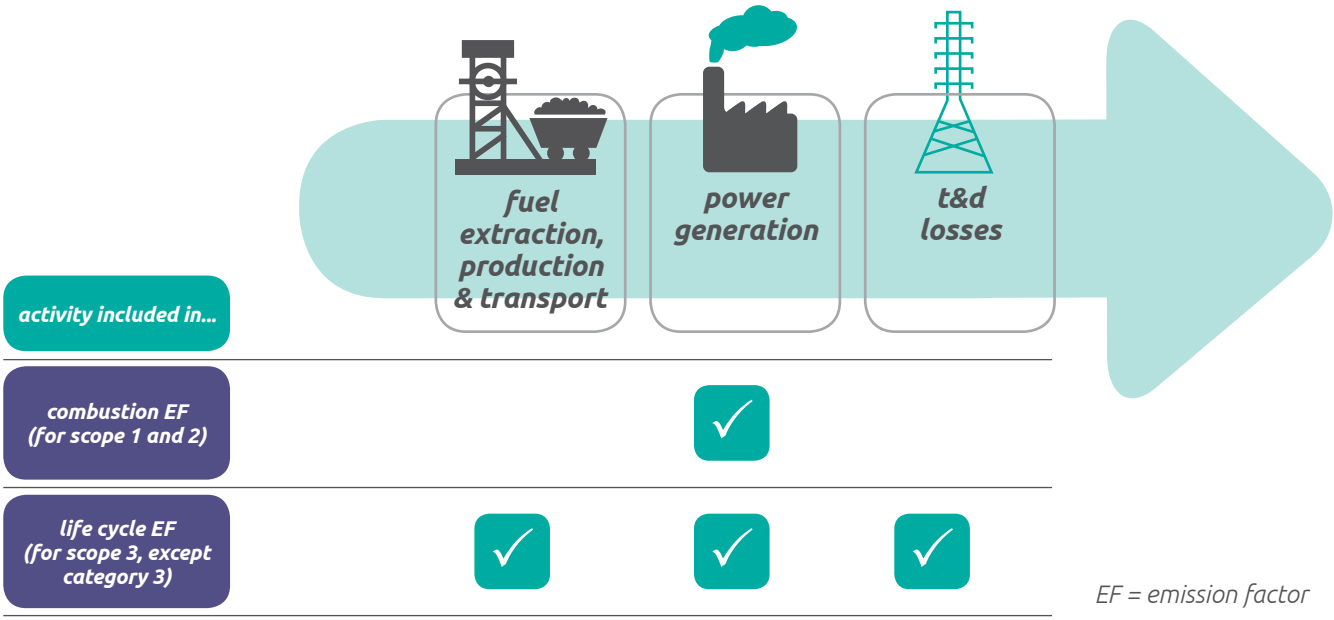
Combustion emission factors are used in the *GHG Protocol Corporate Standard* to calculate scope 1 emissions (in the case of fuels) and scope 2 emissions (in the case of electricity). Life cycle emission factors are used in the *GHG Protocol Product Standard* to calculate emissions from fuels and electricity. These two types of emission factors and their use are described in more detail below.

Energy emission factors in scope 1 and scope 2 accounting

Scope 1 and scope 2 emissions are calculated using combustion emission factors following the *GHG Protocol Corporate Standard*. Scope 1 and scope 2 are defined to avoid double counting by two or more companies of the same emission within the same scope (see table 5.1).

Scope 2 includes emissions from the generation of purchased electricity, steam, heating, and cooling that is consumed by the reporting company. In some regions, electricity emission factors may include life cycle activities related to electricity, such as transmission and distribution of electricity, or extraction, processing and transportation of fuels used to generate electricity. Non-generation activities related to electricity are accounted for in scope 3, category 3 (Fuel- and energy-related activities not included in scope 1 or scope 2), rather than scope 2. As a result, companies should seek (and emission factor developers should provide) transparent, disaggregated electricity emission factors that allow separate accounting of emissions from electricity generation in scope 2 and non-generation activities related to electricity in scope 3. Proper accounting creates consistency in scope 2 accounting and reporting between companies and avoids double counting of the same emission within scope 2 by more than one company. See figure 7.2 for more information on different types of electricity emission factors.

Figure [7.2] Activities included in each type of electricity emission factor



Energy emission factors in scope 3 accounting

Companies should use life cycle emission factors to calculate scope 3 emissions related to fuels and energy consumed in the reporting company's value chain, except for category 3 (fuel- and energy-related activities not included in scope 1 or scope 2) (see below). Compared to combustion emission factors, life cycle emission factors represent all emissions in the upstream supply chain of fuels and energy. Where possible, companies should use life cycle emission factors that are as specific as possible to the type and source of fuel consumed (e.g., specific to the technology used to produce a fuel).

Emission factors for scope 3, category 3 (Fuel- and energy-related activities not included in scope 1 or scope 2)

Two activities within category 3 require special consideration when selecting emission factors:

- Upstream emissions of purchased fuels (i.e., extraction, production, and transportation of fuels consumed by the reporting company)
- Upstream emissions of purchased electricity (i.e., extraction, production, and transportation of fuels consumed in the generation of electricity, steam, heating, and cooling that is consumed by the reporting company)

To calculate emissions from these activities, companies should use life cycle emission factors that exclude emissions from combustion, since emissions from combustion are accounted for in scope 1 (in the case of fuels), in scope 2 (in the case of electricity), and in a separate memo item (in the case of direct CO_2 emissions from combustion of biomass or biofuels).

Global warming potential (GWP) values

Global warming potential (GWP) values describe the radiative forcing impact (or degree of harm to the atmosphere) of one unit of a given GHG relative to one unit of carbon dioxide. GWP values convert GHG emissions data for non-CO_2 gases into units of carbon dioxide equivalent (CO_2e).

Companies should use GWP values provided by the Intergovernmental Panel on Climate Change (IPCC) based on a 100-year time horizon. Companies may either use the IPCC GWP values agreed to by United Nations Framework Convention on Climate Change (UNFCCC) or the most recent GWP values published by the IPCC. Companies should use consistent GWP values across their scope 1, scope 2, and scope 3 inventory and should maintain consistency in the source of GWP values used over time (by consistently following guidance provided by either the UNFCCC or IPCC, once selected). Companies that have already developed scope 1 and scope 2 GHG inventories should use the same GWP values for scope 3 to maintain consistency across the scopes. Companies that have not previously developed a corporate GHG inventory should use the most recent GWP values.

Companies are required to disclose the source of GWP values used to calculate the inventory (see chapter 11).

Overview of primary data and secondary data

Companies may use two types of data to calculate scope 3 emissions:

- Primary data
- Secondary data

Table 7.3 provides definitions of these two types of data.

Table [7.3] Types of data

Data type	*Description*
Primary Data	Data from specific activities within a company's value chain
Secondary Data	Data that is not from specific activities within a company's value chain

Primary data includes data provided by suppliers or other value chain partners related to specific activities in the reporting company's value chain. Such data may take the form of primary activity data, or emissions data calculated by suppliers that are specific to suppliers' activities.

Secondary data includes industry-average data (e.g., from published databases, government statistics, literature studies, and industry associations), financial data, proxy data, and other generic data. In certain cases, companies may use specific data from one activity in the value chain to estimate emissions for another activity in the value chain. This type of data (i.e., proxy data) is considered secondary data, since it is not specific to the activity whose emissions are being calculated.

Table 7.4 provides examples of primary and secondary data by scope 3 category.

Kraft Foods: Collecting scope 3 data

For its first scope 3 inventory, Kraft Foods, a U.S.-based global food products company, focused on achieving a complete inventory of all scope 3 emissions, with the goal of supporting high-level strategic evaluations and internal understanding of its value chain GHG emissions.

Kraft Foods found that scope 3 emissions comprise more than 90 percent of the company's combined scope 1, scope 2, and scope 3 emissions.

To accomplish this goal, the company obtained industry-average life cycle inventory data from various public and commercial sources. Kraft Foods matched the emission factors with its own internal data on activities and purchases. For the company's supply chain, the secondary data approach allowed the company to understand its total scope 3 emissions with reasonable accuracy, cost, and speed, and with the ability to update as more precise secondary data became available.

Using secondary data also fit Kraft Foods' needs given that a large portion of its purchased commodities are produced in a global market where tracking the agricultural source of origin is challenging.

Kraft Foods found that scope 3 emissions comprise more than 90 percent of the company's combined scope 1, scope 2, and scope 3 emissions. Within scope 3, the company found that emissions from category 1 (Purchased goods and services), including raw materials, comprised 70 percent of its total scope 3 emissions, while transportation and distribution, energy-related activities, and the use of sold products accounted for the majority of the remaining 30 percent. Kraft Foods included an estimated uncertainty range for each scope 3 category in order to provide additional transparency.

Kraft Foods plans to continuously improve the quality of its GHG inventory to better understand the company's influence on climate change. Using the inventory results, the company will continue to expand and enhance its efforts to develop effective GHG-reduction strategies.

Table [7.4] **Examples of primary and secondary data by scope 3 category**

Upstream scope 3 emissions

Category	*Examples of primary data*	*Examples of secondary data*
1. Purchased goods and services	• Product-level cradle-to-gate GHG data from suppliers calculated using site-specific data • Site-specific energy use or emissions data from suppliers	• Industry average emission factors per material consumed from life cycle inventory databases
2. Capital goods	• Product-level cradle-to-gate GHG data from suppliers calculated using site-specific data • Site-specific energy use or emissions data from capital goods suppliers	• Industry average emission factors per material consumed from life cycle inventory databases
3. Fuel- and energy-related activities (not included in scope 1 or scope 2)	• Company-specific data on upstream emissions (e.g. extraction of fuels) • Grid-specific T&D loss rate • Company-specific power purchase data and generator-specific emission rate for purchased power	• National average data on upstream emissions (e.g. from life cycle inventory database) • National average T&D loss rate • National average power purchase data
4. Upstream transportation and distribution	• Activity-specific energy use or emissions data from third-party transportation and distribution suppliers • Actual distance traveled • Carrier-specific emission factors	• Estimated distance traveled by mode based on industry-average data
5. Waste generated in operations	• Site-specific emissions data from waste management companies • Company-specific metric tons of waste generated • Company-specific emission factors	• Estimated metric tons of waste generated based on industry-average data • Industry average emission factors
6. Business travel	• Activity-specific data from transportation suppliers (e.g., airlines) • Carrier-specific emission factors	• Estimated distance traveled based on industry-average data
7. Employee commuting	• Specific distance traveled and mode of transport collected from employees	• Estimated distance traveled based on industry-average data
8. Upstream leased assets	• Site-specific energy use data collected by utility bills or meters	• Estimated emissions based on industry-average data (e.g. energy use per floor space by building type)

Table [7.4] Examples of primary and secondary data by scope 3 category (continued)

Downstream scope 3 emissions

Category	*Examples of primary data*	*Examples of secondary data*
9. Transportation and distribution of sold products	• Activity-specific energy use or emissions data from third-party transportation and distribution partners • Activity-specific distance traveled • Company-specific emission factors (e.g., per metric ton-km)	• Estimated distance traveled based on industry-average data • National average emission factors
10. Processing of sold products	• Site-specific energy use or emissions from downstream value chain partners	• Estimated energy use based on industry-average data
11. Use of sold products	• Specific data collected from consumers	• Estimated energy used based on national average statistics on product use
12. End-of-life treatment of sold products	• Specific data collected from consumers on disposal rates • Specific data collected from waste management providers on emissions rates or energy use	• Estimated disposal rates based on national average statistics • Estimated emissions or energy use based on national average statistics
13. Downstream leased assets	• Site-specific energy use data collected by utility bills or meters	• Estimated emissions based on industry-average data (e.g., energy use per floor space by building type)
14. Franchises	• Site-specific energy use data collected by utility bills or meters	• Estimated emissions based on industry-average data (e.g., energy use per floor space by building type)
15. Investments	• Site-specific energy use or emissions data	• Estimated emissions based on industry-average data

7.3 Guidance for selecting data

The quality of the scope 3 inventory depends on the quality of the data used to calculate emissions. Companies should collect data of sufficient quality to ensure that the inventory appropriately reflects the GHG emissions of the company, supports the company's goals, and serves the decision-making needs of users, both internal and external to the company. After prioritizing scope 3 activities (see section 7.1), companies should select data based on the following:

- The company's business goals (see chapter 2)
- The relative significance of scope 3 activities (see section 7.1)
- The availability of primary and secondary data
- The quality of available data

Companies may use any combination of primary and secondary data to calculate scope 3 emissions. See table 7.5 for a list of advantages and disadvantages of primary data and secondary data.

In general, companies should collect high quality, primary data for high priority activities (see section 7.1). To most effectively track performance, companies should use primary data collected from suppliers and other value chain partners for scope 3 activities targeted for achieving GHG reductions.

In some cases, primary data may not be available or may not be of sufficient quality. In such cases, secondary data

Table [7.5] Advantages and disadvantages of primary data and secondary data

	Primary data (e.g., supplier-specific data)	*Secondary data (e.g., industry-average data)*
Advantages	• Provide better representation of the company's specific value chain activities • Enables performance tracking and benchmarking of individual value chain partners by allowing companies to track operational changes from actions taken to reduce emissions at individual facilities/companies and to distinguish between suppliers in the same sector based on GHG performance • Expands GHG awareness, transparency, and management throughout the supply chain to the companies that have direct control over emissions • Allows companies to better track progress toward GHG reduction targets (see chapter 9)	• Allows companies to calculate emissions when primary data is unavailable or of insufficient quality • Can be useful for accounting for emissions from minor activities • Can be more cost-effective and easier to collect • Allows companies to more readily understand the relative magnitude of various scope 3 activities, identify hot spots, and prioritize efforts in primary data collection, supplier engagement, and GHG reduction efforts
Disadvantages	• May be costly • May be difficult to determine or verify the source and quality of data supplied by value chain partners	• Data may not be representative of the company's specific activities • Does not reflect operational changes undertaken by value chain partners to reduce emissions • Could be difficult to quantify GHG reductions from actions taken by specific facilities or value chain partners • May limit the ability to track progress toward GHG reduction targets (see chapter 9)

may be of higher quality than the available primary data for a given activity. Data selection depends on business goals. If the company's main goal is to set GHG reduction targets, track performance from specific operations within the value chain, or engage suppliers, the company should select primary data. If the company's main goal is to understand the relative magnitude of various scope 3 activities, identify hot spots, and prioritize efforts in primary data collection, the company should select secondary data. In general, companies should collect secondary data for:

- Activities not prioritized based on initial estimation methods or other criteria (see section 7.1)
- Activities for which primary data is not available (e.g., where a value chain partner is unable to provide data)
- Activities for which the quality of secondary data is higher than primary data (e.g., when a value chain partner is unable to provide data of sufficient quality)[1]

Companies are required to report a description of the types and sources of data (including activity data, emission factors, and GWP values) used to calculate emissions, and the percentage of emissions calculated using data obtained from suppliers or other value chain partners (see chapter 11).

Data quality

Sources of primary data and secondary data can vary in quality. When selecting data sources, companies should use the data quality indicators in table 7.6 as a guide to obtaining the highest quality data available for a given emissions activity. The data quality indicators describe the representativeness of data (in terms of technology, time, and geography) and the quality of data measurements (i.e., completeness and reliability of data).

Companies should select data that are the most representative in terms of technology, time, and geography; most complete; and most reliable. Companies should determine the most useful method for applying the data quality indicators when selecting data and evaluating data quality. One example of applying the data quality indicators is presented in box 7.2.

To ensure transparency and avoid misinterpretation of data, companies are required to report a description of the data quality of reported emissions data (see chapter 11).

Because scope 3 emissions are emissions from activities not under the reporting company's ownership or control, companies are likely to face additional challenges related to collecting data and ensuring data quality for scope 3 than for activities under the reporting company's ownership or control. Scope 3 data collection challenges include:

- Reliance on value chain partners to provide data
- Lesser degree of influence over data collection and management practices
- Lesser degree of knowledge about data types, data sources, and data quality
- Broader need for secondary data
- Broader need for assumptions and modeling

These data collection challenges contribute to uncertainty in scope 3 accounting. Higher uncertainty for scope 3 calculations is acceptable as long as the data quality of the inventory is sufficient to support the company's goals and ensures that the scope 3 inventory is relevant (i.e., the inventory appropriately reflects the GHG emissions of the company, and serves the decision-making needs of users, both internal and external to the company). For example, companies may seek to ensure that data quality is sufficient to understand the relative magnitude of scope 3 activities across the value chain and to enable consistent tracking of scope 3 emissions over time. See Appendix B for more information on uncertainty.

To facilitate quality assurance and quality control when collecting data, companies should develop a data management plan that documents the GHG inventory process and the internal quality assurance and quality control (QA/QC) procedures in place to enable the preparation of the inventory from its inception through final reporting. For more information, see Appendix C.

Companies should select data that are the most representative in terms of technology, time, and geography; most complete; and most reliable.

Table [7.6] Data quality indicators

Indicator	*Description*
Technological representativeness	The degree to which the data set reflects the actual technology(ies) used
Temporal representativeness	The degree to which the data set reflects the actual time (e.g., year) or age of the activity
Geographical representativeness	The degree to which the data set reflects the actual geographic location of the activity (e.g., country or site)
Completeness	The degree to which the data is statistically representative of the relevant activity. Completeness includes the percentage of locations for which data is available and used out of the total number that relate to a specific activity. Completeness also addresses seasonal and other normal fluctuations in data.
Reliability	The degree to which the sources, data collection methods and verification procedures[2] used to obtain the data are dependable.

Adapted from B.P. Weidema and M.S. Wesnaes, "Data quality management for life cycle inventories – an example of using data quality indicators," Journal of Cleaner Production 4 no. 3-4 (1996): 167-174.

Box [7.2] Example of criteria to evaluate the data quality indicators

A qualitative approach to data quality assessment uses rating descriptions for each of the data quality indicators on direct emissions data, activity data, and emission factors as applicable. This rating system has elements of subjectivity. For example, some fuel emission factors have not changed significantly in many years. Therefore, a fuel emission factor that is over 10 years old, which would be assigned a temporal score of poor with the data quality in the table below, may not be different than a factor less than 6 years old (a temporal rating of good). Companies should consider the individual circumstances of the data when using the data quality results as a basis for collecting new data or evaluating data quality.

Score	*Representativeness to the activity in terms of:*				
	Technology	*Time*	*Geography*	*Completeness*	*Reliability*
Very good	Data generated using the same technology	Data with less than 3 years of difference	Data from the same area	Data from all relevant sites over an adequate time period to even out normal fluctuations	Verified[3] data based on measurements[4]
Good	Data generated using a similar but different technology	Data with less than 6 years of difference	Data from a similar area	Data from more than 50 percent of sites for an adequate time period to even out normal fluctuations	Verified data partly based on assumptions or non-verified data based on measurements
Fair	Data generated using a different technology	Data with less than 10 years of difference	Data from a different area	Data from less than 50 percent of sites for an adequate time period to even out normal fluctuations or more than 50 percent of sites but for a shorter time period	Non-verified data partly based on assumptions, or a qualified estimate (e.g. by a sector expert)
Poor	Data where technology is unknown	Data with more than 10 years of difference or the age of the data are unknown	Data from an area that is unknown	Data from less than 50 percent of sites for shorter time period or representativeness is unknown	Non-qualified estimate

Adapted from B.P. Weidema and M.S. Wesnaes, "Data quality management for life cycle inventories – an example of using data quality indicators," Journal of Cleaner Production 4 no. 3-4 (1996): 167-174.

7.4 Guidance for collecting primary data

Primary activity data may be obtained through meter readings, purchase records, utility bills, engineering models, direct monitoring, mass balance, stoichiometry, or other methods for obtaining data from specific activities in the company's value chain.

Where possible, companies should collect energy or emissions data from suppliers and other value chain partners in order to obtain site-specific data for priority scope 3 categories and activities. To do so, companies should identify relevant suppliers from which to seek GHG data. Suppliers may include contract manufacturers, materials and parts suppliers, capital equipment suppliers, fuel suppliers, third party logistics providers, waste management companies, and other companies that provide goods and services to the reporting company.

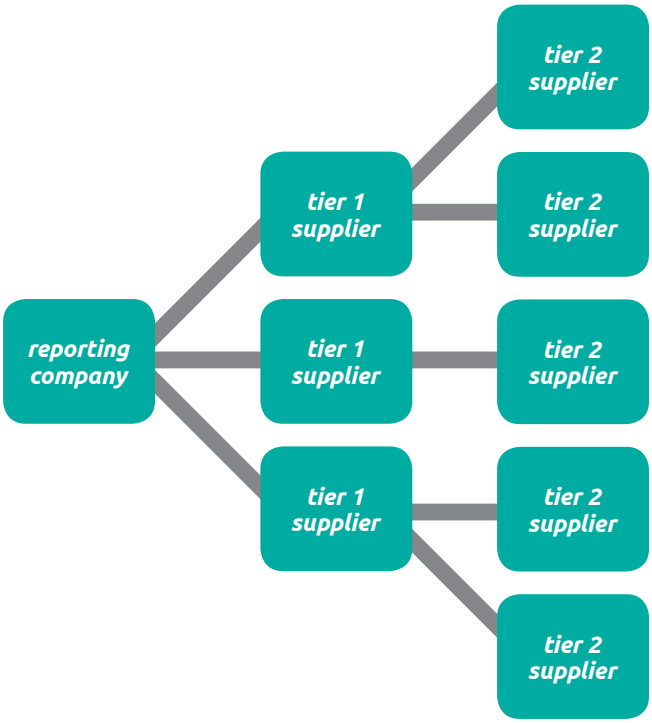
Companies should first engage relevant tier 1 suppliers (see figure 7.3). Tier 1 suppliers are companies with which the reporting company has a purchase order for goods or services (e.g., materials, parts, components, etc.). Tier 1 suppliers have contractual obligations with the reporting company, providing the leverage needed to request GHG inventory data.

To be comprehensive, companies may seek to obtain GHG emissions data from all tier 1 suppliers. However, a company may have many small tier 1 suppliers that together comprise only a small share of a company's total activities and spending. Companies may develop their own policy for selecting relevant suppliers to target for primary data collection. For example, a company may select suppliers based on their contribution to its total spend (see box 7.3). A company may also seek data from tier 2 suppliers, where relevant (see box 7.5). Tier 2 suppliers are companies with which tier 1 suppliers have a purchase order for goods and services (see figure 7.3). Companies should use secondary data to calculate emissions from activities where supplier-specific data is not collected or is incomplete.

Companies are required to report the percentage of emissions calculated using data obtained from suppliers or other value chain partners (see chapter 11).

It is unlikely that all of a company's relevant suppliers will be able to provide GHG inventory data to the company. (See table 7.8 for a list of challenges and guidance for collecting primary data from suppliers.) In such cases, companies should encourage suppliers to develop GHG inventories in the future and may communicate their efforts to encourage more suppliers to provide GHG emissions data in the public report.

Figure [7.3] Tier 1 suppliers in a supply chain



After selecting relevant suppliers, companies should determine the type and level of data to request from suppliers.

Type of data

The type of data that should be collected varies by scope 3 category. For example, companies may send questionnaires to each relevant supplier or other value chain partner requesting the following items:

- Product life cycle GHG emissions data following the *GHG Protocol Product Standard*
- Scope 1 and scope 2 emissions data[5] for the reporting year[6] following the *GHG Protocol Corporate Standard* and according to the hierarchy provided in table 7.7
- The supplier's upstream scope 3 emissions and/or the types of activities that occur upstream of the supplier (if applicable)

- A description of the methodologies used to quantify emissions and a description of the data sources used (including emission factors and GWP values)[7]
- The method(s) the supplier used to allocate emissions, or information the reporting company would need to allocate emissions (see chapter 8)
- Whether the data has been assured/verified, and if so, the type of assurance achieved
- Any other relevant information

For more information on types of data to collect by scope 3 category, see the GHG Protocol *Guidance for Calculating Scope 3 Emissions*, available at www.ghgprotocol.org.

Level of data

Activity data and emissions data may be collected at varying levels of detail and granularity. When collecting primary data from value chain partners, companies should obtain the most product-specific data available (see table 7.7). Product-level data is more precise because it relates to the specific good or service purchased by the reporting company and avoids the need for allocation (see chapter 8).

In general, companies should seek activity data or emissions data from suppliers that is as specific as possible to the product purchased from the supplier, following the hierarchy in table 7.7. If product-level data is not available, suppliers should try to provide data at the activity-, process-, or production line-level. If activity-level data is not available, suppliers should try to provide data at the facility level, and so on. Collecting more granular data is especially important from diversified suppliers that produce a wide variety of products (see box 7.4). Data collected at the activity, production line, facility, business unit, or corporate level may require allocation. (For guidance, see chapter 8.)

For more guidance on collecting primary data from suppliers, see *Guidance for Collecting Data from Suppliers*, available at www.ghgprotocol.org.

Quality of supplier data

The quality of supplier data may vary widely and be difficult to determine. Suppliers should use the data-quality indicators in section 7.3 to select data that are most representative of their activities in terms of technology, time, and geography, and that are the most complete and reliable. Reporting companies should use the data-quality indicators to assess the quality of suppliers' data. To do so, companies should request that suppliers provide supporting documentation to explain their methodology and the sources and quality of data used. Companies may request that suppliers perform first party or third party assurance of their data to ensure its accuracy and completeness (see chapter 10).

See table 7.8 for a list of challenges and guidance for collecting primary data from suppliers.

Box [7.3] Example of prioritizing suppliers based on contribution to the company's total spend

As an example, a company may prioritize suppliers by following these steps:

1. Obtain a complete list of the reporting company's total spend or expenditure, by supplier
2. Rank tier 1 suppliers according to their contribution to the reporting company's total spend
3. Select the largest tier 1 suppliers that collectively account for at least 80 percent[8] of spend (see figure 7.4)
4. Within the remaining 20 percent of spend, select any additional suppliers that are individually more than 1 percent of spend or that are relevant to the company for other reasons (e.g., contract manufacturers, suppliers that are expected to have significant GHG emissions, suppliers that produce or emit HFCs, PFCs, or SF_6, suppliers of high emitting materials, suppliers in priority spend categories as defined by the company, etc.)

Figure [7.4] Ranking a company's tier 1 suppliers according to spend

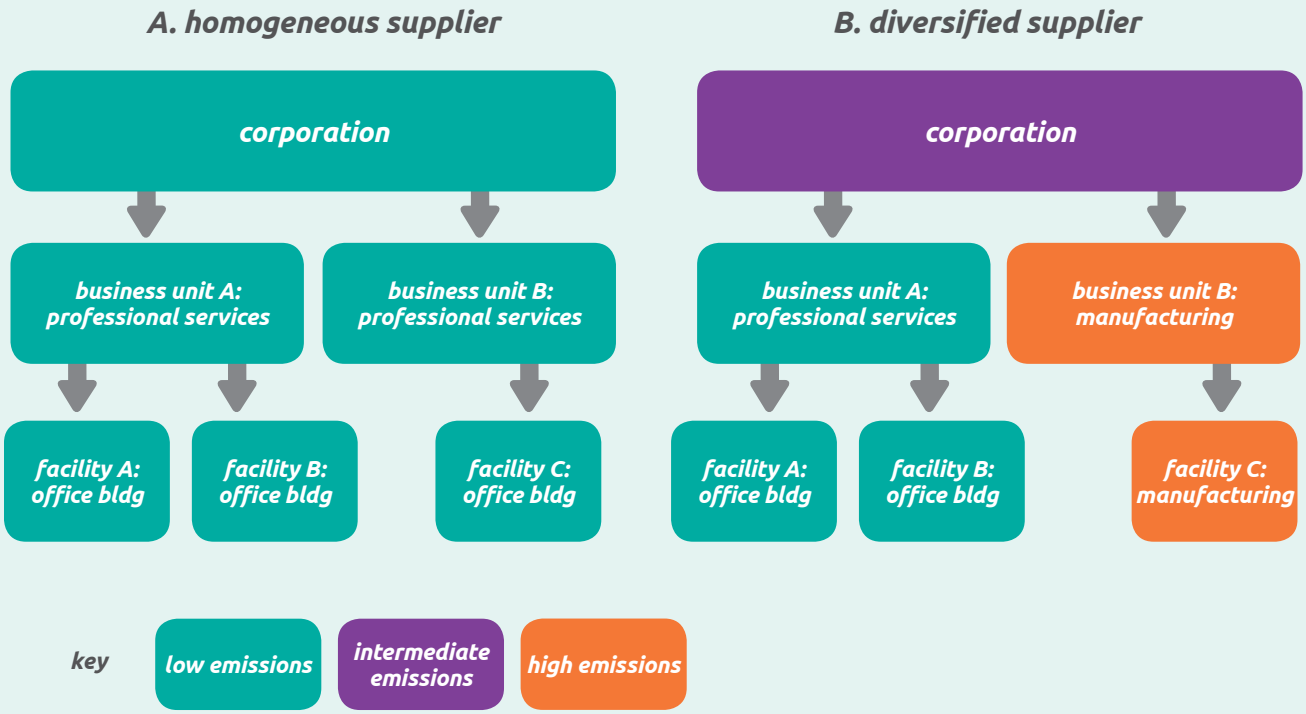
In this example, A-Z represent individual suppliers. The company selects suppliers A through I because they collectively account for 80 percent of the company's spend. The company also selects supplier J because it individually represents more than 1 percent of supplier spend. The company uses secondary data to calculate emissions from activities where supplier-specific data is not collected or is incomplete.

Table [7.7] Levels of data (ranked in order of specificity)

Data type	*Description*
Product-level data	Cradle-to-gate[9] GHG emissions for the product of interest
Activity-, process- or production line-level data	GHG emissions and/or activity data for the activities, processes, or production lines that produce the product of interest
Facility-level data	GHG emissions and/or activity data for the facilities or operations that produce the product of interest
Business unit-level data	GHG emissions and/or activity data for the business units that produce the product of interest
Corporate-level data	GHG emissions and/or activity data for the entire corporation

Box [7.4] Level of data and supplier type

The need to collect granular data from a supplier depends in part on the variety and diversity of products the supplier produces. Collecting data at the product, production line, or facility level is more important for diversified companies than for relatively homogeneous companies, for which business unit- or corporate-level data may yield representative GHG estimates. Below are two examples: A) a homogeneous supplier with relatively uniform emissions throughout its operations and B) a diversified supplier where GHG intensity varies widely between business units and facilities.

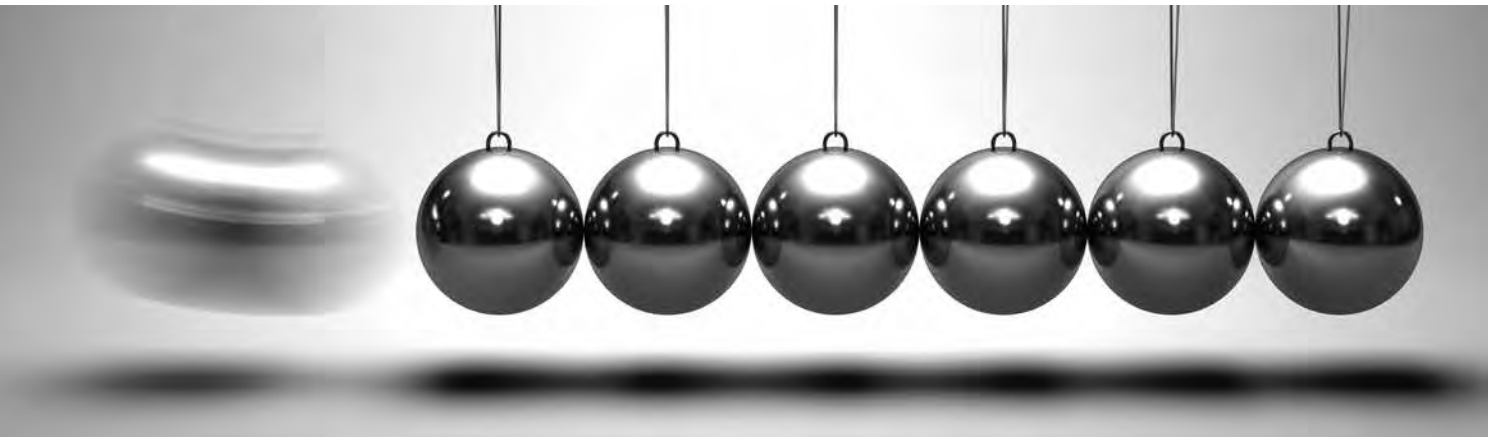


The reporting company purchases the same type of professional services from both suppliers. The reporting company needs to decide whether collecting corporate-level emissions from the suppliers will accurately reflect emissions related to the purchased product. The company makes a qualitative determination based on the nature of each supplier's business activities.

For Supplier A, the reporting company decides to use corporate level data to estimate emissions from the purchased service because the supplier only produces professional services, each of which has a similar GHG intensity. For Supplier B, however, the reporting company decides not to use corporate-level emissions data because the company is diversified and has business units in both professional services and manufacturing, which have widely different GHG intensities. As a result, using corporate-level data would not accurately reflect emissions from the purchased service. More granular data (e.g., facility- or business unit-level data) should be used instead.

Table [7.8] Challenges and guidance for collecting primary data from value chain partners

Challenges	*Guidance*
Large number of suppliers	• Target most relevant suppliers based on spend and/or anticipated emissions impact • Target suppliers where the reporting company has a higher degree of influence (e.g., contract manufacturers or suppliers where the reporting company accounts for a significant share of the supplier's total sales)
Lack of supplier knowledge and experience with GHG inventories and accounting	• Target suppliers with prior experience developing GHG inventories • Identify the correct subject-matter expert at the company • Explain the business value of investing in GHG accounting and management • Request data suppliers already have collected, such as energy-use data, rather than emissions data • Provide clear instructions and guidance with the data request • Provide training, support, and follow-up
Lack of supplier capacity and resources for tracking data	• Make the data request as simple as possible • Use a simple, user-friendly, standardized data template or questionnaire • Provide a clear list of data required and where to find data (e.g., utility bills) • Use an automated online data collection system to streamline data entry • Consider use of a third party database to collect data • Engage and leverage resources from suppliers' trade associations • Coordinate GHG data request with other requests • Follow up with suppliers
Lack of transparency in the quality of supplier data	• Request documentation on methodology and data sources used, inclusions, exclusions, assumptions, etc. • Minimize errors by requesting activity data (e.g., kWh electricity used, kg of fuels used) and calculating GHG emissions separately • Consider third party assurance
Confidentiality concerns of suppliers	• Protect suppliers' confidential and proprietary information (e.g., through nondisclosure agreements, firewalls, etc.) • Ask suppliers to obtain third party assurance rather than submitting detailed activity data to avoid providing confidential information
Language barriers	• Translate the questionnaire and communications into local languages



Box [7.5] Expanding supplier GHG management beyond tier 1 suppliers

While companies should first engage tier 1 suppliers, significant value chain GHG impacts often lie upstream of a company's tier 1 suppliers. Tier 1 suppliers may outsource manufacturing or be several layers removed from the most GHG-intensive operations in a supply chain (e.g., raw material extraction or manufacturing).

As a result, companies may want to promote further proliferation of GHG management throughout the supply chain. As tier 1 data is gathered, companies may consider whether and how to approach deeper levels of the supply chain. Possible approaches include:

- Encouraging or requiring tier 1 suppliers to encourage their own tier 1 suppliers (i.e., the reporting company's tier 2 suppliers) to report their GHG inventories. Eventually ask tier 2 suppliers to require their tier 1 suppliers to do the same.
- Target specific tier 2 suppliers for GHG data requests in cases where tier 2 suppliers are responsible for the majority of GHG emissions associated with a product provided by a tier 1 supplier. In practice, this approach is likely to be difficult without close cooperation between a company and its complete supply chain. As an example, a firm that sells food products may work closely with both growers and processors in its supply chain.

Cascading GHG accounting and reporting throughout supply chains expands the number of companies directly involved in managing GHG emissions. Companies undertaking supply chain engagement efforts may optionally provide information about such efforts in the public report (see chapter 11).

7.5 Guidance for collecting secondary data and filling data gaps

Collecting secondary data

When using secondary databases, companies should prioritize databases and publications that are internationally recognized, provided by national governments, or peer-reviewed. Companies should use the data-quality indicators in section 7.3 when selecting secondary data sources. The data-quality indicators should be used to select secondary data that are the most representative to the company's activities in terms of technology, time, and geography, and that are the most complete and reliable. A list of available secondary data sources is available at www.ghgprotocol.org.

Using proxy data to fill data gaps

Companies should use the guidance in section 7.3 to assess the quality of available data. If data of sufficient quality are not available, companies may use proxy data to fill data gaps. Proxy data is data from a similar activity that is used as a stand-in for the given activity. Proxy data can be extrapolated, scaled up, or customized to be more representative of the given activity (e.g., partial data for an activity that is extrapolated or scaled up to represent 100 percent of the activity).

Examples of proxy data include:

- An emission factor exists for electricity in Ukraine, but not for Moldova. A company uses the electricity emission factor from Ukraine as a proxy for electricity in Moldova.
- A company collects data for 80 percent of its production for a given product category, but 20 percent is unknown. The company assumes the unknown 20 percent has similar characteristics to the known 80 percent so applies a linear extrapolation to estimate 100 percent of the production data.

7.6 Improving data quality over time

Collecting data, assessing data quality, and improving data quality is an iterative process. Companies should first apply data quality indicators and assess data quality when selecting data sources (see section 7.3), then review the quality of data used in the inventory after data has been collected, using the same data quality assessment approach. In the initial years of scope 3 data collection, companies may need to use data of relatively low quality due to limited data availability. Over time, companies should seek to improve the data quality of the inventory by replacing lower quality data with higher quality data as it becomes available. In particular, companies should prioritize data quality improvement for activities that have the following:

- Relatively low data quality (based on the data quality guidance in section 7.3)
- Relatively high emissions

Companies are required to provide a description of the data quality of reported scope 3 emissions data to ensure transparency and avoid misinterpretation of data (see chapter 11). Refer to section 7.3 for guidance on describing data quality; Appendix B for guidance on uncertainty; and section 9.3 for guidance on recalculating base year emissions when making significant improvements in data quality over time.

Endnotes

1 For example, activity-specific secondary data may be of higher quality than corporate-level primary data received from a supplier.

2 Verification may take place in several ways, for example by on-site checking, reviewing calculations, mass balance calculations, or cross-checks with other sources.

3 Verification may take place in several ways, for example by on-site checking, reviewing calculations, mass balance calculations, or cross-checks with other sources.

4 Includes calculated data (e.g., emissions calculated using activity data) when the basis for calculation is measurements (e.g., measured inputs). If the calculation is based partly on assumptions, the score should be 'Good' or 'Fair.'

5 Suppliers' scope 1 and scope 2 emissions data should include emissions of CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6, and may be aggregated to units of carbon dioxide equivalent rather than separately reported by individual greenhouse gas.

6 Some suppliers may collect data on a fiscal year basis, while others collect data on a calendar year basis. To the greatest extent possible, reporting companies should collect or adjust data to reflect a consistent 12-month period.

7 To the greatest extent possible, companies should encourage consistent use of sources of emission factors and GWP values across suppliers.

8 Eighty percent is an example threshold. Companies may define their own threshold. The percentage can be increased over time as the reporting company and its suppliers gain experience in managing GHG emissions.

9 Cradle-to-gate GHG emissions include all emissions that occur in the life cycle of purchased products, up to the point of receipt by the reporting company (excluding emissions from sources that are owned or controlled by the reporting company).

08 Allocating Emissions

This chapter provides guidance on allocating emissions to calculate scope 3 emissions, including:

- *Overview of allocation (section 8.1)*
- *How to avoid or minimize allocation, if possible (section 8.2)*
- *Allocation methods (section 8.3)*
- *Examples of allocating emissions (section 8.4)*

8.1 Overview of allocation

When companies use primary data from suppliers or other value chain partners to calculate scope 3 emissions (see section 7.4), companies may need to allocate emissions. Likewise, companies may need to allocate emissions when providing primary data to customers that are accounting for their scope 3 emissions.

Allocation is the process of partitioning GHG emissions from a single facility or other system[1] (e.g., activity, vehicle, production line, business unit, etc.) among its various outputs (see figure 8.1).

When allocation is needed

Allocation is necessary when:

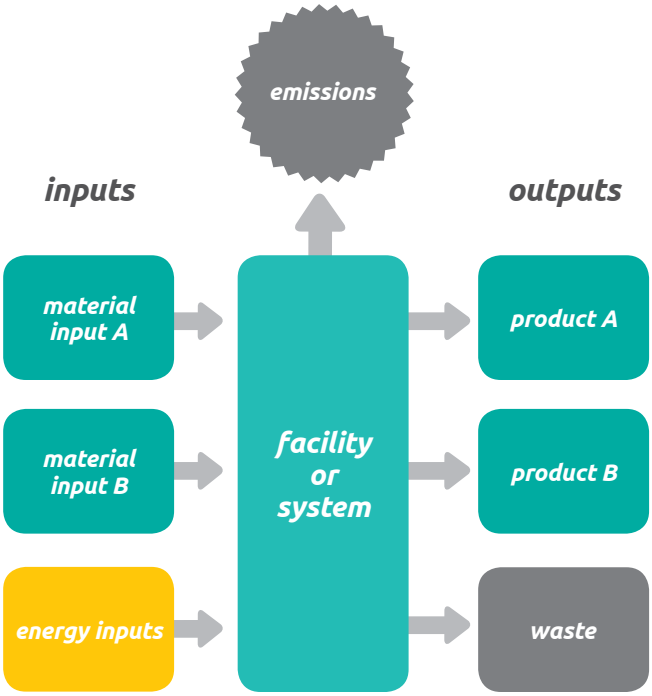
- a single facility or other system produces multiple outputs; and
- emissions are only quantified for the entire facility or system as a whole.

In such a case, emissions from the shared facility or other system need to be allocated to (or divided between) the various outputs (see figure 8.1).

For example, a single production facility may produce many different products and co-products, while activity data (used to calculate GHG emissions) is collected for the plant as a whole. In this case, the facility's energy use and emissions need to be allocated to its various outputs.

Similarly, a company may purchase components from a supplier that manufactures a wide variety of products for many different customers. In this case, the supplier's activity data or emissions data need to be allocated among the various products so its customers know the emissions attributable to the specific products they buy, based on the fraction of total supplier production that is related to the customer's purchases.

Figure [8.1] The need for allocation



When allocation is not needed

When using primary data, allocation is not necessary if:

- a facility or other system produces only one output; or
- emissions from producing each output are separately quantified.

Allocation is not typically necessary when using secondary data to calculate scope 3 emissions, since the activity data and emission factors are typically in reference to a single product (e.g., calculating emissions from third-party transportation by multiplying weight-distance traveled by an emission factor).

8.2 Avoid or minimize allocation if possible

When using primary data to calculate scope 3 emissions, companies should avoid or minimize allocation if possible. Allocation adds uncertainty to the emissions estimates and may be especially inaccurate when an activity or facility produces a wide variety of products that differ significantly in their GHG contribution.

For example, a supplier may manufacture twenty different types of products and only supply one type of product to the reporting company. Allocating the scope 1 and scope 2 emissions of the supplier would be inaccurate if the type of good supplied to the reporting company has a lower or higher emissions intensity than the average emissions intensity of the twenty products manufactured by the supplier. Therefore, allocation should be used only when more accurate data is not available.

Companies should avoid or minimize allocation by collecting more detailed data through one of the following approaches:

- Obtaining product-level GHG data from value chain partners following the *GHG Protocol Product Standard*[2]
- Separately sub-metering energy use and other activity data (e.g., at the production line level)[3]
- Using engineering models to separately estimate emissions related to each product produced[4]

8.3 Allocation methods

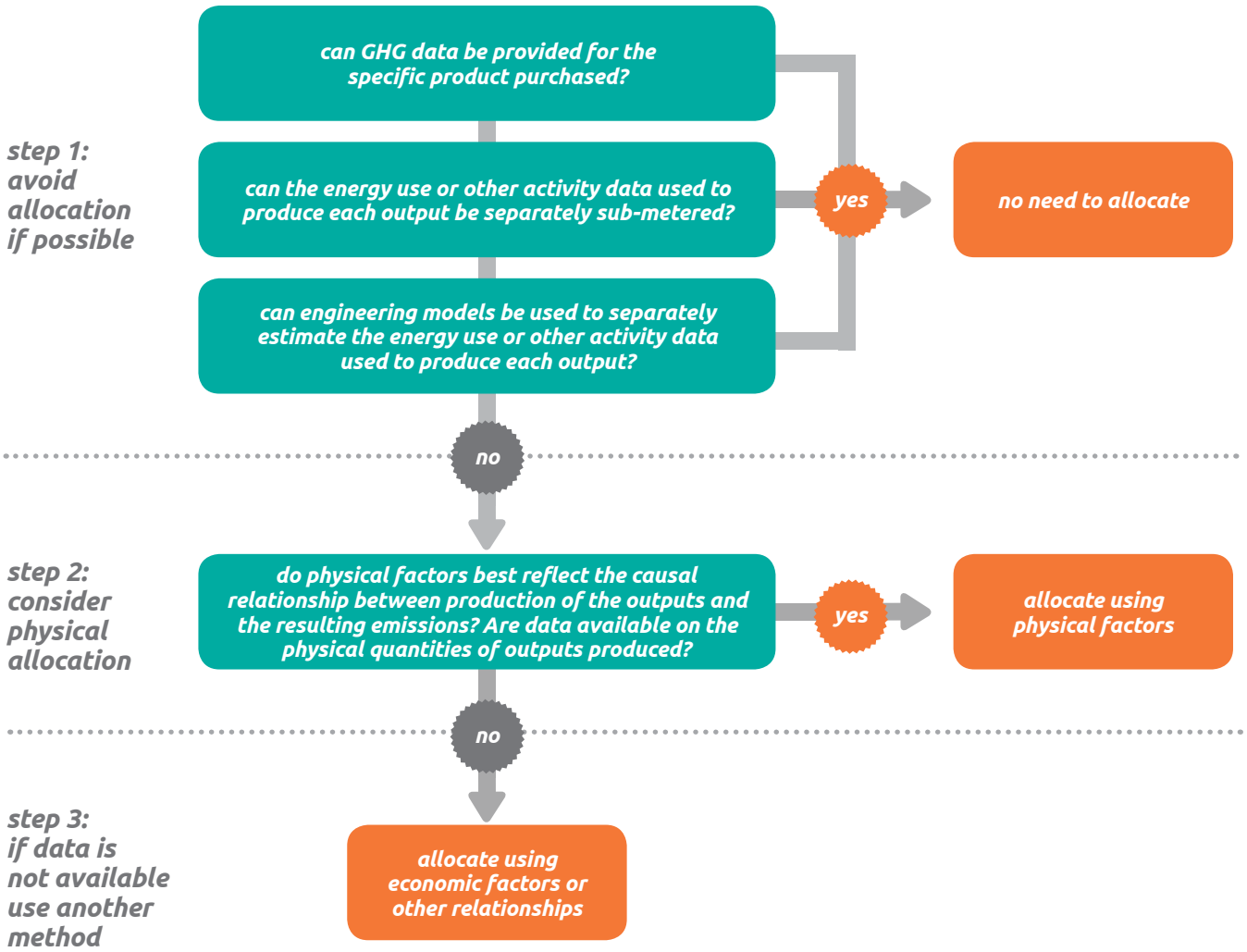
If avoiding allocation is not possible, companies should first determine total facility or system emissions, then determine the most appropriate method and factor for allocating emissions. (See table 8.1 for a list of allocation methods and factors.)

As a general rule, companies should follow the decision tree in figure 8.2 when deciding if allocation is needed and selecting an allocation method. However, the most appropriate allocation method for a given activity depends on individual circumstances (see section 8.4 for examples). Companies should select the allocation approach that:

- best reflects the causal relationship between the production of the outputs and the resulting emissions;
- results in the most accurate and credible emissions estimates;
- best supports effective decision-making and GHG reduction activities; and
- otherwise adheres to the principles of relevance, accuracy, completeness, consistency and transparency.

Different allocation methods may yield significantly different results. Companies that have a choice between multiple methods for a given activity should evaluate each method to determine the range of possible results

Figure [8.2] Decision tree for selecting an allocation approach



before selecting a single method (e.g., conduct a sensitivity analysis).

Companies may use a combination of different allocation methods and factors to estimate emissions from the various activities in the scope 3 inventory. However, for each individual facility or system, a single, consistent allocation factor should be used to allocate emissions throughout the facility or system. The sum of the allocated emissions for each output of a system should equal 100 percent of emissions from the system. The use of multiple allocation methods for a single system can result in over-counting or under-counting of total emissions from the system.

To allocate emissions from a facility, multiply total facility emissions by the reporting company's purchases as a fraction of total production (see box 8.1). Either the reporting company or its suppliers can allocate supplier emissions to the reporting company (see box 8.2).

See table 8.2 for allocation guidance by scope 3 category.

Companies are required to report a description of the allocation methods used to calculate scope 3 emissions (see chapter 11). Where applicable, companies should disclose the range of results obtained through sensitivity analysis.

No allocation for waste generated in production (e.g., within category 1, category 2, and category 10)

Waste is an output of a system that has no market value. While companies generate revenue through the sale of co-products, companies receive no revenue from waste and may instead pay to dispose of it. Waste may be generated from production processes included in category 1 (Purchased goods and services), category 2 (Capital goods), or category 10 (Processing of sold products). If a facility produces waste during production, no emissions from the facility should be allocated to the waste. All emissions from the facility should instead be allocated among the facility's other outputs. If waste becomes useful and marketable for use in another system, it is no longer considered waste and should be treated like other types of outputs.

The preceding guidance does not apply to category 5 (Waste generated in operations) or category 12 (End-of-life treatment of sold products). Companies should account for all emissions related to waste within category 5 and category 12.

Box [8.1] Equation for allocating emissions from a facility

$$\textit{Allocated Facility Emissions} = \textit{Total Facility Emissions} \times \frac{\textit{Reporting Company's Purchases from the Facility}}{\textit{Total Facility Production}}$$

Where both "Reporting Company's Purchases from the Facility" and "Total Facility Production" are measured in the same units (e.g., mass, volume, market value, number of products)

Box [8.2] Two approaches to allocating GHG emissions from suppliers

Companies may use two basic approaches for collecting and allocating GHG emissions from suppliers:

- **Supplier allocation:** Individual suppliers report pre-allocated emissions data to the reporting company and disclose the allocation metric used
- **Reporting company allocation:** The reporting company allocates supplier emissions by obtaining two types of data from individual suppliers: 1) total supplier GHG emissions data (e.g., at the facility or business unit level), and 2) the reporting company's share of the supplier's total production, based on either physical factors (e.g., units of production, mass, volume, or other metrics) or economic factors (e.g., revenue, spend)

Reporting company allocation is likely to ensure more consistency in methodologies for the reporting company, while the supplier allocation approach may be more practical by avoiding the need for suppliers to report confidential business information.

Table [8.1] Allocation methods and factors

Physical allocation: ***Allocating the emissions of an activity based on an underlying physical relationship between the multiple inputs/outputs and the quantity of emissions generated***

Allocation factors	*Examples of allocation factors and formulas*
Mass	Mass of co-products $\textit{Allocated Facility Emissions} = \frac{\textit{Mass of Products Purchased}}{\textit{Total Mass of Products Produced}} \times \textit{Total Emissions}$
Volume	Volume of cargo transported $\textit{Allocated Facility Emissions} = \frac{\textit{Volume of Products Purchased}}{\textit{Total Volume of Products Produced}} \times \textit{Total Emissions}$
Energy	Energy content of heat and electricity co-products $\textit{Allocated Facility Emissions} = \frac{\textit{Energy Content of Products Purchased}}{\textit{Total Energy Content of Products Produced}} \times \textit{Total Emissions}$
Chemical	Chemical composition of chemical co-products $\textit{Allocated Facility Emissions} = \frac{\textit{Chemical Content of Products Purchased}}{\textit{Total Chemical Content of Products Produced}} \times \textit{Total Emissions}$
Number of units	Number of units shipped $\textit{Allocated Facility Emissions} = \frac{\textit{Number of Units Purchased}}{\textit{Total Number of Units Produced}} \times \textit{Total Emissions}$
Other factors	Protein content of food co-products, floor space occupied by products *Other formulas*

Economic allocation: ***Allocating the emissions of an activity based on the market value of each output/product***

Allocation factors	*Examples of allocation factors and formulas*
Market value[5]	Market value of co-products $\textit{Allocated Facility Emissions} = \frac{\textit{Market Value of Products Purchased}}{\textit{Total Market Value of Products Produced}} \times \textit{Total Emissions}$

Other methods: ***Allocating the emissions of an activity based on industry-specific or company-specific allocation methods***

Allocation factors	*Examples of allocation factors and formulas*
Other factors	*Other formulas*

8.4 Examples of allocating emissions

This section provides examples and guidance for determining the most appropriate allocation method to use for various situations. The most appropriate method for a given activity is the one that best reflects the causal relationship between the production of the product and the resulting emissions, and depends on individual circumstances. Companies should establish a consistent policy for allocating emissions for various activities in the value chain. Table 8.2 provides guidance on choosing allocation methods for each scope 3 category.

Using physical allocation

Physical allocation is expected to yield more representative emissions estimates in several situations, outlined below.

Manufacturing

In certain cases, manufacturing facilities may produce multiple products, each of which requires similar energy and material inputs to produce, but which differ significantly in market value (e.g., due to higher brand value of one product than another). While the market value of the products differs, the physical quantity of

Table [8.2] Allocation guidance by scope 3 category

Upstream scope 3 emissions

Category	Examples of primary data requiring allocation	Allocation guidance
1. Purchased goods and services	• Site-specific energy use or emissions data from suppliers	• Physical or economic allocation
2. Capital goods	• Site-specific energy use or emissions data from capital goods suppliers	• Physical or economic allocation
3. Fuel- and energy-related activities (not included in scope 1 or scope 2)	• Company-specific data on upstream emissions (e.g. extraction of fuels) • Actual power purchase data for purchased power	• Physical allocation (energy)
4. Upstream transportation and distribution	• Activity-specific energy use or emissions data from third-party transportation and distribution suppliers	• Physical allocation (mass or volume) for shared vehicles • Physical allocation (volume or area) for shared facilities
5. Waste generated in operations	• Site-specific emissions data from waste management companies	• Physical or economic allocation
6. Business travel	• Activity-specific emissions data from transportation suppliers (e.g., airlines)	• Physical allocation for shared vehicles (e.g., area occupied)
7. Employee commuting	• Specific distance traveled and mode of transport collected from employees	• Physical allocation for shared vehicles (e.g., area occupied)
8. Upstream leased assets	• Site-specific energy use data collected by utility bills or meters	• Physical allocation for shared facilities (e.g., area or volume)

emissions resulting from the production of each product is similar.

In such a case, physical factors are more closely correlated with emissions and better approximate actual emissions associated with producing each product. Companies should select the physical factor that most closely correlates to emissions, which may include units of production, mass, volume, energy, or other metrics. Companies should consider multiple physical factors when selecting the factor that is most appropriate.

Transportation

Allocating emissions from the transportation of cargo (or freight) occurs when:

- a single vehicle (e.g., ship, aircraft, train, or truck) transports multiple products;
- activity data (e.g., fuel use) is collected at the vehicle level; and
- a company chooses to estimate emissions by allocating total vehicle emissions to one or more of the products shipped.

Table [8.2] Allocation guidance by scope 3 category (continued)

Downstream scope 3 emissions

Category	*Examples of primary data requiring allocation*	*Allocation guidance*
9. Downstream transportation and distribution	• Activity-specific energy use or emissions data from third party transportation and distribution partners	• Physical allocation for shared vehicles (mass or volume) • Physical allocation for shared facilities (volume or area)
10. Processing of sold products	• Site-specific energy use or emissions from downstream value chain partners	• Physical or economic allocation
11. Use of sold products	• Specific data collected from consumers	• Physical allocation, where applicable
12. End-of-life treatment of sold products	• Specific data collected from waste management providers on emissions rates or energy use	• Physical allocation, where applicable
13. Downstream leased assets	• Site-specific energy use data collected by utility bills or meters	• Physical allocation for shared facilities (volume or area)
14. Franchises	• Site-specific energy use data collected by utility bills or meters	• Physical allocation for shared facilities (volume or area)
15. Investments	• Site-specific energy use or emissions data	• Economic allocation based on the company's proportional share of equity or debt in the investee

Companies should allocate emissions using physical allocation, since physical factors are expected to best reflect the causal relationship between the transportation of products and the resulting emissions. Companies should allocate using either weight, volume, or a combination of weight and volume, depending on whether the capacity of the vehicle is limited by weight, volume, or a combination of the two. The limiting factor depends on the mode of transportation (road, rail, air, or marine transport). For example, ocean-going vessels tend to be limited by volume, while trucks tend to be limited by weight.

Companies may also calculate emissions without allocating emissions by using secondary data (e.g., industry-average emission factors based on metric ton-km traveled).

Commercial buildings (e.g., leased assets, franchises)

Commercial buildings include retail facilities, warehouses, distribution centers, and owned or leased office buildings. Allocating emissions from commercial buildings occurs when:

- activity data is collected at the facility/building level; and
- a company chooses to estimate emissions for a subset of products by allocating total facility emissions to one or more products located at the facility.

Companies should allocate emissions using physical allocation, since physical factors are expected to best reflect the causal relationship between the storage of products and the resulting emissions. Companies should allocate using either volume or area, depending on whether the capacity of the facility is limited by volume or area, and which is most closely correlated with energy use and emissions.

For example, to allocate emissions from a retail facility, a company may divide total facility emissions by the relative volume (e.g., quantity of shelf space) occupied by a given product within a retail facility.

Companies should obtain more accurate estimates by first separating total facility energy use and total quantity of products sold between refrigerated storage and non-refrigerated storage. Where the same product is stacked on pallets or shelves, companies may divide emissions per unit of volume or floor space by the total number of products occupying that area to determine emissions per unit of product.

Companies may also calculate emissions from retail and warehousing without allocating emissions by using secondary data (e.g., industry average emission factors expressed in units of emissions per volume or floor space).

Box [8.3] Equation for allocating vehicle emissions based on volume

$$\text{Allocated Emissions} = \frac{\text{Volume of Vehicle Occupied By The Product}}{\text{Total Volume of Vehicle}} \times \text{Total Vehicle Emissions}$$

Note: This equation assumes the distance traveled by each product is the same.

Box [8.4] Equation for allocating emissions from a building based on area

$$\text{Allocated Emissions} = \frac{\text{Volume of Retail Facility Occupied By The Product}}{\text{Total Volume of Retail Facility}} \times \text{Total Retail Facility Emissions}$$

Using economic allocation

Economic allocation is expected to yield more representative emissions estimates in certain situations, such as:

- when a physical relationship cannot be established;
- when a co-product would not be produced by the common facility or system without the market demand for the primary product and/or other valuable co-products (e.g., by-catch from lobster harvesting);
- when a co-product was previously a waste output that acquires value in the marketplace as a replacement for another product (e.g., fly ash in cement production);
- investments, where emissions should be allocated to the reporting company based on the reporting company's proportional share of equity or debt in the investee (see section 5.5, category 15); and
- other situations where economic allocation best reflects the causal relationship between the production of the outputs and the resulting emissions.

In situations other than those outlined above, companies should use economic allocation with caution, since economic allocation may yield misleading GHG estimates, especially when:

- prices change significantly or frequently over time;
- companies pay different prices for the same product (due to different negotiated prices); or
- prices are not well-correlated with underlying physical properties and GHG emissions (e.g., for luxury goods, products with high brand value, and products whose price reflects high research and development, marketing, or other costs, apart from production).

Levi Strauss & Company: Allocating scope 3 emissions

Levi Strauss & Co. (LS&Co.) used multiple allocation methods within its scope 3 inventory depending on the types and granularity of data available.

Category 1:
Purchased goods and services (upstream)
LS&Co. collected primary data from a sample of suppliers throughout its supply chain, including fabric mills (facilities that create denim fabric from cotton fiber) and garment manufactures (facilities that assemble and finish final denim products). Allocation was necessary because both types of suppliers provided aggregated data at the facility level on total material use, energy use, production throughput, and waste streams for their full annual production. GHG emissions per product could be reasonably allocated by dividing total facility emissions by facility throughput, since both types of suppliers produce relatively uniform outputs (i.e., denim products).

LS&Co. allocated emissions from the fabric mills by mass, since mass is one of the main quantifiable determinants of material and energy inputs during the milling process and best reflects the causal relationship between production and emissions. LS&Co. allocated emissions from the garment manufacturers by the number of products produced at a facility, since assembly and finishing are similar across a variety of denim products and emissions per unit are expected to be similar. Emissions per product were multiplied by the total number of units purchased by LS&Co. per facility to obtain total scope 3 emissions attributable to LS&Co.

Category 9:
Downstream transportation and distribution
Distribution Centers: After production, jeans are sent to a distribution center that packages and ships various products. LS&Co. estimated emissions per product by collecting primary data for total energy and materials used, allocated by total units of product shipped during a year. This method assumes that all units shipped result in the same emissions, which LS&Co. considered reasonable since all products go through the same processes at the distribution center.

Retail: Jeans are shipped from distribution centers to retail stores. Each retail store sells a variety of products, which requires allocating total store emissions to each product type. LS&Co. allocated emissions according to the retail floor space occupied by each product compared to the entire store. LS&Co. determined the average floor space and emissions of a retail store and the floor area (physical space) occupied by each product to determine emissions per individual unit from retail.

Box [8.5] Example of allocating emissions across a value chain

In this example, Company A produces a co-product during the production of a primary product. Company B transports the co-product to Company C, who consumes the co-product in its production process. The table below explains how each company should account for emissions from each activity.

Activity	How Company A accounts for emissions	How Company C accounts for emissions
Production of co-products (by Company A)	**Scope:** Scope 1 because the facility that produces the co-product is owned and operated by Company A **Allocation approach:** No need to allocate emissions; all emissions are accounted as scope 1 because the facility is owned and operated by Company A	**Scope:** Scope 3, "Purchased goods and services," because the co-product is a purchased material produced by a third party **Allocation approach:** Scope 3 emissions from co-product production by Company A should be allocated using physical allocation if physical factors best reflect the causal relationship between production of the outputs and the resulting emissions and data are available on the physical quantities of outputs produced
Transportation of co-products (by Company B)	**Scope:** Scope 3, "Downstream transportation and distribution" because the vehicles are owned and operated by a third party and not paid for by Company A **Allocation approach:** If vehicles transport multiple types of products and emissions are calculated using primary data provided by the transportation company: scope 3 emissions should be allocated to the co-product using physical allocation (mass or volume) (see section 8.4). Secondary data (based on metric ton-km traveled) may be used instead, which does not require allocation.	**Scope:** Scope 3, "Upstream transportation and distribution" because the vehicles are owned and operated by a third party and transporting products purchased by Company C **Allocation approach:** If vehicles transport multiple types of products and emissions are calculated using primary data provided by the transportation company: scope 3 emissions should be allocated to the co-product using physical allocation (mass or volume) (see section 8.4). Secondary data (based on metric ton-km traveled) may be used instead, which does not require allocation.

Box [8.5] Example of allocating emissions across a value chain (continued)

Activity	*How Company A accounts for emissions*	*How Company C accounts for emissions*
Consumption of co-products (by Company C)	**Scope:** Scope 3, "Processing of sold products," because the co-product is an intermediate product sold by Company A	**Scope:** Scope 1 because the facility is owned and operated by Company C **Allocation approach:** No need to allocate emissions; all emissions are accounted as scope 1 because the facility is owned and operated by Company C

Endnotes

1 In this chapter, the term "system" is used to refer to any source of emissions (e.g., an activity, vehicle, production line, business unit, facility, etc.).

2 Product-level data refers to the cradle-to-gate GHG emissions of an individual product, i.e., all emissions that occur in the life cycle of purchased products, up to the point of receipt by the reporting company (excluding emissions from sources that are owned or controlled by the reporting company).

3 Separately sub-metering a production line allows a company to read an energy meter first before the line starts and again when the run of a product finishes. Sub-metering yields the quantity of the energy used to a specific product without the need for allocation.

4 Avoiding allocation by subdividing a process is called "process subdivision" in the *GHG Protocol Product Standard*.

5 When determining the "market value," companies should use the selling price (i.e., the price the reporting company pays to acquire products from the supplier), rather than the supplier's production cost (i.e., the costs incurred by the suppler to manufacture its products).

09 Setting a GHG Reduction Target and Tracking Emissions Over Time

Greenhouse gas accounting and reporting allows companies to track and report their emissions performance over time. Companies may track scope 3 emissions in response to a variety of business goals (see chapter 2), including demonstrating performance toward achieving GHG reduction targets, managing risks and opportunities, and addressing the needs of stakeholders.

This chapter is organized according to the steps a company should follow to track scope 3 performance over time:

- Choosing a base year and determining base year emissions
- Setting scope 3 reduction goals
- Recalculating base year emissions (if necessary)
- Accounting for scope 3 emissions and reductions over time

The guidance in this chapter is adapted from the *GHG Protocol Corporate Standard* (chapters 5, 8, and 11).

Requirements in this chapter

When companies choose to track performance or set a reduction target, companies shall:

- ***choose a scope 3 base year and specify their reasons for choosing that particular year;***
- ***develop a base year emissions recalculation policy that articulates the basis for any recalculations; and***
- ***recalculate base year emissions when significant changes in the company structure or inventory methodology occur.***

9.1 Choosing a base year and determining base year emissions

A meaningful and consistent comparison of emissions over time requires that companies establish a base year against which to track performance. When companies choose to track scope 3 performance or set a scope 3 reduction target, companies shall choose a scope 3 base year and specify their reasons for choosing that particular year.

Companies should establish a single base year for scope 1, scope 2, and scope 3 emissions to enable comprehensive and consistent tracking of total corporate GHG emissions across all three scopes. However, companies that have already established a base year for scope 1 and scope 2 emissions may choose a more recent year for the scope 3 base year (e.g., the first year for which companies have complete and reliable scope 3 emissions data).

The scope 3 base year does not need to be the first year for which scope 3 emissions are reported. For example, a company may wait until the second or third year of scope 3 reporting to set a scope 3 base year, when the scope 3 inventory is sufficiently complete and reliable. In this case, the company is required to report the scope 3 base year only after it has established a scope 3 base year. Until a scope 3 base year is set, companies should report that they have not yet established a scope 3 base year.

When a base year is chosen, companies should determine base year emissions by following the requirements and guidance contained in this standard.

When setting a base year, companies shall develop a base year emissions recalculation policy (see section 9.3).

9.2 Setting scope 3 reduction targets

Any robust business strategy requires setting targets for revenues, sales, and other core business indicators, as well as tracking performance against those targets. Likewise, a key component of effective GHG management is setting a GHG target. Companies are not required to set a scope 3 reduction target, but should consider setting a target in the context of their business goals (see chapter 2).

Companies should consider several questions when setting a scope 3 GHG reduction target (see table 9.1).

Target boundary

Companies may set a variety of scope 3 reduction goals, including:

- A single target for total scope 1 + scope 2 + scope 3 emissions
- A single target for total scope 3 emissions
- Separate targets for individual scope 3 categories
- A combination of targets, for example a target for total scope 1 + 2 + 3 emissions as well as targets for individual scope 3 categories

Each type of target boundary has advantages and disadvantages (see table 9.2).

Regardless of the type(s) of reduction targets set, companies should establish a single base year for all scope 3 categories. A single base year for all scope 3 categories simplifies scope 3 emissions tracking, avoids "cherry picking" of base years (or the perception thereof), and allows clearer communication of GHG emissions to stakeholders.

Table [9.1] Considerations when setting a GHG reduction target

Issue	*Description*
Target type	Whether to set an absolute or intensity target
Target completion date	The duration of the target (e.g., short term or long term target)
Target level	The numerical value of the reduction target
Use of offsets or credits	Whether to use offsets or credits to meet GHG reduction targets

Target type

Companies can set either absolute targets, intensity targets, or a combination of absolute and intensity targets. An absolute target is expressed as a reduction in GHG emissions to the atmosphere over time in units of metric tons of CO_2e. An intensity target is expressed as a reduction in the ratio of GHG emissions relative to a business metric, such as output, production, sales or revenue. Advantages and disadvantages of each type of target are provided in table 9.3.

To ensure transparency, companies using an intensity target should also report the absolute emissions from sources covered by the target. Companies may find it most useful and credible to implement both absolute and intensity targets. For example, companies may establish an absolute target at the corporate level and a combination of intensity targets at lower levels of the company, or an absolute target for total scope 3 emissions and a combination of intensity targets for individual scope 3 categories.

Table [9.2] Advantages and disadvantages of different target boundaries

Target boundary	*Advantages*	*Disadvantages*
A single target for total scope 1 + scope 2 + scope 3 emissions	• Ensures more comprehensive management of emissions across the entire value chain (i.e., all three scopes) • Offers greater flexibility on where and how to achieve the most cost-effective GHG reductions • Simple to communicate to stakeholders • Does not require base year recalculation for shifting activities between scopes (e.g., outsourcing)	• May provide less transparency for each scope 3 category (if detail is not provided at the scope 3 category level) • Requires the same base year for scope 1, scope 2, and scope 3 emissions, which may be difficult if scope 1 and scope 2 base years have already been established
A single target for total scope 3 emissions	• Ensures more comprehensive GHG management and greater flexibility on how to achieve GHG reductions across all scope 3 categories (compared to separate targets for selected scope 3 categories) • Relatively simple to communicate to stakeholders	• May provide less transparency for each scope 3 category (if detail is not provided at the scope 3 category level) • May require base year recalculation for shifting activities between scopes (e.g., outsourcing)
Separate targets for individual scope 3 categories	• Allows customization of targets for different scope 3 categories based on different circumstances • Provides more transparency for each scope 3 category • Provides additional metrics to track progress • Does not require base year recalculations for adding additional scope 3 categories to the inventory • Easier to track performance of specific activities	• May result in less comprehensive GHG management across the value chain (if multiple scope 3 targets are not set) • May result in "cherry picking" (or the perception thereof) by setting targets only for categories that are easier to achieve • More complicated to communicate to stakeholders • May require base year recalculation for outsourcing or insourcing

For more information on setting targets, see chapter 11 of the *GHG Protocol Corporate Standard*.

Target completion date

The target completion date determines whether the target is relatively short- or long-term. In general, companies should set long-term targets (e.g., a target period of ten years), since they facilitate long-term planning and large capital investments with significant GHG benefits. Companies may also set shorter-term targets to measure progress more frequently.

Target level

The target level represents the level of ambition of the reduction target. To inform the numerical value of the target, companies should examine potential GHG reduction opportunities (see table 9.7) and estimate their effects on total GHG emissions. In general, companies should set an ambitious target that reduces emissions significantly below the company's business-as-usual scope 3 emissions trajectory. A "stretch goal" is expected to drive greater innovation within the company and the value chain and be seen as most credible by stakeholders.

Use of offsets or credits

A GHG target can be met entirely from internal reductions at sources included in the target boundary, or can be met through additionally using offsets that are generated from GHG reduction projects that reduce emissions (or enhance sinks) at sources external to the target boundary. Companies should strive to achieve reduction targets entirely from internal reductions from within the target boundary. Companies that are unable to meet GHG targets through internal reductions may use offsets generated from sources external to the target boundary.

Companies should specify whether offsets are used and, if so, how much of the target reduction was achieved using offsets. Companies should report

Table [9.3] Comparing absolute targets and intensity targets

Target type	*Examples*	*Advantages*	*Disadvantages*
Absolute target	• Reduce total scope 3 emissions by 10 percent from 2010 levels by 2015 • Reduce scope 3 emissions from the use of sold products by 20 percent from 2010 levels by 2015	• Designed to achieve a reduction in a specified quantify of GHGs emitted to the atmosphere • Environmentally robust and more credible to stakeholders as it entails a commitment to reduce total GHGs by a specified amount	• Does not allow comparisons of GHG intensity/efficiency • Reported reductions can result from declines in production/output rather than improvements in performance
Intensity target	• Reduce scope 3 emissions per unit of revenue by 25 percent from 2010 levels by 2015 • Improve the energy efficiency of sold products by 30 percent from 2010 levels by 2015	• Reflects GHG performance improvements independent of business growth or decline • May increase the comparability of GHG emissions among companies	• Less environmentally robust and less credible to stakeholders because absolute emissions may rise even if intensity decreases (e.g., because output increases more than GHG intensity decreases). If a monetary metric is used, such as dollar of revenue or sales, recalculation may be necessary for changes in product prices and inflation.

internal emissions in separate accounts from offsets used to meet the target, rather than providing a net figure. Any purchases or sales of offsets are required to be reported separately (see chapter 11).

Any offsets used should be based on credible accounting standards (for more information, see the *GHG Protocol for Project Accounting*). Companies should avoid double counting of offsets by multiple entities or in multiple GHG targets, for example through contracts between buyers and sellers that transfer ownership of offsets. For additional guidance on avoiding double counting of offsets, see chapter 11 of the *GHG Protocol Corporate Standard*.

Box [9.1] Setting a reduction target for category 11 (Use of sold products)

Companies that set a reduction target for category 11 should carefully choose the most appropriate metric to track performance and measure progress. Category 11 includes the total expected lifetime emissions from products sold in the reporting year. By doing so, the scope 3 inventory accounts for a company's total GHG impact associated with its activities that occur in the reporting year.

Tracking scope 3 emissions from category 11 can show GHG reductions from efficiency improvements, but not from durability improvements. Because the scope 3 inventory accounts for total lifetime emissions of sold products, increasing product durability has the effect of increasing reported scope 3 emissions from category 11. For example, a manufacturer of light bulbs may shift from selling incandescent bulbs to selling LED bulbs. LED bulbs are both more efficient and more durable than incandescent bulbs. Because the increase in durability is greater than the increase in efficiency, shifting to LED bulbs may have the effect of increasing reported scope 3 emissions.

In cases where product durability may change significantly over time, companies should consider using additional metrics to track and report emissions and performance, such as:

- Intensity metrics (e.g., average GHG intensity of sold products, average energy efficiency of sold products, average emissions per hour of use, average emissions per kilometer driven, etc.)
- Annual emissions from the use of sold products (i.e., emissions that occur in a single year from products sold in the reporting year)
- GHG emissions per functional unit (see *GHG Protocol Product Standard*)
- Average lifetime/durability of sold products
- Other metrics developed by the company or industry sector

Companies that use an additional metric to track performance are also required to report the total expected lifetime emissions from products sold in the reporting year in category 11. Companies should report the methodologies and assumptions used to calculate any additional metrics. To reduce the potential for emissions data to be misinterpreted, companies should also report additional information to provide context, such as the average lifetime/durability of sold products and a statement explaining why emissions from category 11 have increased or decreased over time.

9.3 Recalculating base year emissions

To consistently track scope 3 emissions over time, companies shall recalculate base year emissions when significant changes in company structure or inventory methodology occur. In such cases, recalculating base year emissions is necessary to maintain consistency and enable meaningful comparisons of the inventory over time.

Companies are required to recalculate base year emissions when the following changes occur and have a significant impact on the inventory:

- Structural changes in the reporting organization, such as mergers, acquisitions, divestments, outsourcing, and insourcing
- Changes in calculation methodologies, improvements in data accuracy, or discovery of significant errors
- Changes in the categories or activities included in the scope 3 inventory

In such cases, recalculating base year emissions is necessary to ensure the consistency and relevance of the reported GHG emissions data. Companies shall recalculate base year emissions for both GHG emissions increases and decreases. Significant changes result not only from single large changes, but also from several small changes that are cumulatively significant. As an alternative to recalculating base year emissions in the event of a major structural change, companies may reestablish the base year as a more recent year. Each type of change is elaborated further in the sections below.

Establishing a base year recalculation policy

When setting a base year, companies shall develop a base year emissions recalculation policy and clearly articulate the basis and context for any recalculations. Whether base year emissions are recalculated depends on the significance of the changes. A significance threshold is a qualitative and/or quantitative criterion used to define any significant change to the data, inventory boundaries, methods, or any other relevant factors. For example, a significant change could be defined as one that alters base year emissions by at least ten percent. As part of the base year emissions recalculation policy, companies shall establish and disclose the significance threshold that triggers base year emissions recalculations. Companies shall apply the recalculation policy in a consistent manner.

Recalculations for structural changes in ownership or control

Companies are required to retroactively recalculate base year emissions when significant structural changes occur in the reporting organization, such as mergers, acquisitions, or divestments. Structural changes trigger recalculation because they merely transfer emissions from one company to another without any change in emissions released to the atmosphere (e.g., an acquisition or divestment only transfers existing GHG emissions from one company's inventory to another).

For example, if a company divests a subsidiary in the third year of reporting, the company should recalculate its base year emissions by removing the scope 3 emissions of the subsidiary from the company's base year inventory. Doing so allows the company and its stakeholders to understand that the apparent decrease in emissions in the third year of reporting is a result of a structural change rather than a change in GHG management practices.

Recalculations for outsourcing or insourcing

Scope 3 emissions include outsourced activities. If a company is reporting comprehensively on scope 1, scope 2, and scope 3, a change in ownership or control can have the effect of shifting emitting activities between the scopes.

If a company outsources an in-house activity to a third party, the activity shifts from scope 1 or scope 2 to scope 3. Conversely, a company may shift emissions from scope 3 to scope 1 or scope 2 by performing operations in-house that were previously performed by a third party.

Whether the outsourcing or insourcing of an activity triggers a base year emissions recalculation depends on whether:

- the company previously reported emissions from the activity;
- the company has a single base year or GHG target for all scopes or separate base years and GHG targets for each scope; and
- the outsourced or insourced activity contributes significantly to the company's emissions.

See table 9.4 for guidance on whether a recalculation of base year emissions is necessary.

Recalculations for changes in the scope 3 activities included in the inventory over time

Companies may add new activities or change the activities included in the scope 3 inventory over time. For example, a company may add a new scope 3 category to its inventory in the second year of reporting. In the third year of reporting, the company may add a new activity such as emissions from non-production-related procurement to category 1 (Purchased goods and services). Such changes may trigger base year emissions recalculations, depending on whether the company has established:

- A single base year and GHG target for total scope 3 emissions; or
- Separate base years and GHG targets for individual scope 3 categories.

See table 9.5 for guidance on whether a recalculation of base year emissions is necessary.

If the cumulative effect of adding or changing scope 3 categories or activities is significant, the company should include the new categories or activities in the base year inventory and backcast data for the base year based on available historical activity data (e.g., bill of materials data, spend data, product sales data, etc.).

Table [9.4] Criteria for determining whether to recalculate base year emissions due to changes in outsourcing or insourcing

	The company previously reported emissions from the activity	*The company did not previously report emissions from the activity*
The company has a single base year or GHG target for total scope 1 + 2 + 3 emissions	**No Recalculation**	**Recalculate** (if the cumulative effect of outsourcing or insourcing is significant)
The company has separate base years or GHG targets for individual scopes (1, 2, or 3) or individual scope 3 categories	**Recalculate** (if the cumulative effect of outsourcing or insourcing is significant)	**Recalculate** (if the cumulative effect of outsourcing or insourcing is significant)

Table [9.5] Criteria for determining whether to recalculate base year emissions for adding or changing the categories or activities included in the scope 3 inventory

	Add entire categories	*Add or change activities within categories*
The company has a single base year and GHG target for total scope 3 emissions	**Recalculate** (if the cumulative effect of adding or changing the scope 3 categories or activities included in the inventory is significant)	**Recalculate** (if the cumulative effect of adding or changing the scope 3 categories or activities included in the inventory is significant)
The company has separate base years and GHG targets for individual scope 3 categories	**No Recalculation**	**Recalculate** (if the cumulative effect of adding or changing the scope 3 categories or activities included in the inventory is significant)

Recalculations for changes in calculation methodology or improvements in data accuracy over time

A company might report the same sources of GHG emissions as in previous years, but measure or calculate them differently over time. For example, in its third year of reporting scope 3 emissions, a company may significantly improve its data quality by collecting more data from suppliers or increasing the accuracy and precision of emissions estimates. The company should ensure that changes in the inventory over time are a result of actual emissions increases or decreases, not changes in methodology, so that the company tracks "like with like" over time. Therefore, if changes in methodology or data sources result in significant differences in emissions estimates, companies are required to recalculate base year emissions applying the new data sources and/or methodology.

Sometimes the more accurate data input may not reasonably be applied to all past years or new data points may not be available for past years. The company may then have to backcast these data points, or the change in data source may simply be acknowledged without recalculation. This acknowledgment should be made in the report each year in order to enhance transparency and avoid misinterpretation of data by users of the report.

Any changes in emission factors or activity data that reflect real changes in emissions (i.e., changes in fuel type or technology) do not trigger a recalculation.

No recalculation for organic growth or decline

Base year emissions and any historic data are not recalculated for organic growth and decline. Organic growth/decline refers to increases or decreases in production output, changes in product mix, and closures and openings of operating units that are owned or controlled by the company. The rationale for this is that organic growth or decline results in a change of emissions to the atmosphere and therefore needs to be accounted for as an increase or decrease in the company's emissions profile over time.

Box [9.2] Recalculations for category 11 (Use of sold products)

Category 11 (Use of sold products) includes total expected lifetime emissions from the use of sold products, including emissions from future years expected to happen but that have not yet occurred. In certain cases, the assumptions underlying estimates of emissions from category 11 may change after products have been sold and emissions have been reported (e.g., due to changes in policy, technology, or consumer behavior that were unforeseen in the reporting year), making previously reported emissions estimates inaccurate. To address the inaccuracy and enable consistent tracking of emissions over time, companies should recalculate base year emissions for category 11 with updated product use assumptions when any significant changes in assumptions occur.

9.4 Accounting for scope 3 emissions and reductions over time

There are two basic approaches to account for GHG reductions (see table 9.6). This standard uses the inventory method to account for changes in scope 3 emissions over time (see box 9.3). Reductions in corporate emissions are calculated by comparing changes in the company's actual emissions inventory over time relative to a base year. The inventory method allows companies to track the aggregate effect of their activities on total corporate GHG emissions over time.

Accounting for actual reductions in indirect emissions (i.e., scope 2 or scope 3 emissions) to the atmosphere is more complex than accounting for actual reductions in direct emissions (i.e., scope 1) to the atmosphere. Changes in a company's scope 2 or scope 3 inventory over time may not always correspond to actual changes in GHG emissions to the atmosphere, since there is not always a direct cause-and-effect relationship between the reporting company's activities and the resulting GHG emissions. For example, a reduction in business travel would reduce a company's scope 3 emissions from business travel (since the reduction is usually quantified based on an average emission factor of fuel use per passenger). However, how a reduction in business travel actually translates into a change in GHG

emissions to the atmosphere depends on several factors, including whether another person takes the "empty seat" or whether the unused seat contributes to reduced air traffic over the longer term. Generally, as long as the accounting of scope 3 emissions over time recognizes activities that in aggregate change global emissions, any such concerns should not inhibit companies from reporting and tracking their scope 3 emissions over time.

Companies may use the project method to undertake more detailed assessments of actual reductions from discrete scope 3 GHG mitigation projects (such as those listed in table 9.7), in addition to reporting comprehensive scope 3 GHG emissions using the inventory method. Any project-based reductions must be reported separately from the company's scope 1, scope 2, and scope 3 emissions. For more information on quantifying project-based GHG reductions, refer to the *GHG Protocol for Project Accounting* (available at www.ghgprotocol.org).

9.5 Accounting for avoided emissions

This standard is intended to assist companies in quantifying and reporting scope 3 reductions, where GHG reductions are determined by comparing changes in the company's scope 3 emissions from the fifteen scope 3 categories over time relative to a base year. In some cases, GHG reduction opportunities lie beyond a company's scope 1, scope 2, and scope 3 inventories. For example, some companies may track not only the emissions that arise from the use of their products (category 11), but also the avoided emissions in society that result from the use of their products and solutions compared to alternative products and solutions. Avoided emissions may also arise when accounting for emissions from recycling (category 5 or 13), or from activities in other scope 3 categories.

Accounting for avoided emissions that occur outside of a company's scope 1, scope 2, and scope 3 inventories requires a project accounting methodology. Any estimates of avoided emissions must be reported separately from a company's scope 1, scope 2, and scope 3 emissions, rather than included or deducted from the scope 3 inventory. Box 9.4 elaborates on accounting for avoided emissions from the use of sold products.

Table [9.6] Methods for accounting for GHG reductions

Method	Description	Relevant GHG Protocol Publication
Inventory method	Accounts for GHG reductions by comparing changes in the company's actual emissions inventory over time relative to a base year	*GHG Protocol Corporate Standard* *GHG Protocol Scope 3 Standard*
Project method	Accounts for GHG reductions by quantifying impacts from individual GHG mitigation projects relative to a baseline (i.e., a hypothetical scenario of what emissions would have been in the absence of the project)	*GHG Protocol for Project Accounting*

Box [9.3] Quantifying changes in scope 3 emissions over time

Change in emissions from a scope 3 category =
Current year emissions from the scope 3 category - Base year emissions from the scope 3 category

9.6 Addressing double counting of scope 3 reductions among multiple entities in a value chain

Scope 3 emissions are by definition the direct emissions of another entity. Multiple entities in a value chain influence both emissions and reductions, including raw material suppliers, manufacturers, distributors, retailers, consumers, and others. As a result, changes in emissions are not easily attributable to any single entity.

Double counting or double claiming occurs when two or more companies claim ownership for a single GHG reduction within the same scope. The *GHG Protocol Corporate Standard* defines scope 1 and scope 2 to ensure that two or more companies do not account for the same emissions within the same scope. (For more information, see chapter 4 of the *GHG Protocol Corporate Standard*.) By properly accounting for emissions as scope 1, scope 2, and scope 3, companies avoid double counting within scope 1 and scope 2.

Double counting within scope 3 occurs when two entities in the same value chain account for the scope 3 emissions from a single emissions source – for example, if a manufacturer and a retailer both account for the scope 3 emissions resulting from the third-party transportation of goods between them (see figure 9.1). This type of double counting is an inherent part of scope 3 accounting. Each entity in the value chain has some degree of influence over emissions and reductions. Scope 3 accounting facilitates the simultaneous action of multiple entities to reduce emissions throughout society. Because of this type of double counting, scope 3 emissions should not be aggregated across companies to determine total emissions in a given region. Note that while a single emission may be accounted for by more than one company as scope 3, in certain cases the emission is accounted for by each company in a different scope 3 category.

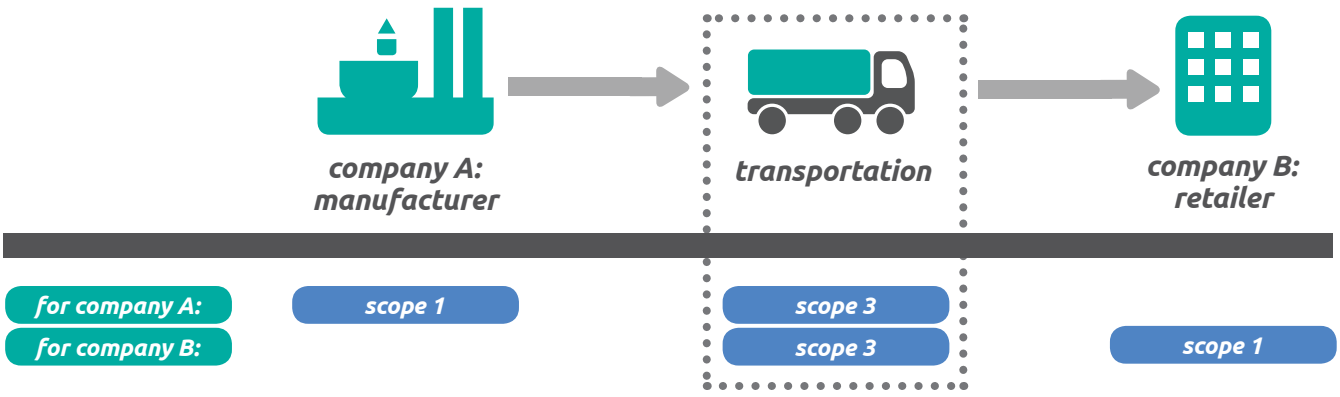
Companies may find double counting within scope 3 to be acceptable for purposes of reporting scope 3 emissions to stakeholders, driving reductions in value chain emissions, and tracking progress toward a scope 3 reduction target. To ensure transparency and avoid misinterpretation of data, companies should acknowledge any potential double counting of reductions or credits when making claims about scope 3 reductions. For example, a company may claim that it is working jointly with partners to reduce emissions, rather than taking exclusive credit for scope 3 reductions.

If GHG reductions take on a monetary value or receive credit in a GHG reduction program, companies should avoid double counting of credits from such reductions. To avoid double crediting, companies should specify exclusive ownership of reductions through contractual agreements.

9.7 Examples of actions to reduce scope 3 emissions

Companies may implement a variety of actions to reduce scope 3 emissions. Table 9.7 provides an illustrative list of actions that companies can take to reduce emissions in the value chain.

Figure [9.1] Type of double counting within scope 3



Box [9.4] Accounting for avoided emissions from the use of sold products

To reduce scope 3 emissions from the use of sold products (category 11), companies may implement various GHG reduction strategies, such as redesigning products to be more efficient in the use-phase or replacing existing product lines with new zero-emitting product lines. These reduction activities can be tracked by comparing a company's scope 3 emissions inventory over time.

A company's products can also have broader impacts on GHG emissions in society when they provide the same or similar function as existing products in the marketplace but with significantly less GHG emissions. For example, a manufacturer of renewable energy technologies may be interested not only in tracking the emissions and reductions that occur during the use of its products, but also in assessing the reduction in society's GHG emissions as a result of using renewable energy technologies compared to generating electricity by combusting fossil fuels.

Examples of such products and solutions may include:

- Wind turbines or solar panels, compared to fossil fuel power plants
- LED bulbs, compared to incandescent bulbs
- Triple-pane windows, compared to double- or single-pane windows
- Insulation in a building, compared to no insulation
- Online meeting software, compared to business travel

Developing new products and solutions that achieve GHG reductions in society compared to other products and solutions is an important component of corporate sustainability strategies and offers significant opportunities for achieving large scale GHG reductions. These reductions are accounted for in scope 3 emissions to the extent that they decrease a company's emissions from the use of sold products over time, for example by redesigning products or replacing existing product lines with new product lines.

Avoided emissions from the use of sold products compared to a baseline are not included in a company's scope 3 emissions. Accounting for such reductions requires a project-based accounting methodology (see section 9.4) and poses several accounting challenges to ensuring that reduction claims are accurate and credible. Challenges include how to:

- Determine an appropriate baseline scenario (e.g., which technologies to compare)
- Determine the system boundaries (e.g., which emissions to include)
- Determine the time period (e.g., how many years to include)
- Accurately quantify avoided emissions
- Avoid "cherry picking" (e.g., account for both emissions increases and decreases across the company's entire product portfolio)
- Allocate reductions among multiple entities in a value chain (e.g., avoid double counting of reductions between producers of intermediate goods, producers of final goods, retailers, etc.)

If a company chooses to account for avoided emissions from the use of sold products, avoided emissions are not included in or deducted from the scope 3 inventory, but instead reported separately from scope 1, scope 2, and scope 3 emissions. Companies that report avoided emissions should also report the methodology and data sources used to calculate avoided emissions, the system boundaries, the time period considered, the baseline (and baseline assumptions) used to make the comparison, as well as a statement on completeness (avoiding "cherry picking") and ownership (avoiding double counting of reductions). For more information on quantifying project-based GHG reductions, refer to the *GHG Protocol for Project Accounting*, available at www.ghgprotocol.org.

Table [9.7] **Illustrative examples of actions to reduce scope 3 emissions**

Upstream scope 3 emissions

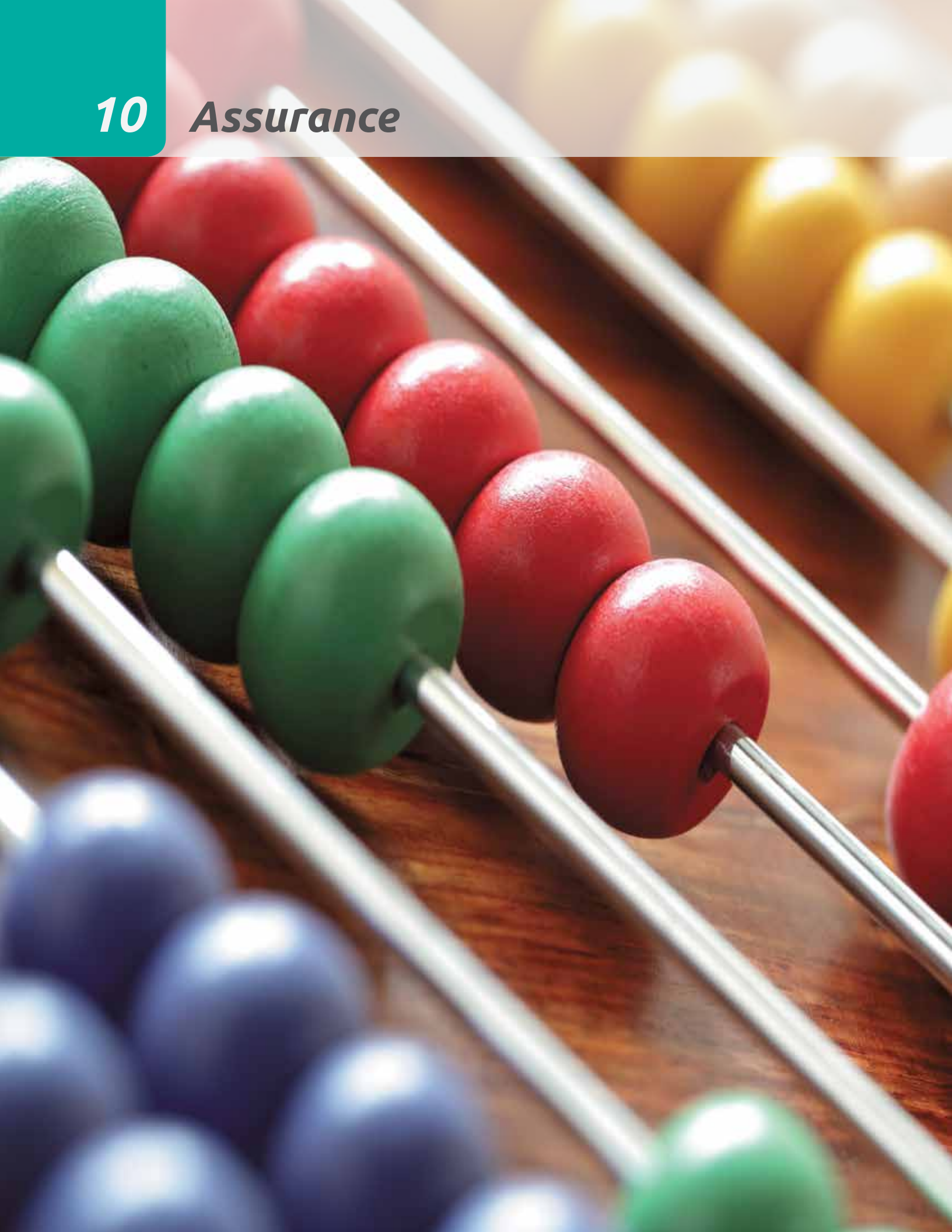
Category	*Examples of actions to reduce scope 3 emissions*
1. Purchased goods and services	• Replace high-GHG-emitting raw materials with low-GHG-emitting raw materials • Implement low-GHG-procurement/purchasing policies • Encourage tier 1 suppliers to engage their tier 1 suppliers (i.e., the reporting company's tier 2 suppliers) and disclose these scope 3 emissions to the customer in order to propagate GHG reporting throughout the supply chain
2. Capital goods	• Replace high-GHG-emitting capital goods with low-GHG-emitting capital goods
3. Fuel- and energy-related activities (not included in scope 1 or scope 2)	• Reduce energy consumption • Change energy source (e.g., shift toward lower-emitting fuel/energy sources) • Generate energy on site using renewable sources
4. Upstream transportation and distribution	• Reduce distance between supplier and customer • Source materials locally if it leads to net GHG reductions • Optimize efficiency of transportation and distribution • Replace higher-emitting transportation modes (e.g. air transport) with lower-emitting transportation modes (e.g. marine transport) • Shift toward lower-emitting fuel sources
5. Waste generated in operations	• Reduce quantity of waste generated in operations • Implement recycling measures that lead to net GHG reductions • Implement lower-emitting waste treatment methods
6. Business travel	• Reduce the amount of business travel (e.g., encourage video conferencing and web-based meetings as an alternative to in-person meetings) • Encourage more efficient travel • Encourage lower-emitting modes of travel (e.g., rail instead of plane)
7. Employee commuting	• Reduce commuting distance (e.g., locate offices/facilities near urban centers and public transit facilities) • Create disincentives for commuting by car (e.g., parking policies) • Provide incentives for use of public transit, bicycling, carpooling, etc. • Implement teleworking/telecommuting programs • Reduce number of days worked per week (e.g., 4 days x 10 hour schedule instead of 5 days x 8 hour schedule)
8. Upstream leased assets	• Increase energy efficiency of operations • Shift toward lower-emitting fuel sources

Table [9.7] **Illustrative examples of actions to reduce scope 3 emissions**

Downstream scope 3 emissions

Category	*Examples of actions to reduce scope 3 emissions*
9. Transportation and distribution of sold products	• Reduce distance between supplier and customer • Optimize efficiency of transportation and distribution • Replace higher emitting transportation modes (e.g. air transport) with lower emitting transportation modes (e.g. marine transport) • Shift toward lower-emitting fuel sources
10. Processing of sold products	• Improve efficiency of processing • Redesign products to reduce processing required • Use lower-GHG energy sources
11. Use of sold products	• Develop new low- or zero-emitting products • Increase the energy efficiency of energy-consuming goods or eliminate the need for energy use • Shift away from products that contain or emit GHGs • Reduce the quantity of GHGs contained/released by products • Decrease the use-phase GHG intensity of the reporting company's entire product portfolio • Change the user instructions to promote efficient use of products
12. End-of-life treatment of sold products	• Make products recyclable if it leads to net GHG reductions • Implement product packaging measures that lead to net GHG reductions (e.g., decrease amount of packaging in sold products, develop new GHG-saving packaging materials, etc.) • Implement recycling measures that lead to net GHG reductions
13. Downstream leased assets	• Increase energy efficiency of operations • Shift toward lower-emitting fuel sources
14. Franchises	• Increase energy efficiency of operations (e.g., set efficiency standards) • Shift toward lower-emitting fuel sources
15. Investments	• Invest in lower-emitting investments, technologies, and projects

10 Assurance



Assurance is the level of confidence that the inventory is complete, accurate, consistent, transparent, relevant, and without material misstatements.[1] While assurance is not a requirement of this standard, obtaining assurance over the scope 3 inventory is valuable for reporting companies and other stakeholders when making decisions using the inventory results.

10.1 Benefits of assurance

Assuring scope 3 inventory results can provide a variety of benefits, including:

- Increased senior management confidence in the reported information on which to base reduction targets and related decisions
- Enhanced internal accounting and reporting practices (e.g. data collection, calculation, and internal reporting systems), and facilitation of learning and knowledge transfer
- Improved efficiency in subsequent inventory update processes
- Greater stakeholder confidence in the reported information

Carefully and comprehensively documenting the inventory process in a data management plan is a vital step in preparing for assurance (see Appendix C).

10.2 Relationships of parties in the assurance process

Three key parties are involved in the assurance process:

1) The reporting company seeking assurance

2) Stakeholders using the inventory report

3) The assurer(s)

When the reporting company also performs the assurance, this is known as first party assurance. When a party other than the reporting company performs the assurance, this is known as third party assurance. These types are further described in table 10.1.

Companies should choose assurers that are independent of, and have no conflicts of interest with, the scope 3 inventory development and reporting process.

Table [10.1] Types of assurance

Type of assurance	*Description*	*Independence mechanism*
First party assurance	Person(s) from within the reporting company but independent of the GHG inventory process conducts internal assurance	Different lines of reporting
Third party assurance	Person(s) from an organization independent of the scope 3 inventory process conduct third party assurance	Different business entity from the reporting company

Both first and third party assurers should follow similar procedures and processes. For external stakeholders, third party assurance is likely to increase the credibility of the GHG inventory. However, first party assurance can also provide confidence in the reliability of the inventory report, and it can be a worthwhile learning experience for a company prior to commissioning third party assurance.

Inherently, assurance provided by a third party offers a higher degree of objectivity and independence. Typical threats to independence may include financial and other conflicts of interest between the reporting company and the assurer. These threats should be assessed throughout the assurance process. Companies receiving first party assurance should report how potential conflicts of interest were avoided during the assurance process.

10.3 Competencies of assurers

Selecting a competent assurer is important for the assurance findings to have the credibility needed to support the reporting company's business goals and stakeholder needs. A competent scope 3 GHG inventory assurer has the following characteristics:

- Assurance expertise and experience using assurance frameworks
- Knowledge and experience in corporate GHG accounting and/or life cycle assessment, including familiarity with key steps in the scope 3 inventory process
- Knowledge of the company's activities and industry sector
- Ability to assess emission sources and the magnitude of potential errors, omissions, and misrepresentations
- Credibility, independence, and professional skepticism to challenge data and information

10.4 Assurance process

Assurance engagements,[2] whether performed by a first or third party, have common elements, including:

1. Planning and scoping (e.g., determining risks and material misstatements)
2. Identifying emission sources included in the scope 3 inventory
3. Performing the assurance process (e.g. gathering evidence, performing analytics, etc.)
4. Evaluating results
5. Determining and reporting conclusions

The nature and extent of assurance procedures can vary depending on whether the assurance engagement is designed to obtain reasonable or limited assurance.

Levels of assurance: Limited and reasonable assurance

The level of assurance refers to the degree of confidence that stakeholders can have over the information in the inventory report. There are two levels of assurance: limited and reasonable. The level of assurance requested by the reporting company will determine the rigor of the assurance process and the amount of evidence required.

Table [10.2] Limited and reasonable assurance opinions

Assurance opinion	*Nature of opinion*	*Example wording of opinion*
Limited assurance	Negative opinion	"Based on our review, we are not aware of any material modifications that should be made to the company's assertion that their scope 3 inventory is in conformance with the requirements of the *GHG Protocol Scope 3 Standard*."
Reasonable assurance	Positive opinion	"In our opinion the reporting company's assertion of their scope 3 emissions by category, as reported in the inventory report, is fairly stated, in all material respects, and is in conformance with the *GHG Protocol Scope 3 Standard*."

The highest level of assurance that can be provided is a reasonable level of assurance. Absolute assurance is never provided since 100 percent of the inputs to the GHG inventory cannot be tested due to practical limitations.

The thoroughness with which the assurance evidence is obtained is less rigorous in limited assurance than with reasonable assurance. Table 10.2 provides examples of limited and reasonable assurance opinions for an assertion of scope 3 inventory emissions.

Timing of the assurance process

The assurance process is conducted before the public release of the inventory report by the reporting company. This allows for material misstatements to be corrected prior to the release of the opinion (or revised opinion) and assertion. The work should be initiated far enough in advance of the inventory report release so that the assurance work is useful in improving the inventory when applicable. The period for assurance is dependent on the nature and complexity of the subject matter and the level of assurance.

10.5 Key concepts in assurance

In the assurance field many different terms are used to describe various assurance processes (e.g. verification, validation, quality assurance, quality control, audit, etc.). Though not comprehensive, table 10.3 includes many key terms and concepts used in the assurance process that reporting companies may encounter.

Materiality

A material misstatement occurs when individual or aggregate errors, omissions, and misrepresentations have a significant impact on the GHG inventory results and could influence a user's decisions. Materiality has both quantitative and qualitative aspects. The assurer and reporting company should determine an appropriate threshold or benchmark of materiality during the assurance process.

Quantitative materiality is typically calculated as a percentage of the inventory (in total or on an individual line item basis). In determining the quantitative materiality benchmark, assurers should contemplate the risk of a potential misstatement and the history of previous misstatements. A materiality threshold (e.g. a point at which a discrepancy becomes material) can be pre-defined by the assurer. Qualitative misstatements tend to be those that have immaterial quantitative effects but could materially affect the reporting company's emissions in the future as well as those that mislead the intended user.

Table [10.3] Key assurance concepts

Assurance concept	*Description*
Assertion	A statement by the reporting company on the company's scope 3 emissions by category. The assertion is presented to the assurer. Example: The reported scope 3 emissions by category are calculated in conformance with the *GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard* as supplemented by our company-specific policies and methodologies described in the inventory report.
Subject matter	Scope 3 emissions by category and supporting information included in the inventory report. The type of assurance performed will determine which subject matter(s) should be assessed.
Criteria	The benchmarks used to evaluate or measure the subject matter. Criteria include the standard's requirements, methodological choices, data quality and uncertainty, and others determined to be suitable by the reporting company and assurer for public reporting.
Evidence	Data sources and documentation used to calculate emissions and support the subject matter of the reporting company's assertion. Evidence should be sufficient in quantity and appropriate in quality.
Assurance standards	Standards, used by assurers, which set requirements on how the assurance process is performed. (For example, ISO 14064-3: Specification with Guidance for the Validation and Verification of Greenhouse Gas Assertions).
Assurance opinion	The results of the assurer's assessment of the reporting company's assertion. In the event that the assurer determines that a conclusion cannot be expressed, the statement should cite the reason.

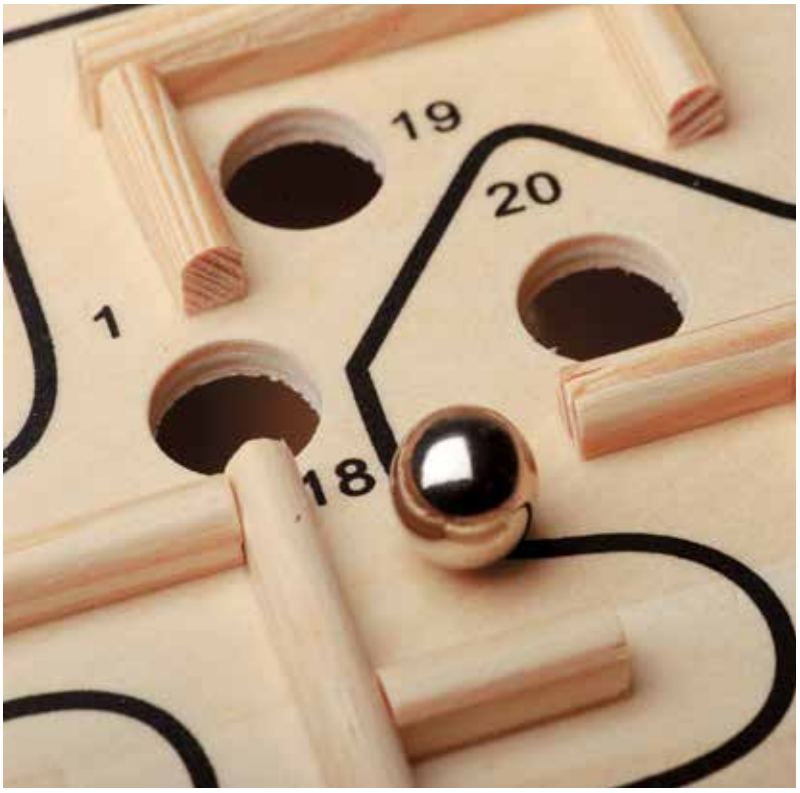
Uncertainty is a separate concept from materiality because it is not a known error, but rather an indicator of how well the data represents the processes in the inventory.

10.6 Preparing for assurance

Preparing for assurance is a matter of ensuring that the evidence that the assurer requires is available or easily accessed. The type of evidence and documentation requested by the assurer will depend on the subject matter, the industry, and the type of assurance being sought. Maintaining documentation of the inventory process through the use of a data management plan (see Appendix C) is helpful for ensuring the assurance evidence is available.

Prior to starting the assurance process, the reporting company should ensure that the following are prepared and available to the assurer:

- The company's written assertion (e.g., inventory results)
- The complete data management plan (see Appendix C)
- Access to sufficient and appropriate evidence (e.g. invoices, bills of sale, etc.)



10.7 Assurance challenges

There are several challenges in assuring scope 3 inventories. Emissions calculations rely on a mixture of data sources and assumptions. Inventory uncertainty, including scenario uncertainty related to the use and end-of-life treatment of sold products, may affect the quality of the inventory. It is important to consider the state of data collection systems and the integrity of the data and methodological choices when performing assurance.

One of the primary challenges is that the emission sources are removed from the reporting company's control, reducing the assurer's ability to obtain sufficient appropriate evidence.

Two approaches to addressing this diminishing control are to:

1. Change the level of assurance, or
2. Rely on the assurance statement of another assurer for emission and removal sources outside of the company's control (i.e., assurance over a supplier's emission sources by a different assurance firm)

10.8 Assurance statement

The assurance statement conveys the assurer's conclusion about the inventory results. It may take different forms depending on whether the assurance was performed by a first or third party. The assurance statement should include the following:

Introduction

- A description of the reporting company
- A reference to the reporting company's assertion included in the inventory report

Description of Assurance Process

- The relevant competencies of the assurers
- A summary of the assurance process and work performed
- Description of the reporting company's and assurer's responsibilities
- List of the assurance criteria
- Whether the assurance was performed by a first or third party
- The assurance standard used to perform assurance
- How any potential conflicts of interest were avoided for first party assurance

Conclusion Paragraph

- Level of assurance achieved (limited or reasonable)
- The materiality threshold or benchmark, if set
- Any additional details regarding the assurer's conclusion, including details regarding any exceptions noted or issues encountered in performing the assurance

When there are material departures in the assertion from the assurance criteria, the reporting company should report the effect of the departures. Companies may report any recommendations from the assurer on improvements in future updates of the inventory.

Endnotes

1 Adapted from ISO 14064-3, "Specification with guidance for the validation and verification of greenhouse gas assertions" (2005).

2 The process is referred to as verification in the *GHG Protocol Product Standard* to distinguish it from the critical review process that also provides assurance over product GHG inventories. The term verification is also used in chapter 10 of the *GHG Protocol Corporate Standard.*

11 Reporting

A credible GHG emissions report presents information based on the principles of relevance, accuracy, completeness, consistency, and transparency. It should be based on the best data available and be transparent about its limitations.

Requirements in this chapter

Companies shall publicly report the information listed in section 11.1.

11.1 Required information

Companies shall publicly report the following information:

- A scope 1 and scope 2 emissions report in conformance with the *GHG Protocol Corporate Standard*
- Total scope 3 emissions reported separately by scope 3 category
- For each scope 3 category, total emissions of GHGs (CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6) reported in metric tons of CO_2 equivalent, excluding biogenic CO_2 emissions and independent of any GHG trades, such as purchases, sales, or transfers of offsets or allowances
- A list of scope 3 categories and activities included in the inventory
- A list of scope 3 categories or activities excluded from the inventory with justification of their exclusion
- Once a base year has been established: the year chosen as the scope 3 base year; the rationale for choosing the base year; the base year emissions recalculation policy; scope 3 emissions by category in the base year, consistent with the base year emissions recalculation policy; and appropriate context for any significant emissions changes that triggered base year emissions recalculations
- For each scope 3 category, any biogenic CO_2 emissions reported separately
- For each scope 3 category, a description of the types and sources of data, including activity data, emission factors and GWP values, used to calculate emissions, and a description of the data quality of reported emissions data
- For each scope 3 category, a description of the methodologies, allocation methods, and assumptions used to calculate scope 3 emissions
- For each scope 3 category, the percentage of emissions calculated using data obtained from suppliers or other value chain partners

11.2 Optional information

A public GHG emissions report should include, when applicable, the following additional information:

- Emissions data further subdivided where this adds relevance and transparency (e.g., by business unit, facility, country, source type, activity type, etc.)
- Emissions data further disaggregated within scope 3 categories where this adds relevance and transparency (e.g., reporting by different types of purchased materials within category 1, or different types of sold products within category 11)
- Emissions from scope 3 activities not included in the list of scope 3 categories (e.g., transportation of attendees to conferences/events), reported separately (e.g., in an "other" scope 3 category)
- Emissions of GHGs reported in metric tons of each individual gas
- Emissions of any GHGs other than CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6 whose 100-year GWP values have been identified by the IPCC to the extent they are emitted in the company's value chain (e.g., CFCs, HCFCs, NF_3, NO_X, etc.) and a list of any additional GHGs included in the inventory
- Historic scope 3 emissions that have previously occurred, reported separately from future scope 3 emissions expected to occur as a result of the reporting company's activities in the reporting year (e.g., from Waste generated in operations, Use of sold products, End-of-life treatment of sold products)
- Qualitative information about emission sources not quantified
- Information on any GHG sequestration or removals, reported separately from scope 1, scope 2 and scope 3 emissions
- Information on project-based GHG reductions calculated using the project method (e.g., using the *GHG Protocol for Project Accounting*), reported separately from scope 1, scope 2, and scope 3 emissions
- Information on avoided emissions (e.g., from the use of sold products), reported separately from scope 1, scope 2, and scope 3 emissions
- Quantitative assessments of data quality
- Information on inventory uncertainty (e.g., information on the causes and magnitude of uncertainties in emission estimates) and an outline of policies in place to improve inventory quality
- The type of assurance performed (first or third party), the relevant competencies of the assurance provider(s), and the opinion issued by the assurance provider
- Relevant performance indicators and intensity ratios
- Information on the company's GHG management and reduction activities, including scope 3 reduction targets, supplier engagement strategies, product GHG reduction initiatives, etc.
- Information on supplier/partner engagement and performance
- Information on product performance
- A description of performance measured against internal and external benchmarks
- Information on purchases of GHG reduction instruments, such as emissions allowances and offsets, from outside the inventory boundary
- Information on reductions at sources inside the inventory boundary that have been sold/transferred as offsets to a third party
- Information on any contractual provisions addressing GHG-related risks or obligations
- Information on the causes of emissions changes that did not trigger a scope 3 base year emissions recalculation
- GHG emissions data for all years between the scope 3 base year and the reporting year (including details of and reasons for recalculations, if appropriate)
- Additional explanations to provide context to the data

11.3 Reporting guidance

By following the *GHG Protocol Scope 3 Standard* reporting requirements, companies adopt a comprehensive standard with the necessary detail and transparency for credible public reporting. The appropriate level of reporting of optional information categories can be determined by the objectives and intended audience for the report. For national or voluntary GHG programs, or for internal management purposes, reporting requirements may vary.

For public reporting, it is important to differentiate between a summary of a public report that is, for example, published on the internet or in sustainability/

corporate social responsibility reporting and a full public report that contains all the necessary data as specified by this standard. Not every circulated report must contain all information as specified by this standard, but a link or reference needs to be made to a publicly available full report where all information is available to be in conformance with the *Scope 3 Standard*.

Companies should strive to create a report that is as relevant, transparent, accurate, consistent and complete as possible. Including a discussion of the reporting company's strategy and goals for GHG accounting, any particular challenges or tradeoffs encountered, the context of decisions on boundaries and other accounting parameters, and an analysis of emissions trends will provide a more complete picture of the company's inventory efforts.

Guidance is provided below for implementing selected reporting requirements and optional information listed in sections 11.1 and 11.2. See the relevant chapters of this standard for guidance on implementing reporting requirements not listed below. A sample GHG reporting form is provided at www.ghgprotocol.org.

Required reporting: For each scope 3 category, total GHG emissions reported in metric tons of CO_2 equivalent, excluding biogenic CO_2 emissions

Companies are required to include emissions of each of the 6 required greenhouse gases (i.e., CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6) in the reported scope 3 emissions data, but are not required to separately report scope 3 emissions by individual gas. Companies may report aggregated emissions in units of CO_2e only.

Required reporting: For each scope 3 category, a description of the methodologies, allocation methods, and assumptions used to calculate scope 3 emissions

Companies should report assumptions underlying reported emissions for each of the 15 scope 3 categories. For example, for category 11 (Use of sold products), companies should report information on average use profiles, assumed product lifetimes and other underlying assumptions. For category 12 (End-of-life treatment of sold products), companies should report underlying assumptions related to product lifetimes and waste treatment methods. Companies should also specify the time boundary of each scope 3 category.

Optional reporting: Information on supplier/partner engagement and performance

Scope 3 accounting is focused on tracking the emissions associated with specific activities in the value chain, such as the production of purchased products, transportation of purchased products, and use of sold products. Because scope 3 emissions include the scope 1 and scope 2 emissions of a company's partners in the value chain (including suppliers, customers, service providers, etc.), reporting on a company's efforts to engage their partners in the value chain provides additional transparency on a company's scope 3 management and reduction activities.

A public GHG emissions report should include, when applicable, the following additional information:

- Supplier/partner engagement metrics, such as the number and percentage of suppliers and other partners that have:
  - Received a request from the reporting company to provide primary GHG emissions data
  - Provided primary GHG emissions data to the reporting company
  - Publicly reported entity-wide GHG emissions
  - Established a publicly-available entity-wide GHG reduction target
- Supplier/partner performance metrics, including the GHG emissions performance of suppliers and other partners over time
  - For example, the sum of the reporting company's tier 1 suppliers' scope 1 and scope 2 emissions, allocated to the reporting company; the methodology used to quantify and allocate supplier emissions data; and the percentage of tier 1 suppliers accounted for (as a percentage of the reporting company's total spend)
- Other relevant information

Optional reporting: Information on product performance

To provide appropriate context related to category 11 (Use of sold products), a public GHG emissions report should include, when applicable, the following additional information:

- Product performance indicators and intensity metrics (e.g., average GHG intensity of sold products, average energy efficiency of sold products, average emissions per hour of use, average fuel efficiency of sold vehicles, average emissions per kilometer driven, GHG intensity of sold fuels, average emissions per functional unit, etc.)
- Annual emissions from the use of sold products (i.e., emissions that occur in a single year from products sold in the reporting year)
- Average lifetime/durability of sold products
- The methodologies and assumptions used to calculate product performance indicators and intensity metrics
- The percentage of sold products that are compliant with standards, regulations, and certifications, where applicable
- A statement explaining why emissions from category 11 (Use of sold products) have increased or decreased over time
- Any sold products not included in the inventory, with justification for their exclusion
- Other relevant information

Optional reporting: Historic scope 3 emissions that have previously occurred, reported separately from future scope 3 emissions expected to occur as a result of the reporting company's activities in the reporting year

Emissions reported for category 5 (Waste generated in operations), category 11 (Use of sold products), and category 12 (End-of-life treatment of sold products) should not be interpreted to mean that emissions have already occurred, but rather that the reported emissions are expected to occur as a result of activities that occurred in the reporting year. Companies may separately report historic emissions (that have already occurred) from future emissions (that have not yet occurred) in order to avoid misinterpretation by stakeholders.

Optional reporting: Information on uncertainty

Companies should describe the level of uncertainty of reported data, qualitatively or quantitatively, to ensure transparency and avoid misinterpretation of data. In cases where data uncertainty is high, companies should also describe efforts to address uncertainty. See Appendix B for more information on uncertainty.

Appendices

Appendix A. Accounting for Emissions from Leased Assets

This appendix provides additional guidance on accounting for emissions from leased assets.

Introduction[1]

Many companies either lease assets (e.g., buildings, vehicles) to other entities or lease assets from other entities. This appendix explains whether to account for emissions from leased assets as scope 1 emissions, scope 2 emissions, scope 3 emissions in category 8 (Upstream leased assets), or scope 3 emissions in category 13 (Downstream leased assets).

How emissions from leased assets are accounted for in a company's GHG inventory depends on the company's selected organizational boundary approach (i.e., equity share, financial control, or operational control), and the type of lease.

Differentiating types of leased assets

The first step in determining how to categorize emissions from leased assets is to understand the two different types of leases: finance or capital leases, and operating leases. One way to determine the type of lease is to check the company's audited financial statements.

- **Finance or capital lease:** This type of lease enables the lessee to operate an asset and also gives the lessee all the risks and rewards of owning the asset. Assets leased under a capital or finance lease are considered wholly owned assets in financial accounting and are recorded as such on the balance sheet.
- **Operating lease:** This type of lease enables the lessee to operate an asset, like a building or vehicle, but does not give the lessee any of the risks or rewards of owning the asset. Any lease that is not a finance or capital lease is an operating lease.[2]

The next step is to determine whether the emissions associated with the leased assets are categorized as scope 1, scope 2, or scope 3 by the reporting company. Proper categorization of emissions from leased assets by lessors and lessees ensures that emissions in scopes 1 and 2 are not double-counted. For example, if a lessee categorizes emissions from the use of purchased electricity as scope 2, the lessor categorizes the same emissions as scope 3, and vice versa.

Table [A.1] Leasing agreements and boundaries (lessee's perspective)

	Type of leasing arrangement	
	Finance/capital lease	***Operating lease***
Equity share or financial control approach used	Lessee has ownership and financial control, therefore emissions associated with fuel combustion are scope 1 and use of purchased electricity are scope 2.	Lessee does not have ownership or financial control, therefore emissions associated with fuel combustion and use of purchased electricity are scope 3 (Upstream leased assets).
Operational control approach used	Lessee has operational control, therefore emissions associated with fuel combustion are scope 1 and use of purchased electricity are scope 2.	Lessee does have operational control, therefore emissions associated with fuel combustion at sources in the leased space are scope 1 and use of purchased electricity are scope 2.[3]

Table [A.2] Leasing agreements and boundaries (lessor's perspective)

	Type of leasing arrangement	
	Finance/capital lease	***Operating lease***
Equity share or financial control approach used	Lessor does not have ownership or financial control, therefore emissions associated with fuel combustion and use of purchased electricity are scope 3 (Downstream leased assets).	Lessor has ownership and financial control, therefore emissions associated with fuel combustion are scope 1 and use of purchased electricity are scope 2.
Operational control approach used	Lessor does not have operational control, therefore emissions associated with fuel combustion and use of purchased electricity are scope 3 (Downstream leased assets).	Lessor does not have operational control, therefore emissions associated with fuel combustion and use of purchased electricity are scope 3 (Downstream leased assets).[4]

Lessee's perspective: Categorizing emissions from leased assets

Many companies lease assets from other companies (e.g., companies that lease office or retail space from real estate companies). Whether emissions from these assets are categorized by the lessee as scope 1, scope 2, or scope 3 depends on the organizational boundary approach and the type of leasing arrangement. See table A.1.

Lessor's perspective: Categorizing emissions from leased assets

Some companies act as lessors and lease assets to other companies (e.g., real estate companies that lease office or retail space or vehicle companies that lease vehicle fleets). Whether emissions from these assets are categorized by the lessor as scope 1, scope 2, or scope 3 depends on the organizational boundary approach and the type of leasing arrangement. See table A.2.

Endnotes

1 This text is adapted from GHG Protocol, "Categorizing GHG Emissions from Leased Assets," GHG Protocol Corporate Accounting and Reporting Standard (Revised Edition), Appendix F, June 2006, Version 1.0, provided at www.ghgprotocol.org.

2 Financial Accounting Standards Board, "Accounting for Leases," Statement of Financial Accounting Standards, no. 13 (1976).

3 Some companies may be able to demonstrate that they do not have operational control over a leased asset held under an operating lease. In this case, the company may report emissions from the leased asset as scope 3 as long as the decision is disclosed and justified in the public report.

4 Some companies may be able to demonstrate that they do have operational control over an asset leased to another company under an operating lease, especially when operational control is not perceived by the lessee. In this case, the lessor may report emissions from fuel combustion as scope 1 and emissions from the use of purchased electricity as scope 2 as long as the decision is disclosed and justified in the public report.

Appendix B. Uncertainty in Scope 3 Emissions

This appendix provides an overview of concepts and procedures for evaluating sources of uncertainty in a scope 3 inventory.

Introduction

Understanding uncertainty can be crucial for properly interpreting scope 3 inventory results. The term uncertainty assessment refers to a systematic procedure to quantify and/or qualify the sources of uncertainty in a scope 3 inventory. Identifying and documenting sources of uncertainty can assist companies in understanding the steps required to help improve the inventory quality and increase the level of confidence users have in the inventory results. Because the audience of a scope 3 inventory report is diverse, companies should make a thorough yet practical effort to communicate key sources of uncertainty in the inventory results.

Guide to the uncertainty assessment process

Uncertainty assessment can be used within the GHG inventory process as a tool for guiding data quality improvements, as well as a tool for reporting uncertainty results. Companies should identify and track key uncertainty sources throughout the inventory process and iteratively check whether the confidence level of the results is adequate for the company's business goals. Identifying, assessing, and managing uncertainty is most effective when done during the inventory process.

Companies may choose a qualitative and/or quantitative approach to uncertainty assessment. Quantitative uncertainty assessment can provide more robust results than a qualitative assessment and better assist companies in prioritizing data improvement efforts on the sources that contribute most to uncertainty. Including quantitative uncertainty results in the inventory report also adds clarity and transparency to users of the inventory report. Companies should present both qualitative and quantitative (if completed) uncertainty information in the inventory report. Companies should also describe their efforts to reduce uncertainty in future revisions of the inventory.

Overview of uncertainty types

Uncertainty is divided into three categories: parameter uncertainty, scenario uncertainty and model uncertainty. The categories are not mutually exclusive, but they can be evaluated and reported in different ways. Table B.1 illustrates these types of uncertainties and corresponding sources.

Parameter uncertainty

Parameter uncertainty is uncertainty regarding whether a value used in the inventory accurately represents the activity in the company's value chain. If parameter

Table [B.1] Types of uncertainties and corresponding sources

Types of Uncertainty	Sources
Parameter Uncertainty	• Direct emissions data • Activity data • Emission factor data • Global warming potential (GWP) values
Scenario Uncertainty	• Methodological choices
Model Uncertainty	• Model limitations

uncertainty can be determined, it can typically be represented as a probability distribution of possible values that include the chosen value used in the inventory results. In assessing the uncertainty of a result, parameter uncertainties can be propagated to provide a quantitative measure (also as a probability distribution) of uncertainty in the final inventory result.

Single parameter uncertainty

Single parameter uncertainty refers to incomplete knowledge about the true value of a parameter.[1] Parameter uncertainty addresses how well data used to represent a parameter fits the activity in the company's value chain. Single parameter uncertainty can arise in three data types: direct emissions data, activity data, and emission factors. Measurement errors, inaccurate approximation, and how the data was modeled to fit the conditions of the activity influence parameter uncertainty. For example, two data points of similar measurement precision may result in very different levels of uncertainty depending on how the points represent the activity's specific context (i.e. in temporal, technological, and geographical representativeness, and completeness terms).

EXAMPLE

An emission factor for the production of plastic used in a toner cartridge is 4.5 kg of CO_2 per kg of plastic resin produced. The emission factor data might be based on a limited sampling of producers of resin and may be from an older timeframe or different geography than that in which the current resin is produced. Therefore, there is parameter uncertainty in the emission factor value being used.

Parameter uncertainty can be quantified based on one or more of the following:

- Measurement uncertainty (represented by standard deviations);
- Data quality indicators (see chapter 7);[2]
- Default uncertainty parameters defined for specific activities or industry data and reported in literature sources or elsewhere;[3]
- Probability distributions in databases or other data sources for data they contain; and
- Other approaches reported by literature.

Propagated parameter uncertainty

Propagated parameter uncertainty is the combined effect of each parameter's uncertainty on the total inventory result. Methods are available to propagate parameter uncertainty from single data points. Two prominent methods are by random sampling (such as in the Monte Carlo method) and by analytical formulas (such as in the Taylor Series expansion method). These methods are described in the quantitative uncertainty guidance available at www.ghgprotocol.org.

EXAMPLE

A company estimates total scope 3 emissions from business travel to be 155,000 metric tons CO_2e. The activity data, emission factor data and GWP values applied in this calculation each have a level of parameter uncertainty. This uncertainty is determined based on the impact of all of the single parameter uncertainties. The propagated parameter uncertainty assessment shows that there is a 95 percent confidence that the true value of business travel emissions is between 140,000 and 170,000 metric tons CO_2e. This can also be presented in the inventory total as 155,000 metric tons CO_2e (+/-15,000 metric tons CO_2e).

Box [B.1] Uncertainty of global warming potential (GWP) values

The uncertainty of the GWP values for the six main greenhouse gases is estimated to be ± 35% for the 90% confidence interval (5% to 95% of the distribution). This is based on information provided in the IPCC's Fourth Assessment Report. The range reflects the uncertainty in converting individual GHG emissions into units of CO_2e. Companies that choose to quantify inventory uncertainty may include the uncertainty of GWP values in their calculations.

Scenario uncertainty

While parameter uncertainty is a measure of how close the data used to calculate emissions are to the true (though unknown) actual data and emissions, scenario uncertainty refers to variation in calculated emissions due to methodological choices. When there are multiple methodological choices available in the standard (e.g., the selection of appropriate allocation methods), scenario uncertainty is created. The use of standards results in a reduction in scenario uncertainty by constraining choices the user may make in their methodology. For example, the boundary setting requirements standardize the inventory approach for all companies.

Methodological choices may include:

- Allocation methods;
- Product use assumptions; and
- End-of-life assumptions.

To identify the influence of these selections on results, parameters (or combinations of parameters) are varied in an exercise known as scenario analysis. Scenario analysis is also commonly called sensitivity analysis. Scenario analysis can reveal differences in the inventory results due to methodological choices.[4]

EXAMPLE

A company may choose to allocate facility electricity consumption between toner production and other production lines using physical allocation (e.g., the number of units produced). Using this factor, 30 percent of electricity consumption is allocated to the toner production process. However, using economic allocation, 40 percent of electricity consumption is allocated to the toner production process.

Model uncertainty

Model uncertainty arises from limitations in the ability of the modeling approaches used to reflect the real world. Simplifying the real world into a numeric model always introduces some inaccuracies. In many cases, model uncertainties can be represented, at least in part, through the parameter or scenario approaches described above. However, some aspects of model uncertainty might not be captured by those classifications and are otherwise very difficult to quantify.

EXAMPLE

In representing the transport of materials to the site of toner cartridge manufacture, a model is used that predicts transport distances and modes based on known transport networks, likely routes, and speeds of travel. The model cannot perfectly predict the true transport logistics and so there is uncertainty regarding the true modes and distances that are used.

A model of soy production is involved in predicting emissions from the production of the cartridge's soy-based ink. Emissions of N_2O due to application of nitrogen fertilizers are based on a linear modeling of interactions of the fertilizer with the soil and plant systems. As these interactions are more complicated than the model assumes, there is uncertainty regarding the emissions resulting from this model.

Reporting uncertainty

Uncertainty can be reported in many ways, including qualitative descriptions of uncertainty sources, and quantitative representations, such as error bars, histograms, probability density functions, etc. It is useful to provide as complete a disclosure of uncertainty information as is possible. Users of the information may then weigh the total set of information provided in judging their confidence in the information.

Endnotes

1 Parameter refers to the value(s) assigned to activities within a company's value chain.

2 B.P. Weidema and M.S. Wesnaes, "Data quality management for life cycle inventories – an example of using data quality indicators," Journal of Cleaner Production 4 no. 3-4 (1996): 167-174.

3 See, for example, S.M. Lloyd and R. Ries, "Characterizing, Propagating, and Analyzing Uncertainty in Life-Cycle Assessment: A Survey of Quantitative Approaches," Journal of Industrial Ecology 11 (2007): 161–179.

4 Mark A. J. Huijbregts, "Application of uncertainty and variability in LCA. Part I: A general framework for the analysis of uncertainty and variability in life cycle assessment," International Journal of Life Cycle Assessment 3 no. 5 (1998): 273 - 280.

Appendix C. Data Management Plan

A data management plan documents the GHG inventory process and the internal quality assurance and quality control (QA/QC) procedures in place to enable the preparation of the inventory from its inception through to final reporting. The data management plan is a valuable tool to manage data and track progress of the inventory over time. Companies may already have similar procedures in place for other data collection efforts to guide their inventory process to meet the accounting requirements of the GHG Protocol, or for ISO standards. Where possible, these processes should be aligned to reduce data management burdens.

The data management plan can also be useful as an assurance readiness measure as it contains much of the data that an assurance provider needs to perform assurance. The plan should be made available to assurance providers (internal or external to the reporting company), as a helpful tool to guide the assurance process.

The data management plan should be divided into two portions, quality control (QC) and quality assurance (QA), explained below.

Quality control

The quality control portion of the data management plan outlines a system of routine technical activities to determine and control the quality of the inventory data and the data management processes. The purpose is to ensure that the inventory does not contain misstatements, including identifying and reducing errors and omissions; providing routine checks to maximize consistency in the accounting process; and facilitating internal and external inventory review and assurance.

Quality assurance

The quality assurance portion of the data management plan involves peer review and audits to assess the quality of the inventory. Peer review involves reviewing the documentation of the GHG accounting methodology and results but does not rigorously review the data used or the references. This review aims to reduce or eliminate any inherent error or bias in the process used to develop the inventory and assess the effectiveness of the internal quality control procedures. The audit evaluates whether the inventory complies with the quality control specifications outlined in the data management plan. Peer review and audits should be conducted by someone not involved in the development of the product inventory.

At a minimum the data management plan should contain:

- Description of the scope 3 categories and activities included in the inventory
- Information on the entity(ies) or person(s) responsible for measurement and data collection procedures
- Data collection procedures
- Data sources, including activity data, emission factors and other data, and the results of any data quality assessment performed
- Calculation methodologies including unit conversions and data aggregation
- Length of time the data should be archived
- Data transmission, storage and backup procedures
- All QA/QC procedures for data collection, input and handling activities, data documentation and emissions calculations.

The process of setting up a data management system should involve establishing standard procedures to address all of the data management activities, including the quality control and quality assurance aspects of developing an inventory.

Creating a data management plan

To develop a data management plan, the following steps should be undertaken and documented.

1. ***Establish a GHG accounting quality person/ team.*** This person/team should be responsible for implementing and maintaining the data management plan, continually improving the quality of the inventory, and coordinating internal data exchanges and external interactions (such as with suppliers, reporting programs and assurance providers).
2. ***Develop data management plan.*** The data management plan should cover the components outlined in the section above and in table C.1. Documenting this information should assist with updating the inventory, and assessing and improving the quality of the inventory over time. Development of the data management plan should begin before any data is collected to ensure all relevant information about the inventory is documented as it proceeds. The plan should evolve over time as data collection and processes are refined.
3. ***Perform generic data quality checks based on data management plan.*** Checks should be applied to all aspects of the inventory process, focusing on data quality, data handling, documentation, and calculation procedures (see table C.2 for data control activities).
4. ***Perform specific data quality checks.*** More in-depth checks should be made for those sources, processes and/or activities that are significant to the inventory and/or have high levels of uncertainty (see Appendix B for information on assessing uncertainty).
5. ***Review final inventory and report.*** Review procedures should be established that match the purpose of the inventory and the type of assurance that will be performed. Internal reviews should be undertaken in preparation for the assurance process by the appropriate department within a company, such as an internal audit or accounting department.
6. ***Establish formal feedback loops to improve data collection, handling and documentation processes.*** Feedback loops can improve the quality of the inventory over time and to correct any errors or inconsistencies identified in the review process.
7. ***Establish reporting, documentation and archiving procedures.*** Establish record-keeping processes for what information should be documented to support data collection and calculation methodologies, and how the data should be stored over time. The process may also involve aligning or developing relevant database systems for record keeping. Systems may take time to develop and it is important to ensure that all relevant information is collected prior to the establishment of the system and then transferred to the system once it is operational.

The data management plan is likely to be an evolving document that is updated as data sources change, data handling procedures are refined, calculation methodologies improve, inventory responsibilities change within a company, or the business objectives of the inventory are updated.

The data management plan checklist in table C.1 outlines what components should be included in a data management plan and can be used as a guide for creating a plan or for pulling together existing documents to constitute the plan.

Table [C.1] Data management plan checklist

Component	*Information*	*Rationale*

Responsibilities	Name and contact details of persons responsible for:
	• Management of GHG inventory
	• Data collection for each process
	• Internal audit procedures
	• External audit procedures
		• This ensures institutional knowledge is maintained and allows relevant person(s) to be identified for:
		  • Confirming and checking information during any internal or external audit procedures
		  • Producing consistent future GHG inventories

Boundary and inventory description	• Description of the boundary decision based on the *GHG Protocol Corporate Standard* • Description of what scope 3 categories and activities are included in the inventory • Description of what categories are excluded and why (as the company may begin including these, as data becomes available, for example)	• To provide internal auditors, assurance providers, and those doing future GHG inventories sufficient information on the activities and categories included in the corporate inventory.
Data summary	• Data collection procedures, including data sources for each process	• Records all data sources and allows others to locate data sources (for audit and updates to inventory). Also provides information on which suppliers have been approached for data.
	• Quality of data collected for each process and if and how a data quality assessment was undertaken	• Enables data quality to be tracked over time and improved
	• Gap analysis identifying where better quality data is preferable and plan for how to improve that data	• Identifies where data sources should be improved over time, including those suppliers who were asked to provide data and those that were not
	• Information on how data assumptions were determined, including use profiles of sold products, product lifetimes, waste treatment profiles, and other relevant assumptions	• Allows internal auditors, assurance providers, and those doing future inventories sufficient information on how assumptions were determined, and identifies how this information may be improved

Table [C.1] Data management plan checklist (continued)

Component	*Information*	*Rationale*
Data summary (continued)	• Information on criteria used to determine when an inventory is to be re-evaluated, including the relevant information needed to be tracked, and how this should be tracked over time.	• This allows data and information sources to be tracked and compared overtime. It may also involve identifying a system (e.g., document tracking and identification system) to ensure data and information is easily located and under what conditions this information/ data was used or collected
Emissions calculations	• Calculation methodologies used (and references), as well as areas where calculation methodologies are needed for the inventory but not available • Changes in calculation methodologies over time	• Provides internal auditors, assurance providers, and those doing future inventories details on how emissions were calculated • Noting methodological changes should allow discrepancies between inventories to be checked and ensures that the most updated methodologies are used
Data storage procedures	• How and where data is stored • Length of time data is archived • Backup procedures	• Allows information to be easily located • Keeps a record of how long information is stored to prevent looking for information that is no longer kept • Ensures backup procedures are implemented
QA/QC procedures	• QA/QC procedures used (see table C.2 for detailed guidance)	• Ensures that adequate processes are in place to check data collection, input and handling, data documentation, and emissions calculations

Table [C.2] Quality assurance/quality control procedures

Activity	*Procedure*
Data collection, input and handling activities	
• **Transcription errors in primary and secondary data**	• Check a sample of input data in each process (both direct measures and calculated estimations) for transcription errors
• **Uncertainty estimates**	• Check that any calculated uncertainties are complete and calculated correctly

Table [C.2] Quality assurance/quality control procedures (continued)

Activity	*Procedure*
Data documentation	
• **Transcription errors in references and storage of all references used**	• Confirm bibliographical data references are properly cited • Ensure all relevant references are archived
• **Storing information on data and data quality**	• Check that emissions categories, boundaries, GHGs included, allocation methodologies uses, data sources and any relevant assumptions are documented and archived • Check that all data quality indicators are described, documented and archived for each process
• **Recording parameter and unit information**	• Check that all units are appropriately labeled in calculation sheets • Check all units are correctly transferred through all calculations and aggregation of emissions in all processes • Check conversion factors are correct
• **Recording calculation methodologies**	• Check that all calculation methodologies are documented • Check that any changes to calculation methodologies are documented
• **Database/calculation sheet integrity**	• Ensure all fields and their units are labeled in database/calculation sheet • Ensure database/calculation sheet is documented and the structure and operating details of the database/calculations sheets are archived
• **Review of internal documentation and archiving**	• Check there is sufficient internal documentation to support the estimates and enable the reproduction of the emissions and data quality assessment, and uncertainty estimations • Check all data, supporting data and records are archived and stored to facilitate a detailed review • Check that the archive is securely stored
Calculating emissions and checking calculations	
• **Aggregation of emissions**	• Ensure that the aggregation of emissions from all emissions activities is correct
• **Emissions trends**	• Where possible compare emissions from each activity to previous estimates. If significant departures, check data inputs, assumptions and calculation methodologies
• **Calculation methodology(ies)**	• Reproduce a sample set of emissions and removals calculations to cross-check application of calculation methodologies • Where possible, cross-check calculation methodologies used against more or less complex methodologies to ensure similar results are achieved

Abbreviations

CH_4	Methane
CO_2	Carbon Dioxide
CO_2e	Carbon Dioxide Equivalent
EEIO	Environmentally-Extended Input Output
EfW	Energy-from-Waste
g	Grams
GHG	Greenhouse Gas
GWP	Global Warming Potential
HFCs	Hydrofluorocarbons
IAS	International Accounting Standard
IPCC	Intergovernmental Panel on Climate Change
ISO	International Organization for Standardization
kg	Kilogram
km	Kilometer
kWh	Kilowatt-hour
LCA	Life Cycle Assessment
LFGTE	Landfill-gas-to-energy
MSW	Municipal Solid Waste
MWh	Megawatt-hour
NGO	Non-Governmental Organization
N_2O	Nitrous Oxide
PFCs	Perfluorocarbons
PP&E	Plant, Property, and Equipment
PSEG	Public Service Enterprise Group
QA	Quality Assurance
QC	Quality Control
SF_6	Sulphur Hexafluoride
t	Metric tons
T&D	Transmission and Distribution
UNFCCC	United Nations Framework Convention on Climate Change
WBCSD	World Business Council for Sustainable Development
WRI	World Resources Institute
WTE	Waste-to-Energy

Glossary

Activity	See "Scope 3 Activity"
Activity data	A quantitative measure of a level of activity that results in GHG emissions. Activity data is multiplied by an emissions factor to derive the GHG emissions associated with a process or an operation. Examples of activity data include kilowatt-hours of electricity used, quantity of fuel used, output of a process, hours equipment is operated, distance traveled, and floor area of a building.
Allocation	The process of partitioning GHG emissions from a single facility or other system (e.g., vehicle, business unit, corporation) among its various outputs.
Associate	An entity in which the parent company has significant influence but neither financial control nor joint financial control. (section 5.5, category 15 (Investments))
Assurance	The level of confidence that the inventory and report are complete, accurate, consistent, transparent, relevant, and without material misstatements.
Assurer	A competent individual or body who is conducting the assurance process, whether internally within the company or externally.
Audit trail	Well organized and transparent historical records documenting how the GHG inventory was compiled.
Baseline	A hypothetical scenario for what GHG emissions would have been in the absence of a GHG project or reduction activity. (chapter 9)
Base year	A historical datum (e.g., year) against which a company's emissions are tracked over time. (chapter 9)
Base year emissions	GHG emissions in the base year. (chapter 9)
Base year emissions recalculation	Recalculation of emissions in the base year to reflect a change in the structure of the company or a change in the accounting methodology used, to ensure data consistency over time. (chapter 9)
Biomass	Any material or fuel produced by biological processes of living organisms, including organic non-fossil material of biological origin (e.g., plant material), biofuels (e.g., liquid fuels produced from biomass feedstocks), biogenic gas (e.g., landfill gas), and biogenic waste (e.g., municipal solid waste from biogenic sources).
Biogenic CO_2 emissions	CO_2 emissions from the combustion or biodegradation of biomass.
Business travel	Transportation of employees for business-related activities.

Capital goods	Final goods that have an extended life and are used by the company to manufacture a product, provide a service, or sell, store, and deliver merchandise. In financial accounting, capital goods are treated as fixed assets or plant, property and equipment (PP&E). Examples of capital goods include equipment, machinery, buildings, facilities, and vehicles.
Category	See "Scope 3 category"
CO_2 equivalent (CO_2e)	The universal unit of measurement to indicate the global warming potential (GWP) of each greenhouse gas, expressed in terms of the GWP of one unit of carbon dioxide. It is used to evaluate releasing (or avoiding releasing) different greenhouse gases against a common basis.
Company	The term company is used in this standard as shorthand to refer to the entity developing a scope 3 GHG inventory, which may include any organization or institution, either public or private, such as businesses, corporations, government agencies, non-profit organizations, assurers and verifiers, universities, etc.
Component	An intermediate product.
Consumer	The end consumer or final user of a product.
Control	The ability of a company to direct the policies of another operation. More specifically, it is defined as either operational control (the organization or one of its subsidiaries has the full authority to introduce and implement its operating policies at the operation) or financial control (the organization has the ability to direct the financial and operating policies of the operation with a view to gaining economic benefits from its activities).
Co-product	One of multiple products produced by a facility or other system that has a market value. (chapter 8)
Cradle-to-gate	All emissions that occur in the life cycle of purchased products, up to the point of receipt by the reporting company (excluding emissions from sources that are owned or controlled by the reporting company).
Customer	An entity that purchases or acquires the products of another entity (i.e., a supplier). A customer may be a business customer or an end consumer.
Debt investment	Investment in an entity (e.g., through loans or bonds) for a fixed period of time that entitles the holder to repayment of the original investment (i.e., principal sum) plus interest, but does not entitle the investor to ownership in the entity. (section 5.5, category 15 (Investments))
Direct emissions	Emissions from sources that are owned or controlled by the reporting company.

Downstream emissions	Indirect GHG emissions from sold goods and services. Downstream emissions also include emissions from products that are distributed but not sold (i.e., without receiving payment).
Economic allocation	Allocating the emissions of an activity based on the market value of each output/product.
Emission factor	A factor that converts activity data into GHG emissions data (e.g., kg CO_2e emitted per liter of fuel consumed, kg CO_2e emitted per kilometer traveled, etc.).
Emissions	The release of greenhouse gases into the atmosphere.
Employee commuting	Transportation of employees between their homes and their worksites.
Equity investment	A share of equity interest in an entity. The most common form is common stock. Equity entitles the holder to a pro rata ownership in the company. (section 5.5, category 15 (Investments))
Equity share approach	A consolidation approach whereby a company accounts for GHG emissions from operations according to its share of equity in the operation. The equity share reflects economic interest, which is the extent of rights a company has to the risks and rewards flowing from an operation.
Extrapolated data	Data from a similar process or activity that is used as a stand-in for the given process or activity, and has been customized to be more representative of the given process or activity.
Final product	Goods and services that are consumed by the end user in their current form, without further processing, transformation, or inclusion in another product. Final products include not only products consumed by end consumers, but also products consumed by businesses in the current form (e.g., capital goods) and products sold to retailers for resale to end consumers (e.g., consumer products).
Financial control	The ability to direct the financial and operating policies of an entity with a view to gaining economic benefits from its activities. (chapter 5)
Financial control approach	A consolidation approach whereby a company accounts for 100 percent of the GHG emissions over which it has financial control. It does not account for GHG emissions from operations in which it owns an interest but does not have financial control. (chapter 5)
First party assurance	Person(s) from within the reporting company but independent of the GHG inventory process conducts internal assurance. (Also called "self-" or "internal-assurance.")
Franchise	A business operating under a license (granted by a franchisor) to sell or distribute the franchisor's goods or services within a certain location.
Franchisee	An entity that operates a franchise and pays fees to a company (i.e., the franchisor) for the license to sell or distribute the franchisor's goods or services.

Franchisor	A company that grants licenses to other entities (i.e., franchisees) to sell or distribute its goods or services, and in return receives payments, such as royalties for the use of trademarks and other services.
Good	A tangible product.
Global warming potential (GWP)	A factor describing the radiative forcing impact (degree of harm to the atmosphere) of one unit of a given GHG relative to one unit of CO_2.
Greenhouse gas inventory	A quantified list of an organization's GHG emissions and sources.
Greenhouse gases (GHG)	For the purposes of this standard, GHGs are the six gases covered by the UNFCCC: carbon dioxide (CO_2); methane (CH_4); nitrous oxide (N_2O); hydrofluorocarbons (HFCs); perfluorocarbons (PFCs); and sulphur hexafluoride (SF_6).
Indirect emissions	Emissions that are a consequence of the activities of the reporting company, but occur at sources owned or controlled by another company.

Intermediate product	Goods that are inputs to the production of other goods or services that require further processing, transformation, or inclusion in another product before use by the end consumer. Intermediate products are not consumed by the end user in their current form.
Leased asset	Any asset that is leased (e.g., facilities, vehicles, etc.).
Lessee	An entity that has the right to use an asset through a contract with the owner of the asset (i.e., the lessor).
Lessor	An entity that owns an asset and leases it to a third party (i.e., the lessee).
Level of assurance	Refers to the degree of confidence stakeholders can have over the information in the inventory report.
Life cycle	Consecutive and interlinked stages of a product system, from raw material acquisition or generation of natural resources to end of life.
Life cycle assessment	Compilation and evaluation of the inputs, outputs and the potential environmental impacts of a product system throughout its life cycle.
Materiality	Concept that individual or the aggregation of errors, omissions and misrepresentations could affect the GHG inventory and could influence the intended users' decisions.
Material misstatement	Individual or aggregate errors, omissions and misrepresentations that significantly impact the GHG inventory results and could influence a user's decisions.
Non-production-related procurement	Purchased goods and services that are not integral to the company's products, but are instead used to enable operations (also called indirect procurement).
Operational boundaries	The boundaries that determine the direct and indirect emissions associated with operations owned or controlled by the reporting company.
Operational control	A consolidation approach whereby a company accounts for 100 percent of the GHG emissions over which it has operational control. It does not account for GHG emissions from operations in which it owns an interest but does not have operational control.
Organizational boundaries	The boundaries that determine the operations owned or controlled by the reporting company, depending on the consolidation approach taken (equity or control approach).
Outsourcing	The contracting out of activities to other businesses.
Parent company	An entity that has one or more subsidiaries. (section 5.5, category 15 (Investments))
Physical allocation	Allocating the emissions of an activity based on an underlying physical relationship between the multiple inputs/outputs and the quantity of emissions generated.

Primary data	Data from specific activities within a company's value chain.
Process	A set of interrelated or interacting activities that transforms or transports a product.
Product	Any good or service.
Production-related procurement	Purchased goods that are directly related to the production of a company's products (also called direct procurement).
Project finance	Long term financing of projects (e.g., infrastructure and industrial projects) by equity investors (sponsors) and debt investors (financiers), based on the projected cash flows of the project rather than the balance sheet of the sponsors/lenders. (section 5.5, category 15 (Investments))
Proxy data	Data from a similar process or activity that is used as a stand-in for the given process or activity without being customized to be more representative of the given process or activity.
Reporting	Presenting data to internal management and external users such as regulators, shareholders, the general public or specific stakeholder groups.
Reporting year	The year for which emissions are reported.
Scope 1 emissions	Emissions from operations that are owned or controlled by the reporting company.
Scope 2 emissions	Emissions from the generation of purchased or acquired electricity, steam, heating or cooling consumed by the reporting company.
Scope 3 emissions	All indirect emissions (not included in scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions.
Scope 3 activity	An individual source of emissions included in a scope 3 category.
Scope 3 category	One of the 15 types of scope 3 emissions.
Secondary data	Data that is not from specific activities within a company's value chain.
Service	An intangible product.
Significant influence	Power to participate in the financial and operating policy decisions but not control them. A holding of 20 percent or more of the voting power (directly or through subsidiaries) will indicate significant influence unless it can be clearly demonstrated otherwise. See International Accounting Standard (IAS) 28 for additional criteria for determining significant influence. (section 5.5, category 15 (Investments))

Subsidiary	An entity over which the parent company has control, including incorporated and non-incorporated joint ventures and partnerships over which the parent company has control. (section 5.5, category 15 (Investments))
Supplier	An entity that provides or sells products to another entity (i.e., a customer).
Supply chain	A network of organizations (e.g., manufacturers, wholesalers, distributors and retailers) involved in the production, delivery, and sale of a product to the consumer.
Third party assurance	Person(s) from an organization independent of the GHG inventory process conducts third party assurance. (Also called "External assurance.")
Tier 1 supplier	A supplier that provides or sells products directly to the reporting company. A tier 1 supplier is a company with which the reporting company has a purchase order for goods or services.
Tier 2 supplier	A supplier that provides or sells products directly to the reporting company's tier 1 supplier. A tier 2 supplier is a company with which the reporting company's tier 1 supplier has a purchase order for goods and services.
Uncertainty	1. Quantitative definition: Measurement that characterizes the dispersion of values that could reasonably be attributed to a parameter. 2. Qualitative definition: A general and imprecise term that refers to the lack of certainty in data and methodology choices, such as the application of non-representative factors or methods, incomplete data on sources and sinks, lack of transparency etc.
Upstream emissions	Indirect GHG emissions from purchased or acquired goods and services.
Value chain	In this standard, "value chain" refers to all of the upstream and downstream activities associated with the operations of the reporting company, including the use of sold products by consumers and the end-of-life treatment of sold products after consumer use.
Value chain emissions	Emissions from the upstream and downstream activities associated with the operations of the reporting company.
Waste	An output of a process that has no market value.

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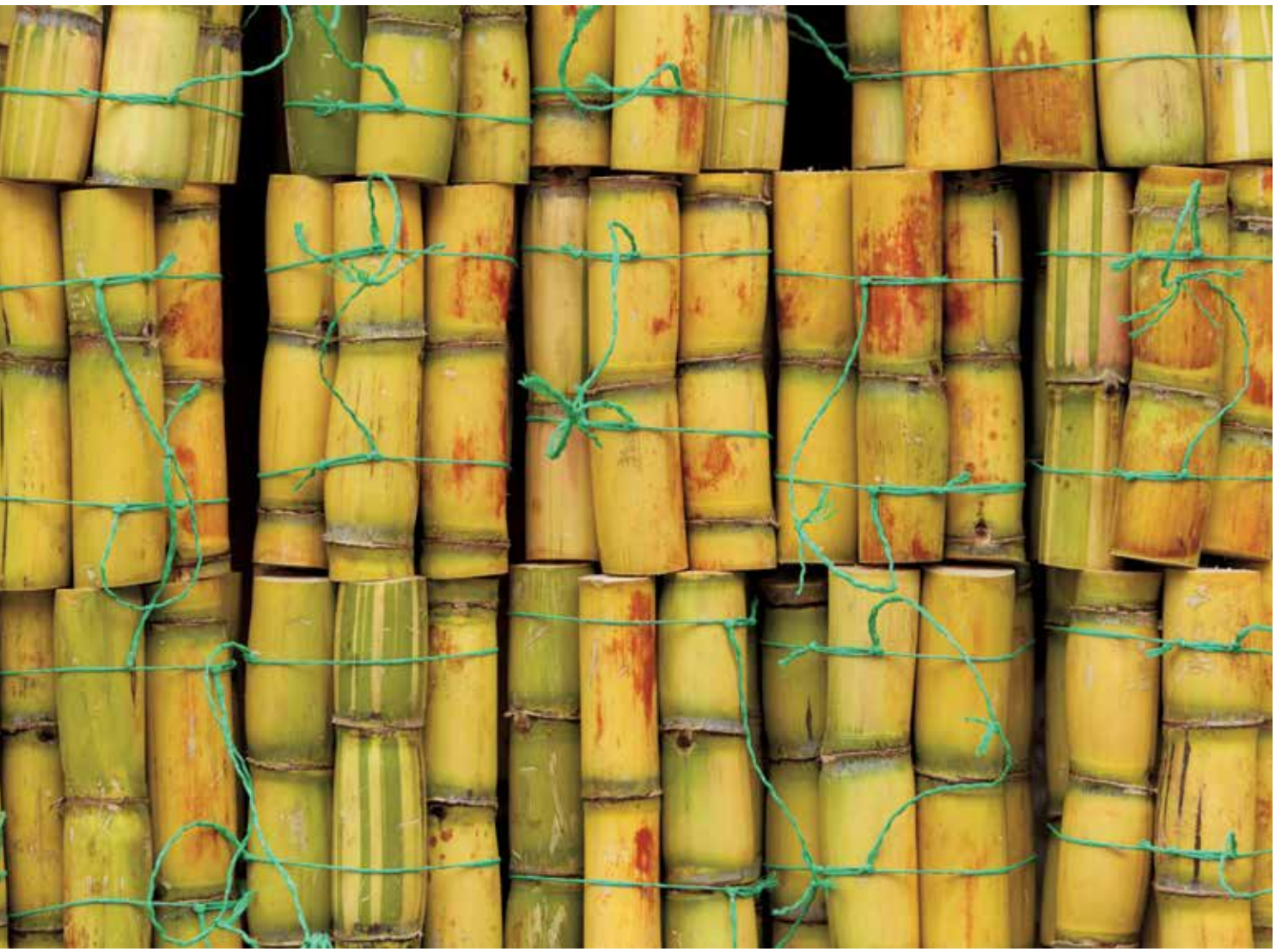

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The WBCSD is a CEO-led, global coalition of some 200 companies advocating for progress on sustainable development. Its mission is to be a catalyst for innovation and sustainable growth in a world where resources are increasingly limited. The Council provides a platform for companies to share experiences and best practices on sustainable development issues and advocate for their implementation, working with governments, non-governmental and intergovernmental organizations. The membership has annual revenues of USD 7 trillion, spans more than 35 countries and represents 20 major industrial sectors. The Council also benefits from a network of 60 national and regional business councils and partner organizations, a majority of which are based in developing countries.

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The Greenhouse Gas Protocol provides the foundation for sustainable climate strategies and more efficient, resilient and profitable organizations. GHG Protocol standards are the most widely used accounting tools to measure, manage and report greenhouse gas emissions.

GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] *(Title 2 enacted by Stats. 1943, Ch. 134.)*

DIVISION 3. EXECUTIVE DEPARTMENT [11000 - 15990.3] *(Division 3 added by Stats. 1945, Ch. 111.)*

PART 1. STATE DEPARTMENTS AND AGENCIES [11000 - 11898] *(Part 1 added by Stats. 1945, Ch. 111.)*

CHAPTER 3.5. Administrative Regulations and Rulemaking [11340 - 11361] *(Heading of Chapter 3.5 amended by Stats. 1994, Ch. 1039, Sec. 2.)*

ARTICLE 1. General [11340 - 11342.4] *(Article 1 added by Stats. 1979, Ch. 567.)*

11340.1. (a) The Legislature therefore declares that it is in the public interest to establish an Office of Administrative Law which shall be charged with the orderly review of adopted regulations. It is the intent of the Legislature that the purpose of such review shall be to reduce the number of administrative regulations and to improve the quality of those regulations which are adopted. It is the intent of the Legislature that agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process. It is the intent of the Legislature that neither the Office of Administrative Law nor the court should substitute its judgment for that of the rulemaking agency as expressed in the substantive content of adopted regulations. It is the intent of the Legislature that while the Office of Administrative Law will be part of the executive branch of state government, that the office work closely with, and upon request report directly to, the Legislature in order to accomplish regulatory reform in California.

(b) It is the intent of the Legislature that the California Code of Regulations made available on the Internet by the office pursuant to Section 11344 include complete authority and reference citations and history notes.

(Amended by Stats. 1996, Ch. 501, Sec. 1. Effective January 1, 1997.)

First Session, Forty-fourth Parliament,
70-71 Elizabeth II – 1-2 Charles III, 2021-2022-2023-2024

STATUTES OF CANADA 2024

CHAPTER 15

An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023

ASSENTED TO

JUNE 20, 2024

BILL C-59

Première session, quarante-quatrième législature,
70-71 Elizabeth II – 1-2 Charles III, 2021-2022-2023-2024

LOIS DU CANADA (2024)

CHAPITRE 15

Loi portant exécution de certaines dispositions de l'énoncé économique de l'automne déposé au Parlement le 21 novembre 2023 et de certaines dispositions du budget déposé au Parlement le 28 mars 2023

SANCTIONNÉE

LE 20 JUIN 2024

PROJET DE LOI C-59

RECOMMENDATION

Her Excellency the Governor General recommends to the House of Commons the appropriation of public revenue under the circumstances, in the manner and for the purposes set out in a measure entitled "*An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023*".

SUMMARY

Part 1 implements certain measures in respect of the *Income Tax Act* and the *Income Tax Regulations* by

(a) limiting the deductibility of net interest and financing expenses by certain corporations and trusts, consistent with certain Organisation for Economic Co-operation and Development and the Group of Twenty Base Erosion and Profit Shifting project recommendations;

(b) implementing hybrid mismatch rules consistent with the Organisation for Economic Co-operation and Development and the Group of Twenty Base Erosion and Profit Shifting project recommendations regarding cross-border tax avoidance structures that exploit differences in the income tax laws of two or more countries to produce "deduction/non-inclusion mismatches";

(c) allowing expenditures incurred in the exploration and development of all lithium to qualify as Canadian exploration expenses and Canadian development expenses;

(d) ensuring that only genuine intergenerational business transfers are excluded from the anti-surplus stripping rule in section 84.1 of the *Income Tax Act*;

(e) denying the dividend received deduction for dividends received by Canadian financial institutions on certain shares that are held as mark-to-market property;

(f) increasing the rate of the rural supplement for Climate Action Incentive payments (CAIP) from 10% to 20% for the 2023 and subsequent taxation years as well as referencing the 2016 census data for the purposes of the CAIP rural supplement eligibility for the 2023 and 2024 taxation years;

(g) providing a refundable investment tax credit to qualifying businesses for eligible carbon capture, utilization and storage equipment;

(h) providing a refundable investment tax credit to qualifying businesses for eligible clean technology equipment;

(i) introducing, under certain circumstances, labour requirements in relation to the new refundable investment tax credits for eligible carbon capture, utilization and storage equipment as well as eligible clean technology equipment;

RECOMMANDATION

Son Excellence la gouverneure générale recommande à la Chambre des communes l'affectation de deniers publics dans les circonstances, de la manière et aux fins prévues dans une mesure intitulée « *Loi portant exécution de certaines dispositions de l'énoncé économique de l'automne déposé au Parlement le 21 novembre 2023 et de certaines dispositions du budget déposé au Parlement le 28 mars 2023* ».

SOMMAIRE

La partie 1 met en œuvre certaines mesures relatives à la *Loi de l'impôt sur le revenu* et au *Règlement de l'impôt sur le revenu* pour :

a) limiter la déductibilité de dépenses d'intérêts et de financement nettes de certaines sociétés ou fiducies, conformément aux recommandations du projet de lutte contre l'érosion de la base d'imposition et le transfert de bénéfices de l'Organisation de coopération et de développement économiques et du Groupe des Vingt;

b) mettre en œuvre des règles sur les dispositifs hybrides conformes aux recommandations du projet de lutte contre l'érosion de la base d'imposition et le transfert de bénéfices de l'Organisation de coopération et de développement économiques et du Groupe des Vingt concernant les stratégies d'évitement fiscal transfrontalières qui exploitent les différences entre les lois de l'impôt sur le revenu de deux ou plusieurs pays pour créer une « asymétrie déduction/non-inclusion »;

c) permettre aux dépenses engagées dans l'exploration et l'aménagement de tout le lithium d'être considérées comme des frais d'exploration au Canada et des frais d'aménagement au Canada;

d) veiller à ce que seuls les véritables transferts intergénérationnels d'entreprises soient exclus de la règle contre le dépouillement de surplus de l'article 84.1 de la *Loi de l'impôt sur le revenu*;

e) refuser la déduction des dividendes reçus pour les dividendes reçus par les institutions financières canadiennes sur certaines actions détenues à titre de biens évalués à la valeur du marché;

f) augmenter le taux du supplément rural pour les paiements de l'Incitatif à agir pour le climat (IAC) de 10 % à 20 % pour les années d'imposition 2023 et suivantes et faire référence aux données du recensement de 2016 aux fins d'admissibilité au supplément rural de l'IAC pour les années d'imposition 2023 et 2024;

g) accorder un crédit d'impôt à l'investissement remboursable aux entreprises admissibles pour l'équipement admissible de captage, d'utilisation et de stockage du carbone;

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(j) removing the requirement that credit unions derive no more than 10% of their revenue from sources other than certain specified sources;

(k) permitting a qualifying family member to acquire rights as successor of a holder of a Registered Disability Savings Plan following the death of that plan's last remaining holder who was also a qualifying family member;

(l) implementing consequential changes of a technical nature to facilitate the operation of the existing rules for First Home Savings Accounts;

(m) introducing a tax of 2% on the net value of equity repurchases by certain Canadian corporations, trusts and partnerships whose equity is listed on a designated stock exchange;

(n) exempting certain fees from the refundable tax applicable to contributions under retirement compensation arrangements;

(o) introducing a technical amendment to the provision that authorizes the sharing of taxpayer information for the purposes of the Canadian Dental Care Plan;

(p) implementing a number of amendments to the general anti-avoidance rule (GAAR) as well as introducing a new penalty applicable to transactions subject to the GAAR and extending the normal reassessment period for the GAAR by three years in certain circumstances;

(q) facilitating the creation of employee ownership trusts;

(r) introducing specific anti-avoidance rules in relation to corporations referred to as substantive CCPCs; and

(s) extending the phase-out by three years, and expanding the eligible activities, in relation to the reduced tax rates for certain zero-emission technology manufacturers.

It also makes related and consequential amendments to the *Excise Tax Act* and the *Excise Act, 2001*.

Part 2 enacts the *Digital Services Tax Act* and its regulations. That Act provides for the implementation of an annual tax of 3% on certain types of digital services revenue earned by businesses that meet certain revenue thresholds. It sets out rules for the purposes of establishing liability for the tax and also sets out applicable reporting and filing requirements. To promote compliance with its provisions, that Act includes modern administration and enforcement provisions generally aligned with those found in other taxation statutes. Finally, this Part also makes related and consequential amendments to other texts to ensure proper implementation of the tax and cohesive and efficient administration by the Canada Revenue Agency.

Part 3 implements certain Goods and Services Tax/Harmonized Sales Tax (GST/HST) measures by

h) accorder un crédit d'impôt à l'investissement remboursable aux entreprises admissibles relativement à l'équipement de technologie propre admissible;

i) prévoir, dans certaines circonstances, des exigences en matière de main-d'œuvre concernant les nouveaux crédits d'impôt à l'investissement remboursables pour l'équipement admissible de captage, d'utilisation et de stockage du carbone ainsi que pour l'équipement de technologie propre admissible;

j) éliminer l'exigence selon laquelle les caisses de crédit ne peuvent pas tirer plus de 10 % de leurs revenus de sources autres que certaines sources désignées;

k) permettre à un membre de la famille admissible d'acquérir des droits à titre de successeur d'un titulaire d'un Régime enregistré d'épargne-invalidité après le décès du dernier titulaire restant de ce régime qui était également un membre de la famille admissible;

l) mettre en œuvre des changements corrélatifs de nature technique pour faciliter le fonctionnement des règles existantes pour les comptes d'épargne libre d'impôt pour l'achat d'une première propriété;

m) instaurer un impôt de 2 % sur la valeur nette des rachats de capitaux propres effectués par certaines sociétés, fiducies et sociétés de personnes canadiennes dont les capitaux propres sont cotés à une bourse de valeurs désignée;

n) exempter certains frais de l'impôt remboursable applicable aux cotisations versées en vertu de conventions de retraite;

o) apporter une modification de nature technique à la disposition qui autorise la communication des renseignements des contribuables pour l'application du Régime canadien de soins dentaires;

p) mettre en œuvre un certain nombre de modifications à la règle générale anti-évitement (RGAÉ), instaurer une nouvelle pénalité applicable aux transactions assujetties à la RGAÉ et prolonger de trois ans la période normale de nouvelle cotisation pour la RGAÉ dans certaines circonstances;

q) faciliter la création de fiducies collectives des employés;

r) instaurer des règles anti-évitement spécifiques à l'égard des sociétés qui sont appelées SPCC en substance;

s) prolonger de trois ans l'élimination progressive et élargir les activités admissibles en ce qui concerne les taux d'imposition réduits pour certains fabricants de technologies à zéro émission.

Elle apporte également des modifications connexes et corrélatives à la *Loi sur la taxe d'accise* et à la *Loi de 2001 sur l'accise*.

La partie 2 édicte la *Loi sur la taxe sur les services numériques* et son règlement. Cette loi prévoit la mise en œuvre d'une taxe annuelle de 3 % sur certains types de revenus provenant des services numériques des entreprises qui atteignent certains seuils de revenu. Cette loi énonce les règles permettant d'établir l'assujettissement à cette taxe et établit également des exigences en matière de déclaration et de production. Pour favoriser l'observation de ses dispositions, cette loi prévoit des dispositions d'application et d'exécution modernes et généralement conformes à celles qui se trouvent dans d'autres lois fiscales. Enfin, cette partie apporte des modifications corrélatives et connexes à d'autres textes pour assurer la mise en œuvre adéquate de la taxe et pour permettre à l'Agence du revenu du Canada de les appliquer de façon cohérente et efficace.

La partie 3 met en œuvre certaines mesures relatives à la taxe sur les produits et services/taxe de vente harmonisée (TPS/TVH) pour :

(a) ensuring that an interest in a corporation that does not have its capital divided into shares is treated as a financial instrument for GST/HST purposes;

(b) ensuring that interest and dividend income from a closely related partnership is not included in the determination of whether a person is a *de minimis* financial institution for GST/HST purposes;

(c) ensuring that an election related to supplies made within a closely related group of persons that includes a financial institution may not be revoked on a retroactive basis without the permission of the Minister of National Revenue;

(d) making technical amendments to an election that allows electing members of a closely related group to treat certain supplies made between them as having been made for nil consideration;

(e) ensuring that certain supplies between the members of a closely related group are not inadvertently taxed under the imported taxable supply rules that apply to financial institutions;

(f) raising the income threshold for the requirement to file an information return by certain financial institutions;

(g) allowing up to seven years to assess the net tax adjustments owing by certain financial institutions in respect of the imported taxable supply rules;

(h) expanding the GST/HST exemption for services rendered to individuals by certain health care practitioners to include professional services rendered by psychotherapists and counselling therapists;

(i) providing relief in relation to the GST/HST treatment of payment card clearing services;

(j) allowing the joint venture election to be made in respect of the operation of a pipeline, rail terminal or truck terminal that is used for the transportation of oil, natural gas or related products;

(k) raising the input tax credit (ITC) documentation thresholds from $30 to $100 and from $150 to $500 and allowing billing agents to be treated as intermediaries for the purposes of the ITC information rules; and

(l) extending the 100% GST rebate in respect of new purpose-built rental housing to certain cooperative housing corporations.

It also implements an excise tax measure by creating a joint election mechanism to specify who is eligible to claim a rebate of excise tax for goods purchased by provinces for their own use.

Part 4 implements certain excise measures by

(a) allowing vaping product licensees to import packaged vaping products for stamping by the licensee and entry into the Canadian duty-paid market as of January 1, 2024;

(b) permitting all cannabis licensees to elect to remit excise duties on a quarterly rather than a monthly basis, starting from the quarter that began on April 1, 2023;

(c) amending the marking requirements for vaping products to ensure that the volume of the vaping substance is marked on the package;

a) veiller à ce qu'une participation dans une société de personnes dont le capital n'est pas divisé en actions soit considérée comme un instrument financier relativement à la TPS/TVH;

b) veiller à ce que le revenu d'intérêts et de dividendes d'une société de personnes étroitement liée ne soit pas pris en compte lorsqu'il s'agit de déterminer si une personne est une institution financière visée par la règle du seuil relativement à la TPS/TVH;

c) veiller à ce qu'un choix lié à des fournitures effectuées au sein d'un groupe de personnes étroitement lié, dont une institution financière est membre, ne soit pas révoqué rétroactivement sans l'autorisation du ministre du Revenu national;

d) apporter des modifications techniques à un choix permettant aux membres d'un groupe étroitement lié ayant fait le choix de considérer certaines fournitures effectuées entre eux comme effectuées sans contrepartie;

e) veiller à ce que certaines fournitures effectuées entre les membres d'un groupe étroitement lié ne soient pas taxées par inadvertance en vertu des règles sur les fournitures taxables importées s'appliquant aux institutions financières;

f) augmenter le seuil de revenu pour satisfaire à l'exigence de production d'une déclaration de renseignements par certaines institutions financières;

g) permettre un délai maximal de sept ans pour procéder à une cotisation des redressements de taxe nette due par certaines institutions financières à l'égard des règles sur les fournitures taxables importées;

h) étendre l'exonération de TPS/TVH visant les services rendus à des particuliers par certains praticiens du domaine de la santé aux services professionnels rendus par les psychothérapeutes et les conseillers thérapeutiques;

i) accorder un allègement relativement au traitement des services de compensation relatifs aux cartes de paiement sous le régime de la TPS/TVH;

j) permettre qu'un choix concernant les coentreprises soit fait relativement à l'exploitation d'un pipeline, d'un terminal ferroviaire ou d'un terminal de camions qui sert au transport du pétrole, du gaz naturel ou de produits connexes;

k) accroître les seuils de documents relatifs au crédit de taxe sur les intrants (CTI) de 30 $ à 100 $ et de 150 $ à 500 $, et permettre aux agents de facturation d'être considérés comme des intermédiaires pour l'application des règles en matière d'information touchant les CTI;

l) rendre accessible à certaines coopératives d'habitation le remboursement de 100 % de la TPS pour les nouveaux logements construits spécialement pour la location.

Elle met également en œuvre une mesure relative à la taxe d'accise en créant un mécanisme de choix conjoint pour préciser qui a le droit à un remboursement de la taxe d'accise visant les marchandises achetées par des provinces pour leur propre usage.

La partie 4 met en œuvre certaines mesures relatives à l'accise pour :

a) permettre à un titulaire de licence de produits de vapotage d'importer des produits de vapotage emballés pour estampillage par le titulaire de licence et en vue de leur entrée dans le marché canadien des marchandises acquittées à compter du 1er janvier 2024;

b) permettre à tous les titulaires de licence de cannabis de faire le choix de verser les droits d'accise chaque trimestre plutôt que chaque mois, à compter du trimestre ayant commencé le 1er avril 2023;

(d) requiring that a person importing vaping products must be at least 18 years old; and

(e) introducing administrative penalties for certain infractions related to the vaping taxation framework.

Part 5 enacts and amends several Acts in order to implement various measures.

Subdivision A of Division 1 of Part 5 amends Subdivision A of Division 16 of Part 6 of the *Budget Implementation Act, 2018, No. 1* to clarify the scope of certain non-financial activities in which federal financial institutions may engage and to remove certain discrepancies between the English and French versions of that Act.

Subdivision B of Division 1 of Part 5 amends the *Trust and Loan Companies Act*, the *Bank Act* and the *Insurance Companies Act* to, among other things, permit federal financial institutions governed by those Acts to hold certain meetings by virtual means without having to obtain a court order and to permit voting during those meetings by virtual means.

Division 2 of Part 5 amends the *Canada Labour Code* to, among other things, provide a leave of absence of three days in the event of a pregnancy loss and modify certain provisions related to bereavement leave.

Division 3 of Part 5 enacts the *Canada Water Agency Act*. That Act establishes the Canada Water Agency, whose role is to assist the Minister of the Environment in exercising or performing that Minister's powers, duties and functions in relation to fresh water. The Division also makes consequential amendments to other Acts.

Division 4 of Part 5 amends the *Tobacco and Vaping Products Act* to, among other things,

(a) authorize the making of regulations respecting fees or charges to be paid by tobacco and vaping product manufacturers for the purpose of recovering the costs incurred by His Majesty in right of Canada in relation to the carrying out of the purpose of that Act;

(b) provide for related administration and enforcement measures; and

(c) require information relating to the fees or charges to be made available to the public.

Division 5 of Part 5 amends the *Canadian Payments Act* to, among other things, provide that additional persons are entitled to be members of the Canadian Payments Association and clarify the composition of that Association's Stakeholder Advisory Council.

Division 6 of Part 5 amends the *Competition Act* to, among other things,

(a) modernize the merger review regime, including by modifying certain notification rules, clarifying that Act's application to labour markets, allowing the Competition Tribunal to consider the effect of changes in market share and the likelihood of coordination between competitors following a merger, extending the limitation period for mergers that were not the subject of a notification to the Commissioner of Competition and placing a temporary restraint on the completion of certain mergers until the Tribunal has disposed of any application for an interim order;

(b) improve the effectiveness of the provisions that address anti-competitive conduct, including by allowing the Commissioner to review the effects of past agreements and arrangements, ensuring that an order related to a refusal to deal may

c) modifier les exigences de marquage relatives aux produits de vapotage afin de veiller à ce que le volume de la substance de vapotage soit indiqué sur l'emballage;

d) exiger qu'une personne qui importe des produits de vapotage soit âgée d'au moins 18 ans;

e) introduire des sanctions administratives pour certaines infractions liées au cadre de taxation du vapotage.

La partie 5 met en œuvre diverses mesures, notamment par l'édiction et la modification de plusieurs lois.

La sous-section A de la section 1 de la partie 5 modifie la sous-section A de la section 16 de la partie 6 de la *Loi n° 1 d'exécution du budget de 2018* pour préciser la portée de certaines activités non financières pouvant être exercées par des institutions financières fédérales et éliminer certaines divergences entre les versions anglaise et française de cette loi.

La sous-section B de la section 1 de la partie 5 modifie la *Loi sur les sociétés de fiducie et de prêt*, la *Loi sur les banques* et la *Loi sur les sociétés d'assurances* pour, notamment, permettre aux institutions financières fédérales régies par ces lois de tenir certaines assemblées de façon virtuelle sans obtenir d'ordonnance du tribunal à cet effet et d'y voter de cette façon.

La section 2 de la partie 5 modifie le *Code canadien du travail* pour, notamment, prévoir un congé de trois jours en cas de perte de grossesse et modifier certaines dispositions concernant le congé de décès.

La section 3 de la partie 5 édicte la *Loi sur l'Agence canadienne de l'eau*. Cette loi constitue l'Agence canadienne de l'eau, dont le rôle est d'assister le ministre de l'Environnement dans l'exercice de ses attributions relatives à l'eau douce. Elle apporte également des modifications corrélatives à d'autres lois.

La section 4 de la partie 5 modifie la *Loi sur le tabac et les produits de vapotage* pour, notamment :

a) permettre la prise de règlements concernant les frais et les redevances à payer par les fabricants de produits du tabac et de produits de vapotage afin de recouvrer les frais exposés par Sa Majesté du chef du Canada qui sont liés à la réalisation de l'objet de cette loi;

b) prévoir des mesures connexes d'exécution et de contrôle d'application;

c) exiger que soient mis à la disposition du public des renseignements concernant les frais et les redevances.

La section 5 de la partie 5 modifie la *Loi canadienne sur les paiements* pour, notamment, élargir l'admissibilité à titre de membre de l'Association canadienne des paiements et clarifier la composition du comité consultatif des intervenants de l'Association.

La section 6 de la partie 5 modifie la *Loi sur la concurrence* pour, notamment :

a) moderniser le régime d'examen des fusionnements, notamment en modifiant certaines règles sur les préavis, en clarifiant l'application de cette loi au marché du travail, en permettant au Tribunal de la concurrence d'examiner les effets de la variation des parts de marché et la probabilité d'une coordination entre les concurrents à la suite d'un fusionnement, en prolongeant le délai de prescription pour les fusionnements qui n'ont pas fait l'objet d'un préavis au commissaire de la concurrence et en imposant une restriction temporaire à la réalisation de certains fusionnements jusqu'à ce que le Tribunal ait statué sur la demande d'ordonnance provisoire;

b) améliorer l'efficacité des dispositions qui traitent de comportement anti-concurrentiel, notamment en permettant au commissaire d'examiner les effets des accords et des

address a refusal to supply a means of diagnosis or repair and ensuring that representations of a product's benefits for protecting or restoring the environment must be supported by adequate and proper tests and that representations of a business or business activity for protecting or restoring the environment must be supported by adequate and proper substantiation;

(c) strengthen the enforcement framework, including by creating new remedial orders, such as administrative monetary penalties, with respect to those collaborations that harm competition, by creating a civilly enforceable procedure to address non-compliance with certain provisions of that Act and by broadening the classes of persons who may bring private cases before the Tribunal and providing for the availability of monetary payments as a remedy in those cases; and

(d) provide for new procedures, such as the certification of agreements or arrangements related to protecting the environment and a remedial process for reprisal actions.

The Division also amends the *Competition Tribunal Act* to prevent the Competition Tribunal from awarding costs against His Majesty in right of Canada, except in specified circumstances.

Finally, the Division makes a consequential amendment to one other Act.

Division 7 of Part 5 amends the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* to exclude from their application prescribed public post-secondary educational institutions.

Subdivision A of Division 8 of Part 5 amends the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to, among other things,

(a) provide that, if a person or entity referred to in section 5 of that Act has reasonable grounds to suspect possible sanctions evasion, the relevant information is reported to the Financial Transactions and Reports Analysis Centre of Canada;

(b) add reporting requirements for persons and entities providing certain services in respect of private automatic banking machines;

(c) require declarations respecting money laundering, the financing of terrorist activities and sanctions evasion to be made in relation to the importation and exportation of goods; and

(d) authorize the Financial Transactions and Reports Analysis Centre of Canada to disclose designated information to the Department of the Environment and the Department of Fisheries and Oceans, subject to certain conditions.

It also amends the *Budget Implementation Act, 2023, No. 1* in relation to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and makes consequential amendments to other Acts and a regulation.

Subdivision B of Division 8 of Part 5 amends the *Criminal Code* to, among other things,

(a) in certain circumstances, provide that a court may infer the knowledge or belief or recklessness required in relation to the offence of laundering proceeds of crime and specify that it is not necessary for the prosecutor to prove that the accused knew, believed they knew or was reckless as to the specific nature of the designated offence;

arrangements antérieurs, en veillant à ce que l'ordonnance rendue en cas de refus de vendre puisse permettre de remédier au refus de fournir un moyen de diagnostic ou de réparation et en exigeant que les indications visant les avantages d'un produit pour la protection ou la restauration de l'environnement soient appuyées par des épreuves suffisantes et appropriées et que les indications visant les avantages d'une entreprise ou de ses activités pour la protection ou la restauration de l'environnement soient appuyées par des éléments corroboratifs suffisants et appuyés;

c) renforcer le cadre d'application de cette loi, notamment en créant de nouvelles ordonnances correctives, lesquelles peuvent prévoir des sanctions administratives pécuniaires pour les collaborations qui nuisent à la concurrence, en créant une procédure non pénale contre les défauts de conformité à certaines dispositions de cette loi, en élargissant les catégories de personnes pouvant porter des affaires privées devant le Tribunal et en prévoyant la possibilité de paiements pécuniaires en guise de réparation dans ces affaires;

d) prévoir de nouvelles procédures, notamment la certification d'accords ou d'arrangements visant la protection de l'environnement, et un processus correctif pour les représailles.

Elle modifie également la *Loi sur le Tribunal de la concurrence* pour empêcher le Tribunal de la concurrence de rendre une ordonnance contre Sa Majesté du chef du Canada pour le paiement des frais, sauf dans des circonstances particulières.

Enfin, elle apporte une modification corrélative à une autre loi.

La section 7 de la partie 5 modifie la *Loi sur la faillite et l'insolvabilité* et la *Loi sur les arrangements avec les créanciers des compagnies* afin d'exclure de leur application les établissements publics d'enseignement postsecondaire prévus par règlement.

La sous-section A de la section 8 de la partie 5 modifie la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes* pour, notamment :

a) que, lorsqu'une personne ou entité visée à l'article 5 de cette loi a des motifs raisonnables de soupçonner un possible contournement de sanctions, les renseignements pertinents soient fournis au Centre d'analyse des opérations et déclarations financières du Canada;

b) créer de nouvelles exigences de déclaration pour les personnes et les entités qui offrent des services relativement à des guichets automatiques privés;

c) exiger qu'une déclaration concernant le recyclage des produits de la criminalité, le financement des activités terroristes et le contournement de sanctions soit faite relativement à l'importation et à l'exportation de marchandises;

d) autoriser le Centre d'analyse des opérations et déclarations financières du Canada à communiquer des renseignements désignés au ministère de l'Environnement et au ministère des Pêches et des Océans, à certaines conditions.

Elle modifie également la *Loi nº 1 d'exécution du budget de 2023* en ce qui a trait à la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes* et apporte des modifications corrélatives à d'autres lois et à un règlement.

La sous-section B de la section 8 de la partie 5 modifie le *Code criminel* pour, notamment :

a) en certaines circonstances, prévoir que le tribunal peut déduire l'existence de la connaissance, de la croyance ou de l'insouciance requise à l'égard de l'infraction de recyclage des produits de la criminalité et préciser que le poursuivant n'a pas à établir que l'accusé connaissait ou croyait connaître la nature exacte de l'infraction désignée, ou ne s'en souciait pas;

(b) remove, in the context of the special warrants and restraint order in relation to proceeds of crime, the requirement for the Attorney General to give an undertaking, as well as permit a judge to attach conditions to a special warrant for search and seizure of property that is proceeds of crime; and

(c) modify certain provisions relating to the production order for financial data to include elements specific to accounts associated with digital assets.

It also makes consequential amendments to the *Seized Property Management Act* and the *Forfeited Property Sharing Regulations*.

Division 9 of Part 5 retroactively amends section 42 of the *Federal-Provincial Fiscal Arrangements Act* to specify the payments about which information must be published on a Government of Canada website, as well as the information that must be published.

Division 10 of Part 5 amends the *Public Sector Pension Investment Board Act* to increase the number of directors in the Public Sector Pension Investment Board, as well as to provide for consultation with the portion of the National Joint Council of the Public Service of Canada that represents employees when certain candidates are included on the list for proposed appointment as directors.

Division 11 of Part 5 enacts the *Department of Housing, Infrastructure and Communities Act*, which establishes the Department of Housing, Infrastructure and Communities, confers on the Minister of Infrastructure and Communities various responsibilities relating to public infrastructure and confers on the Minister of Housing various responsibilities relating to housing and the reduction and prevention of homelessness. The Division also makes consequential amendments to other Acts and repeals the *Canada Strategic Infrastructure Fund Act*.

Division 12 of Part 5 amends the *Employment Insurance Act* to, among other things, create a benefit of 15 weeks for claimants who are carrying out responsibilities related to

(a) the placement with the claimant of one or more children for the purpose of adoption; or

(b) the arrival of one or more new-born children of the claimant into the claimant's care, in the case where the person who will be giving or gave birth to the child or children is not, or is not intended to be, a parent of the child or children.

The Division also amends the *Canada Labour Code* to create a leave of absence of up to 16 weeks for an employee to carry out such responsibilities.

b) supprimer l'exigence pour le procureur général de prendre des engagements dans le contexte des mandats spéciaux et de l'ordonnance de blocage concernant les produits de la criminalité, ainsi que permettre au juge d'assortir de conditions le mandat spécial de perquisition et de saisie de biens constituant des produits de la criminalité;

c) modifier certaines des dispositions relatives à l'ordonnance de communication de données financières afin d'y inclure des éléments propres aux comptes associés à des actifs numériques.

Elle apporte également des modifications corrélatives à la *Loi sur l'administration des biens saisis* et au *Règlement sur le partage du produit de l'aliénation des biens confisqués*.

La section 9 de la partie 5 modifie rétroactivement l'article 42 de la *Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces* pour préciser les versements à propos desquels des renseignements doivent être publiés sur un site Internet du gouvernement du Canada ainsi que les renseignements à publier.

La section 10 de la partie 5 modifie la *Loi sur l'Office d'investissement des régimes de pensions du secteur public* pour augmenter le nombre d'administrateurs de l'Office d'investissement des régimes de pensions du secteur public et prévoir la consultation des représentants des salariés au sein du Conseil national mixte de la fonction publique du Canada lorsque des candidats sont choisis pour figurer sur la liste de personnes compétentes pour remplir les fonctions d'administrateur.

La section 11 de la partie 5 édicte la *Loi sur le ministère du Logement, de l'Infrastructure et des Collectivités*, qui constitue le ministère du Logement, de l'Infrastructure et des Collectivités et confie diverses responsabilités au ministre de l'Infrastructure et des Collectivités, en ce qui a trait à l'infrastructure publique, et au ministre du Logement, en ce qui a trait au logement et à la lutte contre l'itinérance. En outre, elle apporte des modifications corrélatives à d'autres lois et abroge la *Loi sur le Fonds canadien sur l'infrastructure stratégique*.

La section 12 de la partie 5 modifie la *Loi sur l'assurance-emploi* pour, notamment, créer une prestation de quinze semaines pour le prestataire qui s'acquitte de toute obligation se rapportant :

a) soit au placement chez lui d'un ou de plusieurs enfants en vue de leur adoption;

b) soit à l'arrivée chez lui de son ou de ses nouveau-nés, dans le cas où la personne qui leur donnera naissance ou qui leur a donné naissance n'est pas — ou n'est pas censée être — l'un des parents.

Elle modifie également le *Code canadien du travail* pour créer un congé d'au plus seize semaines pour l'employé qui s'acquitte de telles obligations.

TABLE OF PROVISIONS

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CHAPTER 15

An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023

[*Assented to 20th June, 2024*]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

Short title

1 This Act may be cited as the *Fall Economic Statement Implementation Act, 2023*.

PART 1

Amendments to the Income Tax Act and to Other Legislation

R.S., c. 1 (5th Supp.)

Income Tax Act

2 (1) Subsection 12(1) of the *Income Tax Act* is amended by adding the following after paragraph (l.1):

Partnership — interest and financing expenses add back

(l.2) the amount determined by the formula

A × B

where

A is the total of all amounts each of which is an amount determined under paragraph (h) of the description of A in the definition *interest and*

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CHAPITRE 15

Loi portant exécution de certaines dispositions de l'énoncé économique de l'automne déposé au Parlement le 21 novembre 2023 et de certaines dispositions du budget déposé au Parlement le 28 mars 2023

[*Sanctionnée le 20 juin 2024*]

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

Titre abrégé

Titre abrégé

1 *Loi d'exécution de l'énoncé économique de l'automne 2023*.

PARTIE 1

Modification de la Loi de l'impôt sur le revenu et de textes connexes

L.R., ch. 1 (5e suppl.)

Loi de l'impôt sur le revenu

2 (1) Le paragraphe 12(1) de la *Loi de l'impôt sur le revenu* est modifié par adjonction, après l'alinéa l.1), de ce qui suit :

Société de personnes — réintégration des dépenses d'intérêts et de financement

l.2) la somme obtenue par la formule suivante :

A × B

où :

A représente le total des sommes dont chacune représente une somme déterminée selon l'alinéa h) de l'élément A dans la définition de *dépenses d'intérêts et de financement* au paragraphe

financing expenses in subsection 18.2(1) in respect of the taxpayer for the taxation year, and

B is

(i) if the taxpayer is an *excluded entity* for the year (as defined in subsection 18.2(1)), nil, and

(ii) in any other case, the proportion determined under the first formula in subsection 18.2(2) in respect of the taxpayer for the year;

18.2(1) relativement au contribuable pour l'année d'imposition;

B selon le cas :

(i) si le contribuable est une *entité exclue* pour l'année (au sens du paragraphe 18.2(1)), zéro,

(ii) dans les autres cas, la proportion déterminée par la première formule figurant au paragraphe 18.2(2) relativement au contribuable pour l'année;

(2) Paragraph 12(1)(n.3) of the Act is replaced by the following:

Retirement compensation arrangement

(n.3) the total of all amounts received by the taxpayer in the year in the course of a business out of or under a retirement compensation arrangement (including amounts received in respect of the arrangement under subsection 207.71(3)) to which the taxpayer, another person who carried on a business that was acquired by the taxpayer, or any person with whom the taxpayer or that other person does not deal at arm's length, has contributed an amount that was deductible under paragraph 20(1)(r) in computing the contributor's income for a taxation year;

(2) L'alinéa 12(1)n.3) de la même loi est remplacé par ce qui suit :

Convention de retraite

n.3) le total des montants que le contribuable reçoit au cours de l'année, dans le cours des activités d'une entreprise et provenant d'une convention de retraite (y compris les montants reçus relatifs à la convention en vertu du paragraphe 207.71(3)) dans le cadre de laquelle lui-même, une autre personne qui exploitait une entreprise qu'il a acquise ou une personne avec laquelle lui-même ou cette autre personne a un lien de dépendance a versé un montant déductible en vertu de l'alinéa 20(1)r) dans le calcul du revenu du cotisant pour une année d'imposition;

(3) Paragraph 12(1)(t) of the Act is replaced by the following:

Investment tax credit

(t) the amount deducted under subsection 127(5) or (6) or 127.44(3) in respect of a property acquired or an expenditure made in a preceding taxation year in computing the taxpayer's tax payable for a preceding taxation year to the extent that it was not included in computing the taxpayer's income for a preceding taxation year under this paragraph or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e), subparagraph 53(2)(c)(vi), (c)(vi.1) or (h)(ii) or for I in the definition *undepreciated capital cost* in subsection 13(21) or L in the definition *cumulative Canadian exploration expense* in subsection 66.1(6);

(3) L'alinéa 12(1)t) de la même loi est remplacé par ce qui suit :

Crédit d'impôt à l'investissement

t) la somme déduite en application des paragraphes 127(5) ou (6) ou 127.44(3) dans le calcul de l'impôt payable par le contribuable pour une année d'imposition antérieure au titre d'un bien acquis ou d'une dépense effectuée au cours d'une année d'imposition antérieure, dans la mesure où cette somme n'a pas été incluse dans le calcul du revenu du contribuable pour une année d'imposition antérieure en application du présent alinéa ou n'est pas incluse dans une somme déterminée en vertu de l'alinéa 13(7.1)e) ou 37(1)e) ou du sous-alinéa 53(2)c)(vi), c)(vi.1) ou h)(ii), ou représentée par l'élément I de la formule figurant à la définition de *fraction non amortie du coût en capital* au paragraphe 13(21) ou l'élément L de la formule figurant à la définition de *frais cumulatifs d'exploration au Canada* au paragraphe 66.1(6);

(4) Paragraph 12(1)(t) of the Act, as enacted by subsection (3), is replaced by the following:

Investment tax credit

(t) the amount deducted under subsection 127(5) or (6), 127.44(3) or 127.45(6) in respect of a property acquired or an expenditure made in a preceding taxation

(4) L'alinéa 12(1)t) de la même loi, édicté par le paragraphe (3), est remplacé par ce qui suit :

Crédit d'impôt à l'investissement

t) la somme déduite en application des paragraphes 127(5) ou (6), 127.44(3) ou 127.45(6) dans le calcul de l'impôt payable par le contribuable pour une année

year in computing the taxpayer's tax payable for a preceding taxation year to the extent that it was not included in computing the taxpayer's income for a preceding taxation year under this paragraph or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e), subparagraph 53(2)(c)(vi) to (c)(vi.2) or (h)(ii) or for I in the definition *undepreciated capital cost* in subsection 13(21) or L in the definition *cumulative Canadian exploration expense* in subsection 66.1(6);

d'imposition antérieure au titre d'un bien acquis ou d'une dépense effectuée au cours d'une année d'imposition antérieure, dans la mesure où cette somme n'a pas été incluse dans le calcul du revenu du contribuable pour une année d'imposition antérieure en application du présent alinéa ou n'est pas incluse dans une somme déterminée en vertu de l'alinéa 13(7.1)e) ou 37(1)e) ou du sous-alinéa 53(2)c)(vi) à c)(vi.2) ou h)(ii), ou représentée par l'élément I de la formule figurant à la définition de *fraction non amortie du coût en capital* au paragraphe 13(21) ou l'élément L de la formule figurant à la définition de *frais cumulatifs d'exploration au Canada* au paragraphe 66.1(6);

(5) Subsection 12(2.02) of the Act is replaced by the following:

Source of income

(2.02) For the purposes of this Act, if a particular amount is included in computing the income of a taxpayer for a taxation year because of paragraph (1)(l.1) or (l.2) and the particular amount is in respect of another amount that is deductible by a partnership in computing its income from a particular source or from sources in a particular place, the particular amount is deemed to be from the particular source or from sources in the particular place, as the case may be.

(5) Le paragraphe 12(2.02) de la même loi est remplacé par ce qui suit :

Source du revenu

(2.02) Pour l'application de la présente loi, toute somme donnée incluse dans le calcul du revenu d'un contribuable pour une année d'imposition par l'effet des alinéas (1)l.1) ou l.2) au titre d'une autre somme qui est déductible par une société de personnes dans le calcul de son revenu tiré d'une source donnée ou de sources situées dans un endroit donné est réputée être tirée de la source donnée ou de sources situées dans l'endroit donné, selon le cas.

(6) The definition *investment contract* in subsection 12(11) of the Act is amended by adding the following after paragraph (d.1):

(d.2) a FHSA,

(6) La définition de *contrat de placement*, au paragraphe 12(11) de la même loi, est modifiée par adjonction, après l'alinéa d.1), de ce qui suit :

d.2) les CELIAPP;

(7) Subsections (1) and (5) apply in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsections (1) and (5) also apply in respect of a taxation year of a taxpayer that begins before, and ends after, October 1, 2023 if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection (1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.

(7) Les paragraphes (1) et (5) s'appliquent relativement aux années d'imposition d'un contribuable commençant à compter du 1er octobre 2023 ou après. Toutefois, les paragraphes (1) et (5) s'appliquent aussi relativement à une année d'imposition d'un contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :

a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération ou d'un événement ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, cet événement ou cette série;

b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe (1), ou l'application des articles 18.2 ou

18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.

(8) Subsection (2) applies to the 2024 and subsequent taxation years.

(8) Le paragraphe (2) s'applique aux années d'imposition 2024 et suivantes.

(9) Subsection (3) is deemed to have come into force on January 1, 2022.

(9) Le paragraphe (3) est réputé être entré en vigueur le 1er janvier 2022.

(10) Subsection (4) is deemed to have come into force on March 28, 2023.

(10) Le paragraphe (4) est réputé être entré en vigueur le 28 mars 2023.

(11) Subsection (6) is deemed to have come into force on April 1, 2023.

(11) Le paragraphe (6) est réputé être entré en vigueur le 1er avril 2023.

3 (1) The Act is amended by adding the following after section 12.6:

3 (1) La même loi est modifiée par adjonction, après l'article 12.6, de ce qui suit :

Hybrid mismatch arrangements — definitions

12.7 (1) The definitions in subsection 18.4(1) apply in this section.

Dispositifs hybrides — définitions

12.7 (1) Les définitions figurant au paragraphe 18.4(1) s'appliquent au présent article.

Secondary rule — conditions for application

(2) Subsection (3) applies in respect of a payment of which a taxpayer is a recipient if

(a) the payment arises under a hybrid mismatch arrangement; and

(b) there is a foreign deduction component of the hybrid mismatch arrangement.

Règle secondaire — conditions d'application

(2) Le paragraphe (3) s'applique relativement à un paiement dont le contribuable est un bénéficiaire si, à la fois :

a) le paiement découle d'un dispositif hybride;

b) il y a une composante de déduction étrangère du dispositif hybride.

Secondary rule — consequences

(3) Subject to subsection 18.4(5), if this subsection applies in respect of a payment of which a taxpayer is a recipient, an amount equal to the hybrid mismatch amount in respect of the payment shall be

(a) included in computing the taxpayer's income from the same source as the payment; and

(b) included in computing the taxpayer's income for the last taxation year of the taxpayer that begins at or before the end of the first foreign taxation year of any entity in which an amount in respect of the payment, in the absence of any foreign expense restriction rule, would be — or would reasonably be expected to be — deductible in computing relevant foreign income or profits of the entity.

Règle secondaire — conséquences

(3) Sous réserve du paragraphe 18.4(5), lorsque le présent paragraphe s'applique relativement à un paiement dont le contribuable est un bénéficiaire, une somme correspondant au montant de l'asymétrie hybride relative au paiement doit :

a) être incluse dans le calcul du revenu du contribuable provenant d'une source identique à la source du paiement;

b) être incluse dans le calcul du revenu du contribuable pour la dernière année d'imposition du contribuable qui commence au plus tard à la fin de la première année d'imposition étrangère d'une entité au cours de laquelle une somme relative au paiement, en l'absence de toute règle étrangère de restriction des dépenses, serait, ou dont on pourrait raisonnablement s'attendre à ce qu'elle soit, déductible dans le calcul des revenus ou bénéfices étrangers pertinents de l'entité.

(2) Subsection (1) applies in respect of payments arising on or after July 1, 2022, except that

(2) Le paragraphe (1) s'applique relativement aux paiements se produisant après le 30 juin 2022.

subsection 12.7(3) of the Act, as enacted by subsection (1), does not apply to the portion of a payment that

(a) arises because of subsection 18.4(9) of the Act, as enacted by subsection 8(1); and

(b) relates to the portion of a notional interest expense that is computed in respect of a period of time that precedes January 1, 2023.

Toutefois, le paragraphe 12.7(3) de la même loi, édicté par le paragraphe (1), ne s'applique pas à la partie d'un paiement qui, à la fois :

a) se produit en raison de l'application du paragraphe 18.4(9) de la même loi, édicté par le paragraphe 8(1);

b) se rapporte à la partie d'une dépense en intérêts théorique calculée pour une période antérieure au 1er janvier 2023.

4 (1) The portion of subsection 13(7.1) of the Act before paragraph (a) is replaced by the following:

4 (1) Le passage du paragraphe 13(7.1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Deemed capital cost of certain property

(7.1) For the purposes of this Act, where section 80 applied to reduce the capital cost to a taxpayer of a depreciable property or a taxpayer deducted an amount under subsection 127(5) or (6) or 127.44(3) in respect of a depreciable property or received or is entitled to receive assistance from a government, municipality or other public authority in respect of, or for the acquisition of, depreciable property, whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance other than

Coût en capital présumé de certains biens

(7.1) Pour l'application de la présente loi, lorsque l'article 80 a eu pour effet de réduire le coût en capital d'un bien amortissable pour un contribuable ou qu'un contribuable a déduit un montant en vertu des paragraphes 127(5) ou (6) ou 127.44(3) relativement à un bien amortissable ou a reçu ou est en droit de recevoir une aide d'un gouvernement, d'une municipalité ou d'une autre administration relativement à des biens amortissables ou en vue d'en acquérir, sous forme de prime, de subvention, de prêt à remboursement conditionnel, de déduction de l'impôt ou d'allocation de placement, ou sous toute autre forme, à l'exception des sommes et montants suivants :

(2) The portion of subsection 13(7.1) of the Act before paragraph (a), as enacted by subsection (1), is replaced by the following:

(2) Le passage du paragraphe 13(7.1) de la même loi précédant l'alinéa a), édicté par le paragraphe (1), est remplacé par ce qui suit :

Deemed capital cost of certain property

(7.1) For the purposes of this Act, where section 80 applied to reduce the capital cost to a taxpayer of a depreciable property or a taxpayer deducted an amount under subsection 127(5) or (6), 127.44(3) or 127.45(6) in respect of a depreciable property or received or is entitled to receive assistance from a government, municipality or other public authority in respect of, or for the acquisition of, depreciable property, whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance other than

Coût en capital présumé de certains biens

(7.1) Pour l'application de la présente loi, lorsque l'article 80 a eu pour effet de réduire le coût en capital d'un bien amortissable pour un contribuable ou qu'un contribuable a déduit un montant en vertu des paragraphes 127(5) ou (6), 127.44(3) ou 127.45(6) relativement à un bien amortissable ou a reçu ou est en droit de recevoir une aide d'un gouvernement, d'une municipalité ou d'une autre administration relativement à des biens amortissables ou en vue d'en acquérir, sous forme de prime, de subvention, de prêt à remboursement conditionnel, de déduction de l'impôt ou d'allocation de placement, ou sous toute autre forme, à l'exception des sommes et montants suivants :

(3) Paragraph 13(7.1)(e) of the Act is replaced by the following:

(e) where the property was acquired in a taxation year ending before the particular time, all amounts deducted under subsection 127(5) or (6) or 127.44(3) by the

(3) L'alinéa 13(7.1)e) de la même loi est remplacé par ce qui suit :

e) si le bien a été acquis au cours d'une année d'imposition se terminant avant le moment donné, les montants déduits par le contribuable en application des

taxpayer for a taxation year ending before the particular time,

(4) Paragraph 13(7.1)(e) of the Act, as enacted by subsection (3), is replaced by the following:

(e) where the property was acquired in a taxation year ending before the particular time, all amounts deducted under subsection 127(5) or (6), 127.44(3) or 127.45(6) by the taxpayer for a taxation year ending before the particular time,

(5) Section 13 of the Act is amended by adding the following after subsection (7.5):

Capital expenditures — Classes 59 and 60

(7.6) If a taxpayer has incurred an expenditure on account of capital, and the amount of the expenditure would have been included in the taxpayer's undepreciated capital cost of property included in Class 59 or 60 of Schedule II to the *Income Tax Regulations* if the taxpayer had acquired a property as a result of the expenditure, then the taxpayer is deemed to have acquired a property, included in Class 59 or 60, as the case may be, at a cost equal to the amount of the expenditure, at the time that the expenditure is incurred.

(6) The description of I in the definition *undepreciated capital cost* in subsection 13(21) of the Act is replaced by the following:

I is the total of all amounts deducted under subsection 127(5) or (6) or 127.44(3), in respect of a depreciable property of the class of the taxpayer, in computing the taxpayer's tax payable for a taxation year ending before that time and subsequent to the disposition of that property by the taxpayer,

(7) The description of I in the definition *undepreciated capital cost* in subsection 13(21) of the Act, as enacted by subsection (6), is replaced by the following:

I is the total of all amounts deducted under subsection 127(5) or (6), 127.44(3) or 127.45(6), in respect of a depreciable property of the class of the taxpayer, in computing the taxpayer's tax payable for a taxation year ending before that time and subsequent to the disposition of that property by the taxpayer,

paragraphes 127(5) ou (6) ou 127.44(3) pour toute année d'imposition se terminant avant le moment donné;

(4) L'alinéa 13(7.1)e) de la même loi, édicté par le paragraphe (3), est remplacé par ce qui suit :

e) si le bien a été acquis au cours d'une année d'imposition se terminant avant le moment donné, les montants déduits par le contribuable en application des paragraphes 127(5) ou (6), 127.44(3) ou 127.45(6) pour toute année d'imposition se terminant avant le moment donné;

(5) L'article 13 de la même loi est modifié par adjonction, après le paragraphe (7.5), de ce qui suit :

Dépenses en capital — catégories 59 et 60

(7.6) Si un contribuable a engagé une dépense en capital, et que le montant de la dépense aurait été inclus dans la fraction non amortie du coût en capital des biens inclus dans les catégories 59 ou 60 de l'annexe II du *Règlement de l'impôt sur le revenu* du contribuable si ce dernier avait acquis un bien par suite de la dépense, il est réputé avoir acquis un bien, inclus dans les catégories 59 ou 60, selon le cas, à un coût égal au montant de la dépense au moment où celle-ci est engagée.

(6) L'élément I de la formule figurant à la définition de *fraction non amortie du coût en capital*, au paragraphe 13(21) de la même loi, est remplacé par ce qui suit :

I le total des sommes dont chacune est une somme déduite en application des paragraphes 127(5) ou (6) ou 127.44(3), au titre d'un bien amortissable de cette catégorie, dans le calcul de l'impôt payable par le contribuable pour une année d'imposition se terminant avant ce moment et après qu'il a disposé de ces biens;

(7) L'élément I de la formule figurant à la définition de *fraction non amortie du coût en capital* au paragraphe 13(21) de la même loi, édicté par le paragraphe (6), est remplacé par ce qui suit :

I le total des sommes dont chacune est une somme déduite en application des paragraphes 127(5) ou (6), 127.44(3) ou 127.45(6), au titre d'un bien amortissable de cette catégorie, dans le calcul de l'impôt payable par le contribuable pour une année d'imposition se terminant avant ce moment et après qu'il a disposé de ces biens;

(8) The portion of paragraph 13(24)(a) of the Act before subparagraph (i) is replaced by the following:

(a) subject to paragraph (b), for the purposes of the description of A in the definition *undepreciated capital cost* in subsection (21) and of sections 127, 127.1 and 127.44, the property is deemed

(9) The portion of paragraph 13(24)(a) of the Act before subparagraph (i), as enacted by subsection (8), is replaced by the following:

(a) subject to paragraph (b), for the purposes of the description of A in the definition *undepreciated capital cost* in subsection (21) and of sections 127, 127.1, 127.44 and 127.45, the property is deemed

(10) Subsections (1), (3), (5), (6) and (8) are deemed to have come into force on January 1, 2022.

(11) Subsections (2), (4), (7) and (9) are deemed to have come into force on March 28, 2023.

5 (1) Section 15 of the Act is amended by adding the following after subsection (2.5):

When s. 15(2) not to apply — employee ownership trusts

(2.51) Subsection (2) does not apply to a loan made or a debt that arose in respect of a qualifying business transfer if

(a) immediately following the qualifying business transfer,

(i) the lender or creditor is a qualifying business, and

(ii) the borrower is the employee ownership trust that controls the qualifying business described in subparagraph (i);

(b) the sole purpose of the loan or the debt is to facilitate the qualifying business transfer; and

(c) at the time the loan was made or the debt incurred, *bona fide* arrangements were made for repayment of the loan or debt within 15 years of the qualifying business transfer.

(8) Le passage de l'alinéa 13(24)a) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :

a) sous réserve de l'alinéa b), pour l'application de l'élément A de la formule figurant à la définition de *fraction non amortie du coût en capital*, au paragraphe (21), et des articles 127, 127.1 et 127.44, le bien est réputé :

(9) Le passage de l'alinéa 13(24)a) de la même loi précédant le sous-alinéa (i), édicté par le paragraphe (8), est remplacé par ce qui suit :

a) sous réserve de l'alinéa b), pour l'application de l'élément A de la formule figurant à la définition de *fraction non amortie du coût en capital*, au paragraphe (21), et des articles 127, 127.1, 127.44 et 127.45, le bien est réputé :

(10) Les paragraphes (1), (3), (5), (6) et (8) sont réputés être entrés en vigueur le 1er janvier 2022.

(11) Les paragraphes (2), (4), (7) et (9) sont réputés être entrés en vigueur le 28 mars 2023.

5 (1) L'article 15 de la même loi est modifié par adjonction, après le paragraphe (2.5), de ce qui suit :

Inapplication du paragraphe 15(2) — fiducies collectives des employés

(2.51) Le paragraphe (2) ne s'applique pas à un prêt consenti, ou à une dette contractée, relativement à un transfert admissible d'entreprise si les conditions suivantes sont réunies :

a) immédiatement après le transfert admissible d'entreprise :

(i) le prêteur ou le créancier est une entreprise admissible,

(ii) l'emprunteur est la fiducie collective des employés qui contrôle l'entreprise admissible visée au sous-alinéa (i);

b) le prêt ou la dette a pour unique but de faciliter le transfert admissible d'entreprise;

c) au moment où le prêt est consenti ou la dette contractée, des arrangements ont été conclus de bonne foi en vue du remboursement du prêt ou de la dette dans un délai de 15 ans suivant le transfert admissible d'entreprise.

(2) Subsection (1) applies in respect of transactions that occur on or after January 1, 2024.

6 (1) The portion of subsection 18(4) of the Act before paragraph (a) is replaced by the following:

Limitation on deduction of interest

(4) Notwithstanding any other provision of this Act (other than subsection (8)), in computing the income for a taxation year of a corporation or a trust from a business (other than the Canadian banking business of an authorized foreign bank) or property, no deduction shall be made in respect of that proportion of any amount that would, in the absence of this subsection and section 18.2, be deductible in computing that income in respect of interest paid or payable by it on outstanding debts to specified non-residents that

(2) Subsection (1) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year that begins before, and ends after, October 1, 2023 if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.

7 (1) The Act is amended by adding the following after section 18.1:

Definitions

18.2 (1) The following definitions apply in this section and section 18.21.

absorbed capacity of a taxpayer for a taxation year means the lesser of

(a) the taxpayer's cumulative unused excess capacity for the year, determined as if the taxpayer's absorbed capacity for the year were nil, and

(2) Le paragraphe (1) s'applique aux opérations se produisant après le 31 décembre 2023.

6 (1) Le passage du paragraphe 18(4) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Plafond de la déduction d'intérêts

(4) Malgré les autres dispositions de la présente loi, à l'exception du paragraphe (8), aucune déduction ne peut être faite, dans le calcul du revenu pour une année d'imposition qu'une société ou une fiducie tire d'une entreprise (sauf l'entreprise bancaire canadienne d'une banque étrangère autorisée) ou d'un bien, relativement à la proportion des sommes qui seraient, compte non tenu du présent paragraphe et de l'article 18.2, déductibles dans le calcul de ce revenu au titre d'intérêts payés ou payables par elle sur des dettes impayées envers des non-résidents déterminés que représente le rapport entre :

(2) Le paragraphe (1) s'applique relativement aux années d'imposition d'un contribuable commençant après septembre 2023. Toutefois, le paragraphe (1) s'applique aussi relativement à une année d'imposition commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :

a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération ou d'un événement ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, cet événement ou cette série;

b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.

7 (1) La même loi est modifiée par adjonction, après l'article 18.1, de ce qui suit :

Définitions

18.2 (1) Les définitions qui suivent s'appliquent au présent article et à l'article 18.21.

administration du secteur public Sa Majesté du chef du Canada, d'une province, une entité visée à l'un des alinéas 149(1)c) à d.6), une *administration hospitalière* (au sens du paragraphe 123(1) de la *Loi sur la taxe d'accise*) ou un organisme de bienfaisance enregistré qui est une *administration scolaire*, un *collège public* ou une

(b) the amount determined by the formula

A – (B + C)

where

A is the taxpayer's interest and financing expenses for the year,

B is

(i) if subsection 18.21(2) applies in respect of the taxpayer for the year, the amount determined in respect of the taxpayer for the year under that subsection, and

(ii) in any other case, the amount determined by the formula

D × E

where

D is the taxpayer's ratio of permissible expenses for the year, and

E is the taxpayer's adjusted taxable income for the year, and

C is the taxpayer's interest and financing revenues for the year. (*capacité absorbée*)

adjusted taxable income of a taxpayer for a taxation year means the amount determined by the formula

A + B – C

where

A is the positive or negative amount determined by the formula

D – E

where

D is

(a) if the taxpayer is non-resident, the taxpayer's taxable income earned in Canada for the year (determined without regard to subsection (2) and paragraphs 12(1)(l.2) and 111(1)(a.1)), and

(b) in any other case, the taxpayer's taxable income for the year (determined without regard to subsection (2), paragraphs 12(1)(l.2) and 111(1)(a.1) and clause 95(2)(f.11)(ii)(D)), and

E is the total of

(a) the taxpayer's non-capital loss for the year (determined without regard to subsection (2), paragraphs 12(1)(l.2) and 111(1)(a.1) and clause 95(2)(f.11)(ii)(D)), and

(b) the total of all amounts each of which is, in respect of a corporation that is a controlled *université* (chacun s'entendant au sens du paragraphe 123(1) de la *Loi sur la taxe d'accise*). (*public sector authority*)

année d'imposition de la société affiliée À l'égard d'une société étrangère affiliée contrôlée d'un contribuable, la période dans le cadre de laquelle les comptes de la société affiliée sont habituellement dressés, cette période ne pouvant cependant excéder 53 semaines. (*affiliate taxation year*)

bail exclu S'entend, pour une année d'imposition d'un contribuable, d'un bail qui remplit l'une des conditions suivantes :

a) les règles du paragraphe 16.1(1) s'appliquent au bail;

b) il ne serait pas considéré comme un bail pour une durée de plus d'un an pour l'application de l'alinéa b) de la définition de *bien de location déterminé* au paragraphe 1100(1.11) du *Règlement de l'impôt sur le revenu*;

c) il vise un bien qui :

(i) soit ne serait pas considéré, au moment de la conclusion du bail, comme ayant une juste valeur marchande supérieure à 25 000 $ pour l'application de l'alinéa c) de cette définition,

(ii) soit serait considéré, à tous les moments de l'année, comme des biens exonérés pour l'application du paragraphe 1100(1.13) du *Règlement de l'impôt sur le revenu*. (*excluded lease*)

capacité absorbée En ce qui concerne un contribuable pour une année d'imposition, la moins élevée des sommes suivantes :

a) la capacité excédentaire cumulative inutilisée du contribuable pour l'année, déterminée comme si la capacité absorbée du contribuable pour l'année était nulle,

b) la somme obtenue par la formule suivante :

A – (B + C)

où :

A représente les dépenses d'intérêts et de financement du contribuable pour l'année,

B :

(i) si le paragraphe 18.21(2) s'applique relativement au contribuable pour l'année, la somme

foreign affiliate of the taxpayer at the end of an affiliate taxation year ending in the year — or a controlled foreign affiliate of a partnership, of which the taxpayer or a controlled foreign affiliate of the taxpayer is a member, at the end of an affiliate taxation year ending in a fiscal period of the partnership — an amount determined by the formula

T × U ÷ V

where

T is the lesser of

(i) the affiliate's foreign accrual property loss (determined without regard to clause 95(2)(f.11)(ii)(D)) for the affiliate taxation year, and

(ii) the amount by which the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year exceeds the affiliate's relevant affiliate interest and financing revenues for the affiliate taxation year,

U is the amount that is included in the taxpayer's interest and financing expenses for the year in respect of the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year, and

V is the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year;

B is the total of all amounts (subject to paragraph (k), other than an amount that can reasonably be considered to be in respect of exempt interest and financing expenses) each of which is

(a) the taxpayer's interest and financing expenses for the year,

(b) an amount deducted by the taxpayer in computing its income for the year under paragraph 20(1)(a) or 59.1(a) or subsection 66(4), 66.1(2) or (3), 66.2(2), 66.21(4), 66.4(2) or 66.7(1), (2), (2.3), (3), (4) or (5), other than any portion of that amount that is described in subparagraph (c)(ii) of the description of A in the definition *interest and financing expenses*,

(c) an amount deducted by the taxpayer in computing its income for the year under subsection 20(16), other than any portion of that amount that is described in paragraph (d) of the description of A in the definition *interest and financing expenses*,

déterminée selon ce paragraphe relativement au contribuable pour l'année,

(ii) dans les autres cas, la somme obtenue par la formule suivante :

D × E

où :

D représente le ratio des dépenses admissibles du contribuable pour l'année,

E le revenu imposable rajusté du contribuable pour l'année,

C ses revenus d'intérêts et de financement pour l'année. (*absorbed capacity*)

capacité excédentaire En ce qui concerne un contribuable pour une année d'imposition, l'une des sommes suivantes :

a) si le paragraphe 18.21(2) s'applique relativement au contribuable pour l'année, zéro;

b) dans les autres cas, la somme obtenue par la formule suivante :

A – B – C

où :

A représente la somme obtenue par la formule suivante :

D × E + F

où :

D représente le ratio des dépenses admissibles du contribuable pour l'année,

E le revenu imposable rajusté du contribuable pour l'année,

F la somme obtenue par la formule suivante :

G – H × I

où

G représente les revenus d'intérêts et de financement du contribuable pour l'année,

H le ratio des dépenses admissibles du contribuable pour l'année,

I le moindre des montants suivants :

(i) l'excédent des revenus d'intérêts et de financement du contribuable pour l'année sur les dépenses d'intérêts et de financement du contribuable pour l'année,

(ii) selon le cas :

(d) in respect of the income or loss of a partnership, for a fiscal period that ends in the year, from any source or from sources in a particular place, an amount determined by the formula

F × G – H

where

F is the total of all amounts, each of which is an amount deducted by the partnership under paragraph 20(1)(a) or subsection 20(16) in computing its income or loss from the source, or the source in a particular place, for the fiscal period, other than any portion of that amount that is described in subparagraph (c)(ii) of the description of A in the definition *interest and financing expenses*,

G is the taxpayer's specified proportion, if the references in the definition *specified proportion* in subsection 248(1) to "total income or loss" were read as "income or loss from the source, or the source in a particular place", and

H is the portion of an amount referred to in the description of F that can reasonably be considered to not be deductible in computing the taxpayer's income for the year, or to not be included in computing the taxpayer's non-capital loss for the year, because of subsection 96(2.1),

(e) the portion of an amount deducted under paragraph 111(1)(e) for the year, in respect of a partnership of which the taxpayer is a member, that can reasonably be considered to be attributable to an amount referred to in the description of H in paragraph (d) in respect of a fiscal period of the partnership ending in a preceding taxation year of the taxpayer,

(f) an amount deducted by the taxpayer under paragraph 110(1)(k) in computing its taxable income for the year,

(g) an amount deducted by the taxpayer under subsection 104(6) in computing its income for the year, except to the extent of any portion of the amount that has been designated under subsection 104(19) for the year,

(h) an amount determined by the formula

I × J ÷ K

where

I is the amount deducted by the taxpayer under paragraph 111(1)(a) in computing its taxable income for the year, in respect of the taxpayer's non-capital loss (other than a specified

(A) si le revenu imposable rajusté du contribuable pour l'année était, compte non tenu de l'article 257, une somme négative, la valeur absolue de la somme négative,

(B) dans les autres cas, zéro,

B les dépenses d'intérêts et de financement du contribuable pour l'année,

C la somme déductible par le contribuable en application de l'alinéa 111(1)a.1) dans l'année. (*excess capacity*)

capacité excédentaire cumulative inutilisée En ce qui concerne un contribuable pour une année d'imposition donnée, le total des sommes dont chacune représente :

a) soit, la capacité excédentaire du contribuable pour l'année donnée;

b) soit, la capacité excédentaire du contribuable pour l'une des trois années d'imposition précédentes, si la capacité excédentaire du contribuable pour chacune de ces années est déterminée selon les règles suivantes :

(i) lorsque le contribuable a un montant de capacité transférée pour une année d'imposition (appelée « année de transfert » dans la présente définition) antérieure à l'année donnée :

(A) la capacité excédentaire du contribuable doit faire l'objet de réductions pour l'année de transfert et les trois années d'imposition précédant l'année de transfert (chacune appelée « année pertinente » au présent sous-alinéa) d'un montant total égal au total des sommes dont chacune est un montant de capacité transférée du contribuable dans l'année de transfert (appelé « montant total de capacité transférée » dans la présente définition),

(B) la somme dont la capacité excédentaire du contribuable pour une année pertinente donnée doit être réduite, correspond au moindre de :

(I) la capacité excédentaire du contribuable pour l'année pertinente donnée, déterminée en prenant en compte des réductions à cette capacité excédentaire prévues, selon le cas :

1 au présent sous-alinéa, relativement aux montants de capacité transférée pour les années antérieures à l'année de transfert,

pre-regime loss of the taxpayer in respect of the year) for another taxation year (referred to in this paragraph as the "taxpayer loss year"),

J is the lesser of

(i) the non-capital loss for the taxpayer loss year, and

(ii) the amount determined by the formula

W – X – Y

where

W is the total of all amounts, each of which is an amount that is

(A) the interest and financing expenses of the taxpayer for the taxpayer loss year, determined without regard to any amount or portion of an amount that is not deductible because of subsection (2) or clause 95(2)(f.11)(ii)(D),

(B) described in any of paragraphs (b) to (g) or (j) to (m) of the description of B for the taxpayer loss year, or

(C) deducted by the taxpayer under paragraph 111(1)(a.1) in computing its taxable income for the taxpayer loss year,

X is the total of all amounts, each of which is an amount

(A) described in any of paragraphs (a) to (f), (h) or (j) of the description of C for the taxpayer loss year, or

(B) included in the income of the taxpayer for the taxpayer loss year by reason of paragraph 12(1)(l.2), and

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

Z × Z.1 ÷ Z.2

where

Z is the lesser of

(A) the foreign accrual property loss, for an affiliate taxation year, of a corporation (referred to throughout the description of Y as the "affiliate") that, at the end of the affiliate taxation

2 au sous-alinéa (ii), relativement aux montants de capacité absorbée pour l'année de transfert et les années antérieures à l'année de transfert,

(II) l'excédent éventuel du total du montant de capacité transférée pour l'année de transfert sur les réductions, en vertu du présent sous-alinéa relativement au total du montant de capacité transférée, à la capacité excédentaire du contribuable pour les années pertinentes antérieures à l'année pertinente donnée,

(ii) si le contribuable a un montant de capacité absorbée pour une année d'imposition (appelée « année de capacité absorbée » dans la présente définition) :

(A) la capacité excédentaire du contribuable doit faire l'objet de réductions pour les trois années d'imposition qui précèdent l'année de capacité absorbée (chacune appelée « année pertinente » au présent sous-alinéa) d'un montant total égal au montant de capacité absorbée pour l'année de capacité absorbée,

(B) la somme dont la capacité excédentaire du contribuable pour une année pertinente donnée doit être réduite, correspond au moindre de :

(I) la capacité excédentaire du contribuable pour l'année pertinente donnée, déterminée en prenant en compte des réductions à cette capacité excédentaire prévues, selon le cas :

1 au sous-alinéa (i), relativement aux montants de capacité transférée pour les années antérieures à l'année de capacité absorbée,

2 au présent sous-alinéa, relativement aux montants de capacité absorbée pour les années antérieures à l'année de capacité absorbée,

(II) l'excédent éventuel du montant de capacité absorbée pour l'année de capacité absorbée sur les réductions, en vertu du présent sous-alinéa relativement au montant de capacité absorbée, à la capacité excédentaire du contribuable pour les années pertinentes antérieures à l'année pertinente donnée. (*cumulative unused excess capacity*)

year, is a controlled foreign affiliate of the taxpayer, or is a controlled foreign affiliate of a partnership of which the taxpayer or a controlled foreign affiliate of the taxpayer is a member at any time, and

(B) the amount by which the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year (determined without regard to any amount or portion of an amount that is not deductible because of clause 95(2)(f.11)(ii)(D)) exceeds the total of all amounts, each of which is

(I) the affiliate's relevant affiliate interest and financing revenues for the affiliate taxation year, or

(II) an amount included under subclause 95(2)(f.11)(ii)(D)(II) in respect of the affiliate for the affiliate taxation year,

Z.1 is the amount that is included in the taxpayer's interest and financing expenses for the taxpayer loss year in respect of the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year, and

Z.2 is the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year, and

K is the non-capital loss for the taxpayer loss year,

(i) 25% of the amount deducted, in respect of a specified pre-regime loss of the taxpayer in respect of the year, by the taxpayer under paragraph 111(1)(a) in computing its taxable income for the year,

(j) in respect of a corporation (referred to in this paragraph as the "affiliate") that is a controlled foreign affiliate of the taxpayer at the end of an affiliate taxation year ending in the year — or that is a controlled foreign affiliate of a partnership, of which the taxpayer or a controlled foreign affiliate of the taxpayer is a member at any time, at the

capacité reçue Montant de capacité reçue d'un cessionnaire pour une année d'imposition déterminé en application du paragraphe (4). (*received capacity*)

capacité transférée Montant de capacité transférée d'un cédant pour une année d'imposition déterminé en application du paragraphe (4). (*transferred capacity*)

contribuable S'entend au sens du paragraphe 248(1), mais ne vise pas une personne physique ou une société de personnes. (*taxpayer*)

dépenses d'intérêts et de financement S'entend, relativement à un contribuable pour une année d'imposition donnée, de la somme obtenue par la formule suivante :

A – B

où :

A représente le total des sommes (sauf une somme qui est incluse dans les dépenses d'intérêts et de financement exonérées) dont chacune représente :

a) une somme qui, à la fois :

(i) est payée ou payable au cours d'une année, à titre ou en paiement intégral ou partiel d'intérêts (sauf les intérêts exclus pour l'année donnée ou une somme qui est réputée être des intérêts en vertu du paragraphe 137(4.1)),

(ii) serait, en l'absence du présent article, déductible (autre qu'en vertu d'une disposition visée au sous-alinéa c)(i)) par le contribuable dans le calcul de son revenu pour l'année donnée,

(iii) n'est pas visée à tout autre alinéa de la présente définition;

b) une somme qui, en l'absence du présent article et à supposer qu'elle ne soit pas déductible en vertu d'une autre disposition de la présente loi (à l'exception des dispositions visées au sous-alinéa c)(i)), serait déductible dans le calcul du revenu du contribuable pour l'année donnée selon l'un des sous-alinéas 20(1)e)(ii) à (ii.2) et des alinéas 20(1)e.1) à f);

c) la partie d'une somme, si les conditions ci-après sont réunies :

(i) la somme, en l'absence du présent article, serait déductible dans le calcul du revenu du contribuable pour l'année donnée et est demandée par celui-ci en application de l'alinéa 20(1)a), des paragraphes 66(4), 66.1(2) ou (3), 66.2(2), 66.21(4), 66.4(2) ou 66.7(1), (2), (2.3), (3), (4) ou (5),

end of an affiliate taxation year ending in a fiscal period of the partnership — the additional amount that would be included in the taxpayer's income, either under subsection 91(1) or because an amount would be included in the income of a partnership under that subsection, in respect of the affiliate's foreign accrual property income for the affiliate taxation year, if the affiliate's foreign accrual property income for the affiliate taxation year were increased by the amount determined by the formula

L × M ÷ N

where

L is the amount that, in computing the foreign accrual property income of the affiliate for the affiliate taxation year, is the prescribed amount for the description of F in the definition *foreign accrual property income* in subsection 95(1), in respect of a foreign accrual property loss of the affiliate for another affiliate taxation year (referred to in this paragraph as the "affiliate loss year"),

M is the lesser of

(i) the affiliate's foreign accrual property loss for the affiliate loss year, and

(ii) the amount by which the affiliate's relevant affiliate interest and financing expenses for the affiliate loss year (determined without regard to any amount or portion of an amount that is not deductible because of clause 95(2)(f.11)(ii)(D)) exceeds the total of all amounts, each of which is

(A) the affiliate's relevant affiliate interest and financing revenues for the affiliate loss year, or

(B) an amount included under subclause 95(2)(f.11)(ii)(D)(II) in respect of the affiliate for the affiliate loss year, and

N is the affiliate's foreign accrual property loss for the affiliate loss year,

(k) the amount that would be the taxpayer's loss for the year, or that would be the taxpayer's share of the loss of a partnership of which the taxpayer is a member, if the taxpayer or partnership had no income or loss other than a loss that can reasonably be considered to be incurred by the taxpayer or the partnership in respect of activities funded by a borrowing (within the meaning of the definition *exempt interest and financing expenses*)

(ii) il est raisonnable d'attribuer la partie à une somme payée ou à payer au plus tôt le 4 février 2022 qui :

(A) soit est visée au sous-alinéa a)(i),

(B) soit aurait été déductible par ailleurs au cours d'une année d'imposition en vertu d'une disposition visée à l'alinéa b), n'eût été l'application d'une autre disposition de la présente loi,

d) la partie d'une somme qui, en l'absence du présent article, serait déductible dans le calcul du revenu du contribuable pour l'année donnée en vertu du paragraphe 20(16), jusqu'à concurrence de la fraction que l'on peut raisonnablement considérer comme visée au sous-alinéa c)(ii);

e) une somme qui est payée ou payable par le contribuable au cours d'une année ou qui est une perte ou une perte en capital qu'il a subie pour une année, selon le cas, en vertu ou résultant d'une convention ou d'un arrangement, si les conditions suivantes sont remplies :

(i) la somme, compte non tenu du présent article, selon le cas :

(A) serait déductible (exception faite du sous-alinéa 20(1)e)(i)) dans le calcul du revenu du contribuable pour l'année donnée,

(B) dans le cas d'une perte en capital, réduirait la somme déterminée selon l'alinéa 3b) relativement au contribuable ou serait déductible dans le calcul du revenu imposable du contribuable pour l'année donnée (sauf dans la mesure où elle a déjà été prise en compte en application du présent alinéa pour une année antérieure),

(ii) la convention ou l'arrangement est conclu relativement à un emprunt ou un autre financement conclu par le contribuable ou une personne ou une société de personnes ayant un lien de dépendance avec le contribuable, que ce soit actuellement ou pour l'avenir et conditionnellement ou non,

(iii) il est raisonnable de considérer la somme comme augmentant le coût de financement, ou en faisant partie, à l'égard de l'emprunt ou de l'autre financement (y compris à la suite de toute couverture du coût de financement ou de l'emprunt ou de l'autre financement) du contribuable ou d'une personne ou société de personnes ayant avec le contribuable un lien de dépendance;

that results in exempt interest and financing expenses of the taxpayer or the partnership,

(I) an amount deducted under subsection 127(5) or (6), 127.44(3) or 127.45(6) in respect of a property acquired in a preceding taxation year in computing the taxpayer's tax payable for a preceding taxation year to the extent that it

(i) is included in an amount determined under paragraph 13(7.1)(e) or subparagraph 53(2)(c)(vi) to (vi.2) or (h)(ii) or for I in the definition *undepreciated capital cost* in subsection 13(21), and

(ii) was not included

(A) in computing the taxpayer's income for the year or a preceding taxation year, and

(B) under this paragraph in calculating the taxpayer's adjusted taxable income for a preceding taxation year, or

(m) an amount described in clause 12(1)(x)(i)(C) or subparagraph 12(1)(x)(ii) that is received by the taxpayer in the year to the extent that it

(i) reduces the cost or capital cost of a property,

(ii) is not included in computing the income of the taxpayer for the year under paragraph 12(1)(x), and

(iii) would be included in computing the income of the taxpayer for the year under paragraph 12(1)(x) if that paragraph were read without reference to its subparagraphs (vi) and (vii); and

C is the total of all amounts each of which is

(a) the taxpayer's interest and financing revenues for the year,

(b) an amount included under subsection 13(1) in computing the taxpayer's income for the year,

(c) in respect of the income or loss of a partnership, for a fiscal period that ends in the year, from any source or from sources in a particular place, an amount determined by the formula

O × P

where

O is an amount that is included by the partnership under subsection 13(1) in computing its income or loss from the source, or the source in a particular place, for the fiscal period, and

P is the taxpayer's specified proportion, if the references in the definition *specified*

f) une somme donnée qui remplit les conditions suivantes :

(i) est relative à une convention ou un arrangement qui donne lieu à, ou dont on peut raisonnablement s'attendre à ce qu'il donne lieu à, une somme qui, selon le cas :

(A) est incluse dans le calcul des dépenses d'intérêts et de financement du contribuable pour une année d'imposition en application de l'alinéa e),

(B) réduit les dépenses d'intérêts et de financement du contribuable pour une année d'imposition selon la description de l'élément B,

(ii) serait, en l'absence du présent article, déductible par le contribuable dans le calcul de son revenu pour l'année donnée,

(iii) n'est pas déductible en application des dispositions visées à l'alinéa b),

(iv) représente une dépense ou des frais payables en vertu de la convention ou de l'arrangement ou une dépense qui est engagée en prévision de la convention ou de l'arrangement ou dans le cadre de, ou relativement à, celle-ci ou celui-ci;

g) un montant du crédit-bail (sauf s'il s'agit d'un bail exclu pour l'année donnée) qui, à la fois :

(i) serait, en l'absence du présent article, déductible par le contribuable dans le calcul de son revenu pour l'année donnée,

(ii) ne représente pas des intérêts exclus pour l'année donnée;

h) relativement au revenu ou à la perte d'une société de personnes, pour un exercice se terminant dans l'année donnée, tiré d'une source ou de sources situées dans un endroit donné, la somme obtenue par la formule suivante :

C × D – E – F

où :

C représente le total des sommes dont chacune représente une somme qui, selon le cas :

(i) serait déductible par la société de personnes dans le calcul de son revenu ou de sa perte tiré de la source, ou de la source située dans un endroit donné, pour un exercice, et qui serait visée à l'un des alinéas a) à g) si la mention « contribuable » était remplacée par la mention « société de personnes »,

proportion in subsection 248(1) to "total income or loss" were read as "income or loss from the source, or the source in a particular place",

(d) an amount included under subsection 59(1) or (3.2) or paragraph 59.1(b) in computing the taxpayer's income for the year,

(e) in the case of a corporation

(i) 100/28 of the total of the amounts that would be deductible by it under subsection 126(1) from its tax for the year otherwise payable under this Part if those amounts were determined without reference to sections 123.3 and 123.4, or

(ii) the amount determined by multiplying the total of the amounts that would be deductible by it under subsection 126(2) from its tax for the year otherwise payable under this Part, if those amounts were determined without reference to section 123.4, by the relevant factor for the year,

(f) in the case of a trust, the amount determined by the formula

Q × (1 ÷ (R × S))

where

Q is the total of the amounts deductible by it under subsection 126(1) or (2) from its tax for the year otherwise payable under this Part for the year,

R is the percentage (expressed as a decimal fraction) referred to in paragraph 122(1)(a) in respect of the year, and

S is 1 plus the percentage (expressed as a decimal fraction) referred to in subsection 120(1) in respect of the year,

(g) an amount included under section 110.5 in computing the taxpayer's taxable income for the year,

(h) an amount included under subsection 104(13) in computing the taxpayer's income for the year, except to the extent of any portion of the amount that

(i) has been designated under subsection 104(19) for the year, or

(ii) gives rise to a deduction under paragraph 94.2(3)(a) in computing the foreign accrual property income for an affiliate taxation year of an entity that is a controlled foreign affiliate of the taxpayer at the end of the affiliate taxation year,

(ii) serait incluse en application de l'alinéa j) dans le calcul des dépenses d'intérêts et de financement de la société de personnes dans le but de calculer son revenu ou sa perte tiré de la source ou de la source située dans un endroit donné, pour l'exercice, si la société de personnes était un contribuable pour l'application du présent article,

D la proportion déterminée du contribuable si les mentions « du revenu total ou de la perte totale » et « au revenu total ou à la perte totale » dans la définition de *proportion déterminée* au paragraphe 248(1) étaient remplacées respectivement par les mentions « de son revenu ou de sa perte, tiré de la source ou de la source située dans un endroit donné » et « à son revenu ou à sa perte, tiré de la source ou de la source située dans un endroit donné »,

E la somme incluse dans le calcul du revenu du contribuable en vertu de l'alinéa 12(1)l.1) relativement au montant visé à l'élément C,

F la partie d'une somme visée à l'élément C qu'il est raisonnable de considérer comme non déductible dans le calcul du revenu du contribuable pour l'année donnée, et qu'elle ne peut être incluse dans le calcul de sa perte autre qu'une perte en capital pour l'année donnée, par l'effet du paragraphe 96(2.1),

i) la partie d'une somme qui, en l'absence du présent article, serait déductible dans le calcul du revenu imposable du contribuable pour l'année donnée et est demandée par le contribuable en application de l'alinéa 111(1)e) relativement à une société de personnes dont le contribuable est un associé et qu'il est raisonnable de considérer comme étant attribuable à une somme visée à l'élément F de l'alinéa h) relativement à un exercice de la société de personnes se terminant dans une autre année d'imposition du contribuable,

j) relativement à une société qui est une société étrangère affiliée contrôlée du contribuable à la fin d'une année d'imposition de la société affiliée se terminant dans l'année donnée, une somme obtenue par la formule suivante :

G × H

où :

G représente les dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée pour l'année d'imposition de la société affiliée,

(i) an amount of the taxpayer's taxable income for the year that is not, because of an Act of Parliament, subject to tax under this Part, or

(j) the amount that would be the taxpayer's income for the year, or that would be the taxpayer's share of the income of a partnership of which the taxpayer is a member, if the taxpayer or partnership had no income or loss other than income that can reasonably be considered to be earned by the taxpayer or the partnership in respect of activities funded by a borrowing (within the meaning of the definition *exempt interest and financing expenses*) that results in exempt interest and financing expenses of the taxpayer or the partnership. (*revenu imposable rajusté*)

affiliate taxation year of a controlled foreign affiliate means the period for which the accounts of the affiliate have been ordinarily made up, but no such period may exceed 53 weeks. (*année d'imposition de la société affiliée*)

cumulative unused excess capacity of a taxpayer for a particular taxation year means the total of all amounts each of which is

(a) the excess capacity of the taxpayer for the particular year, or

(b) the excess capacity of the taxpayer for any of the three immediately preceding taxation years, if the taxpayer's excess capacity for each of those years is determined according to the following rules:

(i) if the taxpayer has an amount of transferred capacity for any taxation year (referred to in this definition as the "transfer year") preceding the particular year,

(A) there are to be reductions to the taxpayer's excess capacity for the transfer year and the three taxation years immediately preceding the transfer year (each referred to in this subparagraph as a "relevant year") in a total amount equal to the total of all amounts each of which is an amount of transferred capacity of the taxpayer for the transfer year (referred to in this definition as the "total transferred capacity amount"), and

(B) the amount by which the taxpayer's excess capacity for a particular relevant year is to be reduced is equal to the lesser of

(I) the taxpayer's excess capacity for the particular relevant year, determined taking into

H le pourcentage de participation déterminé du contribuable à l'égard de la société affiliée pour l'année d'imposition de la société affiliée;

B le total des sommes dont chacune représente :

a) une somme reçue ou à recevoir (à l'exclusion d'un dividende ou relativement à des dépenses d'intérêts et de financement exonérées) par le contribuable au cours d'une année ou un gain du contribuable pour l'année, selon le cas, en vertu ou résultant d'une convention ou d'un arrangement, dans la mesure où, à la fois :

(i) la somme est incluse dans le calcul du revenu du contribuable pour l'année donnée,

(ii) la convention ou l'arrangement est conclu :

(A) soit à titre d'emprunt ou un autre financement du contribuable ou d'une personne ou société de personnes ayant un lien de dépendance avec le contribuable,

(B) soit relativement à un emprunt ou un autre financement du contribuable ou d'une personne ou société de personnes ayant un lien de dépendance avec le contribuable pour couvrir le coût de financement ou l'emprunt ou l'autre financement,

(iii) il est raisonnable de considérer la somme comme réduisant le coût du financement relativement à l'emprunt ou autre financement du contribuable ou d'une personne ou société de personnes ayant un lien de dépendance avec le contribuable,

(iv) il n'est pas raisonnable de considérer que la somme est exclue, réduite, compensée ou autrement effectivement à l'abri de l'impôt en application de la présente partie parce qu'un montant peut être déduit

(A) en application de l'un des paragraphes 20(11) à (12.1) et 126(1) et (2),

(B) au titre de l'impôt sur le revenu ou sur les bénéfices payé à un pays étranger et :

(I) qu'il est raisonnable de considérer comme ayant été payé relativement à cette somme,

(II) il n'est pas un impôt substantiellement semblable à l'impôt en vertu du paragraphe 212(1),

b) au titre du revenu ou de la perte d'une société de personnes, pour un exercice se terminant dans l'année donnée, tiré d'une source quelconque ou

consideration any reductions to that excess capacity under

1 this subparagraph, in respect of amounts of transferred capacity for years preceding the transfer year, and

2 subparagraph (ii), in respect of amounts of absorbed capacity for the transfer year and any years preceding the transfer year, and

(II) the amount, if any, by which the total transferred capacity amount for the transfer year exceeds the reductions, under this subparagraph in respect of that total transferred capacity amount, to the taxpayer's excess capacity for any relevant years preceding the particular relevant year, and

(ii) if the taxpayer has an amount of absorbed capacity for a taxation year (referred to in this definition as the "absorbed capacity year"),

(A) there are to be reductions to the taxpayer's excess capacity for the three taxation years immediately preceding the absorbed capacity year (each referred to in this subparagraph as a "relevant year") in a total amount equal to the amount of absorbed capacity for the absorbed capacity year, and

(B) the amount by which the taxpayer's excess capacity for a particular relevant year is to be reduced is equal to the lesser of

(I) the taxpayer's excess capacity for the particular relevant year, determined taking into account any reductions to that excess capacity under

1 subparagraph (i), in respect of amounts of transferred capacity for years preceding the absorbed capacity year, and

2 this subparagraph, in respect of amounts of absorbed capacity for years preceding the absorbed capacity year, and

(II) the amount, if any, by which the amount of absorbed capacity for the absorbed capacity year exceeds the reductions under this subparagraph in respect of that amount of absorbed capacity to the taxpayer's excess capacity for the relevant years preceding the particular relevant year. (*capacité excédentaire cumulative inutilisée*)

de sources situées dans un endroit donné, la somme obtenue par la formule suivante :

I × J

où :

I représente une somme qui serait visée à l'alinéa a) si, à la fois :

(i) la mention « contribuable » à cet alinéa était remplacée par la mention « société de personnes »,

(ii) la mention « revenu du contribuable pour l'année donnée » au sous-alinéa a)(i) était remplacée par la mention « revenu ou perte de la société de personnes tiré de la source ou de la source dans un endroit donné, pour l'exercice »,

J la proportion déterminée du contribuable si les mentions « du revenu total ou de la perte totale » et « au revenu total ou à la perte totale » dans la définition de *proportion déterminée* au paragraphe 248(1) étaient remplacées respectivement par les mentions « de son revenu ou de sa perte, tiré de la source ou de la source située dans un endroit donné » et « à son revenu ou à sa perte, tiré de la source ou de la source située dans un endroit donné ». (*interest and financing expenses*)

dépenses d'intérêts et de financement de la société affiliée pertinentes À l'égard d'une société étrangère affiliée contrôlée d'un contribuable (calculées comme si la définition de *contribuable* au présent paragraphe n'incluait pas le passage « ou une société de personnes ») pour une année d'imposition de la société affiliée, sous réserve du paragraphe (19), le total des sommes (autre qu'une somme qui est déductible dans le calcul du revenu ou de la perte de la société affiliée qui est inclus dans le calcul du revenu ou de la perte de la société affiliée provenant d'une entreprise exploitée activement en application de l'alinéa 95(2)a) ou une somme qui est visée par la division 95(2)a)(ii)(D) et réputée nulle aux fins du calcul de la valeur des éléments A ou D de la formule figurant à la définition de *revenu étranger accumulé, tiré de biens* au paragraphe 95(1), dont chacune représente des dépenses d'intérêts et de financement de la société affiliée (compte non tenu de l'alinéa j) de l'élément A de la formule figurant à la définition de *dépenses d'intérêts et de financement*) pour l'année d'imposition de la société affiliée dans le but de calculer, relativement au contribuable pour l'année d'imposition de la société affiliée, chaque montant visé aux sous-alinéas 95(2)f)(i) ou (ii), si :

eligible group entity, in respect of a taxpayer resident in Canada, at any time, means a corporation, or a trust, resident in Canada

(a) that is, at that time, related (other than because of a right referred to in paragraph 251(5)(b)) to the taxpayer;

(b) that would, at that time, be affiliated with the taxpayer if section 251.1 were read without reference to the definition *controlled* in subsection 251.1(3);

(c) that is a trust in respect of which the taxpayer's interest in the trust is not a *fixed interest* (as defined in subsection 94(1)); or

(d) that is a beneficiary of the taxpayer, if the taxpayer is a trust, whose interest in the taxpayer is not a *fixed interest* (as defined in subsection 94(1)) (other than a beneficiary that is a registered charity, or a non-profit organization, with whom the taxpayer deals at arm's length). (*entité admissible du groupe*)

excess capacity of a taxpayer for a taxation year means

(a) if subsection 18.21(2) applies in respect of the taxpayer for the year, nil; and

(b) in any other case, the amount determined by the formula

A – B – C

where

A is the amount determined by the formula

D × E + F

where

D is the ratio of permissible expenses of the taxpayer for the year,

E is the adjusted taxable income of the taxpayer for the year, and

F is the amount determined by the formula

G – H × I

where

G is the interest and financing revenues of the taxpayer for the year,

H is the ratio of permissible expenses of the taxpayer for the year, and

I is the lesser of

(i) the amount by which the interest and financing revenues of the taxpayer for the year exceed the interest and

a) la mention de « en l'absence du présent article » dans la définition de *dépenses d'intérêts et de financement* valait mention de « en l'absence de la division 95(2)f.11)(ii)(D) »;

b) la division 95(2)f.11)(ii)(A) était lue sans la mention du paragraphe 18.2(2). (*relevant affiliate interest and financing expenses*)

dépenses d'intérêts et de financement exonérées S'entend, pour une année d'imposition d'un contribuable, du total des montants dont chacun serait inclus, s'il n'était pas tenu compte des « dépenses d'intérêts et de financement exonérées » de l'élément A de la formule figurant à la définition de *dépenses d'intérêts et de financement*, dans les dépenses d'intérêts et de financement du contribuable pour cette année et qui ont été engagés relativement à un emprunt ou un autre financement (appelé « emprunt » à la présente définition), si les conditions ci-après sont remplies :

a) le contribuable ou une société de personnes dont il est un associé a conclu une convention avec une administration du secteur public pour concevoir, construire et financer, ou concevoir, construire, financer, maintenir et exploiter des biens dont l'administration du secteur public, ou une autre administration du secteur public, est propriétaire, sur lesquels elle détient un droit de tenure à bail ou qu'elle a le droit d'acquérir;

b) l'emprunt a été contracté relativement à la convention;

c) il est raisonnable de considérer que la totalité ou la presque totalité du montant est directement ou indirectement assumée par une administration du secteur public visée à l'alinéa a);

d) le montant a été payé ou était payable :

(i) soit à une personne qui n'a pas de lien de dépendance avec le contribuable ou la société de personnes dont il est un associé,

(ii) soit à une personne donnée avec laquelle le contribuable ou la société de personnes dont il est un associé a un lien de dépendance s'il est raisonnable de considérer que la totalité ou la presque totalité du montant payé ou payable à la personne donnée a été payé ou était payable par la personne donnée à une ou plusieurs personnes qui n'ont pas de lien de dépendance avec le contribuable ou la société de personnes dont il est un associé. (*exempt interest and financing expenses*)

financing expenses of the taxpayer for the year, and

(ii) either

(A) if the adjusted taxable income of the taxpayer for the year would, in the absence of section 257, be a negative amount, the absolute value of the negative amount, or

(B) in any other case, nil,

B is the interest and financing expenses of the taxpayer for the year, and

C is the amount deductible by the taxpayer under paragraph 111(1)(a.1) in the year. (*capacité excédentaire*)

excluded entity for a particular taxation year means

(a) a corporation that is throughout the particular year a Canadian-controlled private corporation in respect of which the amount determined for C in paragraph 125(5.1)(a) for the year is less than $50,000,000;

(b) a particular taxpayer resident in Canada, if $1,000,000 is not less than the amount determined by the formula

A – B

where

A is the total of all amounts, each of which is the interest and financing expenses or the exempt interest and financing expenses of

(i) the particular taxpayer for the particular taxation year, or

(ii) another taxpayer resident in Canada for a taxation year (referred to in this subparagraph as the "relevant taxation year") ending in the particular taxation year, if the other taxpayer is an eligible group entity in respect of the particular taxpayer at the end of the relevant taxation year, and

B is the amount that would be determined for A if

(i) the reference in the description of A to "the interest and financing expenses or the exempt interest and financing expenses" were read as a reference to "the interest and financing revenues", and

(ii) the interest and financing revenues of a financial institution group entity were excluded; or

(c) a taxpayer resident in Canada if

entité admissible du groupe En ce qui concerne un contribuable résidant au Canada, à un moment donné, s'entend d'une société ou d'une fiducie, résidant au Canada, qui, selon le cas :

a) est, à ce moment, liée au contribuable (autrement qu'en vertu d'un droit visé à l'alinéa 251(5)b));

b) serait, à ce moment, affiliée au contribuable si l'article 251.1 s'appliquait s'il n'était pas tenu compte de la définition de *contrôlé* au paragraphe 251.1(3);

c) est une fiducie, à l'égard de laquelle la participation du contribuable dans la fiducie n'est pas une *participation fixe* (au sens du paragraphe 94(1));

d) est un bénéficiaire du contribuable, si le contribuable est une fiducie, dont la participation dans le contribuable n'est pas une *participation fixe* (au sens du paragraphe 94(1)) (sauf un bénéficiaire qui est un organisme de bienfaisance enregistré, ou une organisation à but non lucratif, avec lequel le contribuable n'a aucun lien de dépendance). (*eligible group entity*)

entité du groupe d'institutions financières Contribuable qui est, à un moment d'une année d'imposition, l'une des entités suivantes :

a) une banque;

b) une caisse de crédit;

c) une compagnie d'assurance;

d) une entité autorisée par la législation fédérale ou provinciale à exploiter une entreprise d'offre au public de services de fiduciaire;

e) une entité dont l'entreprise principale consiste en une ou plusieurs des activités suivantes :

(i) le prêt d'argent à des personnes avec lesquelles elle n'a aucun lien de dépendance,

(ii) l'achat de titres de créance émis par des personnes avec lesquelles elle n'a aucun lien de dépendance,

(iii) des activités qui donnent principalement lieu aux sommes visées aux alinéas a) à d) de l'élément A de la définition de *revenus d'intérêts et de financement* et qui sont principalement menées avec des personnes avec lesquelles elle n'a aucun lien de dépendance;

(i) all or substantially all of the businesses, if any, and all or substantially all of the undertakings and activities of

(A) the taxpayer are, throughout the particular year, carried on in Canada, and

(B) each eligible group entity in respect of the taxpayer are, throughout the eligible group entity's taxation year that ends in the particular year, carried on in Canada,

(ii) throughout the year, it is the case that

$$A \geq B$$

where

A is $5,000,000, and

B is the greater of

(A) the total of all amounts, each of which is the amount at which the shares of the capital stock of a foreign affiliate of the taxpayer, a foreign affiliate of an eligible group entity in respect of the taxpayer or a foreign affiliate of a partnership of which the taxpayer or an eligible group entity in respect of the taxpayer is a member, would be valued for the purpose of the balance sheet of the taxpayer or the eligible group entity if that balance sheet were prepared in accordance with generally accepted accounting principles used in Canada, other than any amount or portion of an amount that is already included under this clause because the value of the shares of the capital stock of a particular foreign affiliate reflects the value of shares of the capital stock of another foreign affiliate that is owned, directly or indirectly, by the particular foreign affiliate, or

(B) the total of all amounts, each of which is the amount that can reasonably be considered to be the proportionate share, of the taxpayer or an eligible group entity in respect of the taxpayer, of the fair market value of all property of a foreign affiliate of the taxpayer, a foreign affiliate of an eligible group entity in respect of the taxpayer or a foreign affiliate of a partnership of which the taxpayer or an eligible group entity in respect of the taxpayer is a member, other than a property that is shares of the capital stock of another corporation that is a foreign affiliate of the taxpayer, a foreign affiliate of an eligible group entity in respect of the taxpayer or a foreign affiliate of a partnership of

f) une entité donnée qui est une entité admissible du groupe relativement à une entité visée à l'un des alinéas a) à e), si l'entité donnée, ou une société de personnes dont l'entité donnée est un associé et de laquelle elle tire principalement son revenu, selon le cas :

(i) est autorisée en vertu de la législation provinciale sur les valeurs mobilières à se livrer, et se livre principalement, selon le cas :

(A) au commerce des valeurs mobilières,

(B) à la fourniture de services de gestion de portefeuille, de conseils en placement, d'administration de fonds ou de gestion de fonds,

(ii) se livre principalement à la fourniture de services de gestion de portefeuille, de conseils en placement, d'administration de fonds ou de gestion de fonds, y compris les services reliés à ces activités, relativement aux biens immeubles;

g) une entité donnée (sauf une société de portefeuille financière) qui est une entité admissible du groupe relativement à une entité visée à l'un des alinéas a) à f) si la totalité ou la presque totalité des activités de l'entité donnée sont accessoires aux activités exercées ou à l'entreprise exploitée par une ou plusieurs entités visées aux alinéas a) à f) qui sont des entités admissibles du groupe relativement à l'entité donnée. (*financial institution group entity*)

entité exclue S'entend, pour une année d'imposition donnée :

a) d'une société qui est une société privée sous contrôle canadien tout au long de l'année donnée à l'égard de laquelle la valeur de l'élément C de la formule figurant à l'alinéa 125(5.1)a) pour l'année est inférieure à 50 000 000 $;

b) d'un contribuable donné résidant au Canada, si la somme de 1 000 000 $ n'est pas inférieure à la somme obtenue par la formule suivante :

$$A - B$$

où :

A représente le total des montants dont chacun représente les dépenses d'intérêts et de financement ou les dépenses d'intérêts et de financement exonérées :

(i) du contribuable donné pour l'année d'imposition donnée,

which the taxpayer or an eligible group entity in respect of the taxpayer is a member,

(iii) no person or partnership is, at any time in the particular year,

(A) a *specified shareholder* or a *specified beneficiary* (as those terms are defined in subsection 18(5)) of the taxpayer, or of any eligible group entity in respect of the taxpayer, that is not resident in Canada, or

(B) a partnership more than 50% of the fair market value of all interests in which can reasonably be considered to be held, directly or indirectly through one or more trusts or partnerships, by non-resident persons, if the property of the partnership includes,

(I) if the taxpayer or the eligible group entity in respect of the taxpayer is a corporation, shares, or a right to acquire shares, of the capital stock of the taxpayer or an eligible group entity in respect of the taxpayer that, either alone or together with shares, or rights to acquire shares, held by persons or partnerships with whom the partnership does not deal at arm's length,

1 provide 25% or more of the votes that could be cast at an annual meeting of the shareholders of the corporation, or

2 have 25% or more of the fair market value of all capital stock in the corporation, or

(II) if the taxpayer or the eligible group entity in respect of the taxpayer is a trust, an interest, or a right to acquire an interest, as a beneficiary in the taxpayer or an eligible group entity in respect of the taxpayer that, either alone or together with interests, or rights to acquire interests, held by persons or partnerships with whom the partnership does not deal at arm's length, has 25% or more of the fair market value of all interests as a beneficiary in the trust, and

(iv) all or substantially all of the interest and financing expenses of the taxpayer and of each eligible group entity in respect of the taxpayer for the particular year are paid or payable to persons or partnerships that are not, at any time in the particular year, tax-indifferent persons or partnerships that do not deal at arm's length with the taxpayer or

(ii) d'un autre contribuable résidant au Canada pour une année d'imposition (appelée l'« année d'imposition pertinente » au présent sous-alinéa) se terminant au cours de l'année d'imposition donnée, si l'autre contribuable est une entité admissible du groupe relativement au contribuable donné à la fin de l'année d'imposition pertinente,

B le montant qui représenterait l'élément A si, selon le cas :

(i) la mention « les dépenses d'intérêts et de financement ou les dépenses d'intérêts et de financement exonérées » à l'élément A était remplacée par « les revenus d'intérêts et de financement »,

(ii) les revenus d'intérêts et de financement d'une entité du groupe d'institutions financières étaient exclus;

c) d'un contribuable résidant au Canada qui remplit les conditions suivantes :

(i) la totalité ou la presque totalité des entreprises, le cas échéant, et la totalité ou la presque totalité des activités :

(A) du contribuable sont, tout au long de l'année donnée, exploitées au Canada,

(B) de chaque entité admissible du groupe à l'égard du contribuable sont, tout au long de l'année d'imposition de l'entité admissible du groupe qui se termine dans l'année donnée, exploitées au Canada,

(ii) tout au long de l'année, les faits ci-après s'avèrent :

$$\mathbf{A} \geq \mathbf{B}$$

où :

A représente 5 000 000 $,

B la plus élevée des sommes suivantes :

(A) le total des sommes dont chacune représente la somme à laquelle les actions du capital-actions d'une société étrangère affiliée du contribuable, d'une société étrangère affiliée d'une entité admissible du groupe relativement au contribuable ou d'une société étrangère affiliée d'une société de personnes dont le contribuable ou une entité admissible du groupe relativement au contribuable est un associé, serait évaluée en vue de l'établissement du bilan du contribuable ou de l'entité admissible du groupe si ce bilan était

any eligible group entity in respect of the taxpayer. (*entité exclue*)

excluded interest, for a taxation year or fiscal period, means an amount of interest or a lease financing amount, if

(a) the amount is paid in, or payable in or in respect of, the year or period by a corporation or partnership (in this definition referred to as the "payer") to another corporation or partnership (in this definition referred to as the "payee") in respect of a debt or a lease in respect of a particular property;

(b) throughout the period during which the amount accrued (in this definition referred to as the "relevant period")

(i) if the amount is interest, the debt is owed by the payer to the payee, or

(ii) if the amount is a lease financing amount, the lease is between the payer and payee;

(c) where the payer is not a financial institution group entity, the payee is not a financial institution group entity;

(d) throughout the relevant period and at the time of payment

(i) each of the payer and payee is

(A) a taxable Canadian corporation, or

(B) a partnership, no member of which is a natural person, a trust or a corporation that is not a taxable Canadian corporation, and

(ii) one of the following conditions is met:

(A) if the payee is a partnership, all the members of the payee (other than another partnership) are eligible group entities in respect of

(I) if the payer is a partnership, each member of the payer (other than another partnership), and

(II) in any other case, the payer, or

(B) if the payee is not a partnership, the payee is an eligible group entity in respect of

(I) if the payer is a partnership, each member of the payer (other than another partnership), and

dressé conformément aux principes comptables généralement reconnus utilisés au Canada, autre qu'une somme ou partie d'une somme qui est déjà incluse en vertu de la présente division en raison du fait que la valeur des actions du capital-actions d'une société étrangère affiliée donnée comprend la valeur des actions du capital-actions d'une autre société étrangère affiliée qui est détenue, directement ou indirectement, par la société étrangère affiliée donnée,

(B) le total des sommes dont chacune représente la somme qu'il est raisonnable de considérer comme étant la part proportionnelle, du contribuable ou d'une entité admissible du groupe relativement au contribuable, sur la juste valeur marchande de l'ensemble des biens d'une société étrangère affiliée du contribuable, d'une société étrangère affiliée d'une entité admissible du groupe relativement au contribuable ou d'une société étrangère affiliée d'une société de personnes dont le contribuable ou une entité admissible du groupe relativement au contribuable est un associé, autre que des actions du capital-actions d'une autre société qui est une société étrangère affiliée du contribuable, une société étrangère affiliée d'une entité admissible du groupe relativement au contribuable ou une société étrangère affiliée d'une société de personnes dont le contribuable, ou dont une entité admissible du groupe relativement au contribuable, est un associé,

(iii) aucune personne ou société de personnes n'est, à un moment donné de l'année donnée :

(A) un *actionnaire déterminé* ou un *bénéficiaire déterminé* (au sens du paragraphe 18(5)) du contribuable ou de toute entité admissible du groupe à l'égard du contribuable, qui ne réside pas au Canada,

(B) une société de personnes dont il est raisonnable de considérer que plus de 50 % de la juste valeur marchande de l'ensemble des participations dans celle-ci sont détenues, directement ou indirectement, par l'entremise d'une ou de plusieurs fiducies ou sociétés de personnes, par des personnes non-résidentes, si les biens de la société de personnes comprennent :

(I) si le contribuable ou l'entité admissible du groupe à l'égard du contribuable est une société, les actions, ou le droit d'acquérir des

(II) in any other case, the payer; and

(e) the payer — or, if the payer is a partnership, each member of the payer — and the payee — or, if the payee is a partnership, each member of the payee — file with the Minister, in respect of the year or period of both the payer and the payee, a joint election in writing in prescribed manner under this paragraph that

(i) specifies

(A) the amount of the interest or lease financing amount,

(B) if the amount is interest, the amounts outstanding, at the beginning and end of the relevant period, as or on account of the debt in respect of which this paragraph applies, and

(C) if the amount is a lease financing amount, the fair market value of the particular property at the time the lease began, and

(ii) is filed on or before the earliest of the filing-due date of

(A) the payer for its year,

(B) the payee for its year, and

(C) if the payer or the payee is a partnership, any member of the payer or payee for the member's taxation year that includes the end of the fiscal period of the payer or the payee, as the case may be. (*intérêts exclus*)

excluded lease for a taxation year of a taxpayer means a lease

(a) to which the rules in subsection 16.1(1) apply;

(b) that would not be considered to be a lease for a term of more than one year for purposes of paragraph (b) of the definition *specified leasing property* in subsection 1100(1.11) of the *Income Tax Regulations*; or

(c) that is in respect of property

(i) that would not be considered, at the time the lease was entered into, to have a fair market value in excess of $25,000 for purposes of paragraph (c) of that definition, or

(ii) that would be considered, at all times in the taxation year, exempt property for purposes of

actions, du capital-actions du contribuable ou d'une entité admissible du groupe à l'égard du contribuable qui, seul ou avec des actions, ou des droits d'acquérir des actions, détenues par des personnes ou des sociétés de personnes avec lesquelles la société de personnes a un lien de dépendance, selon le cas :

1 confère au moins 25 % des voix pouvant être exprimées à l'assemblée annuelle des actionnaires de la société,

2 confère au moins 25 % de la juste valeur marchande de l'ensemble du capital-actions dans la société,

(II) si le contribuable ou l'entité admissible du groupe à l'égard du contribuable est une fiducie, une participation, ou un droit d'acquérir une participation, à titre de bénéficiaire dans le contribuable ou une entité admissible du groupe à l'égard du contribuable qui, seul ou avec des participations, ou des droits d'acquérir des participations, détenues par des personnes ou des sociétés de personnes avec lesquelles la société de personnes a un lien de dépendance, détient au moins 25 % de la juste valeur marchande de l'ensemble des participations à titre de bénéficiaire dans la fiducie,

(iv) la totalité ou la presque totalité des dépenses d'intérêts et de financement du contribuable et de chaque entité admissible du groupe à l'égard du contribuable pour l'année donnée sont payées ou payables aux personnes ou aux sociétés de personnes qui ne sont pas, au cours de l'année donnée, des personnes ou des sociétés de personnes indifférentes relativement à l'impôt qui ont un lien de dépendance avec le contribuable ou une entité admissible du groupe à l'égard du contribuable. (*excluded entity*)

fiducie commerciale à participation fixe Fiducie résidant au Canada qui, à un moment donné, remplit les conditions suivantes :

a) les seuls bénéficiaires qui peuvent, pour tout motif que ce soit, recevoir, à ce moment ou après, et directement de la fiducie, tout revenu ou capital de la fiducie sont les bénéficiaires qui détiennent une *participation fixe* (au sens du paragraphe 94(1)) dans la fiducie;

b) l'une des conditions prévues aux divisions h)(ii)(A) à (C) de la définition de *fiducie étrangère exempte* au paragraphe 94(1) est remplie. (*fixed interest commercial trust*)

subsection 1100(1.13) of the *Income Tax Regulations*. (*bail exclu*)

exempt interest and financing expenses of a taxpayer for a taxation year means the total of all amounts, each of which would, if the description of A in the definition *interest and financing expenses* were read without reference to "exempt interest and financing expenses", be included in interest and financing expenses of the taxpayer for that year, and that is incurred in respect of a borrowing or other financing (referred to in this definition as the "borrowing"), if

(a) the taxpayer or a partnership of which the taxpayer is a member entered into an agreement with a public sector authority to design, build and finance — or to design, build, finance, maintain and operate — property that the public sector authority, or another public sector authority, owns or has a leasehold interest in or right to acquire;

(b) the borrowing was entered into in respect of the agreement;

(c) it can reasonably be considered that all or substantially all of the amount is directly or indirectly borne by a public sector authority referred to in paragraph (a); and

(d) the amount was paid or payable to

(i) a person that deals at arm's length with the taxpayer or the partnership of which the taxpayer is a member, or

(ii) a particular person that does not deal at arm's length with the taxpayer or the partnership of which the taxpayer is a member if it may reasonably be considered that all or substantially all of the amount paid or payable to the particular person was paid or payable by the particular person to one or more persons that deal at arm's length with the taxpayer or the partnership of which the taxpayer is a member. (*dépenses d'intérêts et de financement exonérées*)

financial holding corporation, for a taxation year, means a corporation (other than a corporation described in any of paragraphs (a) to (f) of the definition *financial institution group entity*) if, throughout the year,

(a) the fair market value of the capital stock of the corporation is primarily attributable to any combination of shares or indebtedness of one or more entities described in any of paragraphs (a) to (f) of the definition

indifférent relativement à l'impôt Personne ou société de personnes qui est, selon le cas :

a) une personne exonérée d'impôt en vertu de l'article 149;

b) une personne non-résidente;

c) une société de personnes dont plus de 50 % de la juste valeur marchande de l'ensemble des participations dans la société de personnes peut raisonnablement être considérée comme étant détenue, directement ou indirectement par l'entremise d'une ou de plusieurs fiducies ou sociétés de personnes, par une ou plusieurs des personnes visées à l'un des alinéas a) ou b);

d) une fiducie résidant au Canada si plus de 50 % de la juste valeur marchande de l'ensemble des participations des bénéficiaires dans la fiducie peut raisonnablement être considéré comme étant détenu, directement ou indirectement par l'entremise d'une ou de plusieurs fiducies ou sociétés de personnes, par une ou plusieurs des personnes visées aux alinéas a) ou b). (*tax-indifferent*)

intérêts exclus Montant des intérêts ou montant du crédit-bail, pour une année d'imposition ou un exercice, si toutes les conditions ci-après sont réunies :

a) le montant est payé au cours de, ou payable au cours de ou relativement à, l'année ou l'exercice par une société ou une société de personnes (appelée « payeur » dans la présente définition) à une autre société ou société de personnes (appelée « bénéficiaire » dans la présente définition) relativement à une dette ou à un bail relativement à un bien donné;

b) tout au long de la période durant laquelle le montant s'est accumulé (appelée « période pertinente » dans la présente définition) :

(i) si le montant représente des intérêts, le payeur doit la dette au bénéficiaire,

(ii) si le montant est un montant du crédit-bail, le bail existe entre le payeur et le bénéficiaire;

c) si le payeur n'est pas une entité du groupe d'institutions financières, le bénéficiaire n'est pas une entité du groupe d'institutions financières;

d) tout au long de la période pertinente et au moment du paiement :

(i) le payeur et le bénéficiaire sont tous deux, selon le cas :

financial institution group entity that are controlled by the corporation; or

(b) the corporation is incorporated under the *Insurance Companies Act* and shares of the capital stock of the corporation are listed on a designated stock exchange. (*société de portefeuille financière*)

financial institution group entity means a taxpayer that at any time in a taxation year is

(a) a bank;

(b) a credit union;

(c) an insurance corporation;

(d) an entity authorized under the laws of Canada or a province to carry on the business of offering its services as a trustee to the public;

(e) an entity whose principal business consists of one or more of

(i) the lending of money to persons with whom the entity deals at arm's length,

(ii) the purchasing of debt obligations issued by persons with whom the entity deals at arm's length, or

(iii) activities which principally give rise to amounts described in paragraphs (a) to (d) of the description of A in the definition *interest and financing revenues* and are principally conducted with persons with whom the entity deals at arm's length;

(f) a particular entity that is an eligible group entity in respect of an entity described in any of paragraphs (a) to (e), if the particular entity, or a partnership of which the particular entity is a member and from which the particular entity primarily derives its income,

(i) is authorized under provincial securities laws to engage in, and primarily engages in, the business of

(A) dealing in securities, or

(B) providing portfolio management, investment advice, fund administration or fund management; or

(ii) primarily engages in the business of providing portfolio management, investment advice, fund administration or fund management, including any

(A) une société canadienne imposable,

(B) une société de personnes dont aucun associé n'est une personne physique, une fiducie ou une société qui n'est pas une société canadienne imposable,

(ii) l'une des conditions suivantes est remplie :

(A) si le bénéficiaire est une société de personnes, tous les associés du bénéficiaire (sauf une autre société de personnes) sont des entités admissibles du groupe à l'égard :

(I) de chaque associé du payeur (sauf une autre société de personnes), si le payeur est une société de personnes,

(II) du payeur dans les autres cas,

(B) si le bénéficiaire n'est pas une société de personnes, le bénéficiaire est une entité admissible du groupe à l'égard :

(I) de chaque associé du payeur (sauf une autre société de personnes) si le payeur est une société de personnes,

(II) du payeur dans les autres cas;

e) le payeur — ou, si le payeur est une société de personnes, chaque associé du payeur — et le bénéficiaire — ou, si le bénéficiaire est une société de personnes, chaque associé du bénéficiaire — présentent au ministre, relativement à l'année ou l'exercice du payeur et du bénéficiaire, un choix conjoint en vertu du présent alinéa selon les modalités réglementaires, dans un document qui :

(i) détermine :

(A) le montant des intérêts ou le montant du crédit-bail,

(B) si le montant représente des intérêts, les sommes impayées, au début et à la fin de la période pertinente, au titre de la dette relativement à laquelle s'applique le présent alinéa,

(C) si le montant est un montant du crédit-bail, la juste valeur marchande du bien donné au moment où le bail commence,

(ii) est présenté au premier en date de la date d'échéance de production qui est applicable :

(A) au payeur pour son année,

services connected to those activities, in respect of real estate; or

(g) a particular entity (other than a financial holding corporation) that is an eligible group entity in respect of any entity described in any of paragraphs (a) to (f) if all or substantially all of the activities of the particular entity are ancillary to the activities or business carried on by one or more entities described in paragraphs (a) to (f) that are eligible group entities in respect of the particular entity. (*entité du groupe d'institutions financières*)

fixed interest commercial trust at any time means a trust resident in Canada, if at that time

(a) the only beneficiaries that may for any reason receive, at or after that time and directly from the trust, any of the income or capital of the trust are beneficiaries that hold *fixed interests* (as defined in subsection 94(1)) in the trust; and

(b) any of the conditions set out in clauses (h)(ii)(A) to (C) in the definition *exempt foreign trust* in subsection 94(1) is met. (*fiducie commerciale à participation fixe*)

foreign accrual property loss of a foreign affiliate for an affiliate taxation year has the meaning assigned by subsection 5903(3) of the *Income Tax Regulations*. (*perte étrangère accumulée, relative à des biens*)

interest and financing expenses of a taxpayer for a particular taxation year means the amount determined by the formula

A – B

where

A is the total of all amounts (other than an amount that is included in exempt interest and financing expenses), each of which is

(a) an amount that

(i) is paid in, or payable in or in respect of, a year as, on account of, in lieu of payment of or in satisfaction of, interest (other than excluded interest for the particular year or an amount that is deemed to be interest under subsection 137(4.1)),

(ii) would, in the absence of this section, be deductible (other than under a provision referred to in subparagraph (c)(i)) by the taxpayer in computing its income for the particular year, and

(B) au bénéficiaire pour son année,

(C) si le payeur ou le bénéficiaire est une société de personnes, à tout associé du payeur ou du bénéficiaire pour son année d'imposition qui inclut la fin de l'exercice du payeur ou du bénéficiaire selon le cas. (*excluded interest*)

intérêts pertinents entre sociétés affiliées Relativement à une société étrangère affiliée contrôlée d'un contribuable pour une année d'imposition de la société affiliée, s'entend d'un montant d'intérêts dans la mesure où le montant, à la fois :

a) est payé ou payable par la société affiliée à une société étrangère affiliée contrôlée (appelée « autre société affiliée » à la présente définition), ou reçu ou à recevoir par la société affiliée d'une autre société, selon le cas :

(i) du contribuable

(ii) d'un contribuable qui est une entité admissible du groupe relativement au contribuable;

b) serait, en l'absence du paragraphe (19), inclus, selon le cas :

(i) si le montant est payé ou payable par la société affiliée, dans ses dépenses d'intérêts et de financement de la société affiliée pertinentes pour l'année d'imposition de la société affiliée et dans les revenus d'intérêts et de financement de la société affiliée pertinents de l'autre société affiliée pour une année d'imposition de la société affiliée,

(ii) si le montant est reçu ou à recevoir par la société affiliée, dans ses revenus d'intérêts et de financement de la société affiliée pertinents pour l'année d'imposition de la société affiliée et dans les dépenses d'intérêts et de financement de la société affiliée pertinentes de l'autre société affiliée pour une année d'imposition de la société affiliée. (*relevant inter-affiliate interest*)

montant du crédit-bail Somme représentant la partie d'un paiement donné relativement à un bail donné conclu par un contribuable qui serait considéré au titre des intérêts si les conditions ci-après sont réunies :

a) le preneur avait reçu un prêt au moment où le bail donné a commencé et le principal correspond à la juste valeur marchande du bien à ce moment qui est assujetti au bail donné;

b) des intérêts, composés semestriellement et non à l'avance, avaient été imputés sur le principal du prêt à

(iii) is not described in any other paragraph in this definition,

(b) an amount that, in the absence of this section and on the assumption that it is not deductible under another provision of this Act (other than any of the provisions referred to in subparagraph (c)(i)), would be deductible in computing the taxpayer's income for the particular year under any of subparagraphs 20(1)(e)(ii) to (ii.2) and paragraphs 20(1)(e.1) to (f),

(c) the portion of an amount, if

(i) the amount, in the absence of this section, would be deductible in computing the taxpayer's income for the particular year and is claimed by the taxpayer under paragraph 20(1)(a) or subsection 66(4), 66.1(2) or (3), 66.2(2), 66.21(4), 66.4(2) or 66.7(1), (2), (2.3), (3), (4) or (5), and

(ii) the portion can reasonably be considered to be attributable to an amount paid or payable on or after February 4, 2022 that either

(A) is described in subparagraph (a)(i), or

(B) would otherwise have been deductible in a taxation year under a provision referred to in paragraph (b), but for the application of another provision of this Act,

(d) the portion of an amount that would, in the absence of this section, be deductible in computing the taxpayer's income for the particular year under subsection 20(16), to the extent that the portion can reasonably be considered to be described in subparagraph (c)(ii),

(e) an amount that is paid or payable by the taxpayer in a year or that is a loss or a capital loss of the taxpayer for a year, as the case may be, under or as a result of an agreement or arrangement, if

(i) the amount would, in the absence of this section

(A) be deductible (other than under subparagraph 20(1)(e)(i)) in computing the taxpayer's income for the particular year, or

(B) in the case of a capital loss, reduce the amount determined under paragraph 3(b) in respect of the taxpayer or be deductible in computing the taxpayer's taxable income for the particular year (except to the extent it has already been included under this paragraph for a previous year),

(ii) the agreement or arrangement is entered into as or in relation to a borrowing or other

rembourser au taux établi conformément à l'article 4302 du *Règlement de l'impôt sur le revenu* en vigueur au moment visé à l'alinéa a);

c) le paiement donné était un paiement de principal et d'intérêts, calculé conformément à l'alinéa b), sur le prêt appliqué d'abord en réduction des intérêts sur le principal, ensuite en réduction des intérêts sur les intérêts impayés et enfin en réduction du principal. (*lease financing amount*)

opération Comprend les arrangements ou les événements. (*transaction*)

perte antérieure au régime déterminée À l'égard d'un contribuable pour une année d'imposition, s'entend des pertes autres qu'en capital du contribuable relativement à une année d'imposition antérieure, si, à la fois :

a) l'année antérieure se termine avant le 4 février 2022;

b) le contribuable présente au ministre, relativement à la perte, un choix écrit en vertu de la présente définition selon les modalités réglementaires;

c) le choix précise les sommes suivantes :

(i) la perte,

(ii) chaque montant déduit, relativement à la perte, par le contribuable en vertu de l'alinéa 111(1)a) dans le calcul de son revenu imposable :

(A) pour l'année,

(B) chaque année d'imposition antérieure à l'année,

(iii) le revenu imposable rajusté du contribuable pour l'année;

d) le choix est présenté au plus tard à la date d'échéance de production qui lui est applicable pour l'année. (*specified pre-regime loss*)

perte étrangère accumulée, relative à des biens À l'égard d'une société étrangère affiliée pour une année d'imposition de la société affiliée, a le sens que lui confère le paragraphe 5903(3) du *Règlement de l'impôt sur le revenu*. (*foreign accrual property loss*)

pourcentage de participation déterminé En ce qui concerne un contribuable à l'égard d'une société étrangère affiliée contrôlée du contribuable pour une année d'imposition de la société affiliée, le pourcentage qui serait le *pourcentage de participation total* (au sens du

financing that the taxpayer or a person or partnership that does not deal at arm's length with the taxpayer enters into, whether currently or in the future, and absolutely or contingently, and

(iii) the amount can reasonably be considered to increase (or be part of) the cost of funding with respect to the borrowing or other financing (including as a result of any hedge of the cost of funding or of the borrowing or other financing) of the taxpayer or a person or partnership that does not deal at arm's length with the taxpayer;

(f) a particular amount that

(i) is in respect of an agreement or arrangement that gives rise to, or can reasonably be expected to give rise to, an amount that

(A) is included in computing a taxpayer's interest and financing expenses for a taxation year under paragraph (e), or

(B) reduces the taxpayer's interest and financing expenses for a taxation year under the description of B,

(ii) would, in the absence of this section, be deductible by the taxpayer in computing its income for the particular year,

(iii) is not deductible under any of the provisions listed in paragraph (b), and

(iv) is an expense or fee payable under the agreement or arrangement or an expense that is incurred in contemplation of, in the course of entering into or in relation to, the agreement or arrangement,

(g) a lease financing amount (other than in respect of an excluded lease for the particular year) that

(i) would, in the absence of this section, be deductible by the taxpayer in computing its income for the particular year, and

(ii) is not excluded interest for the particular year,

(h) in respect of the income or loss of a partnership, for a fiscal period that ends in the particular year, from any source or from sources in a particular place, an amount determined by the formula

C × D – E – F

where

C is the total of all amounts, each of which is an amount that

paragraphe 91(1.3)) du contribuable, calculé compte non tenu de la division 95(2)f.11)(ii)(D), à l'égard de la société affiliée pour l'année d'imposition de la société affiliée, si la définition de *pourcentage de participation* au paragraphe 95(1) était lue sans la mention :

a) de son alinéa a);

b) du passage de son alinéa b) qui précède son sous-alinéa b)(i). (*specified participating percentage*)

ratio des dépenses admissibles En ce qui concerne un contribuable pour une année d'imposition, le pourcentage qui est, à la fois :

a) si l'année d'imposition du contribuable commence le 1er octobre 2023 ou après, et avant le 1er janvier 2024, 40 %, sauf lorsqu'il s'agit de déterminer sa capacité excédentaire cumulative inutilisée pour une année d'imposition qui commence le 1er janvier 2024 ou après;

b) si l'année d'imposition du contribuable commence le 1er janvier 2024 ou après, et aux fins visées à l'alinéa a) pour lesquelles 40 % n'est pas le pourcentage applicable, 30 %. (*ratio of permissible expenses*)

revenus d'intérêts et de financement S'entend, relativement à un contribuable pour une année d'imposition, de la somme obtenue par la formule suivante :

A – B

où :

A représente le total des sommes, sauf toute somme incluse dans l'élément B de la définition de *dépenses d'intérêts et de financement*, dont chacune représente :

a) une somme reçue ou à recevoir au titre ou en paiement intégral ou partiel des intérêts (sauf les intérêts exclus pour l'année, une somme réputée être des intérêts en vertu du paragraphe 137(4.1) ou tout montant visé par tout autre alinéa de la présente définition) qui sont inclus par le contribuable dans le calcul de son revenu pour l'année;

b) une somme qui est incluse par le contribuable dans le calcul du revenu pour l'année par l'effet du paragraphe 12(9) ou de l'article 17.1 (sauf tout montant visé par tout autre alinéa de la présente définition);

c) des frais ou une somme similaire relativement à une garantie, ou un soutien au crédit similaire, fourni par le contribuable pour le paiement de toute somme sur une créance due par une autre personne ou société de personnes qui sont inclus

(i) is deductible by the partnership in computing its income or loss from the source, or the source in a particular place, for a fiscal period, and that would be described in any of paragraphs (a) to (g) if the references to the taxpayer were read as references to the partnership, or

(ii) would be included under paragraph (j) in determining the interest and financing expenses of the partnership for the purposes of determining its income or loss from the source, or the source in a particular place, for the fiscal period, if the partnership were a taxpayer for the purposes of this section,

D is the taxpayer's specified proportion, if the references in the definition *specified proportion* in subsection 248(1) to "total income or loss" were read as "income or loss from the source, or the source in a particular place",

E is the amount, if any, included in computing the taxpayer's income under paragraph 12(1)(l.1) in respect of the amount referred to in the description of C, and

F is the portion of an amount determined for C that can reasonably be considered to not be deductible in computing the taxpayer's income for the particular year, and to not be included in computing the taxpayer's non-capital loss for the particular year, because of subsection 96(2.1),

(i) the portion of an amount that, in the absence of this section, would be deductible in computing the taxpayer's taxable income for the particular year and is claimed by the taxpayer under paragraph 111(1)(e) in respect of a partnership of which the taxpayer is a member that can reasonably be considered to be attributable to an amount referred to in the description of F in paragraph (h) in respect of a fiscal period of the partnership ending in another taxation year of the taxpayer, or

(j) in respect of a corporation that is a controlled foreign affiliate of the taxpayer at the end of an affiliate taxation year ending in the particular year, an amount determined by the formula

G × H

where

G is the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year, and

dans le calcul du revenu du contribuable pour l'année (sauf tout montant visé par tout autre alinéa de la présente définition);

d) une somme reçue ou à recevoir (à l'exclusion d'un dividende) par le contribuable ou un gain du contribuable, selon le cas, en vertu ou résultant d'une convention ou d'un arrangement, si les conditions ci-après sont réunies :

(i) la somme est incluse dans le calcul du revenu du contribuable pour l'année,

(ii) la convention ou l'arrangement est conclu relativement à un prêt ou autre financement dû au contribuable ou une personne ou société de personnes ayant un lien de dépendance avec le contribuable ou fourni par l'un de ceux-ci,

(iii) il est raisonnable de considérer la somme comme augmentant le rendement (ou faisant partie du rendement) du contribuable ou d'une personne ou société de personnes ayant un lien de dépendance avec le contribuable à l'égard du prêt ou d'un autre financement (y compris à la suite de toute couverture du rendement ou du prêt ou d'un autre financement);

e) un montant du crédit-bail (sauf s'il s'agit d'un bail qui serait un bail exclu pour l'année s'il n'était pas tenu compte de l'alinéa a) de la définition de *bail exclu*) qui, à la fois :

(i) est inclus dans le calcul du revenu du contribuable pour l'année,

(ii) ne représente pas des intérêts exclus pour l'année;

f) relativement au revenu ou à la perte d'une société de personnes, pour un exercice se terminant dans l'année, tiré d'une source ou de sources situées dans un endroit donné, la somme obtenue par la formule suivante :

C × D

où :

C représente le total des sommes dont chacune représente une somme :

(i) qui est incluse par la société de personnes dans le calcul de son revenu ou de sa perte tiré de la source ou de la source située dans un endroit donné, pour un exercice, et qui serait visée aux alinéas a) à e) si la mention « contribuable » était remplacée par la mention « société de personnes »,

(ii) qui serait incluse en vertu de l'alinéa g) dans le calcul des revenus d'intérêts et de financement de la société de personnes

H is the taxpayer's specified participating percentage in respect of the affiliate for the affiliate taxation year; and

B is the total of all amounts, each of which is

(a) an amount received or receivable (other than as a dividend or in respect of exempt interest and financing expenses) by the taxpayer in a year, or a gain of the taxpayer for a year, as the case may be, under or as a result of an agreement or arrangement to the extent that

(i) the amount is included in computing the taxpayer's income for the particular year,

(ii) the agreement or arrangement is entered into

(A) as a borrowing or other financing of the taxpayer or of a person or partnership that does not deal at arm's length with the taxpayer, or

(B) in relation to a borrowing or other financing of the taxpayer or of a person or partnership that does not deal at arm's length with the taxpayer to hedge the cost of funding or the borrowing or other financing,

(iii) the amount can reasonably be considered to reduce the cost of funding with respect to the borrowing or other financing of the taxpayer or a person or partnership that does not deal at arm's length with the taxpayer, and

(iv) the amount cannot reasonably be considered to be excluded, reduced, offset or otherwise effectively sheltered from tax under this Part because

(A) an amount is deductible under any of subsections 20(11) to (12.1) and 126(1) and (2), and

(B) an amount is deductible in respect of income or profits tax paid to a country other than Canada that

(I) can reasonably be considered to have been paid in respect of the amount, and

(II) is not a tax substantially similar to tax under subsection 212(1), or

(b) in respect of the income or loss of a partnership, for a fiscal period that ends in the particular year, from any source or from sources in a particular place, an amount determined by the formula

I × J

where

dans le but d'en calculer le revenu ou la perte tiré de la source ou de la source située dans un endroit donné, pour l'exercice, si la société de personnes était un contribuable pour l'application du présent article,

D la proportion déterminée du contribuable si les mentions « du revenu total ou de la perte totale » et « au revenu total ou à la perte totale » dans la définition de *proportion déterminée* au paragraphe 248(1) étaient remplacées respectivement par les mentions « de son revenu ou de sa perte, tiré de la source ou de la source située dans un endroit donné » et « à son revenu ou à sa perte, tiré de la source ou de la source située dans un endroit donné »;

g) relativement à une société qui est une société étrangère affiliée contrôlée du contribuable à la fin d'une année d'imposition de la société affiliée qui se termine dans l'année, une somme obtenue par la formule suivante :

E × F – G

où :

E représente les revenus d'intérêts et de financement de la société affiliée pertinents de la société affiliée pour l'année d'imposition de la société affiliée,

F le pourcentage de participation déterminée du contribuable à l'égard de la société affiliée pour l'année d'imposition de la société affiliée,

G un montant (autre que toute partie du montant relativement à l'impôt sur le revenu payé en vertu du paragraphe 212(1)) déduit en application du paragraphe 91(4) dans le calcul du revenu du contribuable pour toute année d'imposition à l'égard de l'*impôt étranger accumulé* (au sens du paragraphe 95(1)) applicable à une somme qui est incluse dans le revenu du contribuable en vertu du paragraphe 91(1) à l'égard des revenus d'intérêts et de financement de la société affiliée pertinents de la société affiliée pour l'année d'imposition de la société affiliée;

B le total des sommes dont chacune représente :

a) une somme payée ou payable par le contribuable ou une perte ou une perte en capital du contribuable, selon le cas, en vertu ou résultant d'une convention ou d'un arrangement, dans la mesure où, à la fois :

(i) la somme

I is an amount that would be described in paragraph (a) if

(i) the references to the taxpayer in that paragraph were read as references to the partnership, and

(ii) the reference in subparagraph (a)(i) to "the taxpayer's income for the particular year" were read as "the partnership's income or loss from the source, or the source in a particular place, for a fiscal period", and

J is the taxpayer's specified proportion, if the references in the definition *specified proportion* in subsection 248(1) to "total income or loss" were read as "income or loss from the source, or the source in a particular place". (*dépenses d'intérêts et de financement*)

interest and financing revenues of a taxpayer for a taxation year means the amount determined by the formula

A – B

where

A is the total of all amounts (other than any amount included under the description of B in the definition *interest and financing expenses*), each of which is

(a) an amount received or receivable as, on account of, in lieu of payment or in satisfaction of, interest (other than excluded interest for the year, an amount that is deemed to be interest under subsection 137(4.1) or any amount described in any other paragraph in this definition) that is included in computing the taxpayer's income for the year,

(b) an amount that is included in computing the taxpayer's income for the year because of subsection 12(9) or section 17.1 (other than any amount described in any other paragraph in this definition),

(c) a fee or similar amount in respect of a guarantee, or similar credit support, provided by the taxpayer for the payment of any amount on a debt obligation owing by another person or partnership that is included in computing the taxpayer's income for the year (other than any amount described in any other paragraph in this definition),

(d) an amount received or receivable (other than as a dividend) by the taxpayer, or a gain of the taxpayer, as the case may be, under or as a result of an agreement or arrangement, if

(A) est déductible dans le calcul du revenu du contribuable pour l'année,

(B) dans le cas d'une perte en capital, réduit la somme déterminée selon l'alinéa 3b) relativement au contribuable ou est déductible dans le calcul du revenu imposable du contribuable pour l'année (sauf dans la mesure où il a déjà été pris en compte dans la détermination d'une somme en application du présent alinéa pour une année antérieure),

(ii) la convention ou l'arrangement est conclu :

(A) soit à titre de prêt ou autre financement dû au contribuable, ou une personne ou société de personnes ayant avec le contribuable un lien de dépendance, ou fourni par l'un de ceux-ci,

(B) soit relativement à un prêt ou autre financement dû au contribuable, ou une personne ou société de personnes ayant avec le contribuable un lien de dépendance, ou fourni par l'un de ceux-ci, pour couvrir le coût du financement ou l'emprunt ou autre financement,

(iii) il est raisonnable de considérer la somme comme réduisant le rendement du contribuable, ou d'une personne ou société de personnes ayant avec le contribuable un lien de dépendance, à l'égard du prêt ou d'autre financement;

b) au titre du revenu ou de la perte d'une société de personnes, pour un exercice se terminant dans l'année, tiré d'une source quelconque ou de sources situées dans un endroit donné, la somme obtenue par le formule suivante :

H × I

où :

H représente une somme qui serait visée à l'alinéa a) si :

(i) la mention « contribuable » à cet alinéa était remplacée par la mention « société de personnes »,

(ii) la mention « revenu du contribuable pour l'année donnée » au sous-alinéa a)(i) était remplacée par la mention « revenu ou perte de la société de personnes tiré de la source ou de la source dans un endroit donné, pour l'exercice »,

I la proportion déterminée du contribuable si les mentions « du revenu total ou de la perte

(i) the amount is included in computing the taxpayer's income for the year,

(ii) the agreement or arrangement is entered into as or in relation to a loan or other financing owing to or provided by the taxpayer or a person or partnership that does not deal at arm's length with the taxpayer, and

(iii) the amount can reasonably be considered to increase (or be part of) the return of the taxpayer or a person or partnership that does not deal at arm's length with the taxpayer with respect to the loan or other financing (including as a result of any hedge of the return or of the loan or other financing),

(e) a lease financing amount (other than in respect of a lease that would be an excluded lease for the year, if the definition *excluded lease* were read without regard to its paragraph (a)) that

(i) is included in computing the taxpayer's income for the year, and

(ii) is not excluded interest for the year,

(f) in respect of the income or loss of a partnership, for a fiscal period that ends in the year, from any source or from sources in a particular place, an amount determined by the formula

C × D

where

C is the total of all amounts, each of which is an amount that

(i) is included by the partnership in computing its income or loss from the source, or the source in a particular place, for a fiscal period and that would be described in paragraphs (a) to (e) if the references to the taxpayer were read as references to the partnership, or

(ii) would be included under paragraph (g) in determining the interest and financing revenues of the partnership for the purposes of determining its income or loss from the source, or the source in a particular place, for the fiscal period, if the partnership were a taxpayer for the purposes of this section, and

D is the taxpayer's specified proportion, if the references in the definition *specified proportion* in subsection 248(1) to "total income or loss" were read as "income or loss from the source, or the source in a particular place", or

totale » et « au revenu total ou à la perte totale » dans la définition de *proportion déterminée* au paragraphe 248(1) étaient remplacées respectivement par les mentions « de son revenu ou de sa perte, tiré de la source ou de la source située dans un endroit donné » et « à son revenu ou à sa perte, tiré de la source ou de la source située dans un endroit donné »;

c) la partie de toute somme de l'élément A (appelée « somme en cause » au présent alinéa) qu'il est raisonnable de considérer comme étant exclue, réduite, compensée ou autrement effectivement à l'abri de l'impôt en application de la présente partie parce qu'un montant peut être déduit :

(i) en application de l'un des paragraphes 20(11) à (12.1) et 126(1) et (2),

(ii) au titre de l'impôt sur le revenu ou sur les bénéfices payé à un pays étranger et :

(A) qu'il est raisonnable de considérer comme ayant été payé relativement à la somme en cause,

(B) il n'est pas un impôt substantiellement semblable à l'impôt en vertu du paragraphe 212(1);

d) la partie de toute somme de l'élément A qui n'est pas assujettie à l'impôt en vertu de la présente partie par l'effet de quelque loi fédérale. (*interest and financing revenues*)

revenus d'intérêts et de financement de la société affiliée pertinents À l'égard d'une société étrangère affiliée contrôlée d'un contribuable (calculés comme si la définition de *contribuable* au présent paragraphe n'incluait pas le passage « ou une société de personnes ») pour une année d'imposition de la société affiliée, sous réserve du paragraphe (19), le total des sommes (sauf toute somme incluse dans le calcul du revenu ou de la perte de la société affiliée provenant d'une entreprise exploitée activement pour l'application des alinéas 95(2)a) ou (2.44)b)), dont chacune représente les revenus d'intérêts et de financement de la société affiliée (compte non tenu de l'alinéa g) de l'élément A de la définition de *revenus d'intérêts et de financement*) pour l'année d'imposition de la société affiliée aux fins du calcul, relativement au contribuable pour l'année d'imposition de la société affiliée, chaque montant mentionné aux sous-alinéas 95(2)f)(i) ou (ii), si la division 95(2)f.11)(ii)(A) était lue sans la mention du paragraphe 18.2(2). (*relevant affiliate interest and financing revenues*)

revenu imposable rajusté En ce qui concerne un contribuable pour une année d'imposition, la somme obtenue par la formule suivante :

(g) in respect of a corporation that is a controlled foreign affiliate of the taxpayer at the end of an affiliate taxation year ending in the year, an amount determined by the formula

E × F – G

where

E is the affiliate's relevant affiliate interest and financing revenues for the affiliate taxation year,

F is the taxpayer's specified participating percentage in respect of the affiliate for the affiliate taxation year, and

G is an amount (other than any portion of the amount that is in respect of income tax paid under subsection 212(1)) that is deducted under subsection 91(4) in computing the taxpayer's income for any taxation year in respect of *foreign accrual tax* (as defined in subsection 95(1)) applicable to an amount that is included in the taxpayer's income under subsection 91(1) in respect of the affiliate's relevant affiliate interest and financing revenues for the affiliate taxation year, and

B is the total of all amounts, each of which is

(a) an amount paid or payable by the taxpayer, or a loss or a capital loss of the taxpayer, as the case may be, under or as a result of an agreement or arrangement, to the extent that

(i) the amount

(A) is deductible in computing the taxpayer's income for the year, or

(B) in the case of a capital loss, reduces the amount determined under paragraph 3(b) in respect of the taxpayer or is deductible in computing the taxpayer's taxable income for the year (except to the extent it has already been taken into account in determining an amount under this paragraph for a previous year),

(ii) the agreement or arrangement is entered into

(A) as a loan or other financing owing to or provided by the taxpayer, or a person or partnership that does not deal at arm's length with the taxpayer, or

(B) in relation to a loan or other financing owing to or provided by the taxpayer, or a person or partnership that does not deal at arm's length with the taxpayer, to hedge the

A + B – C

où :

A représente la somme positive ou négative obtenue par la formule :

D – E

où :

D représente :

a) lorsque le contribuable est un non-résident, son revenu imposable gagné au Canada pour l'année (déterminé compte non tenu du paragraphe (2) et des alinéas 12(1)l.2) et 111(1)a.1)),

b) dans les autres cas, son revenu imposable pour l'année (déterminé compte non tenu du paragraphe (2), des alinéas 12(1)l.2) et 111(1)a.1) et de la division 95(2)f.11)(ii)(D)),

E le total des sommes suivantes :

a) la perte autre qu'une perte en capital du contribuable pour l'année (déterminée compte non tenu du paragraphe (2), des alinéas 12(1)l.2) et 111(1)a.1) et de la division 95(2)f.11)(ii)(D)),

b) le total des sommes dont chacune représente, relativement à une société qui est une société étrangère affiliée contrôlée du contribuable à la fin d'une année d'imposition de la société affiliée se terminant dans l'année – ou une société étrangère affiliée contrôlée d'une société de personnes dont le contribuable ou une société étrangère affiliée contrôlée du contribuable est associé, à la fin d'une année d'imposition de la société affiliée se terminant au cours d'un exercice de la société de personnes – la somme obtenue par la formule suivante :

T × U ÷ V

où :

T représente la moindre des sommes suivantes :

(i) la perte étrangère accumulée, relative à des biens (déterminée compte non tenu de la division 95(2)f.11)(ii)(D)) pour l'année d'imposition de la société affiliée,

(ii) l'excédent des dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée pour l'année d'imposition de la société affiliée sur ses revenus d'intérêts et de

cost of funding or the borrowing or other financing, and

(iii) the amount can reasonably be considered to reduce the return of the taxpayer, or a person or partnership that does not deal at arm's length with the taxpayer, in respect of the loan or other financing;

(b) in respect of the income or loss of a partnership, for a fiscal period that ends in the year, from any source or from sources in a particular place, an amount determined by the formula

H × I

where

H is an amount that would be described in paragraph (a) if

(i) the references to the taxpayer in that paragraph were read as references to the partnership, and

(ii) the reference in subparagraph (a)(i) to "the taxpayer's income for the year" were read as "the partnership's income or loss from the source, or the source in a particular place, for a fiscal period", and

I is the taxpayer's specified proportion, if the references in the definition *specified proportion* in subsection 248(1) to "total income or loss" were read as "income or loss from the source, or the source in a particular place",

(c) the portion of any amount included under the description of A (referred to in this paragraph as the "subject amount") that can reasonably be considered to be excluded, reduced, offset or otherwise effectively sheltered from tax under this Part because an amount is deductible

(i) under any of subsections 20(11) to (12.1) and 126(1) and (2), and

(ii) in respect of income or profits tax paid to a country other than Canada that

(A) can reasonably be considered to have been paid in respect of the subject amount, and

(B) is not a tax substantially similar to tax under subsection 212(1),

(d) the portion of any amount included under A that is not, because of an Act of Parliament, subject to tax under this Part. (*revenus d'intérêts et de financement*)

lease financing amount means an amount that is the portion of a particular payment in respect of a particular

financement de la société affiliée pertinents pour l'année d'imposition de la société affiliée,

U la somme qui est incluse dans les dépenses d'intérêts et de financement du contribuable pour l'année relativement aux dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée pour l'année d'imposition de la société affiliée,

V les dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée pour l'année d'imposition de la société affiliée;

B le total des sommes (sauf, sous réserve de l'alinéa k), une somme qu'il est raisonnable de considérer comme relative aux dépenses d'intérêts et de financement exonérées) dont chacune représente :

a) les dépenses d'intérêts et de financement du contribuable pour l'année;

b) une somme que le contribuable a déduite dans le calcul de son revenu pour l'année en application des alinéas 20(1)a) et 59.1a), des paragraphes 66(4), 66.1(2) ou (3), 66.2(2), 66.21(4), 66.4(2) ou 66.7(1), (2), (2.3), (3), (4) ou (5), sauf toute fraction de cette somme visée au sous-alinéa c)(ii) de l'élément A dans la définition de *dépenses d'intérêts et de financement*;

c) une somme que le contribuable a déduite dans le calcul de son revenu pour l'année en application du paragraphe 20(16), sauf toute fraction de cette somme visée à l'alinéa d) de l'élément A dans la définition de *dépenses d'intérêts et de financement*;

d) au titre du revenu ou de la perte d'une société de personnes, pour un exercice se terminant dans l'année, tiré d'une source quelconque ou de sources situées dans un endroit donné, la somme obtenue par la formule suivante :

F × G – H

où :

F représente le total des sommes dont chacune est une somme déduite par la société de personnes selon l'alinéa 20(1)a) ou le paragraphe 20(16) dans le calcul de son revenu ou de sa perte, tiré de la source ou de la source située dans un endroit donné, pour l'exercice, sauf toute fraction de cette somme visée au sous-alinéa c)(ii) de l'élément A dans la définition de *dépenses d'intérêts et de financement*,

lease entered into by a taxpayer that would be considered to be on account of interest if

(a) the lessee had received a loan at the time the particular lease began and in a principal amount equal to the fair market value at that time of the property that is the subject of the particular lease;

(b) interest had been charged on the principal amount of the loan outstanding from time to time at the rate — determined in accordance with section 4302 of the *Income Tax Regulations* — in effect at the time described in paragraph (a), compounded semi-annually not in advance; and

(c) the particular payment was a blended payment of principal and interest, calculated in accordance with paragraph (b), on the loan applied firstly on account of interest on principal, secondly on account of interest on unpaid interest and thirdly on account of principal. (*montant du crédit-bail*)

public sector authority means His Majesty in right of Canada, His Majesty in right of a province, an entity referred to in any of paragraphs 149(1)(c) to (d.6), a *hospital authority* (as defined in subsection 123(1) of the *Excise Tax Act*) or a registered charity that is a *public college*, *school authority* or *university* (each as defined in subsection 123(1) of the *Excise Tax Act*). (*administration du secteur public*)

ratio of permissible expenses of a taxpayer for a taxation year means the percentage that is

(a) if the taxpayer's taxation year begins on or after October 1, 2023, and before January 1, 2024, 40%, other than for the purpose of determining the taxpayer's cumulative unused excess capacity for any taxation year that begins on or after January 1, 2024; and

(b) if the taxpayer's taxation year begins on or after January 1, 2024, and for the purposes referred to in paragraph (a) for which 40% is not the applicable percentage, 30%. (*ratio des dépenses admissibles*)

received capacity means an amount of received capacity of a transferee for a taxation year as determined under subsection (4). (*capacité reçue*)

relevant affiliate interest and financing expenses of a controlled foreign affiliate of a taxpayer (determined as though the definition *taxpayer* in this subsection did not include the words "or a partnership") for an affiliate taxation year means, subject to subsection (19), the total of all amounts (other than an amount that is deductible in computing any income or loss of the affiliate that is

G la proportion déterminée du contribuable si les mentions « du revenu total ou de la perte totale » et « au revenu total ou à la perte totale » faites dans la définition de *proportion déterminée* au paragraphe 248(1) étaient remplacées respectivement par les mentions « de son revenu ou de sa perte, tiré de la source ou de la source située dans un endroit donné » et « à son revenu ou à sa perte, tiré de la source ou de la source située dans un endroit donné »,

H la partie d'un montant visé à l'élément F qu'il est raisonnable de considérer comme non déductible dans le calcul du revenu du contribuable pour l'année, ou exclu du calcul de sa perte autre qu'une perte en capital pour l'année, par l'effet du paragraphe 96(2.1);

e) la partie d'une somme déduite selon l'alinéa 111(1)e) pour l'année, relativement à une société de personnes dont le contribuable est associé, qu'il est raisonnable de considérer comme étant attribuable à une somme visée à l'élément H de l'alinéa d) relativement à un exercice de la société de personnes qui se termine dans une année d'imposition précédente du contribuable;

f) une somme déduite par le contribuable en application de l'alinéa 110(1)k) dans le calcul de son revenu imposable pour l'année;

g) une somme déduite par le contribuable en application du paragraphe 104(6) dans le calcul de son revenu pour l'année, sauf dans la mesure où une fraction de la somme a été désignée en application du paragraphe 104(19) pour l'année;

h) une somme obtenue par la formule suivante :

I × J ÷ K

où :

I représente la somme déduite par le contribuable en application de l'alinéa 111(1)a) dans le calcul de son revenu imposable pour l'année, relativement à sa perte autre qu'une perte en capital (autre qu'une perte antérieure au régime déterminée du contribuable relativement à l'année) pour une autre année d'imposition (appelée « année de perte du contribuable » au présent alinéa),

J la moindre des sommes suivantes :

(i) la perte autre qu'une perte en capital pour l'année de perte du contribuable,

(ii) la somme obtenue par la formule suivante :

W – X – Y

included in computing the affiliate's income or loss from an active business because of paragraph 95(2)(a) or an amount that is described in clause 95(2)(a)(ii)(D) and treated as nil for the purposes of determining an amount for A or D in the definition *foreign accrual property income* in subsection 95(1)), each of which would be the affiliate's interest and financing expenses (determined without regard to paragraph (j) of the description of A in the definition *interest and financing expenses*) for the affiliate taxation year for the purposes of determining, in respect of the taxpayer for the affiliate taxation year, each amount referred to in subparagraph 95(2)(f)(i) or (ii), if

(a) the references in the definition *interest and financing expenses* to "in the absence of this section" were read as references to "in the absence of clause 95(2)(f.11)(ii)(D)"; and

(b) clause 95(2)(f.11)(ii)(A) were read without regard to the reference to subsection 18.2(2). (*dépenses d'intérêts et de financement de la société affiliée pertinentes*)

relevant affiliate interest and financing revenues of a controlled foreign affiliate of a taxpayer (determined as though the definition *taxpayer* in this subsection did not include the words "or a partnership") for an affiliate taxation year means, subject to subsection (19), the total of all amounts (other than an amount included in computing the affiliate's income or loss from an active business under paragraph 95(2)(a) or (2.44)(b)), each of which would be the affiliate's interest and financing revenues (determined without regard to paragraph (g) of the description of A in the definition *interest and financing revenues*) for the affiliate taxation year for the purposes of determining, in respect of the taxpayer for the affiliate taxation year, each amount referred to in subparagraph 95(2)(f)(i) or (ii), if clause 95(2)(f.11)(ii)(A) were read without regard to the reference to subsection 18.2(2). (*revenus d'intérêts et de financement de la société affiliée pertinents*)

relevant inter-affiliate interest, of a controlled foreign affiliate of a taxpayer for an affiliate taxation year, means an amount of interest to the extent that the amount

(a) is paid or payable by the affiliate to, or received or receivable by the affiliate from, a controlled foreign affiliate (in this definition referred to as the "other affiliate") of

(i) the taxpayer, or

(ii) a taxpayer that is an eligible group entity in respect of the taxpayer; and

où :

W représente le total des sommes dont chacune est une somme qui, selon le cas :

(A) représente les dépenses d'intérêts et de financement du contribuable pour l'année de perte du contribuable, déterminées compte non tenu de toute somme ou fraction d'une somme qui n'est pas déductible par l'effet du paragraphe (2) ou de la division 95(2)f.11)(ii)(D),

(B) est visée à l'un des alinéas b) à g) ou j) à m) de l'élément B pour l'année de perte du contribuable,

(C) est déduite par le contribuable en vertu de l'alinéa 111(1)a.1) lors du calcul de son revenu imposable pour l'année de perte du contribuable,

X le total des sommes dont chacune est une somme qui est, selon le cas :

(A) visée à l'un des alinéas a) à f), h) ou j) de l'élément C pour l'année de perte du contribuable,

(B) incluse dans le revenu du contribuable pour l'année de perte du contribuable par l'effet de l'alinéa 12(1)l.2),

Y le total des sommes, dont chacune est une somme obtenue par la formule suivante :

Z × Z.1 ÷ Z.2

où :

Z représente la moindre des sommes suivantes :

(A) la perte étrangère accumulée, relative à des biens, pour une année d'imposition de la société affiliée, d'une société (appelée « société affiliée » tout au long de l'élément Y) qui, à la fin de l'année d'imposition de la société affiliée, est une société étrangère affiliée contrôlée du contribuable, ou est une société étrangère affiliée contrôlée d'une société de personnes dont le contribuable ou une société étrangère affiliée contrôlée du

(b) would, in the absence of subsection (19), be included in

(i) if the amount is paid or payable by the affiliate, the affiliate's relevant affiliate interest and financing expenses for the affiliate taxation year and the other affiliate's relevant affiliate interest and financing revenues for an affiliate taxation year, or

(ii) if the amount is received or receivable by the affiliate, the affiliate's relevant affiliate interest and financing revenues for the affiliate taxation year and the other affiliate's relevant affiliate interest and financing expenses for an affiliate taxation year. (*intérêts pertinents entre sociétés affiliées*)

special purpose loss corporation, for a taxation year, means a particular corporation that

(a) is an eligible group entity in respect of a financial holding corporation to which the particular corporation has interest paid or payable in the year;

(b) is formed or exists solely for the purpose of generating a loss of the particular corporation; and

(c) would, in the absence of this section, have a loss for the year that is, or will be, utilized by a financial institution group entity that is an eligible group entity in respect of the particular corporation. (*société à usage déterminé ayant subi des pertes*)

specified participating percentage of a taxpayer, in respect of a controlled foreign affiliate of the taxpayer for an affiliate taxation year, means the percentage that would be the taxpayer's *aggregate participating percentage* (as defined in subsection 91(1.3)), determined without regard to clause 95(2)(f.11)(ii)(D), in respect of the affiliate for the affiliate taxation year, if the definition *participating percentage* in subsection 95(1) were read without reference to

(a) its paragraph (a); and

(b) the portion of its paragraph (b) before its subparagraph (b)(i). (*pourcentage de participation déterminé*)

specified pre-regime loss of a taxpayer, in respect of a taxation year, means the taxpayer's non-capital loss for a preceding taxation year, if

(a) the preceding year ends before February 4, 2022;

(b) the taxpayer files with the Minister, in respect of the loss, an election in writing in prescribed manner under this definition;

contribuable est un associé à un moment donné,

(B) l'excédent des dépenses d'intérêts et de financement de la société affiliée pertinentes pour l'année d'imposition de la société affiliée (déterminé compte non tenu de toute somme ou fraction d'une somme qui n'est pas déductible par l'effet de la division 95(2)f.11)(ii)(D)) sur le total des sommes représentant chacune, selon le cas :

I) les revenus d'intérêts et de financement de la société affiliée pertinents de la société affiliée pour l'année d'imposition de la société affiliée,

II) une somme incluse en application de la subdivision 95(2)f.11)(ii)(D)(II) relativement à la société affiliée pour l'année d'imposition de la société affiliée,

Z.1 la somme qui est incluse dans les dépenses d'intérêts et de financement du contribuable pour l'année de perte du contribuable relativement aux dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée pour l'année d'imposition de la société affiliée,

Z.2 les dépenses d'intérêts et de financement de la société affiliée pertinentes pour l'année d'imposition de la société affiliée;

K la perte autre qu'une perte en capital pour l'année de perte du contribuable,

i) 25 % du montant déduit, relativement à la perte antérieure au régime déterminée du contribuable relativement à l'année, par le contribuable en vertu de l'alinéa 111(1)a) lors du calcul de son revenu imposable pour l'année;

j) relativement à une société (appelée « société affiliée » au présent alinéa) qui est une société étrangère affiliée contrôlée du contribuable à la fin d'une année d'imposition de la société affiliée se terminant dans l'année – ou qui est une société étrangère affiliée contrôlée d'une société de

(c) the election specifies

(i) the loss,

(ii) each amount deducted, in respect of the loss, by the taxpayer under paragraph 111(1)(a) in computing its taxable income

(A) for the year, and

(B) each taxation year that precedes the year, and

(iii) the taxpayer's adjusted taxable income for the year; and

(d) the election is filed on or before the filing-due date of the taxpayer for the year. (*perte antérieure au régime déterminée*)

tax-indifferent means a person or partnership that is

(a) a person exempt from tax under section 149;

(b) a non-resident person;

(c) a partnership more than 50% of the fair market value of all interests in which can reasonably be considered to be held, directly or indirectly through one or more trusts or partnerships, by any combination of persons described in paragraph (a) or (b); or

(d) a trust resident in Canada if more than 50% of the fair market value of all interests as beneficiaries under the trust can reasonably be considered to be held, directly or indirectly through one or more trusts or partnerships, by any combination of persons described in paragraph (a) or (b). (*indifférent relativement à l'impôt*)

taxpayer has the meaning assigned by subsection 248(1), but does not include a natural person or a partnership. (*contribuable*)

transaction includes an arrangement or event. (*opération*)

transferred capacity means an amount of transferred capacity of a transferor for a taxation year as determined under subsection (4). (*capacité transférée*)

personnes dont le contribuable ou une société étrangère affiliée contrôlée du contribuable est un associé à un moment donné, à la fin d'une année d'imposition de la société affiliée se terminant dans un exercice de la société de personnes – la somme supplémentaire qui serait incluse dans le revenu du contribuable, en vertu du paragraphe 91(1) ou en raison d'une somme qui serait incluse dans le revenu d'une société de personnes en vertu de ce paragraphe, relativement au revenu étranger accumulé, tiré de biens de la société affiliée pour l'année d'imposition de la société affiliée, si ce revenu augmentait de la somme obtenue par la formule suivante :

L × M ÷ N

où :

L représente la somme qui, dans le calcul du revenu étranger accumulé, tiré de biens de la société affiliée pour l'année d'imposition de la société affiliée, est la somme visée par règlement à l'élément F de la définition de *revenu étranger accumulé, tiré de biens* au paragraphe 95(1), relativement à la perte étrangère accumulée, relative à des biens de la société affiliée pour une autre année d'imposition de la société affiliée (appelé « année de perte de la société affiliée » au présent alinéa),

M la moindre des sommes suivantes :

(i) la perte étrangère accumulée, relative à des biens de la société affiliée pour l'année de perte de la société affiliée,

(ii) l'excédent des dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée pour l'année de perte de la société affiliée (déterminé compte non tenu de toute somme ou fraction d'une somme qui n'est pas déductible par l'effet de la division 95(2)f.11)(ii)(D)) sur le total des sommes dont chacune représente :

(A) soit les revenus d'intérêts et de financement de la société affiliée pertinents pour l'année de perte de la société affiliée,

(B) soit une somme incluse en application de la subdivision 95(2)f.11)(ii)(D)(II) relativement à la société affiliée pour l'année de perte de la société affiliée,

N la perte étrangère accumulée, relative à des biens de la société affiliée pour l'année de perte de la société affiliée;

k) le montant qui serait la perte du contribuable pour l'année, ou qui serait sa part de la perte d'une société de personnes dont il est associé, si le contribuable ou la société de personnes n'avait aucun revenu ou aucune perte autre qu'une perte qu'il est raisonnable de considérer comme subie par le contribuable ou la société de personnes relativement à des activités financées par un emprunt (au sens de la définition de *dépenses d'intérêts et de financement exonérées*) qui entraîne des dépenses d'intérêts et de financement exonérées du contribuable ou de la société de personnes;

l) une somme déduite en application des paragraphes 127(5) ou (6), 127.44(3) ou 127.45(6) relativement à un bien acquis au cours d'une année d'imposition précédente dans le calcul de l'impôt payable par le contribuable pour une année d'imposition précédente, dans la mesure où :

(i) elle est incluse dans une somme déterminée en vertu de l'alinéa 13(7.1)e) ou des sous-alinéas 53(2)c)(vi) à (vi.2) ou h)(ii), ou représentée par l'élément I de la formule figurant à la définition de *fraction non amortie du coût en capital* au paragraphe 13(21),

(ii) elle n'a pas été incluse, à la fois :

(A) dans le calcul du revenu du contribuable pour l'année ou une année d'imposition précédente,

(B) dans le calcul du revenu imposable rajusté du contribuable pour une année d'imposition antérieure en application du présent alinéa;

m) une somme visée à la division 12(1)x)(i)(C) ou au sous-alinéa 12(1)x)(ii) que le contribuable reçoit au cours de l'année dans la mesure où, à la fois :

(i) elle réduit le coût ou le coût en capital d'un bien,

(ii) elle n'est pas incluse dans le calcul du revenu du contribuable pour l'année en vertu de l'alinéa 12(1)x),

(iii) elle serait incluse dans le calcul du revenu du contribuable pour l'année en vertu de l'alinéa 12(1)x), si cet alinéa s'appliquait compte non tenu de ses sous-alinéas (vi) et (vii);

C le total des sommes dont chacune représente :

a) les revenus d'intérêts et de financement du contribuable pour l'année;

b) une somme incluse, en application du paragraphe 13(1), dans le calcul du revenu du contribuable pour l'année;

c) relativement aux revenus ou aux pertes d'une société de personnes, pour un exercice qui se termine dans l'année, tirés de toute source ou de sources dans un endroit donné, une somme obtenue par la formule suivante :

O × P

où :

O représente une somme que la société de personnes inclut, en application du paragraphe 13(1), dans le calcul de son revenu ou de sa perte tiré d'une source ou de sources situées dans un endroit donné, pour l'exercice,

P la proportion déterminée du contribuable si les mentions « du revenu total ou de la perte totale » et « au revenu total ou à la perte totale » faites dans la définition de *proportion déterminée* au paragraphe 248(1) étaient remplacées respectivement par les mentions « de son revenu ou de sa perte, tiré de la source ou de la source située dans un endroit donné » et « à son revenu ou à sa perte, tiré de la source ou de la source située dans un endroit donné »;

d) une somme incluse, en application des paragraphes 59(1) ou (3.2) ou de l'alinéa 59.1b), dans le calcul du revenu du contribuable pour l'année;

e) dans le cas d'une société :

(i) les 100/28^{e} du total des sommes qui seraient déductibles, en application du paragraphe 126(1), de l'impôt payable par ailleurs par la société pour l'année en vertu de la présente partie si elles étaient déterminées compte non tenu des articles 123.3 et 123.4,

(ii) le résultat de la multiplication du total des sommes qui seraient déductibles, en application du paragraphe 126(2), de l'impôt payable par ailleurs par la société pour l'année en vertu de la présente partie si elles étaient déterminées compte non tenu de l'article 123.4, par le facteur de référence pour l'année;

f) dans le cas d'une fiducie, la somme obtenue par la formule suivante :

Q × (1 ÷ (R × S))

où :

Q représente le total des sommes qu'elle pouvait déduire en application des paragraphes 126(1)

ou (2) de son impôt payable par ailleurs pour l'année en vertu de la présente partie,

R le pourcentage exprimé en fraction décimale visé à l'alinéa 122(1)a) relativement à l'année,

S 1 plus le pourcentage exprimé en fraction décimale visé au paragraphe 120(1) pour l'année;

g) un montant inclus en application de l'article 110.5 dans le calcul du revenu imposable du contribuable pour l'année;

h) un montant inclus en application du paragraphe 104(13) dans le calcul du revenu du contribuable pour l'année, sauf dans la mesure de toute fraction du montant qui, selon le cas :

(i) a été désignée en application du paragraphe 104(19) pour l'année,

(ii) donne lieu à une déduction en application de l'alinéa 94.2(3)a) dans le calcul du revenu étranger accumulé, tiré de biens pour l'année d'imposition d'une société affiliée d'une entité qui est une société étrangère affiliée contrôlée du contribuable à la fin de l'année d'imposition de la société affiliée;

i) un montant du revenu imposable du contribuable pour l'année qui n'est pas assujetti à l'impôt en vertu de la présente partie par l'effet de quelque loi fédérale;

j) le montant qui serait le revenu du contribuable pour l'année, ou qui serait sa part du revenu d'une société de personnes dont il est associé, si le contribuable ou la société de personnes n'avait aucun revenu ou perte autre qu'un revenu qu'il est raisonnable de considérer comme gagné par le contribuable ou la société de personnes relativement à des activités financées par un emprunt (au sens de la définition de *dépenses d'intérêts et de financement exonérées*) qui entraîne des dépenses d'intérêts et de financement exonérées du contribuable ou de la société de personnes. (*adjusted taxable income*)

société à usage déterminé ayant subi des pertes Société donnée qui, pour une année d'imposition, à la fois :

a) est une entité admissible du groupe relativement à une société de portefeuille financière à l'égard de laquelle la société donnée a des intérêts payés ou à payer dans l'année;

b) est constituée ou existe uniquement aux fins de générer une perte de la société donnée;

c) subirait, en l'absence du présent article, une perte pour l'année qui est, ou qui sera, utilisée par une entité du groupe d'institutions financières qui est une entité admissible du groupe relativement à la société donnée. (*special purpose loss corporation*)

société de portefeuille financière Société (sauf celle visée à l'un des alinéas a) à f) de la définition de *entité du groupe d'institutions financières*) si, tout au long d'une année d'imposition, selon le cas :

a) la juste valeur marchande du capital-actions de la société est principalement attribuable à tout ensemble d'actions ou de dettes d'une ou plusieurs entités visées à l'un des alinéas a) à f) de la définition de *entité du groupe d'institutions financières* que la société contrôle;

b) la société est constituée sous le régime de la *Loi sur les sociétés d'assurances* et les actions du capital-actions de la société sont inscrites à la cote d'une bourse de valeurs désignée. (*financial holding corporation*)

Excessive interest and financing expenses limitation

(2) Notwithstanding any other provision of this Act, in computing the income for a taxation year of a taxpayer (other than an excluded entity for the year) from a business or property or the taxable income of the taxpayer for the year, no deduction shall be made — and in determining the amount under paragraph 3(b) in respect of the taxpayer for the year, no reduction shall be made — in respect of any amount that is described in any of paragraphs (a) to (g) and (i) of the description of A in the definition *interest and financing expenses* in subsection (1) that would, in the absence of this section, be deductible in computing that income or taxable income — or would reduce that amount determined under paragraph 3(b) — to the extent of the proportion of that amount that is determined by the formula

(A – (B + C + D + E)) ÷ F

where

A is the taxpayer's interest and financing expenses for the year;

B is

(a) if subsection 18.21(2) applies in respect of the taxpayer for the year, the amount determined in respect of the taxpayer for the year under that subsection, and

(b) in any other case, the amount determined by the formula

G × H

Restriction des dépenses excessives d'intérêts et de financement

(2) Malgré les autres dispositions de la présente loi, aucune déduction ne peut être faite, dans le calcul du revenu pour une année d'imposition d'un contribuable (sauf une entité exclue pour l'année) provenant d'une entreprise ou d'un bien, ou du revenu imposable du contribuable pour l'année — et aucune réduction ne peut être faite, dans le calcul du montant en application de l'alinéa 3b), relativement au contribuable pour l'année — relativement à une somme visée à l'un des alinéas a) à g) et i) de l'élément A de la définition de *dépenses d'intérêts et de financement* au paragraphe (1) qui serait, en l'absence du présent article, déductible dans le calcul de ce revenu ou ce revenu imposable — ou qui réduirait ce montant déterminé en application de l'alinéa 3b) — jusqu'à concurrence de la proportion de cette somme qui est obtenue par la formule :

(A – (B + C + D + E)) ÷ F

où :

A représente les dépenses d'intérêts et de financement du contribuable pour l'année,

B selon le cas :

a) si le paragraphe 18.21(2) s'applique relativement au contribuable pour l'année, la somme déterminée à l'égard du contribuable selon ce paragraphe pour l'année;

b) dans les autres cas, la somme obtenue par la formule :

G × H

where

G is the taxpayer's ratio of permissible expenses for the year, and

H is the taxpayer's adjusted taxable income for the year;

C is the taxpayer's interest and financing revenues for the year;

D is the amount by which the total of all amounts each of which is an amount of received capacity of the taxpayer for the year, as determined under subsection (4), exceeds the total amount deductible under paragraph 111(1)(a.1) for the year;

E is the amount of the taxpayer's absorbed capacity for the year; and

F is

(a) if no amount is included in the taxpayer's interest and financing expenses for the year under paragraph (j) of the description of A of that definition, or under paragraph (h) of the description of A of that definition in respect of a controlled foreign affiliate of a partnership of which the taxpayer is a member, the amount determined for A in that definition for the taxpayer for the year, or

(b) in any other case, the amount that would be determined for A in the definition *interest and financing expenses* in subsection (1) for the taxpayer for the year if the reference to "the affiliate's interest and financing expenses" in the definition *relevant affiliate interest and financing expenses* were read as a reference to "an amount determined for A in the definition *interest and financing expenses* for the affiliate".

où :

G représente le ratio des dépenses admissibles du contribuable pour l'année,

H le revenu imposable rajusté du contribuable pour l'année;

C les revenus d'intérêts et de financement du contribuable pour l'année;

D l'excédent du total des sommes représentant chacune un montant de capacité reçue du contribuable pour l'année, établi en vertu du paragraphe (4), sur le total du montant déductible en application de l'alinéa 111(1)a.1) pour l'année;

E la capacité absorbée du contribuable pour l'année;

F :

a) si aucune somme n'est incluse dans les dépenses d'intérêts et de financement du contribuable pour l'année en vertu de l'alinéa j) de l'élément A de la formule figurant à cette définition, ou en vertu de l'alinéa h) de l'élément A de la formule figurant à cette définition relativement à une société étrangère affiliée contrôlée d'une société de personnes dont le contribuable est associé, la somme obtenue pour l'élément A de cette définition pour le contribuable pour l'année;

b) dans les autres cas, la somme qui serait obtenue pour l'élément A de la définition de *dépenses d'intérêts et de financement* au paragraphe (1) pour le contribuable pour l'année si la mention de « dépenses d'intérêts et de financement de la société affiliée » à la définition de *dépenses d'intérêts et de financement de la société affiliée pertinentes* valait mention de « somme obtenue pour l'élément A de la définition de *dépenses d'intérêts et de financement* pour la société affiliée ».

Amount deemed deducted

(3) All or any portion, of a particular amount described in paragraph (c) or (d) of the description of A in the definition *interest and financing expenses* in subsection (1), that would, in the absence of subsection (2), have been deducted in computing the income of a taxpayer for a taxation year but that is not deductible because of subsection (2), is deemed to have been deductible and to have been deducted in the year for purposes of determining, in respect of any taxpayer at any time, such of the following amounts to which the particular amount relates:

(a) the *total depreciation* (as defined in subsection 13(21)) allowed for property of a prescribed class;

Montant réputé déduit

(3) Tout ou partie, d'une somme donnée visée aux alinéas c) ou d) de l'élément A de la définition de *dépenses d'intérêts et de financement* au paragraphe (1), qui aurait, en l'absence du paragraphe (2), été déduite dans le calcul du revenu d'un contribuable pour une année d'imposition, mais qui n'est pas déductible par l'effet du paragraphe (2), est réputée avoir été déductible et déduite dans l'année aux fins de la détermination, relativement à un contribuable à un moment donné, celles des sommes suivantes auxquelles la somme donnée se rapporte :

a) l'*amortissement total* (au sens du paragraphe 13(21)) accordé pour les biens d'une catégorie prescrite;

(b) the amount the taxpayer may deduct under subsection 66(4);

(c) the *cumulative Canadian exploration expense* (as defined in subsection 66.1(6));

(d) the *cumulative Canadian development expense* (as defined in subsection 66.2(5));

(e) the *cumulative foreign resource expense* (as defined in subsection 66.21(1)) in respect of a country;

(f) the *cumulative Canadian oil and gas property expense* (as defined in subsection 66.4(5)); and

(g) the amount the taxpayer may deduct under subsections 66.7(1), (2) or (2.3) to (5).

b) la somme que le contribuable peut déduire en application du paragraphe 66(4);

c) les *frais cumulatifs d'exploration au Canada* (au sens du paragraphe 66.1(6));

d) les *frais cumulatifs d'aménagement au Canada* (au sens du paragraphe 66.2(5));

e) les *frais cumulatifs relatifs à des ressources à l'étranger* (au sens du paragraphe 66.21(1)) se rapportant à un pays;

f) les *frais cumulatifs à l'égard de biens canadiens relatifs au pétrole et au gaz* (au sens du paragraphe 66.4(5));

g) la somme que le contribuable peut déduire en application des paragraphes 66.7(1), (2) ou (2.3) à (5).

Transfer of cumulative unused excess capacity

(4) For the purposes of this section, a taxpayer and another taxpayer (referred to in this section as the "transferor" and the "transferee", respectively) may jointly elect in prescribed form to designate an amount equal to all or a portion of the transferor's cumulative unused excess capacity, and that amount is an amount of transferred capacity of the transferor for a taxation year and an amount of received capacity of the transferee for a taxation year, if

(a) the taxation year of the transferor ends in the taxation year of the transferee;

(b) each of the transferor and the transferee is

(i) a taxable Canadian corporation or a fixed interest commercial trust throughout its taxation year, and

(ii) an eligible group entity in respect of the other at the end of its taxation year;

(c) where the transferor is a financial institution group entity or a financial holding corporation for its taxation year, the transferee is, for its taxation year,

(i) a financial institution group entity,

(ii) a financial holding corporation, or

(iii) a special purpose loss corporation;

(d) the election or amended election

Transfert de la capacité excédentaire cumulative inutilisée

(4) Pour l'application du présent article, un contribuable et un autre contribuable (appelée le « cédant » et le « cessionnaire » respectivement au présent article) peuvent faire un choix conjoint, sur le formulaire prescrit, de désigner un montant égal à la totalité ou à une partie de la capacité excédentaire cumulative inutilisée du cédant, et ce montant est un montant de capacité transférée du cédant pour une année d'imposition et un montant de capacité reçue du cessionnaire pour une année d'imposition si les conditions ci-après sont remplies :

a) l'année d'imposition du cédant se termine dans l'année d'imposition du cessionnaire;

b) le cédant et le cessionnaire sont chacun, à la fois :

(i) une société canadienne imposable ou une fiducie commerciale à participation fixe tout au long de son année d'imposition,

(ii) une entité admissible du groupe relativement à l'autre à la fin de son année d'imposition;

c) si le cédant est une entité du groupe d'institutions financières ou une société de portefeuille financière pour son année d'imposition, le cessionnaire est, pour son année d'imposition, selon le cas :

(i) une entité du groupe d'institutions financières,

(ii) une société de portefeuille financière,

(iii) une société à usage déterminé ayant subi des pertes;

(i) specifies the amount of the transferred capacity, and

(ii) is filed with the Minister by the transferor

(A) on or before the later of the filing-due date of

(I) the transferor for its taxation year, and

(II) the transferee for its taxation year, or

(B) on or before the day that is 90 days after the day of sending of

(I) a notice of assessment of tax payable under this Part by the transferor or the transferee for their respective taxation years, or

(II) a notification that no tax is payable under this Part by the transferor or the transferee for their respective taxation years;

(e) the total of all amounts each of which would, if this subsection were read without reference to this paragraph, be an amount of transferred capacity of the transferor for its taxation year in respect of any transferee, does not exceed the transferor's cumulative unused excess capacity for the year;

(f) if the transferee is a financial holding corporation and the transferor is a financial institution group entity, it is the case that

$$\mathbf{A} \geq \mathbf{B}$$

where

A is the total of all amounts, each of which is an amount that is included in computing the income of the financial holding corporation for its taxation year in respect of excluded interest, the payer of which is, for the taxation year of the payer in which the interest is payable,

(i) a financial institution group entity, or

(ii) a special purpose loss corporation, if the amount gives rise to a loss of the special purpose loss corporation that is, or will be, utilized solely by a financial institution group entity, and

B is the total of all amounts, each of which would, in the absence of this paragraph, be an amount that is both

(i) received capacity of the financial holding corporation for its taxation year, and

d) le choix ou le choix modifié :

(i) précise le montant de capacité transférée,

(ii) est présenté au ministre par le cédant :

(A) soit au plus tard au dernier en date de la date d'échéance de production :

(I) du cédant pour son année d'imposition,

(II) du cessionnaire pour son année d'imposition,

(B) au plus tard le quatre-vingt-dixième jour suivant la date d'envoi des documents suivants :

(I) un avis de cotisation concernant l'impôt payable en vertu de la présente partie par le cédant ou le cessionnaire pour leurs années d'imposition respectives,

(II) un avis au cédant ou au cessionnaire portant qu'aucun impôt n'est payable en vertu de la présente partie pour leurs années d'imposition respectives;

e) le total des montants dont chacun représenterait, compte non tenu du présent alinéa, un montant de capacité transférée du cédant pour son année d'imposition à l'égard de tout cessionnaire, ne dépasse la capacité excédentaire cumulative inutilisée du cédant pour l'année;

f) si le cessionnaire est une société de portefeuille financière et le cédant est une entité du groupe d'institutions financières, la condition ci-après est remplie :

$$\mathbf{A} \geq \mathbf{B}$$

où :

A représente le total des sommes dont chacune représente une somme qui est incluse dans le calcul du revenu de la société de portefeuille financière pour son année d'imposition relativement aux intérêts exclus, dont le payeur est, pour l'année d'imposition du payeur dans laquelle les intérêts sont payables :

(i) une entité du groupe d'institutions financières,

(ii) une société à usage déterminé ayant subi des pertes, si la somme donne lieu à une perte subie par la société à usage déterminé ayant subi des pertes qui est, ou qui sera, utilisée uniquement par une entité du groupe d'institutions financières,

(ii) transferred capacity of a financial institution group entity for one of its taxation years;

(g) if the transferee is a special purpose loss corporation and the transferor is a financial institution group entity, it is the case that

$$\mathbf{C} \geq \mathbf{D}$$

where

C is the total of all amounts, each of which is an amount that

(i) would, in the absence of this section, be deductible in computing the income of the special purpose loss corporation for its taxation year,

(ii) is paid or payable to a financial holding corporation,

(iii) meets the conditions set out in paragraphs (a) to (d) of the definition *excluded interest*, and

(iv) would, in the absence of this section, give rise to a loss that is, or will be, utilized solely by a financial institution group entity, and

D is the total of all amounts, each of which would, in the absence of this paragraph, be an amount that is both

(i) received capacity of the special purpose loss corporation for its taxation year, and

(ii) transferred capacity of a financial institution group entity for one of its taxation years;

(h) an amended election has not been filed in accordance with this section;

(i) where the election is an amended election,

(i) the following conditions are met:

(A) in the absence of any assessment, the condition set out in paragraph (e) would be met in respect of a prior election under this subsection made by the transferor and transferee for their respective taxation years, and

(B) subsection (9) does not apply to a tax benefit in respect of a prior election for the taxation year of the transferor or transferee, or

(ii) the Minister grants permission to amend the prior election under subsection (5); and

(j) the transferee files an information return in accordance with subsection (6) for the calendar year in which the transferee's taxation year ends.

B le total des sommes dont chacune serait, en l'absence du présent alinéa, à la fois :

(i) un montant de capacité reçue de la société de portefeuille financière pour son année d'imposition,

(ii) un montant de capacité transférée d'une entité du groupe d'institutions financières pour une de ses années d'imposition;

g) si le cessionnaire est une société à usage déterminé ayant subi des pertes et le cédant est une entité du groupe d'institutions financières, la condition ci-après est remplie :

$$\mathbf{C} \geq \mathbf{D}$$

où :

C représente le total des sommes dont chacune représente une somme qui, à la fois :

(i) serait, en l'absence du présent article, déductible dans le calcul du revenu de la société à usage déterminé ayant subi des pertes pour son année d'imposition,

(ii) est payée ou payable à une société de portefeuille financière,

(iii) remplit les conditions des alinéas a) à d) de la définition de *intérêts exclus*,

(iv) donnerait lieu, en l'absence du présent article, à une perte qui est, ou qui sera, utilisée uniquement par une entité du groupe d'institutions financières,

D le total des sommes dont chacune serait, en l'absence du présent alinéa, à la fois :

(i) un montant de capacité reçue de la société ayant subi des pertes à usage déterminé pour son année d'imposition,

(ii) un montant de capacité transférée d'une entité du groupe d'institutions financières pour une de ses années d'imposition;

h) un choix modifié n'a pas été produit conformément au présent article;

i) lorsque le choix est un choix modifié :

(i) soit les conditions ci-après sont remplies :

(A) en l'absence d'une cotisation, la condition de l'alinéa e) serait remplie relativement à un choix antérieur prévu au présent paragraphe fait par le cédant et le cessionnaire pour leurs années d'imposition respectives,

(B) le paragraphe (9) ne s'applique pas à un avantage fiscal relativement à un choix antérieur pour l'année d'imposition du cédant ou du cessionnaire,

(ii) soit le ministre accorde l'autorisation de modifier le choix antérieur en vertu du paragraphe (5);

j) le cessionnaire produit une déclaration de renseignements conformément au paragraphe (6) pour l'année civile dans laquelle son année d'imposition se termine.

Late or amended election

(5) The Minister may extend the time for making an election, or grant permission to amend an election, under subsection (4) if

(a) the transferor and the transferee demonstrate to the satisfaction of the Minister that

(i) the transferor, the transferee and each other eligible group entity in respect of the transferor and transferee made reasonable efforts to determine all amounts that may reasonably be considered relevant in making the election, and

(ii) the election or amended election, as the case may be, is filed as soon as circumstances permit; and

(b) in the opinion of the Minister, the circumstances are such that it would be just and equitable to permit the election to be made or amended.

Choix modifié ou produit en retard

(5) Le ministre peut proroger le délai pour faire le choix prévu au paragraphe (4), ou permettre que ce choix soit modifié, si les conditions suivantes sont réunies :

a) le cédant et le cessionnaire démontrent, à la satisfaction du ministre, que, à la fois :

(i) le cédant, le cessionnaire et chaque autre entité admissible du groupe relativement au cédant et au cessionnaire ont fait des efforts voulus pour déterminer toutes les sommes qu'il est raisonnable de considérer comme pertinentes pour faire le choix,

(ii) le choix ou le choix modifié, selon le cas, est produit dès que les circonstances le permettent;

b) selon le ministre, les circonstances sont telles qu'il serait juste et équitable de permettre que le choix soit fait ou modifié.

Summary — cumulative unused excess capacity transfers

(6) If one or more elections are filed under subsection (4), in which amounts are designated as received capacity of a particular transferee for a taxation year ending in a calendar year, the particular transferee shall file with the Minister for the calendar year an information return in prescribed form within six months after the end of the calendar year in respect of

(a) each such election; and

(b) each election filed under subsection (4) for a taxation year ending in the calendar year, by any other transferee that is an eligible group entity in respect of the particular transferee at the end of the other transferee's taxation year.

Sommaire — transferts de la capacité excédentaire cumulative inutilisée

(6) Si un ou plusieurs choix sont produits en vertu du paragraphe (4), dans lesquels les montants sont désignés comme capacité reçue d'un cessionnaire donné pour une année d'imposition se terminant dans une année civile, le cessionnaire donné est tenu de présenter au ministre pour l'année civile une déclaration de renseignements sur un formulaire prescrit, dans les six mois suivant la fin de l'année civile relativement à ce qui suit :

a) chacun de ces choix;

b) chaque choix produit en vertu du paragraphe (4) pour une année d'imposition se terminant dans l'année civile, par un autre cessionnaire qui est une entité admissible du groupe relativement au cessionnaire donné à la fin de l'année d'imposition de l'autre cessionnaire.

Summary — filing by designated filer

(7) For the purposes of this section, if any taxpayer is required to file an information return for a calendar year under subsection (6), the taxpayer is deemed to have filed the information return if

(a) an information return under subsection (6) is filed for the calendar year by any other taxpayer (in this subsection referred to as the "designated filer" in respect of the taxpayer for the year) that is an eligible group entity in respect of the taxpayer at the end of the taxpayer's taxation year ending in the calendar year; and

(b) the taxpayer jointly elects, with each other transferee described in paragraph (6)(b), to designate under this paragraph the designated filer to be a designated filer in respect of the taxpayer and each other transferee for the calendar year.

Assessment

(8) If an election or an amended election has been made under subsection (4), the Minister shall, notwithstanding subsections 152(4) and (5), assess or reassess the tax, interest or penalties payable under this Act by any taxpayer for any relevant taxation year as is necessary to give effect to the election or amended election.

Anti-avoidance — group status

(9) If, at any time, a particular taxpayer is, becomes or ceases to be an eligible group entity, in respect of another taxpayer, a financial institution group entity or a financial holding corporation and it may reasonably be considered, having regard to all the circumstances, that one of the main purposes of the particular taxpayer being, becoming or ceasing to be an eligible group entity, in respect of the other taxpayer, a financial institution group entity or a financial holding corporation is to enable any taxpayer to obtain a tax benefit (within the meaning of subsection 245(1)), the particular taxpayer is deemed not to be, to have become, or to remain, as the case may be, an eligible group entity, in respect of the other taxpayer, a financial institution group entity or a financial holding corporation, as the case may be, at that time.

Benefits conferred

(10) For the purposes of this Part, if a transferor and a transferee file an election (including an amended election) under subsection (4), no benefit is considered to

Sommaire — production par un déclarant désigné

(7) Pour l'application du présent article, si un contribuable est tenu de produire une déclaration de renseignements pour une année civile en vertu du paragraphe (6), le contribuable est réputé avoir produit la déclaration de renseignements si, à la fois :

a) la déclaration de renseignements produite conformément au paragraphe (6) est produite pour l'année civile par un autre contribuable (appelé « déclarant désigné » au présent paragraphe relativement au contribuable pour l'année) qui est une entité admissible du groupe relativement au contribuable à la fin de l'année d'imposition du contribuable se terminant dans l'année civile;

b) le contribuable fait le choix conjoint, avec chaque autre cessionnaire visé à l'alinéa (6)b), de désigner le déclarant désigné comme tel en vertu du présent alinéa relativement au contribuable et chaque autre cessionnaire pour l'année civile.

Cotisation

(8) En cas de choix ou de choix modifié fait en vertu du paragraphe (4), le ministre, malgré les paragraphes 152(4) et (5), établit les cotisations ou les nouvelles cotisations concernant l'impôt, les intérêts et les pénalités payables en application de la présente loi par tout contribuable pour toute année d'imposition pertinente afin de rendre applicable le choix ou le choix modifié.

Anti-évitement — statut du groupe

(9) Si, à un moment donné, un contribuable donné est ou devient une entité admissible du groupe, relativement à un autre contribuable, une entité du groupe d'institutions financières ou une société de portefeuille financière, ou cesse de l'être, et il est raisonnable de considérer, compte tenu de toutes les circonstances, que l'un des principaux objets pour lequel le contribuable donné est ou devient ainsi une entité admissible du groupe, relativement à un autre contribuable, une entité du groupe d'institutions financières ou une société de portefeuille financière, ou cesse de l'être, est de permettre à un contribuable d'obtenir un avantage fiscal (au sens du paragraphe 245(1)), le contribuable donné est réputé ne pas être, ne pas être devenu, ou ne pas demeurer, selon le cas, une entité admissible du groupe relativement à l'autre contribuable, une entité du groupe d'institutions financières ou une société de portefeuille financière, selon le cas, à ce moment.

Avantages conférés

(10) Pour l'application de la présente partie, si un cédant et un cessionnaire produisent un choix (y compris un choix modifié) en vertu du paragraphe (4), aucun

have been conferred on the transferee as a consequence of the election.

Consideration for election

(11) For the purposes of this Part, if property is acquired at any time by a transferor as consideration for filing an election or amended election with a transferee under subsection (4)

(a) where the property was owned by the transferee immediately before that time,

(i) the transferee is deemed to have disposed of the property at that time for proceeds equal to the fair market value of the property at that time, and

(ii) no amount may be deducted in computing the transferee's income as a consequence of the transfer of the property, except any amount arising as a consequence of subparagraph (i);

(b) the cost at which the property was acquired by the transferor at that time is deemed to be equal to the fair market value of the property at that time; and

(c) the transferor is not required to add an amount in computing income solely because of the acquisition at that time of the property.

Partnerships

(12) For the purposes of this section,

(a) a person or partnership that is (or is deemed by this paragraph to be) a member of a particular partnership that is a member of another partnership is deemed to be a member of the other partnership; and

(b) a person's share of the income or loss of a partnership includes the person's direct or indirect, through one or more other partnerships, share of that income or loss.

Anti-avoidance — interest and financing revenues and expenses

(13) A particular amount that would, in the absence of this subsection, be included under the description of A in the definition *interest and financing revenues*, or the description of B in the definition *interest and financing expenses*, in computing the income or loss of a taxpayer for a taxation year, must not be so included, if

(a) an amount in respect of the particular amount is deductible in computing the foreign accrual property income of a corporation that is a foreign affiliate, but

avantage n'est considéré comme ayant été conféré au cessionnaire du fait qu'il a produit le choix.

Contrepartie du choix

(11) Pour l'application de la présente partie, lorsqu'un bien est acquis à un moment donné par un cédant en contrepartie de la production d'un choix ou d'un choix modifié avec un cessionnaire en application du paragraphe (4) :

a) si le bien appartenait au cessionnaire immédiatement avant ce moment :

(i) le cessionnaire est réputé avoir disposé du bien à ce moment pour un produit égal à sa juste valeur marchande à ce moment,

(ii) seuls les montants découlant de l'application du sous-alinéa (i) sont déductibles dans le calcul du revenu du cessionnaire par suite du transfert du bien;

b) le coût auquel le cédant a acquis le bien à ce moment est réputé égal à sa juste valeur marchande à ce moment;

c) le cédant n'est pas tenu d'ajouter un montant dans le calcul de son revenu du seul fait qu'il a acquis le bien à ce moment.

Sociétés de personnes

(12) Pour l'application du présent article :

a) toute personne ou société de personnes qui est (ou est réputée être) en vertu du présent alinéa un associé d'une société de personnes donnée qui est un associé d'une autre société de personnes est réputée être un associé de cette dernière;

b) la part d'une personne sur le revenu ou la perte d'une société de personnes comprend la part directe ou indirecte de la personne par l'intermédiaire d'une ou de plusieurs sociétés de personnes, de ce revenu ou cette perte.

Anti-évitement — revenus et dépenses d'intérêts et de financement

(13) Une somme donnée qui serait, compte non tenu du présent paragraphe, incluse dans l'élément A de la formule figurant à la définition de *revenus d'intérêts et de financement* ou dans l'élément B de la formule figurant à la définition de *dépenses d'intérêts et de financement* dans le calcul du revenu ou de la perte d'un contribuable pour une année d'imposition, ne doit être incluse si, selon le cas :

not a controlled foreign affiliate, of the taxpayer or of a person or partnership that does not deal at arm's length with the taxpayer;

(b) the particular amount is received or receivable, directly or indirectly and in whole or in part, by the taxpayer, or a partnership of which it is a member, from

(i) a person that does not deal at arm's length with the taxpayer and that is

(A) an excluded entity,

(B) a natural person, or

(C) if the taxpayer is not a financial institution group entity or a financial holding corporation, a financial institution group entity or a financial holding corporation, or

(ii) a partnership of which a person described in subparagraph (i) is a member; or

(c) one of the main purposes of a transaction or series of transactions is to include the particular amount under the description of A in the definition *interest and financing revenues*, or the description of B in the definition *interest and financing expenses*, in computing the income or loss of the taxpayer for a taxation year and

(i) the transaction or series results in an amount that

(A) is not included in the description of B in the definition *interest and financing revenues*, or the description of A in the definition *interest and financing expenses*, in computing the income or loss of the taxpayer, or of a person not dealing at arm's length with the taxpayer, for a taxation year, and

(B) is deductible in computing the income of loss for a taxation year of the taxpayer or a person or partnership not dealing at arm's length with the taxpayer, or

(ii) it can reasonably be considered that, in the absence of the transaction or series, the particular amount or an amount for which the particular amount was substituted

(A) would have been included in computing the income or loss for a taxation year (other than as a dividend) of the taxpayer, or a person or partnership not dealing at arm's length with the taxpayer, and

a) une somme relative à la somme donnée est déductible dans le calcul du revenu étranger accumulé, tiré de biens d'une société qui est une société étrangère affiliée, autre qu'une société étrangère affiliée contrôlée, du contribuable ou d'une personne ou société de personnes ayant un lien de dépendance avec le contribuable;

b) la somme donnée est reçue ou à recevoir, directement ou indirectement et en tout ou en partie, par le contribuable ou par une société de personnes dont il est associé :

(i) soit d'une personne ayant un lien de dépendance avec le contribuable et qui est, selon le cas :

(A) une entité exclue,

(B) une personne physique,

(C) si le contribuable n'est pas une entité du groupe d'institutions financières ou une société de portefeuille financière, une entité du groupe d'institutions financières ou une société de portefeuille financière,

(ii) soit d'une société de personnes dont une personne visée au sous-alinéa (i) est un associé;

c) l'un des principaux objets d'une opération ou d'une série d'opérations consiste à inclure la somme donnée dans l'élément A de la formule figurant à la définition de *revenus d'intérêts et de financement* ou dans l'élément B de la formule figurant à la définition de *dépenses d'intérêts et de financement* dans le calcul du revenu ou de la perte du contribuable pour une année d'imposition et, selon le cas :

(i) l'opération ou la série donne lieu à une somme qui, à la fois :

(A) n'est pas incluse dans l'élément B de la formule figurant à la définition de *revenus d'intérêts et de financement* ou de l'élément A de la formule figurant à la définition de *dépenses d'intérêts et de financement* dans le calcul du revenu ou de la perte du contribuable ou d'une personne ayant avec lui un lien de dépendance pour une année d'imposition,

(B) est déductible dans le calcul du revenu ou de la perte pour une année d'imposition du contribuable ou d'une personne ou société de personnes ayant un lien de dépendance avec le contribuable,

(B) would not have been included under the description of A in the definition *interest and financing revenues*, or the description of B in the definition *interest and financing expenses*, in computing the income or loss of the taxpayer or a person not dealing at arm's length with the taxpayer.

(ii) il est raisonnable de considérer que, en l'absence de l'opération ou de la série, la somme donnée ou une somme à laquelle la somme donnée est substituée, à la fois :

(A) aurait été incluse dans le calcul du revenu ou de la perte pour une année d'imposition (à l'exclusion d'un dividende) du contribuable ou d'une personne ou société de personnes ayant un lien de dépendance avec le contribuable,

(B) n'aurait pas été incluse dans l'élément A de la formule figurant à la définition de *revenus d'intérêts et de financement* ou dans l'élément B de la formule figurant à la définition de *dépenses d'intérêts et de financement* dans le calcul du revenu ou de la perte du contribuable ou d'une personne ayant avec lui un lien de dépendance.

Anti-avoidance — excluded entity

(14) For the purposes of subparagraph (c)(iv) of the definition *excluded entity*, a person or partnership is deemed to be tax-indifferent and not to deal at arm's length with the taxpayer or any eligible group entity in respect of the taxpayer throughout a taxation year of the taxpayer if

(a) any portion of the interest and financing expenses of the taxpayer for the year is paid or payable by the taxpayer or any eligible group entity in respect of the taxpayer to the person or partnership as part of a transaction or series of transactions; and

(b) it can reasonably be considered that one of the main purposes of the transaction or series is to avoid that portion of the interest and financing expenses being paid or payable to a person or partnership that is tax-indifferent and does not deal at arm's length with the taxpayer or any eligible group entity in respect of the taxpayer.

Anti-évitement — entité exclue

(14) Pour l'application du sous-alinéa c)(iv) de la définition de *entité exclue*, une personne ou une société de personnes est réputée être indifférente relativement à l'impôt et avoir un lien de dépendance avec le contribuable ou toute entité admissible du groupe à l'égard du contribuable tout au long d'une année d'imposition de celui-ci si, à la fois :

a) toute partie des dépenses d'intérêts et de financement du contribuable pour l'année est payée ou payable par le contribuable ou par toute entité admissible du groupe à l'égard du contribuable à la personne ou la société de personnes dans le cadre d'une opération ou d'une série d'opérations;

b) il est raisonnable de considérer que l'un des principaux objets de l'opération ou de la série est d'éviter que cette partie des dépenses d'intérêts et de financement soit payée ou payable à une personne ou une société de personnes indifférente relativement à l'impôt qui a un lien de dépendance avec le contribuable ou toute entité admissible du groupe à l'égard du contribuable.

Deemed eligible group entities

(15) If two taxpayers are eligible group entities in respect of a third taxpayer, they are deemed to be eligible group entities in respect of each other.

Entités admissibles du groupe réputées

(15) Lorsque deux contribuables sont des entités admissibles du groupe à l'égard d'un troisième contribuable, ils sont réputés être des entités admissibles du groupe les uns à l'égard des autres.

Eligible group entities — related

(16) For the purposes of paragraph (a) of the definition *eligible group entity* in subsection (1)

Entités admissibles du groupe — liées

(16) Pour l'application de l'alinéa a) de la définition de *entité admissible du groupe* au paragraphe (1) :

(a) despite subsection 104(1), a reference to a person that is a trust does not include a reference to the trustee or other persons that own or control the trust property; and

(b) a corporation or a trust is deemed not to be related to a taxpayer where the corporation or trust would, but for this paragraph, be related to the taxpayer solely because the taxpayer is controlled by His Majesty in right of Canada, His Majesty in right of a province or an entity referred to in any of paragraphs 149(1)(c) to (d.6).

a) malgré le paragraphe 104(1), la mention d'une personne qui est une fiducie ne vaut pas mention du fiduciaire ou d'autres personnes qui ont la propriété ou le contrôle des biens de la fiducie;

b) une société ou une fiducie est réputée ne pas être liée à un contribuable lorsque la société ou la fiducie serait, n'eût été le présent alinéa, liée au contribuable uniquement parce que celui-ci est contrôlé par Sa Majesté du Chef du Canada, Sa Majesté du chef d'une province ou une entité visée aux alinéas 149(1)c) à d.6).

Eligible group entities — affiliated

(17) For the purposes of paragraph (b) of the definition *eligible group entity* in subsection (1), a corporation or a trust is deemed not to be affiliated with a taxpayer where that corporation or trust would, but for this subsection, be affiliated with the taxpayer solely because

(a) the taxpayer is controlled by His Majesty in right of Canada, His Majesty in right of a province or an entity referred to in any of paragraphs 149(1)(c) to (d.6); or

(b) if the corporation or trust is a registered charity or a non-profit organization with whom the taxpayer deals at arm's length, the corporation or trust is a *majority-interest beneficiary* (within the meaning of subsection 251.1(3)) of the taxpayer.

Entités admissibles du groupe — affiliées

(17) Pour l'application de l'alinéa b) de la définition de *entité admissible du groupe* au paragraphe (1), une société ou une fiducie est réputée ne pas être affiliée à un contribuable lorsque cette société ou fiducie serait, n'eût été le présent paragraphe, affiliée au contribuable uniquement parce que, selon le cas :

a) le contribuable est contrôlé par Sa Majesté du Chef du Canada Sa Majesté du chef d'une province ou une entité visée aux alinéas 149(1)c) à d.6);

b) si la société ou la fiducie est un organisme de bienfaisance enregistré ou une organisation à but non lucratif avec laquelle le contribuable n'a aucun lien de dépendance, la société ou fiducie est un *bénéficiaire détenant une participation majoritaire* (au sens du paragraphe 251.1(3)) du contribuable.

Filing requirement

(18) Each taxpayer shall file with its return of income for the taxation year a prescribed form containing prescribed information for the purpose of determining the deductibility of its interest and financing expenses and determining its exempt interest and financing expenses.

Exigence relative à la production de déclarations de revenus

(18) Chaque contribuable est tenu de produire, avec sa déclaration de revenu pour l'année d'imposition, un formulaire prescrit contenant les renseignements prescrits pour déterminer la déductibilité de ses dépenses d'intérêts et de financement et déterminer ses dépenses d'intérêts et de financement exonérées.

Relevant inter-affiliate interest

(19) If an amount is paid or payable by a controlled foreign affiliate (referred to in this subsection as the "payer affiliate") of a taxpayer and received or receivable by a controlled foreign affiliate (referred to in this subsection as the "recipient affiliate") of the taxpayer, or a taxpayer that is an eligible group entity in respect of the taxpayer, and the amount is relevant inter-affiliate interest of the payer affiliate for an affiliate taxation year (referred to in this subsection as the "payer affiliate year") and of the recipient affiliate for an affiliate taxation year (referred to in this subsection as the "recipient affiliate year"),

Intérêts pertinents entre sociétés affiliées

(19) Si un montant est payé ou payable par une société étrangère affiliée contrôlée (appelée « société affiliée payeuse » au présent paragraphe) d'un contribuable et est reçu ou à recevoir par une société étrangère affiliée contrôlée (appelée « société affiliée bénéficiaire » au présent paragraphe) du contribuable, ou d'un contribuable qui est une entité admissible du groupe relativement au contribuable, et le montant correspond à des intérêts pertinents entre sociétés affiliées de la société affiliée payeuse pour une année d'imposition de la société affiliée (appelée « année de la société affiliée payeuse » au présent paragraphe) et de la société affiliée bénéficiaire pour une année d'imposition de la société affiliée (appelée

(a) the amount included, in respect of the relevant inter-affiliate interest, in the payer affiliate's relevant affiliate interest and financing expenses for the payer affiliate year is the lesser of

(i) the relevant inter-affiliate interest, and

(ii) the amount determined by the formula

A + B

where

A is the amount determined by the formula

(C – D) × E ÷ C

where

C is the total of all amounts, each of which would — if the relevant inter-affiliate interest were not paid or payable — be, in respect of the payer affiliate for the payer affiliate year, the specified participating percentage of

(A) the taxpayer, or

(B) another taxpayer that is an eligible group entity in respect of the taxpayer, and

D is the total of all amounts, each of which is, in respect of the recipient affiliate for the recipient affiliate year, the specified participating percentage of

(A) the taxpayer, or

(B) another taxpayer that is an eligible group entity in respect of the taxpayer, and

E is the relevant inter-affiliate interest, and

B is the lesser of

(A) the relevant inter-affiliate interest, and

(B) the amount determined by the formula

(F – G) × H ÷ I

where

F is the payer affiliate's relevant affiliate interest and financing revenues for the payer affiliate year,

G is the amount that would be the payer affiliate's relevant affiliate interest and financing expenses for the payer affiliate year if the payer affiliate had no relevant inter-affiliate interest for the payer affiliate year,

H is the amount determined for E, and

« année de la société affiliée bénéficiaire » au présent paragraphe) :

a) le montant inclus, relativement aux intérêts pertinents entre sociétés affiliées, dans les dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée payeuse pour l'année de la société affiliée payeuse est le moins élevé des montants suivants :

(i) les intérêts pertinents entre sociétés affiliées,

(ii) le montant obtenu par la formule suivante :

A + B

où :

A représente le montant obtenu par la formule suivante :

(C – D) × E ÷ C

où :

C représente le total de tous les montants dont chacun représenterait — si les intérêts pertinents entre sociétés affiliées n'avaient pas été payés ou n'étaient pas payables — relativement à la société affiliée payeuse pour l'année de la société affiliée payeuse, le pourcentage de participation déterminé :

(A) soit du contribuable,

(B) soit d'un autre contribuable qui est une entité admissible du groupe relativement au contribuable,

D le total des montants dont chacun représente, relativement à la société affiliée bénéficiaire pour l'année de la société affiliée bénéficiaire, le pourcentage de participation déterminé :

(A) soit du contribuable,

(B) soit d'un autre contribuable qui est une entité admissible du groupe relativement au contribuable,

E les intérêts pertinents entre sociétés affiliées,

B le moindre des montants suivants :

(A) les intérêts pertinents entre sociétés affiliées,

(B) le montant obtenu par la formule suivante :

(F – G) × H ÷ I

où :

I is the total of all amounts, each of which is an amount of relevant inter-affiliate interest of the payer affiliate for the payer affiliate year that would, in the absence of this paragraph, be included in the payer affiliate's relevant affiliate interest and financing expenses; and

(b) the amount included, in respect of the relevant inter-affiliate interest, in the recipient affiliate's relevant affiliate interest and financing revenues for the recipient affiliate year is the lesser of

(i) the amount referred to in E, and

(ii) the amount determined by the formula

J × K ÷ L

where

J is the amount determined for B,

K is the amount determined for C, and

L is the amount determined for D.

F représente les revenus d'intérêts et de financement de la société affiliée pertinents de la société affiliée payeuse pour l'année de la société affiliée payeuse,

G le montant qui serait des dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée payeuse pour l'année de la société affiliée payeuse si la société affiliée payeuse n'avait pas d'intérêts pertinents entre sociétés affiliées pour l'année de la société affiliée payeuse,

H la valeur de l'élément E,

I le total des montants dont chacun représente un montant d'intérêts pertinents entre sociétés affiliées de la société affiliée payeuse pour l'année de la société affiliée payeuse qui serait, en l'absence du présent alinéa, inclus dans les dépenses d'intérêts et de financement de la société affiliée pertinentes de la société affiliée payeuse;

b) le montant inclus, relativement aux intérêts pertinents entre sociétés affiliées, dans les revenus d'intérêts et de financement de la société affiliée pertinents de la société affiliée bénéficiaire pour l'année de la société affiliée bénéficiaire est le moindre des montants suivants :

(i) la somme visée à l'élément E,

(ii) la somme déterminée par la formule suivante :

J × K ÷ L

où :

J représente la valeur de l'élément B,

K la valeur de l'élément C,

L la valeur de l'élément D.

Group ratio — definitions

18.21 (1) The following definitions apply in this section.

acceptable accounting standards means International Financial Reporting Standards and the generally accepted accounting principles of

(a) Canada;

(b) Australia;

(c) Brazil;

(d) member states of the European Union;

Ratio de groupe — définitions

18.21 (1) Les définitions qui suivent s'appliquent au présent article.

bénéfice net comptable rajusté du groupe En ce qui concerne un groupe consolidé pour une période pertinente, la somme obtenue par la formule suivante :

A – B

où :

A représente la somme obtenue par la formule suivante :

C + D + E + F + G

(e) member states of the European Economic Area;

(f) Hong Kong (China);

(g) Japan;

(h) Mexico;

(i) New Zealand;

(j) the People's Republic of China;

(k) the Republic of India;

(l) the Republic of Korea;

(m) Singapore;

(n) Switzerland;

(o) the United Kingdom; and

(p) the United States. (*principes comptables acceptables*)

consolidated financial statements means financial statements prepared in accordance with a relevant acceptable accounting standard in which the assets, liabilities, income, expenses and cash flows of two or more entities are presented as those of a single economic entity and, for greater certainty, the financial statements include the notes to the financial statements. (*états financiers consolidés*)

consolidated group means two or more entities, other than an equity-accounted entity but including an ultimate parent, (each such entity referred to in this section as a "member of the consolidated group") in respect of which consolidated financial statements are required to be prepared for financial reporting purposes or would be so required if the entities were subject to International Financial Reporting Standards. (*groupe consolidé*)

equity-accounted entity means an entity the net income or loss of which is included in the consolidated financial statements of a consolidated group under the equity method of accounting. (*entité comptabilisée à la valeur de consolidation*)

equity interest means

(a) a share of the capital stock of a corporation;

(b) an interest as a beneficiary under a trust;

(c) an interest as a member of a partnership; or

où :

C représente le montant éventuel de revenu net déclaré dans les états financiers consolidés du groupe pour la période,

D le montant éventuel des charges d'impôts déclaré dans ces états,

E la somme qui serait les dépenses d'intérêts déterminées du groupe pour la période si la définition de *dépenses d'intérêts déterminées* s'appliquait compte non tenu de l'alinéa b) de l'élément A,

F le total des montants qui entrent dans le calcul des sommes déclarées dans ces états dont chacun représente le montant :

a) d'un amortissement ou d'une charge d'amortissement relativement à un bien,

b) d'une charge relative à la dépréciation ou à la radiation d'un actif visé à l'alinéa a),

c) d'une perte sur la disposition d'un élément d'actif visé à l'alinéa a),

d) si un choix est fait en vertu du paragraphe (4) et que le montant de la juste valeur net pour la période est négatif, de la valeur absolue du montant de la juste valeur net,

e) de frais, de dépenses, de déduction ou de perte qui est semblable à l'un de ces éléments visés aux alinéas a) à d),

G le total des montants visés aux éléments D ou F qui sont inclus dans le calcul du revenu net ou de la perte nette d'une entité comptabilisée à la valeur de consolidation, jusqu'à concurrence de la part du groupe consolidé dans ce revenu net ou cette perte nette;

B la somme obtenue par la formule suivante :

H + I + J + K + L + M + N

où :

H représente le montant éventuel de la perte nette déclarée dans ces états,

I le montant éventuel de l'impôt recouvrable déclaré dans ces états,

J les revenus d'intérêts déterminés du groupe pour la période,

K si un choix est fait en vertu du paragraphe (4) et que le montant de la juste valeur net pour la période est positif, le montant de la juste valeur net,

L le total des montants qui entrent dans le calcul des montants déclarés dans ces états

(d) any similar interest in respect of any entity. (*participation au capital*)

fair value amount means any amount reflected in the net income or net loss reported in the consolidated financial statements of a consolidated group for a relevant period where

(a) the carrying value of any asset or liability of the consolidated group is measured using the fair value method of accounting; and

(b) the amount reflects a change in the carrying value of the asset or liability during the relevant period and is included in either the description of C or H in the definition *group adjusted net book income*. (*montant de la juste valeur*)

group adjusted net book income, of a consolidated group for a relevant period, means the amount determined by the formula

A – B

where

A is the amount determined by the formula

C + D + E + F + G

where

C is the amount, if any, of net income reported in the consolidated financial statements of the group for the period,

D is the amount, if any, of income tax expense reported in those statements,

E is the amount that would be the specified interest expense of the group for the period if the definition *specified interest expense* were read without reference to paragraph (b) of the description of A,

F is the total of all amounts used in determining the amounts reported in those statements each of which is the amount of

(a) a depreciation or amortization expense in respect of an asset,

(b) a charge in respect of the impairment or write-off of an asset referred to in paragraph (a),

(c) a loss on the disposal of an asset referred to in paragraph (a),

(d) if an election is made under subsection (4) and the net fair value amount for the period is negative, the absolute value of the net fair value amount, and

représentant chacun le montant d'un gain sur la disposition d'un élément d'actif visé à l'alinéa a) de l'élément F, dans la mesure ou le produit des ventes ne dépasse pas le coût initial de l'élément d'actif,

M le total des montants visés aux éléments I, K et L qui est pris en compte dans la détermination du revenu net ou de la perte nette d'une entité comptabilisée à la valeur de consolidation, jusqu'à concurrence de la part du groupe consolidé dans ce revenu net ou cette perte nette,

N le total des montants représentant chacun la fraction du revenu net déclaré dans ces états qu'il est raisonnable de considérer comme ayant été gagné par un emprunteur (au sens de la définition de *dépenses d'intérêts et de financement exonérées* au paragraphe 18.2(1)) relativement à un emprunt (au sens de la définition de *dépenses d'intérêts et de financement exonérées* au paragraphe 18.2(1)) qui entraîne des dépenses d'intérêts et de financement exonérées de celui-ci. (*group adjusted net book income*)

dépenses d'intérêts déterminées En ce qui concerne un groupe consolidé pour une période pertinente, la somme obtenue par la formule suivante :

A – B

où :

A représente le total des montants (sauf les montants qui sont inclus dans les dépenses d'intérêts et de financement exonérées) représentant chacun :

a) un montant de dépenses d'intérêts qui entre dans le calcul des montants déclarés dans les états financiers consolidés du groupe consolidé pour la période pertinente,

b) un montant d'intérêts capitalisés qui entre dans le calcul des montants déclarés dans ces états,

c) le montant des frais de garantie, des frais pour droit d'usage, de la commission d'arrangement ou d'autres frais semblables payés ou payables qui entre dans le calcul des montants déclarés dans ces états et qui n'est pas visé aux alinéas a) ou b),

d) un montant visé à l'un des alinéas a) à c) qui est pris en compte dans la détermination du revenu net ou de la perte nette d'une entité comptabilisée à la valeur de consolidation, jusqu'à concurrence de la part du groupe consolidé dans ce revenu net ou cette perte nette,

B le total des montants représentant chacun le montant d'un dividende pris en compte dans la

(e) an expense, charge, deduction or loss that is similar to any of those referred to in paragraphs (a) to (d), and

G is the total of all amounts referred to in the description of D or F that are included in the determination of the net income or loss of an equity-accounted entity, to the extent of the consolidated group's share of that net income or loss; and

B is the amount determined by the formula

H + I + J + K + L + M + N

where

H is the amount, if any, of net loss reported in those statements,

I is the amount, if any, of income tax recoverable reported in those statements,

J is the specified interest income of the group for the period,

K if an election is made under subsection (4) and the net fair value amount for the period is positive, the net fair value amount,

L is the total of all amounts used in determining the amounts reported in those statements each of which is the amount of a gain on the disposal of an asset referred to in paragraph (a) of the description of F, to the extent that the sale proceeds do not exceed the original cost of the asset,

M is the total of all amounts referred to in the descriptions of I, K and L that is included in the determination of the net income or loss of an equity-accounted entity, to the extent of the consolidated group's share of that net income or loss, and

N is the total of all amounts, each of which is the portion of net income reported in those statements that can reasonably be considered to be earned by a borrower (within the meaning of the definition *exempt interest and financing expenses* in subsection 18.2(1)) in respect of a borrowing (within the meaning of the definition *exempt interest and financing expenses* in subsection 18.2(1)) that results in exempt interest and financing expenses of the borrower. (*bénéfice net comptable rajusté du groupe*)

group net interest expense, of a consolidated group for a relevant period, means the amount determined by the formula

A – B

where

A is the amount determined by the formula

détermination d'une somme visée à l'un des alinéas a) à d) de l'élément A. (*specified interest expense*)

dépenses nettes d'intérêts du groupe En ce qui concerne un groupe consolidé pour une période pertinente, la somme obtenue par la formule suivante :

A – B

où :

A représente la somme obtenue par la formule suivante :

C – D

où :

C représente les dépenses d'intérêts déterminées du groupe pour la période,

D les revenus d'intérêts déterminés du groupe pour la période,

B le total des montants représentant chacun la somme obtenue par la formule suivante à l'égard d'un non-membre déterminé du groupe :

E – F

où :

E représente la partie du montant de dépenses d'intérêts déterminées du groupe pour la période qui est payée ou payable au non-membre déterminé,

F la partie du montant de revenus d'intérêts déterminés du groupe pour la période qui est reçue ou à recevoir du non-membre déterminé. (*group net interest expense*)

entité comptabilisée à la valeur de consolidation Entité dont le revenu net ou la perte nette est inclus dans les états financiers consolidés d'un groupe consolidé selon la méthode de la comptabilisation à la valeur de consolidation. (*equity-accounted entity*)

états financiers consolidés États financiers établis conformément à un principe comptable acceptable pertinent dans lesquels les actifs, les passifs, le revenu, les dépenses et les flux de trésorerie de plusieurs entités sont présentés comme étant ceux d'une seule entité économique. Il est entendu que les états financiers comprennent les notes qui leur sont afférentes. (*consolidated financial statements*)

groupe consolidé Plusieurs entités, autre qu'une entité comptabilisée à la valeur de consolidation, mais incluant une mère ultime, (chaque entité appelée « membre du groupe consolidé » au présent article) à l'égard desquelles des états financiers consolidés sont tenus d'être établis aux fins de présentation de l'information

C – D

where

C is the specified interest expense of the group for the period, and

D is the specified interest income of the group for the period; and

B is the total of all amounts each of which is an amount determined, in respect of a specified non-member of the group, by the formula

E – F

where

E is the portion of the amount of the specified interest expense of the group for the period that is paid or payable to the specified non-member, and

F is the portion of the amount of the specified interest income of the group for the period that is received or receivable from the specified non-member. (*dépenses nettes d'intérêts du groupe*)

group ratio, of a consolidated group for a relevant period, means

(a) except where paragraph (b) applies, the percentage determined by the formula

1.1 × A ÷ B

where

A is the group net interest expense of the consolidated group for the relevant period, and

B is the group adjusted net book income of the consolidated group for the relevant period; and

(b) if the group adjusted net book income of the consolidated group for the relevant period is nil, nil. (*ratio de groupe*)

net fair value amount means the positive or negative amount that is the total of all amounts, each of which is a positive or negative fair value amount in the consolidated financial statements of the consolidated group for a relevant period. (*montant de la juste valeur net*)

relevant period means a period in respect of which the consolidated financial statements of a consolidated group are presented. (*période pertinente*)

specified interest expense, of a consolidated group for a relevant period, means the amount determined by the formula

A – B

financière ou seraient ainsi tenus de l'être si les entités étaient assujetties aux normes internationales d'information financière. (*consolidated group*)

mère ultime S'entend d'une entité donnée si les conditions suivantes sont réunies :

a) l'entité donnée n'est pas Sa Majesté du chef du Canada, Sa Majesté du chef d'une province ou une entité visée à l'un des alinéas 149(1)c) à d.6);

b) elle détient directement ou indirectement une participation dans une ou plusieurs autres entités à l'égard desquelles elle est tenue d'établir des états financiers consolidés à des fins de présentation de l'information financière, ou le serait si elle était assujettie aux normes internationales d'information financière;

c) aucune entité (autre qu'une entité visée à l'alinéa a)) ne détient, directement ou indirectement, dans l'entité donnée une participation visée à l'alinéa b). (*ultimate parent*)

montant de la juste valeur Tout montant reflété dans le revenu net ou la perte nette déclaré dans les états financiers consolidés d'un groupe consolidé pour une période pertinente où, à la fois :

a) la valeur comptable d'un actif ou d'un passif du groupe consolidé est mesurée à l'aide de la méthode de la comptabilisation de la juste valeur;

b) le montant reflète une variation de la valeur comptable de l'actif ou du passif au cours de la période pertinente et est pris en compte dans les éléments C ou H de la définition de *bénéfice net comptable rajusté du groupe*. (*fair value amount*)

montant de la juste valeur net Le montant positif ou négatif représentant le total des sommes dont chacune représente un montant de la juste valeur positif ou négatif dans les états financiers consolidés du groupe consolidé pour une période pertinente. (*net fair value amount*)

non-membre déterminé En ce qui concerne un groupe consolidé pour une période pertinente, une personne ou une société de personnes donnée qui n'est pas membre du groupe consolidé et qui, à un moment de la période :

a) a un lien de dépendance avec un membre du groupe;

b) seule ou avec d'autres personnes ou sociétés de personnes avec lesquelles la personne ou la société de personnes donnée a un lien de dépendance détient, ou a le droit d'acquérir, une ou plusieurs participations

where

A is the total of all amounts (other than amounts that are included in exempt interest and financing expenses), each of which is

(a) an amount of interest expense used in determining the amounts reported in the consolidated financial statements of the consolidated group for the relevant period,

(b) an amount of capitalized interest used in determining the amounts reported in those statements,

(c) the amount of a guarantee fee, standby charge, arrangement fee or similar fee paid or payable that is used in determining the amounts reported in those statements and that is not included in paragraph (a) or (b), or

(d) an amount referred to in any of paragraphs (a) to (c) that is included in the determination of the net income or loss of an equity-accounted entity, to the extent of the consolidated group's share of that net income or loss; and

B is the total of all amounts each of which is the amount of a dividend included in the determination of an amount referred to in any of paragraphs (a) to (d) of the description of A. (*dépenses d'intérêts déterminées*)

specified interest income, of a consolidated group for a relevant period, means the amount determined by the formula

A – B

where

A is the total of all amounts, each of which is

(a) an amount of interest income used in determining the amounts reported in the consolidated financial statements of the consolidated group for the relevant period,

(b) the amount of a guarantee fee, standby charge, arrangement fee or similar fee received or receivable that is used in determining the amounts reported in those statements and that is not included in paragraph (a), or

(c) an amount referred to in paragraph (a) or (b) that is included in the determination of the net income or loss of an equity-accounted entity, to the extent of the consolidated group's share of that income or loss; and

B is the total of all amounts each of which is the amount of a dividend included in the determination of an amount referred to in any of paragraphs (a) to

au capital dans un membre du groupe qui, selon le cas :

(i) confère au moins 25 % des voix pouvant être exprimées à l'assemblée annuelle des actionnaires du membre, si ce dernier est une société,

(ii) a au moins 25 % de la juste valeur marchande de l'ensemble des participations au capital dans le membre;

c) est une personne ou une société de personnes à l'égard de laquelle un membre du groupe, seul ou avec d'autres personnes ou sociétés de personnes avec lesquelles il a un lien de dépendance, détient, ou a le droit d'acquérir, une ou plusieurs participations au capital dans la personne ou la société de personnes donnée qui, selon le cas :

(i) confère au moins 25 % des voix pouvant être exprimées à l'assemblée annuelle des actionnaires de la personne donnée, si cette dernière est une société,

(ii) a au moins 25 % de la juste valeur marchande de l'ensemble des participations au capital dans la personne ou la société de personnes donnée. (*specified non-member*)

participation au capital S'entend, selon le cas :

a) d'une action du capital-actions d'une société;

b) d'une participation à titre de bénéficiaire d'une fiducie;

c) d'une participation à titre d'associé d'une société de personnes;

d) de tout intérêt similaire à l'égard de toute entité. (*equity interest*)

période pertinente Période relativement à laquelle les états financiers consolidés d'un groupe consolidé sont présentés. (*relevant period*)

principes comptables acceptables S'entend des normes internationales d'information financière et des principes comptables généralement reconnus dans les pays suivants :

a) Canada;

b) Australie;

c) Brésil;

(c) of the description of A. (*revenus d'intérêts déterminés*)

specified non-member, of a consolidated group for a relevant period, means a particular person or partnership that is not a member of the consolidated group and that, at any time in the period,

(a) does not deal at arm's length with a member of the group;

(b) alone or together with persons or partnerships with whom the particular person or partnership does not deal at arm's length owns, or has the right to acquire, one or more equity interests in a member of the group that

(i) provide 25% or more of the votes that could be cast at an annual meeting of the shareholders of the member, if the member is a corporation, or

(ii) have 25% or more of the fair market value of all equity interests in the member; or

(c) is a person or partnership in respect of which a member of the group — alone or together with persons or partnerships with whom the member does not deal at arm's length — owns, or has the right to acquire, one or more equity interests in the particular person or partnership that

(i) provide 25% or more of the votes that could be cast at an annual meeting of the shareholders of the particular person, if the particular person is a corporation, or

(ii) have 25% or more of the fair market value of all equity interests in the particular person or partnership. (*non-membre déterminé*)

ultimate parent means a particular entity if

(a) the particular entity is not His Majesty in right of Canada, His Majesty in right of a province or an entity referred to in any of paragraphs 149(1)(c) to (d.6);

(b) it holds directly or indirectly an interest in one or more other entities in respect of which it is required to prepare consolidated financial statements for financial reporting purposes, or would be so required if it was subject to International Financial Reporting Standards; and

(c) no entity (other than an entity described in paragraph (a)) holds, directly or indirectly, in the particular entity an interest that is described in paragraph (b). (*mère ultime*)

d) pays membres de l'Union européenne;

e) pays membres de l'Espace économique européen;

f) Hong Kong (Chine);

g) Japon;

h) Mexique;

i) Nouvelle-Zélande;

j) République populaire de Chine;

k) République de l'Inde;

l) République de Corée;

m) Singapour;

n) Suisse;

o) Royaume-Uni;

p) États-Unis. (*acceptable accounting standards*)

ratio de groupe En ce qui concerne un groupe consolidé pour une période pertinente, selon le cas :

a) sauf si l'alinéa b) s'applique, le pourcentage obtenu par la formule suivante :

1,1 × A ÷ B

où :

A représente les dépenses nettes d'intérêts du groupe relativement au groupe consolidé pour la période pertinente,

B le bénéfice net comptable rajusté du groupe relativement au groupe consolidé pour la période pertinente,

b) si le bénéfice net comptable rajusté du groupe relativement au groupe consolidé pour la période pertinente est zéro, zéro. (*group ratio*)

revenus d'intérêts déterminés En ce qui concerne un groupe consolidé pour une période pertinente, la somme obtenue par la formule suivante :

A – B

où :

A représente le total des montants représentant chacun :

a) un montant de revenus d'intérêts qui entre dans le calcul des montants déclarés dans les états

financiers consolidés du groupe consolidé pour la période pertinente,

b) le montant des frais de garantie, des frais d'utilisation, de la commission d'arrangement ou d'autres frais semblables reçus ou à recevoir qui entre dans le calcul des montants déclarés dans ces états et qui n'est pas visé à l'alinéa a),

c) un montant visé aux alinéas a) ou b) qui est pris en compte dans la détermination du revenu net ou de la perte nette d'une entité comptabilisée à la valeur de consolidation, jusqu'à concurrence de la part du groupe consolidé dans ce revenu net ou cette perte nette,

B le total des montants représentant chacun le montant d'un dividende pris en compte dans la détermination d'une somme visée à l'un des alinéas a) à c) de l'élément A. (*specified interest income*)

Allocated group ratio amount

(2) A taxpayer and each corporation or trust that is, throughout the relevant period, an eligible group entity in respect of that taxpayer and a member of the same consolidated group as the taxpayer (the taxpayer and each of the corporations or trusts being referred to in this subsection and subsection (4) as a "Canadian group member") may, if the taxpayer is a taxpayer described in subsection (7), elect, and otherwise jointly elect in respect of their taxation years ending in the relevant period (each referred to in this subsection and subsection (4) as a "relevant taxation year") to allocate amounts in respect of each relevant taxation year and the amount allocated to a member for a relevant taxation year is the amount determined in respect of that member for that relevant taxation year for the purposes of this section and subsection 18.2(2), if

(a) the consolidated financial statements of the consolidated group for the relevant period are audited financial statements;

(b) the election or amended election

(i) specifies the amount allocated to each Canadian group member for each relevant taxation year, and

(ii) is filed with the Minister by the taxpayer or a Canadian group member of the taxpayer on or before

(A) the latest filing-due date of a Canadian group member for a relevant taxation year, or

(B) the day that is 90 days after the sending of

Montant attribué du ratio de groupe

(2) Un contribuable et chaque société ou fiducie qui est, tout au long de la période pertinente, une entité admissible du groupe relativement à ce contribuable et un membre du même groupe consolidé que le contribuable (le contribuable et chacune de celles-ci étant appelés individuellement au présent paragraphe et au paragraphe (4) un « membre canadien du groupe »), peuvent, si le contribuable est visé au paragraphe (7), faire un choix, et autrement faire un choix conjoint relativement à leurs années d'imposition se terminant dans la période pertinente (chacune étant appelée au présent paragraphe et au paragraphe (4) une « année d'imposition pertinente ») pour attribuer les montants relativement à chaque année d'imposition pertinente et le montant attribué à un membre pour une année d'imposition pertinente est le montant déterminé relativement à ce membre pour cette année d'imposition pertinente pour l'application du présent article et du paragraphe 18.2(2), si les conditions suivantes sont réunies :

a) les états financiers consolidés du groupe consolidé pour la période pertinente sont des états financiers vérifiés;

b) le choix ou le choix modifié, à la fois :

(i) précise le montant attribué à chaque membre canadien du groupe pour chaque année d'imposition pertinente,

(ii) est présenté au ministre par le contribuable ou un membre canadien du groupe du contribuable au plus tard :

(II) a notification that no tax is payable under this Part by a Canadian group member for a relevant taxation year;

(c) the total of all amounts, each of which is an amount allocated to a Canadian group member for a relevant taxation year, does not exceed the least of

(i) the total of all amounts in respect of a member each of which is determined by the formula

A × B

where

A is the group ratio of the consolidated group for the relevant period, and

B is the adjusted taxable income of the member for each relevant taxation year,

(ii) the group net interest expense of the consolidated group in respect of the relevant period, and

(iii) the total of all amounts, each of which would, in the absence of section 257, be the adjusted taxable income of a member for each relevant taxation year;

(d) an amended election has not been filed in accordance with this section; and

(e) where the election is an amended election,

(i) the following conditions are met:

(A) in the absence of any assessment, the condition set out in paragraph (c) would be met in respect of a prior election under this subsection made by the Canadian group members for a relevant taxation year under this subsection, and

(B) subsection 18.2(9) does not apply to a tax benefit in respect of a prior election for the relevant period, or

(ii) the Minister grants permission to amend the prior election under subsection (3).

(A) à la dernière date d'échéance de production d'un membre canadien du groupe pour une année d'imposition pertinente,

(B) le quatre-vingt-dixième jour suivant la date d'envoi des documents suivants :

(I) un avis de cotisation concernant l'impôt payable en vertu de la présente partie par un membre canadien du groupe pour une année d'imposition pertinente,

(II) un avis portant qu'aucun impôt n'est payable en vertu de la présente partie par un membre canadien du groupe pour une année d'imposition pertinente;

c) le total des montants dont chacun représente un montant attribué à un membre canadien du groupe pour une année d'imposition pertinente n'excède pas le moindre des montants suivants :

(i) le total des montants relativement à un membre dont chacun est déterminé selon la formule suivante :

A × B

où :

A représente le ratio de groupe du groupe consolidé pour la période pertinente,

B le revenu imposable rajusté du membre pour chaque année d'imposition pertinente,

(ii) les dépenses nettes d'intérêts du groupe consolidé relativement à la période pertinente,

(iii) le total des montants dont chacun représenterait, compte non tenu de l'article 257, le revenu imposable rajusté d'un membre pour chaque année d'imposition pertinent;

d) un choix modifié n'a pas été produit conformément au présent article;

e) lorsque le choix est un choix modifié :

(i) soit les conditions ci-après sont remplies :

(A) en l'absence de toute cotisation, la condition de l'alinéa c) serait remplie relativement à un choix antérieur fait par les membres canadiens du groupe pour une année d'imposition pertinente en vertu du présent paragraphe,

(B) le paragraphe 18.2(9) ne s'applique pas à un avantage fiscal relativement à un choix antérieur pour la période pertinente,

(ii) soit le ministre accorde l'autorisation de modifier le choix en vertu du paragraphe (3).

Late or amended election

(3) The Minister may extend the time for making an election or grant permission to amend or revoke an election under subsection (2) if

(a) the Canadian group members demonstrate to the satisfaction of the Minister that

(i) they made reasonable efforts to determine all amounts that may reasonably be considered relevant in making the election, and

(ii) the election or amended election, as the case may be, is filed as soon as circumstances permit; and

(b) in the opinion of the Minister, the circumstances are such that it would be just and equitable to permit the election to be made, amended or revoked.

Choix modifié ou produit en retard

(3) Le ministre peut proroger le délai pour faire le choix prévu au paragraphe (2), ou permettre que ce choix soit modifié ou annulé, si les conditions suivantes sont réunies :

a) les membres canadiens du groupe démontrent que, à la satisfaction du ministre, à la fois :

(i) ils ont fait des efforts voulus pour déterminer toutes les sommes qu'il est raisonnable de considérer comme pertinentes pour faire le choix,

(ii) le choix ou le choix modifié, selon le cas, est produit dès que les circonstances le permettent;

b) selon le ministre, les circonstances sont telles qu'il serait juste et équitable de permettre que le choix soit fait, modifié ou annulé.

Fair value adjustments — election

(4) For the purposes of calculating group adjusted net book income, the following rules apply:

(a) no amounts may be included in paragraph (d) of the description of F or in the description of K in the definition *group adjusted net book income* for any relevant period unless the Canadian group members jointly elect, for the first relevant taxation year in respect of which the Canadian group members jointly elect under subsection (2), to include net fair value amounts in calculating group adjusted net book income for the relevant period in which the first relevant taxation year ends;

(b) if an election to include net fair value amounts in the calculation is not made in the first relevant taxation year, each Canadian group member is deemed not to have so elected in that taxation year and any subsequent taxation year; and

(c) if an election to include net fair value amounts in the calculation is made in the first relevant taxation year, each Canadian group member is deemed to have so elected in that taxation year and any subsequent taxation year.

Ajustements de la juste valeur — choix

(4) Aux fins du calcul du bénéfice net comptable rajusté du groupe, les règles ci-après s'appliquent :

a) aucun montant ne peut être inclus dans l'alinéa d) de l'élément F ou dans l'élément K de la définition de *bénéfice net comptable rajusté du groupe* pour toute période pertinente, sauf si les membres canadiens du groupe font un choix conjoint, pour la première année d'imposition pertinente relativement à laquelle les membres canadiens du groupe font un choix conjoint en application du paragraphe (2), d'inclure les montants de la juste valeur nets dans le calcul du bénéfice net comptable rajusté du groupe pour la période pertinente au cours de laquelle la première année d'imposition pertinente se termine;

b) si le choix d'inclure les montants de la juste valeur nets dans le calcul n'est pas fait au cours de la première année d'imposition pertinente, chaque membre canadien du groupe est réputé ne pas avoir ainsi fait le choix au cours de cette année d'imposition et des années d'imposition subséquentes;

c) si le choix d'inclure les montants de la juste valeur nets dans le calcul est fait au cours de la première année d'imposition pertinente, chaque membre canadien du groupe est réputé avoir ainsi fait le choix au cours

de cette année d'imposition et des années d'imposition subséquentes.

Assessment

(5) If an election or amended election has been made under subsection (2), the Minister shall, notwithstanding subsections 152(4) and (5), assess or reassess the tax, interest or penalties payable under this Act by any taxpayer for any relevant taxation year as is necessary to give effect to the election or amended election.

Cotisation

(5) En cas de choix ou de choix modifié fait en vertu du paragraphe (2), le ministre, malgré les paragraphes 152(4) et (5), établit les cotisations ou les nouvelles cotisations concernant l'impôt, les intérêts et les pénalités payables en application de la présente loi par tout contribuable pour toute année d'imposition pertinente afin de rendre applicable le choix ou le choix modifié.

Use of accounting terms

(6) For the purposes of the definitions *consolidated financial statements*, *consolidated group*, *equity-accounted entity*, *fair value amount*, *group adjusted net book income*, *specified interest expense*, *specified interest income* and *ultimate parent* in subsection (1), a term that is not defined under this Act has the meaning assigned to the term for financial reporting purposes under the relevant acceptable accounting standards.

Utilisation des termes comptables

(6) Pour l'application des définitions de *bénéfice net comptable rajusté du groupe*, *dépenses d'intérêts déterminées*, *entité comptabilisée à la valeur de consolidation*, *états financiers consolidés*, *groupe consolidé*, *mère ultime*, *montant de la juste valeur* et *revenus d'intérêts déterminés* au paragraphe (1), un terme non défini en vertu de la présente loi a le sens qui lui est attribué aux fins de présentation de l'information financière selon les principes comptables acceptables pertinents.

Single member group

(7) For the purposes of this section, if a taxpayer resident in Canada is not a member of a consolidated group for a relevant period,

(a) the taxpayer is deemed to be an eligible group entity in respect of itself;

(b) the taxpayer is deemed to be

(i) a member of a consolidated group that comprises only itself, and

(ii) the ultimate parent of the group; and

(c) the taxpayer's financial statements are deemed to be consolidated financial statements.

Groupe avec membre unique

(7) Pour l'application du présent article, si un contribuable résidant au Canada n'est pas un membre d'un groupe consolidé pour une période pertinente :

a) le contribuable est réputé être une entité admissible du groupe relativement à lui-même;

b) le contribuable est réputé être :

(i) un membre d'un groupe consolidé dont il est le seul membre,

(ii) la mère ultime du groupe;

c) les états financiers du contribuable sont réputés être des états financiers consolidés.

Anti-avoidance — specified non-member

(8) A particular person or partnership that is not a member of a consolidated group for a relevant period is deemed to be a specified non-member in respect of the group for the period if a portion of the amount of the specified interest expense of the group is paid or payable by a member of the group to the particular person or partnership as part of a transaction or series of transactions where it can reasonably be considered that one of the main purposes of the transaction or series is to avoid the inclusion of that portion in the determination of the amount for E in the definition *group net interest expense* in subsection (1).

Anti-évitement — non-membre déterminé

(8) Une personne ou une société de personnes donnée qui n'est pas un membre d'un groupe consolidé pour une période pertinente est réputée être un non-membre déterminé relativement au groupe pour la période si une partie du montant des dépenses d'intérêts déterminées du groupe est payée ou payable par un membre du groupe à la personne ou la société de personnes donnée dans le cadre d'une opération ou d'une série d'opérations lorsqu'il est raisonnable de considérer que l'un des principaux objets de l'opération ou de la série est d'éviter l'inclusion de cette partie dans la détermination de la valeur de l'élément E figurant à la définition de *dépenses nettes d'intérêts du groupe* au paragraphe (1).

(2) Subsection (1) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023, except that

(a) sections 18.2 and 18.21 of the Act, as enacted by subsection (1), also apply in respect of a taxation year of a taxpayer that begins before, and ends after, October 1, 2023 if

(i) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series, and

(ii) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of section 18.2 or 18.21 of the Act, as enacted by subsection (1), or the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), to the taxpayer or to increase an amount of excess capacity of any taxpayer determined under paragraphs (c) and (d);

(b) paragraph (a) of the definition *ratio of permissible expenses* in subsection 18.2(1) of the Act, as enacted by subsection (1), is to be read, in respect of a taxpayer, as if its reference to "40%" were a reference to "30%" if

(i) any taxation year of the taxpayer that begins after 2022 but before 2024 is, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series, and

(ii) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph (b) of that definition to the taxpayer;

(c) for the purpose of determining the cumulative unused excess capacity of a taxpayer that is a corporation or a fixed interest commercial trust for a particular taxation year, the taxpayer's excess capacity for each of the three taxation years (in this paragraph and paragraph (d), each referred to as a "pre-regime year") immediately preceding the first taxation year of the taxpayer in respect of which subsection (1) applies (in this paragraph and paragraph (d) referred to as the "first regime year" of the taxpayer) is deemed to be nil unless

(2) Le paragraphe (1) s'applique relativement aux années d'imposition d'un contribuable commençant après septembre 2023. Toutefois :

a) les articles 18.2 et 18.21 de la même loi, édictés par le paragraphe (1), s'appliquent aussi relativement à une année d'imposition d'un contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :

(i) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération ou d'un événement ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, cet événement ou cette série,

(ii) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe (1), ou l'application de l'alinéa 12(1)l.2), édicté par le paragraphe 2(1), au contribuable ou d'augmenter le montant de la capacité excédentaire d'un contribuable déterminée selon les alinéas c) et d);

b) l'alinéa a) de la définition de *ratio des dépenses admissibles* au paragraphe 18.2(1) de la même loi, édicté par le paragraphe (1), s'applique, relativement à un contribuable, comme si la mention de « 40 % » était remplacée par « 30 % » si, à la fois :

(i) toute année d'imposition du contribuable commençant après 2022, mais se termine avant 2024 est, en raison d'une opération ou d'un événement, ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, cet événement ou cette série,

(ii) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa b) de cette définition au contribuable;

c) pour déterminer la capacité excédentaire cumulative inutilisée d'un contribuable qui est une société ou une fiducie commerciale à participation fixe pour une année d'imposition donnée, la capacité excédentaire du contribuable, pour chacune des trois années

(i) the taxpayer and each corporation or fixed interest commercial trust that is an eligible group entity in respect of the taxpayer at the end of the first regime year (in this subsection referred to as an "eligible pre-regime group entity") jointly elect in prescribed form to have paragraph (d) apply in respect of the taxpayer,

(ii) the election or amended election is filed with the Minister by the taxpayer or by an eligible pre-regime group entity of the taxpayer on or before the earliest filing-due date for the first regime year of the taxpayer or of any eligible pre-regime group entity of the taxpayer, and

(iii) in the election the taxpayer and the eligible pre-regime group entities

(A) allocate to the taxpayer or eligible pre-regime group entities in respect of the taxpayer, for the purpose of determining the taxpayer's cumulative unused excess capacity for the particular taxation year and any other taxation year in which the taxpayer's ratio of permissible expenses is the same as in the particular year, one or more portions of the *group net excess capacity* (as defined in subparagraph (d)(vi)) for the pre-regime years that is determined for that purpose, and

(B) set out, for the taxpayer and each eligible pre-regime group entity, the *excess interest* (as defined in subparagraph (d)(ii)) for each pre-regime year, the *excess capacity otherwise determined* (as defined in subparagraph (d)(iii)) for each pre-regime year and the *net excess capacity* (as defined in subparagraph (d)(v)) for the pre-regime years; and

(d) if the conditions set out in subparagraphs (c)(i) to (iii) are satisfied, for the purpose of determining the taxpayer's cumulative unused excess capacity for a particular taxation year and any other taxation year in which the taxpayer's ratio of permissible expenses is the same as in the particular year, the taxpayer's excess capacity for a pre-regime year (other than for the purposes of this paragraph) is determined in accordance with the following rules:

d'imposition (chacune appelée « année antérieure au régime » au présent alinéa et à l'alinéa d)) qui précède immédiatement la première année d'imposition du contribuable relativement à laquelle le paragraphe (1) s'applique (appelée « première année du régime » du contribuable au présent alinéa et à l'alinéa d)), est réputée nulle, sauf si les faits ci-après se vérifient :

(i) le contribuable et chaque société ou fiducie commerciale à participation fixe qui est une entité admissible du groupe relativement au contribuable à la fin de la première année du régime (appelée « entité admissible du groupe antérieure au régime » au présent paragraphe) font un choix conjoint sur le formulaire prescrit afin que l'alinéa d) s'applique relativement au contribuable,

(ii) le choix ou le choix modifié est présenté au ministre par le contribuable ou par une entité admissible du groupe antérieure au régime du contribuable au plus tard à la date de production la plus rapprochée pour la première année du régime du contribuable ou d'une entité admissible du groupe antérieure au régime du contribuable,

(iii) dans le document concernant le choix, le contribuable et les entités admissibles du groupe antérieures au régime, à la fois :

(A) attribuent au contribuable ou aux entités admissibles du groupe antérieures au régime relativement au contribuable, afin de déterminer la capacité excédentaire cumulative inutilisée du contribuable pour l'année d'imposition donnée ou pour toute autre année d'imposition dans laquelle le ratio des dépenses admissibles du contribuable est identique à celui de l'année donnée, une ou plusieurs parties de la *capacité excédentaire nette du groupe* (au sens du sous-alinéa d)(vi)) pour les années antérieures au régime qui est déterminée à cette fin,

(B) mentionnent, pour le contribuable et chaque entité admissible du groupe antérieure, les *intérêts excédentaires* (au sens du sous-alinéa d)(ii)) pour chaque année antérieure au régime, la *capacité excédentaire déterminée par ailleurs* (au sens du sous-alinéa d)(iii)) pour chaque année antérieure au régime et la *capacité*

(i) for the purposes of this paragraph, the determination of whether a corporation or a fixed interest commercial trust is an eligible pre-regime group entity in respect of the taxpayer is to be made at the end of the taxpayer's first regime year,

(ii) the *excess interest*, of the taxpayer or an eligible pre-regime group entity in respect of the taxpayer, for a pre-regime year, means the amount that would be determined for the pre-regime year under paragraph (b) of the definition *absorbed capacity* in subsection 18.2(1) of the Act, as enacted by subsection (1),

(iii) the *excess capacity otherwise determined* means the amount that would be the excess capacity of the taxpayer or an eligible pre-regime group entity in respect of the taxpayer for a pre-regime year, if that amount were determined under the definition *excess capacity* in subsection 18.2(1) of the Act, as enacted by subsection (1),

(iv) for the purposes of this paragraph, if the taxpayer or an eligible pre-regime group entity in respect of the taxpayer was subject to a loss restriction event at the beginning of any of its pre-regime years, its excess capacity otherwise determined and its excess interest for any pre-regime year that precedes that year are deemed to be nil,

(v) the *net excess capacity* of a taxpayer for its pre-regime years means the amount, if any, by which the total of all amounts each of which is the excess capacity otherwise determined of the taxpayer for a pre-regime year exceeds the total of all amounts each of which is the excess interest of the taxpayer for a pre-regime year,

(vi) the *group net excess capacity* for the pre-regime years means the amount, if any, by which the total of all amounts each of which is the excess capacity otherwise determined of the taxpayer or an eligible pre-regime group entity in respect of the taxpayer (other than a taxpayer or eligible pre-regime group entity that is, at any time in a pre-regime year, a financial institution group entity or a person exempt from tax under Part I of the Act) for a pre-regime year exceeds the total of all amounts each of which is the excess interest of the taxpayer or an *excédentaire nette* (au sens du sous-alinéa d)(v)) pour les années antérieures au régime;

d) si les conditions énoncées aux sous-alinéas c)(i) à (iii) sont remplies, pour déterminer la capacité excédentaire cumulative inutilisée du contribuable pour une année d'imposition donnée ou pour toute autre année d'imposition dans laquelle le ratio des dépenses admissibles du contribuable est identique à celui de l'année donnée, sa capacité excédentaire pour une année antérieure au régime, sauf pour l'application du présent alinéa, est déterminée conformément aux règles suivantes :

(i) pour l'application du présent alinéa, la question de savoir si une société ou une fiducie commerciale à participation fixe est une entité admissible du groupe antérieure au régime relativement au contribuable doit être déterminée à la fin de la première année du régime du contribuable,

(ii) les *intérêts excédentaires* du contribuable ou d'une entité admissible du groupe antérieure au régime relativement au contribuable, pour une année antérieure au régime, s'entendent du montant qui serait déterminé pour l'année antérieure au régime, en vertu de l'alinéa b) de la définition de *capacité absorbée* au paragraphe 18.21(1) de la même loi, édicté par le paragraphe (1),

(iii) la *capacité excédentaire déterminée par ailleurs* s'entend du montant qui serait la capacité excédentaire du contribuable ou d'une entité admissible du groupe antérieure au régime relativement au contribuable pour une année antérieure au régime, si ce montant était déterminé selon la définition de *capacité excédentaire* au paragraphe 18.2(1) de la même loi, édicté par le paragraphe (1),

(iv) pour l'application du présent alinéa, si le contribuable ou une entité admissible du groupe antérieure au régime relativement au contribuable était assujetti à un fait lié à la restriction de pertes au début de l'une de ses années antérieures au régime, sa capacité excédentaire déterminée par ailleurs et ses intérêts excédentaires pour toute année antérieure au régime précédant cette année sont réputés nuls,

eligible pre-regime group entity (other than a taxpayer or eligible pre-regime group entity that is, at any time in a pre-regime year, a financial institution group entity or a person exempt from tax under Part I of the Act) for a pre-regime year,

(vii) for the purposes of determining the excess capacity otherwise determined or the excess interest of the taxpayer or an eligible pre-regime group entity for a pre-regime year, the net excess capacity of the taxpayer or an eligible pre-regime group entity for its pre-regime years and the group net excess capacity for pre-regime years,

(A) the ratio of permissible expenses is the same as the taxpayer's ratio of permissible expenses for the particular year, and

(B) if it is the case that, in respect of a pre-regime year, the conditions set out in subsection 18.21(2) of the Act, as enacted by subsection (1), would be met in respect of the taxpayer and each eligible pre-regime group entity that is a member of the same consolidated group in respect of the year — if the reference in subsection 18.21(2) to the "filing–due date of a Canadian group member for the year" were read as a reference to the "filing-due date of any Canadian group member for its first regime year" — then subsection 18.21(2) of the Act, as enacted by subsection (1), applies in respect of the taxpayer and each such eligible pre-regime group entity for the pre-regime year,

(viii) the taxpayer's excess capacity for a pre-regime year is deemed to be

(A) if the taxpayer's net excess capacity for its pre-regime years is not a positive amount, nil, and

(B) in any other case, the lesser of

(I) the taxpayer's excess capacity otherwise determined for the pre-regime year, and

(II) the portion, if any, of the group net excess capacity allocated to the taxpayer for the year in the joint election under paragraph (c), and

(v) la *capacité excédentaire nette* d'un contribuable pour ses années antérieures au régime s'entend de l'excédent éventuel du total des montants dont chacun représente la capacité excédentaire déterminée par ailleurs du contribuable pour une année antérieure au régime sur le total des montants dont chacun représente ses intérêts excédentaires pour une année antérieure au régime,

(vi) la *capacité excédentaire nette du groupe* pour les années antérieures au régime s'entend de l'excédent éventuel du total des montants dont chacun représente la capacité excédentaire déterminée par ailleurs du contribuable ou d'une entité admissible du groupe antérieure au régime relativement au contribuable (sauf un contribuable ou une entité admissible du groupe antérieure au régime qui est, à un moment donné au cours d'une année antérieure au régime, une entité du groupe d'institutions financières ou une personne exonérée d'impôt en vertu de la partie I de la même loi) pour une année antérieure au régime sur le total des montants dont chacun représente les intérêts excédentaires du contribuable ou d'une entité admissible du groupe antérieure au régime (sauf un contribuable ou une entité admissible du groupe antérieure au régime qui est, à un moment donné au cours d'une année antérieure au régime, une entité du groupe d'institutions financières ou une personne exonérée d'impôt en vertu de la partie I de la même loi) pour une année antérieure au régime,

(vii) pour déterminer la capacité excédentaire déterminée par ailleurs ou les intérêts excédentaires du contribuable ou d'une entité admissible du groupe antérieure au régime pour une année antérieure au régime, la capacité excédentaire nette du contribuable ou d'une entité admissible du groupe antérieure au régime pour ses années antérieures au régime et la capacité excédentaire nette du groupe pour les années antérieures au régime :

(A) le ratio des dépenses admissibles est identique à celui du contribuable pour l'année donnée,

(B) s'il s'avère que, relativement à une année antérieure au régime, les conditions

(ix) notwithstanding subparagraph (viii), the taxpayer's excess capacity for each pre-regime year is deemed to be nil if

(A) the total of all amounts each of which is a portion of the group net excess capacity that is allocated to the taxpayer or an eligible pre-regime group entity in respect of the taxpayer for a pre-regime year in the joint election under paragraph (c) is greater than the group net excess capacity, or

(B) the total of all amounts each of which is a portion of the group net excess capacity that is allocated to the taxpayer for a pre-regime year under the joint election is greater than the taxpayer's net excess capacity for its pre-regime years;

(e) an amended election is deemed to be filed in accordance with subparagraph (c)(ii) if

(i) as a result of an assessment or reassessment, the amount of excess interest or excess capacity otherwise determined of the taxpayer, or any eligible pre-regime group entity (other than a financial institution group entity or a person exempt from tax under Part I of the Act) in respect of the taxpayer, is different from the amount reported by the taxpayer or eligible group entity in a prior election under this subsection,

(ii) in the absence of the assessment or reassessment, the taxpayer's excess capacity for each pre-regime year would not be deemed to be nil under subparagraph (d)(ix) based on a prior election, and

(iii) the amended election is filed within 90 days of the reassessment;

(f) if an election or amended election has been made under paragraph (c), the Minister shall, despite subsections 152(4) and (5) of the Act, assess or reassess the tax, interest or penalties payable under the Act by any taxpayer for any relevant taxation year as is necessary to give effect to the election or amended election; and

(g) despite paragraphs (c) and (e), the Minister may accept an election or amended election if

(i) the taxpayer and the eligible pre-regime group entities in respect of the taxpayer

énoncées au paragraphe 18.21(2) de la même loi, édicté par le paragraphe (1), étaient remplies relativement au contribuable et chaque entité admissible du groupe antérieure au régime qui est un membre du même groupe consolidé pour l'année — si la mention « date d'échéance de production d'un membre du groupe canadien pour l'année » à ce paragraphe était remplacée par la mention « date d'échéance de production d'un membre canadien du groupe pour sa première année du régime » — ce paragraphe 18.21(2) de la même loi, édicté par le paragraphe (1), s'applique relativement au contribuable et à chaque entité admissible du groupe antérieure au régime pour l'année antérieure au régime,

(viii) la capacité excédentaire du contribuable pour une année antérieure au régime est réputée :

(A) si la capacité excédentaire nette du contribuable pour ses années antérieures au régime n'est pas un montant positif, nulle,

(B) dans les autres cas, le moins élevé des montants suivants :

(I) la capacité excédentaire déterminée par ailleurs du contribuable pour l'année antérieure au régime,

(II) la partie éventuelle de la capacité excédentaire nette du groupe attribuée au contribuable pour l'année dans le choix prévu à l'alinéa c),

(ix) malgré le sous-alinéa (viii), la capacité excédentaire du contribuable pour chaque année antérieure au régime est réputée nulle si, selon le cas :

(A) le total des montants représentant chacun une partie de la capacité excédentaire nette du groupe qui est attribuée au contribuable ou à une entité admissible du groupe antérieure au régime relativement au contribuable pour une année antérieure au régime dans le choix prévu à l'alinéa c) est supérieur à la capacité excédentaire nette du groupe,

(B) le total des montants représentant chacun une partie de la capacité

demonstrate to the satisfaction of the Minister that

(A) they made reasonable efforts to determine all amounts that may reasonably be considered relevant in making the election or amended election, and

(B) the election or amended election, as the case may be, is filed as soon as circumstances permit, and

(ii) in the opinion of the Minister, the circumstances are such that it would be just and equitable to permit the election to be made or amended.

excédentaire nette du groupe qui est attribuée au contribuable pour une année antérieure au régime en vertu du choix conjoint est supérieur à sa capacité excédentaire nette pour ses années antérieures au régime;

e) un choix modifié est réputé être présenté conformément au sous-alinéa c)(ii) si, à la fois :

(i) par suite d'une cotisation ou d'une nouvelle cotisation, le montant des intérêts excédentaires ou de la capacité excédentaire déterminé par ailleurs du contribuable ou de toute entité admissible du groupe antérieure au régime (sauf une entité du groupe d'institutions financières ou une personne exonérée d'impôt en vertu de la partie I de la même loi) relativement au contribuable diffère du montant déclaré par le contribuable ou l'entité admissible du groupe dans un choix antérieur prévu au présent paragraphe,

(ii) en l'absence de la cotisation ou de la nouvelle cotisation, la capacité excédentaire du contribuable pour chaque année antérieure au régime ne serait pas réputé nulle en vertu du sous-alinéa d)(ix) selon un choix antérieur,

(iii) le choix modifié est produit dans les quatre-vingt-dix jours suivant la nouvelle cotisation;

f) en cas de choix ou de choix modifié fait conformément à l'alinéa c), le ministre, malgré les paragraphes 152(4) et (5) de la même loi, établit les cotisation et nouvelle cotisation voulues, pour rendre le choix ou le choix modifié applicable, concernant l'impôt, les intérêts et les pénalités payables par tout contribuable en application de la même loi pour toute année d'imposition pertinente;

g) malgré les alinéas c) et e), le ministre peut accepter un choix ou un choix modifié si, à la fois :

(i) le contribuable et les entités admissibles du groupe antérieures au régime relativement au contribuable démontrent, à la satisfaction du ministre, que, à la fois :

(A) ils ont fait des efforts voulus pour déterminer toutes les sommes qu'il est

raisonnable de considérer comme pertinentes pour faire le choix ou le choix modifié,

(B) le choix ou le choix modifié, selon le cas, est produit dès que les circonstances le permettent,

(ii) selon le ministre, les circonstances sont telles qu'il serait juste et équitable de permettre que le choix soit fait ou modifié.

8 (1) The Act is amended by adding the following after section 18.3:

Hybrid mismatch arrangements — definitions

18.4 (1) The following definitions apply in this section and paragraph 20(1)(yy).

Canadian ordinary income, of a taxpayer for a taxation year in respect of a payment, means an amount that is

(a) if the taxpayer is not a partnership, included in respect of the payment in computing, in the case of a taxpayer resident in Canada, the income of the taxpayer for the purposes of this Part — or, in the case of a taxpayer that is a non-resident person, the taxable income earned in Canada of the taxpayer — for the year, except to the extent that

(i) the amount is included in the Canadian ordinary income of any taxpayer under paragraph (b) or (c),

(ii) the taxpayer is entitled to a deduction under section 112 or 113 in respect of the payment, or

(iii) the amount can otherwise reasonably be considered to be excluded, reduced, offset or otherwise effectively sheltered from tax under this Part by reason of any exemption, exclusion, deduction, credit (other than a credit for a tax substantially similar to tax under Part XIII) or other form of relief under this Act that

(A) applies specifically in respect of all or a portion of the amount and not in computing income generally, or

(B) arises in respect of the payment;

(b) if the taxpayer is a partnership, determined by the formula

A × B ÷ C – D

where

8 (1) La même loi est modifiée par adjonction, après l'article 18.3, de ce qui suit :

Dispositifs hybrides — définitions

18.4 (1) Les définitions qui suivent s'appliquent au présent article et à l'alinéa 20(1)yy).

année d'imposition étrangère La période d'une entité dans le cadre de laquelle ses comptes sont habituellement dressés pour le calcul des revenus ou bénéfices étrangers pertinents, cette période ne pouvant cependant dépasser 53 semaines. (*foreign taxation year*)

bénéficiaire S'agissant d'un paiement, comprend toute entité qui a droit à se faire verser, porter à son crédit ou conférer un paiement par une entité, dans l'immédiat ou pour l'avenir et conditionnellement ou non. (*recipient*)

déductible À l'égard d'une somme relativement à un paiement, dans le calcul des revenus ou bénéfices étrangers pertinents, comprend tout allègement qui découle du paiement et qui a un effet équivalent à une déduction, notamment :

a) une exonération ou une exclusion dans le calcul des revenus ou bénéfices étrangers pertinents;

b) un remboursement ou un crédit qui peut être appliqué pour réduire ou compenser de l'impôt sur le revenu ou sur les bénéfices payé ou payable à un gouvernement d'un pays étranger relativement aux revenus ou bénéfices étrangers pertinents. (*deductible*)

dispositif hybride S'entend de l'un des dispositifs ci-après duquel un paiement découle :

a) un dispositif d'instrument financier hybride;

b) un dispositif de transfert hybride;

c) un dispositif de paiement par substitution. (*hybrid mismatch arrangement*)

dispositif structuré Opération ou série d'opérations pour laquelle les conditions ci-après sont réunies :

A is an amount that is included in respect of the payment in computing the income or loss of the partnership from any source, or from sources in a particular place, for the year, except to the extent that the amount

(i) is included in the Canadian ordinary income of any taxpayer under paragraph (c), or

(ii) can reasonably be considered to be excluded, reduced, offset or otherwise sheltered by any reason described in subparagraph (a)(iii),

B is the total of all amounts, each of which is, in respect of the partnership's income or loss from that source or the sources in the particular place for the year,

(i) the share of a member of the partnership that is a person resident in Canada, or

(ii) the share of a member of the partnership that is a non-resident person to the extent it is included in computing the non-resident person's taxable income earned in Canada,

C is the income or loss of the partnership from the source, or the sources in the particular place, for the year, and

D is the total of all amounts, each of which is an amount deductible, in respect of the payment, by a member of the partnership under section 112 or 113; or

(c) determined by the formula

E × F

where

E is the amount determined by the formula

G × H

where

G is an amount that is included in respect of the payment in computing the foreign accrual property income of a controlled foreign affiliate of the taxpayer for a *taxation year* (as defined in subsection 95(1)) of the affiliate ending in the year, except to the extent the amount can reasonably be considered to be excluded, reduced, offset or otherwise effectively sheltered for any reason described in subparagraph (a)(iii), and

H is the *aggregate participating percentage* (as defined in subsection 91(1.3)) of the taxpayer in respect of the affiliate for the taxation year of the affiliate, and

F is

a) l'opération ou la série comprend un paiement qui donne lieu à une asymétrie de déduction/non-inclusion;

b) compte tenu de l'ensemble des faits et circonstances, notamment les modalités de l'opération ou de la série, il est raisonnable de considérer que, selon le cas :

(i) la totalité ou une partie d'un avantage économique découlant de l'asymétrie de déduction/non-inclusion est reflétée dans l'établissement du prix de l'opération ou de la série,

(ii) l'opération ou la série est par ailleurs, directement ou indirectement, conçue afin de donner lieu à une asymétrie de déduction/non-inclusion. (*structured arrangement*)

entité S'entend au sens du paragraphe 95(1). (*entity*)

entité déterminée Relativement à une autre entité à un moment donné, s'entend d'une entité donnée, compte tenu des règles énoncées au paragraphe (17), si, selon le cas :

a) l'entité donnée, à ce moment donné, soit seule, soit avec des entités avec lesquelles elle a un lien de dépendance, détient directement ou indirectement des participations au capital dans l'autre entité qui, selon le cas :

(i) confèrent au moins 25 % des voix pouvant être exprimées à une assemblée annuelle des actionnaires, si cette autre entité est une société,

(ii) représentent au moins 25 % de la juste valeur marchande de l'ensemble des participations au capital dans cette autre entité;

b) la condition énoncée à l'alinéa a) serait remplie si, à cet alinéa, la mention « entité donnée » était remplacée par la mention « autre entité » et si la mention « autre entité » était remplacée par la mention « entité donnée »;

c) une troisième entité, à ce moment donné, soit seule, soit avec des entités avec lesquelles elle a un lien de dépendance, détient directement ou indirectement des participations au capital dans l'entité donnée et dans l'autre entité qui, relativement à chacune de celles-ci, selon le cas :

(i) confèrent au moins 25 % des voix pouvant être exprimées à l'assemblée annuelle des actionnaires, si l'entité donnée ou l'autre entité, selon le cas, est une société,

(i) if the taxpayer is a partnership, the amount determined by the formula

I ÷ E

where

I is the total of all amounts each of which is a share of the amount determined for E of a member of the partnership that is a person resident in Canada, and

(ii) in any other case, 1. (*revenu ordinaire canadien*)

controlled foreign company tax regime means a set of provisions under the tax laws of a particular country other than Canada under which a direct or indirect shareholder of an entity that is located in a country other than the particular country is subject to current taxation in respect of its share of all or part of the income earned by the entity, irrespective of whether that income is distributed currently to the shareholder. (*régime fiscal des sociétés étrangères contrôlées*)

deductible, in relation to an amount in respect of a payment, in computing relevant foreign income or profits, includes any relief that arises in respect of the payment and is equivalent in effect to a deduction, including

(a) an exemption or exclusion in computing the relevant foreign income or profits; and

(b) a refund of, or credit that can be applied to reduce or offset, income or profits tax paid or payable to a government of a country other than Canada in respect of the relevant foreign income or profits. (*déductible*)

entity has the same meaning as in subsection 95(1). (*entité*)

equity interest means any of the following:

(a) a share of the capital stock of a corporation;

(b) an interest as a beneficiary under a trust;

(c) an interest as a member of a partnership; or

(d) any similar interest in respect of any entity. (*participation au capital*)

equity or financing return means a payment that can reasonably be considered to be in respect of, or determined by reference to,

(a) revenue, profit, cash flow, commodity price or any other similar criterion;

(ii) représentent au moins 25 % de la juste valeur marchande de l'ensemble des participations au capital dans l'entité donnée ou l'autre entité, selon le cas. (*specified entity*)

instrument financier S'entend :

a) d'une dette;

b) d'une participation au capital ou de tout droit qui peut raisonnablement être considéré comme reproduisant un droit de participation aux bénéfices ou aux gains d'une entité;

c) de tout autre dispositif donnant lieu à un rendement financier ou de capitaux propres. (*financial instrument*)

montant de l'asymétrie hybride Relativement à un paiement, s'entend de l'un des montants suivants :

a) si le paiement découle d'un dispositif d'instrument financier hybride, le montant de l'asymétrie d'instrument financier hybride relativement au paiement;

b) si le paiement découle d'un dispositif de transfert hybride, le montant de l'asymétrie de transfert hybride relativement au paiement;

c) si le paiement découle d'un dispositif de paiement par substitution, le montant de l'asymétrie de paiement par substitution relativement au paiement. (*hybrid mismatch amount*)

opération Sont assimilés aux opérations les arrangements et les événements. (*transaction*)

paiement Comprend toute somme ou tout avantage qu'une entité à l'obligation de payer à une entité, de porter à son crédit ou de lui conférer, dans l'immédiat ou pour l'avenir et conditionnellement ou non. (*payment*)

paiement compensatoire (courtier) exonéré Paiement, à la fois :

a) qui représente un *paiement compensatoire (courtier)* (au sens du paragraphe 260(1));

b) qu'un courtier en valeurs mobilières inscrit résidant au Canada reçoit, en compensation d'un dividende imposable versé sur une action du capital-actions d'une société publique, d'une société non-résidente (appelée « société affiliée » dans la présente définition) qui, au moment où le paiement est reçu, à la fois :

(i) est une société étrangère affiliée contrôlée :

(b) dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation, or income or capital paid or payable to any member of a partnership or beneficiary under a trust, or any other distribution in respect of any entity; or

(c) an amount that is, or is on account of, in lieu of payment of or in satisfaction of, interest, or that is otherwise compensation for the use of money. (*rendement financier ou de capitaux propres*)

exempt dealer compensation payment means a payment that

(a) is a *dealer compensation payment* (as defined in subsection 260(1));

(b) is received by a registered securities dealer resident in Canada, as compensation for a taxable dividend paid on a share of the capital stock of a public corporation, from a non-resident corporation (referred to in this definition as the "affiliate") that, at the time the payment is received,

(i) is a controlled foreign affiliate of

(A) the registered securities dealer, or

(B) another taxpayer that does not deal at arm's length with the registered securities dealer,

(ii) has a substantial market presence in a particular country other than Canada,

(iii) makes the payment in the ordinary course of a business of trading in securities, if

(A) the business is carried on by the affiliate as a *foreign bank* (as defined in subsection 95(1)), a trust company, a credit union, an insurance corporation or a trader or dealer in securities,

(B) the activities of the business are regulated under the laws of

(I) the particular country,

(II) another country under the laws of which the affiliate is governed and any of exists, was (unless the affiliate was continued in any jurisdiction) formed or organized, or was last continued and of each country in which the business is carried on through a permanent establishment, or

(III) if the affiliate is related to a corporation, another country under the laws of which the

(A) soit du courtier en valeurs mobilières inscrit,

(B) soit d'un autre contribuable ayant un lien de dépendance avec le courtier en valeurs mobilières inscrit,

(ii) a une présence importante sur les marchés d'un pays étranger donné,

(iii) fait le paiement dans le cours normal d'une entreprise d'opérations sur valeurs, si, à la fois :

(A) elle exploite l'entreprise en tant que *banque étrangère* (au sens du paragraphe 95(1)), société de fiducie, caisse de crédit, compagnie d'assurance ou négociateur ou courtier en valeurs mobilières,

(B) les activités de l'entreprise sont réglementées en vertu des lois, selon le cas :

(I) du pays donné,

(II) d'un autre pays sous le régime des lois duquel la société affiliée est régie et, selon le cas, existe, a été constituée ou organisée (sauf si elle a été prorogée dans un territoire quelconque) ou a été prorogée la dernière fois et de chaque pays où l'entreprise est exploitée par l'intermédiaire d'un établissement stable,

(III) si la société affiliée est liée à une société, un autre pays sous le régime des lois duquel la société liée est régie et, selon le cas, existe, a été constituée ou organisée (sauf si elle a été prorogée dans un territoire quelconque) ou a été prorogée la dernière fois, si ces lois sont reconnues par les lois du pays où l'entreprise est principalement exploitée et si ces pays sont tous membres de l'Union européenne,

(iv) mène les activités de l'entreprise, directement ou indirectement, à la fois :

(A) principalement avec des personnes qui, à la fois :

(I) n'ont aucun lien de dépendance avec la société affiliée,

(II) résident dans le pays donné ou y exploitent une entreprise par l'intermédiaire d'un établissement stable,

(B) font concurrence avec d'autres entités qui, à la fois :

related corporation is governed and any of exists, was (unless the related corporation was continued in any jurisdiction) formed or organized, or was last continued, if those regulating laws are recognized under the laws of the country in which the business is principally carried on and all of those countries are members of the European Union, and

(iv) conducts the business, directly or indirectly,

(A) principally with persons that

(I) deal at arm's length with the affiliate, and

(II) are resident, or carry on business through a permanent establishment, in the particular country, and

(B) in competition with other entities that

(I) deal at arm's length with the affiliate, and

(II) have a substantial market presence in the particular country; and

(c) does not arise under, or in connection with, a structured arrangement. (*paiement compensatoire (courtier) exonéré*)

financial instrument means

(a) a debt;

(b) an equity interest or any right that may reasonably be considered to replicate a right to participate in profits or gain of any entity; or

(c) any other arrangement that gives rise to an equity or financing return. (*instrument financier*)

foreign expense restriction rule means a provision under the tax laws of a country other than Canada that can reasonably be considered to

(a) have an effect, or be intended to have an effect, that is substantially similar to that of subsection 18(4); or

(b) have been enacted or otherwise brought into effect by the country with the intention of implementing, in whole or in part,

(i) any of the recommendations set out in *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 – 2016 Update*,

(I) n'ont aucun lien de dépendance avec la société affiliée,

(II) ont une présence importante sur les marchés du pays donné;

c) qui ne découle pas d'un dispositif structuré ou ne s'y rapporte pas. (*exempt dealer compensation payment*)

participation au capital S'entend :

a) d'une action du capital-actions d'une société;

b) d'une participation à titre de bénéficiaire d'une fiducie;

c) d'une participation à titre d'associé d'une société de personnes;

d) d'une participation semblable relativement à une entité. (*equity interest*)

payeur S'agissant d'un paiement, comprend toute entité qui a l'obligation de payer à une entité, de porter à son crédit ou de lui conférer le paiement, dans l'immédiat ou pour l'avenir et conditionnellement ou non. (*payer*)

régime fiscal des sociétés étrangères contrôlées S'entend d'un ensemble de dispositions des lois fiscales d'un pays donné, autre que le Canada, en vertu desquelles un actionnaire direct ou indirect d'une entité qui se trouve dans un pays autre que le pays donné est assujetti à l'impôt courant relativement à sa part sur la totalité ou une partie du revenu gagné par l'entité, que ce revenu ait été ou non distribué à l'actionnaire. (*controlled foreign company tax regime*)

régime fiscal minimum déterminé S'entend, selon le cas, des :

a) dispositions relatives au revenu mondial incorporel faiblement imposé (*global intangible low-taxed income*) au sens de l'article 951A de la loi des États-Unis intitulée *Internal Revenue Code of 1986* avec ses modifications successives;

b) dispositions des lois fiscales d'un pays qui peuvent raisonnablement être considérées comme édictées ou mises en vigueur par le pays dans le but de mettre en œuvre, en tout ou en partie, les *Règles globales anti-érosion de la base d'imposition* énoncées dans *Les défis fiscaux soulevés par la numérisation de l'économie – Règles globales anti-érosion de la base d'imposition (Pilier Deux)*, publiées par l'Organisation de coopération et de développement économiques;

published by the Organisation for Economic Co-operation and Development, or

(ii) the *Global Anti-Base Erosion Model Rules* set out in *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)*, published by the Organisation for Economic Co-operation and Development. (*règle étrangère de restriction des dépenses*)

foreign hybrid mismatch rule means a provision, under the tax laws of a country other than Canada, that can reasonably be considered to

(a) have an effect that is substantially similar to that of a provision under this section, section 12.7 or subsection 113(5); or

(b) have been enacted or otherwise brought into effect by the country with the intention of implementing, in whole or in part, *Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2 – 2015 Final Report* published by the Organisation for Economic Co-operation and Development, as amended from time to time. (*règle étrangère d'asymétrie hybride*)

foreign ordinary income, of an entity for a foreign taxation year in respect of a payment, means an amount that is determined by the formula

A – B – C – D – E – F

where

A is an amount (referred to in this definition as the "relevant amount") that is included in respect of the payment in computing relevant foreign income or profits of the entity for the year (other than income or profits in respect of which the entity is subject to a tax substantially similar to tax under Part XIII, or a tax under a controlled foreign company tax regime or a specified minimum tax regime) because the entity is a recipient of the payment or has a direct or indirect equity interest in a recipient of the payment;

B is

(a) if the relevant amount is included in computing relevant foreign income or profits in respect of which the entity is subject to an income or profits tax that is charged at a nil rate, the relevant amount, or

(b) in any other case, nil;

C is any portion of the relevant amount that is included in computing relevant foreign income or profits of the entity for the year because of any foreign hybrid

c) dispositions des lois fiscales d'un pays qui peuvent raisonnablement être considérées comme édictées ou mises en vigueur par le pays dans le but de mettre en œuvre, en tout ou en partie, un *impôt complémentaire minimum qualifié prélevé localement* (au sens des règles types visées à l'alinéa b)). (*specified minimum tax regime*)

règle étrangère d'asymétrie hybride S'entend d'une disposition des lois fiscales d'un pays étranger qui peut raisonnablement être considérée, selon le cas :

a) comme ayant un effet substantiellement semblable à celui d'une disposition du présent article, de l'article 12.7 ou du paragraphe 113(5);

b) comme étant édictée ou mise en vigueur par le pays dans le but de mettre en œuvre, en tout ou en partie, le rapport intitulé *Neutraliser les effets des dispositifs hybrides, Action 2 – Rapport final 2015* de l'Organisation de coopération et développement économiques publié avec ses modifications successives. (*foreign hybrid mismatch rule*)

règle étrangère de restriction des dépenses S'entend d'une disposition des lois fiscales d'un pays étranger qui peut raisonnablement être considérée, selon le cas :

a) comme ayant un effet, ou étant destinée à avoir un effet, substantiellement semblable à celui du paragraphe 18(4);

b) comme étant édictée ou mise en vigueur par le pays dans le but de mettre en œuvre, en tout ou en partie,

(i) l'une des recommandations énoncées dans *Limiter l'érosion de la base d'imposition faisant intervenir les déductions d'intérêts et d'autres frais financiers Action 4 – Version actualisée 2016*, publiées par l'Organisation de coopération et de développement économiques,

(ii) les *Règles globales anti-érosion de la base d'imposition* énoncées dans *Les défis fiscaux soulevés par la numérisation de l'économie – Règles globales anti-érosion de la base d'imposition (Pilier Deux)*, publiées par l'Organisation de coopération et de développement économiques. (*foreign expense restriction rule*)

rendement financier ou de capitaux propres S'entend d'un paiement qu'il est raisonnable de considérer comme se rapportant à l'un des éléments ci-après ou déterminé en fonction de ceux-ci :

mismatch rule (other than any rule that is substantially similar in effect to subsection 113(5));

D is any portion of the relevant amount that can reasonably be considered to be excluded, reduced, offset or otherwise effectively sheltered from income or profits tax by reason of any exemption, exclusion, deduction, credit (other than a credit for tax payable under Part XIII) or other form of relief that

(a) applies specifically in respect of all or a portion of the relevant amount and not in computing the entity's relevant foreign income or profits in general, or

(b) arises in respect of the payment;

E is the amount determined by the formula

(A – C – D) × G ÷ H

where

G is the total of all amounts, each of which is an amount that

(i) meets the following conditions:

(A) is repaid or repayable in respect of income or profits tax paid or payable by the entity to the government of a country other than Canada in respect of the relevant foreign income or profits for the year, and

(B) is not repaid or repayable because a loss is used to reduce or offset the relevant foreign income or profits for the year, or

(ii) is paid or payable in respect of a credit that can reasonably be considered to reduce or offset, directly or indirectly, the income or profits tax referred to in clause (i)(A), and

H is the total amount of the income or profits tax referred to in clause (i)(A) of the description of G; and

F is the amount determined by the formula

(A – C – D – E) × (1 – I ÷ J)

where

I is the rate at which the income or profits tax referred to in clause (i)(A) in the description of G is charged in respect of the relevant amount, and

J is the highest rate at which an income or profits tax imposed by the government of the country is charged in respect of an amount of income in respect of a financial instrument. (*revenu ordinaire étranger*)

foreign taxation year of an entity means the period for which the accounts of the entity have been ordinarily made up for the purpose of computing relevant foreign

a) les revenus, les bénéfices, les flux de trésorerie, le prix des marchandises ou tout autre critère semblable;

b) les dividendes versés ou payables aux actionnaires d'une catégorie d'actions du capital-actions d'une société, le revenu ou le capital payé ou payable à tout associé d'une société de personnes ou tout bénéficiaire d'une fiducie, ou toute autre distribution relativement à toute entité;

c) une somme d'intérêts, à titre ou en paiement intégral ou partiel d'intérêts, ou une somme qui est autrement une compensation pour l'utilisation de l'argent. (*equity or financing return*)

revenu ordinaire canadien Relativement à un contribuable pour une année d'imposition relativement à un paiement, un montant qui est, selon le cas :

a) si le contribuable n'est pas une société de personnes, inclus relativement au paiement dans le calcul, pour un contribuable résidant au Canada, de son revenu pour l'application de la présente partie, ou, pour un contribuable qui est une personne non-résidente, de son revenu imposable gagné au Canada, pour l'année, sauf dans la mesure où, selon le cas :

(i) le montant est inclus dans le revenu ordinaire canadien d'un contribuable en vertu des alinéas b) ou c),

(ii) le contribuable a droit à une déduction en vertu des articles 112 ou 113 relativement au paiement,

(iii) il est par ailleurs raisonnable de considérer le montant exclu, réduit, compensé ou autrement à l'abri de l'impôt en application de la présente partie en raison d'une exemption, d'une exclusion, d'une déduction, d'un crédit (sauf un crédit pour un impôt substantiellement semblable à l'impôt en vertu de la partie XIII) ou d'une autre forme d'allègement en vertu de la présente loi qui :

(A) soit s'applique particulièrement à la totalité ou à une partie du montant et non au calcul du revenu de façon générale,

(B) soit découle du paiement;

b) si le contribuable est une société de personnes, obtenu par la formule suivante :

A × B ÷ C – D

où :

A représente un montant qui est inclus relativement au paiement dans le calcul du revenu ou de la perte de la société de personnes, tiré d'une source

income or profits of the entity, but no such period may exceed 53 weeks. (*année d'imposition étrangère*)

hybrid mismatch amount, in respect of a payment, means

(a) if the payment arises under a hybrid financial instrument arrangement, the amount of the hybrid financial instrument mismatch in respect of the payment;

(b) if the payment arises under a hybrid transfer arrangement, the amount of the hybrid transfer mismatch in respect of the payment; or

(c) if the payment arises under a substitute payment arrangement, the amount of the substitute payment mismatch in respect of the payment. (*montant de l'asymétrie hybride*)

hybrid mismatch arrangement under which a payment arises means

(a) a hybrid financial instrument arrangement under which the payment arises;

(b) a hybrid transfer arrangement under which the payment arises; or

(c) a substitute payment arrangement under which the payment arises. (*dispositif hybride*)

payer of a payment includes any entity that has an obligation to pay, credit or confer, either immediately or in the future and either absolutely or contingently, the payment to an entity. (*payeur*)

payment includes any amount or benefit that any entity has an obligation to pay, credit or confer, either immediately or in the future and either absolutely or contingently, to an entity. (*paiement*)

recipient of a payment includes any entity that has an entitlement to be paid, credited or conferred, either immediately or in the future and either absolutely or contingently, the payment by an entity. (*bénéficiaire*)

relevant foreign income or profits of an entity means income or profits in respect of which the entity is subject to an income or profits tax that is imposed by the government of a country other than Canada. (*revenus ou bénéfices étrangers pertinents*)

specified entity, in respect of another entity at any time, means a particular entity if, taking into consideration the rules in subsection (17),

quelconque ou de sources situées dans un endroit donné, pour l'année, sauf dans la mesure où :

(i) soit le montant est inclus dans le revenu ordinaire canadien d'un contribuable en vertu de l'alinéa c),

(ii) soit il est raisonnable de le considérer comme exclu, réduit, compensé ou autrement à l'abri de l'impôt pour l'un ou l'autre des motifs visés au sous-alinéa a)(iii),

B le total des sommes dont chacune représente, relativement au revenu ou à la perte de la société de personnes de cette source ou de ces sources dans l'endroit donné pour l'année, selon le cas :

(i) la part d'un associé de la société de personnes qui est une personne résidant au Canada,

(ii) la part d'un associé de la société de personnes qui est une personne non-résidente, dans la mesure où elle est incluse dans le calcul du revenu imposable de la personne non-résidente gagné au Canada,

C le revenu ou la perte de la société de personnes tiré de la source, ou des sources, située dans un endroit donné, pour l'année,

D le total des sommes représentant chacune une somme déductible, relativement au paiement, par un associé de la société de personnes en vertu des articles 112 ou 113;

c) obtenu par la formule suivante :

E × F

où :

E représente la somme obtenue par la formule suivante :

G × H

où :

G représente une somme incluse relativement au paiement dans le calcul du revenu étranger accumulé, tiré de biens d'une société étrangère affiliée contrôlée du contribuable pour une *année d'imposition* (au sens du paragraphe 95(1)) de la société affiliée qui se termine dans l'année, sauf dans la mesure où le montant peut raisonnablement être considéré exclu, réduit, compensé ou autrement abrité pour l'un ou l'autre des motifs visés au sous-alinéa a)(iii),

H le *pourcentage de participation total* (au sens du paragraphe 91(1.3)) du contribuable

(a) the particular entity at that time, either alone or together with entities with whom the particular entity does not deal at arm's length, owns directly or indirectly equity interests in the other entity that

(i) provide 25% or more of the votes that could be cast at an annual meeting of the shareholders, if the other entity is a corporation, or

(ii) have 25% or more of the fair market value of all equity interests in the other entity;

(b) the condition in paragraph (a) would be satisfied if the references in that paragraph to "particular entity" were read as references to "other entity" and the references to "other entity" were read as references to "particular entity"; or

(c) a third entity at that time, either alone or together with entities with which the third entity does not deal at arm's length, owns directly or indirectly equity interests in the particular entity and the other entity that, in respect of each of the particular entity and the other entity,

(i) provide 25% or more of the votes that could be cast at an annual meeting of the shareholders, if the particular entity or the other entity, as the case may be, is a corporation, or

(ii) have 25% or more of the fair market value of all equity interests in the particular entity or the other entity, as the case may be. (*entité déterminée*)

specified minimum tax regime means

(a) any provisions in respect of *global intangible low-taxed income* (as defined in section 951A of the *Internal Revenue Code of 1986* of the United States, as amended from time to time);

(b) any provisions under the tax laws of a country that can reasonably be considered to have been enacted or otherwise brought into effect by the country with the intention of implementing, in whole or in part, the *Global Anti-Base Erosion Model Rules* set out in *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)*, published by the Organisation for Economic Co-operation and Development; or

(c) any provisions under the tax laws of a country that can reasonably be considered to have been enacted or otherwise brought into effect by the country with the intention of implementing, in whole or in part, a *Qualified Domestic Minimum Top-up Tax* (as defined in relativement à la société affiliée pour l'année d'imposition de cette dernière,

F :

(i) si le contribuable est une société de personnes, la somme obtenue par la formule suivante :

I ÷ E

où :

I représente le total des sommes représentant chacune une part de la somme déterminée pour l'élément E, d'un associé de la société de personnes qui est une personne résidant au Canada,

(ii) dans les autres cas, 1. (*Canadian ordinary income*)

revenu ordinaire étranger S'agissant d'une entité pour une année d'imposition étrangère relativement à un paiement, une somme obtenue par la formule suivante :

A – B – C – D – E – F

où :

A représente une somme (appelée « somme pertinente » à la présente définition) qui est incluse relativement au paiement dans le calcul des revenus ou bénéfices étrangers pertinents de l'entité pour l'année (autre que le revenu ou les bénéfices à l'égard desquels l'entité est assujettie à un impôt sensiblement le même que l'impôt en vertu de la partie XIII ou à un impôt en vertu d'un régime fiscal des sociétés étrangères contrôlées ou d'un régime fiscal minimum déterminé) parce que l'entité est un bénéficiaire du paiement ou détient une participation au capital directe ou indirecte dans un bénéficiaire du paiement;

B :

a) si la somme pertinente est incluse dans le calcul des revenus ou bénéfices étrangers pertinents à l'égard desquels l'entité est assujettie à l'impôt sur le revenu ou sur les bénéfices qui est prélevé à un taux nul, la somme pertinente,

b) dans les autres cas, zéro;

C toute partie de la somme pertinente qui est incluse dans le calcul des revenus ou bénéfices étrangers pertinents de l'entité pour l'année par l'effet d'une règle étrangère d'asymétrie hybride (sauf toute règle dont l'effet est sensiblement le même que celui obtenu par l'application du paragraphe 113(5));

D toute partie de la somme pertinente qui peut raisonnablement être considérée comme exclue, réduite, compensée ou par ailleurs effectivement à l'abri de l'impôt sur le revenu ou sur les bénéfices en

the model rules referred to in paragraph (b)). (*régime fiscal minimum déterminé*)

structured arrangement means any transaction, or series of transactions, if

(a) the transaction or series includes a payment that gives rise to a deduction/non-inclusion mismatch; and

(b) it can reasonably be considered, having regard to all the facts and circumstances, including the terms or conditions of the transaction or series, that

(i) portion of any economic benefit arising from the deduction/non-inclusion mismatch is reflected in the pricing of the transaction or series, or

(ii) the transaction or series was otherwise designed to, directly or indirectly, give rise to the deduction/non-inclusion mismatch. (*dispositif structuré*)

transaction includes an arrangement or event. (*opération*)

application de toute exemption, exclusion, déduction, crédit (autre qu'un crédit pour l'impôt payable en vertu de la partie XIII) ou toute autre forme d'allègement, qui :

a) soit s'applique relativement à la totalité ou à une partie de la somme en particulier et non dans le calcul des revenus ou bénéfices étrangers pertinents en général,

b) soit découle du paiement;

E la somme obtenue par la formule suivante :

(A – C – D) × G ÷ H

où :

G représente le total des sommes représentant chacune une somme qui, selon le cas :

(i) remplit les conditions suivantes :

(A) elle est remboursée ou remboursable relativement à l'impôt sur le revenu ou les bénéfices payé ou payable par l'entité au gouvernement d'un pays étranger relativement aux revenus ou bénéfices étrangers pertinents pour l'année,

(B) elle n'est pas remboursée ou remboursable parce qu'une perte est utilisée pour réduire ou compenser les revenus ou bénéfices étrangers pertinents pour l'année,

(ii) elle est payée ou payable relativement à un crédit qui peut raisonnablement être considéré comme réduisant ou compensant, directement ou indirectement, l'impôt sur le revenu ou les bénéfices visé à la division (i)(A),

H le montant total de l'impôt sur le revenu ou les bénéfices visé à la division (i)(A) de l'élément G;

F la somme obtenue par la formule suivante :

(A – C – D – E) × (1 – I ÷ J)

où :

I représente le taux auquel l'impôt sur le revenu ou les bénéfices visé à la division (i)(A) de l'élément G est imputé relativement au montant pertinent,

J le taux le plus élevé auquel l'impôt sur le revenu ou les bénéfices imposé par le gouvernement du pays est exigé relativement à un montant de revenu relativement à un instrument financier. (*foreign ordinary income*)

revenus ou bénéfices étrangers pertinents S'agissant d'une entité, le revenu ou les bénéfices pour lesquels l'entité est assujettie à un impôt sur le revenu ou les

bénéfices imposé par le gouvernement d'un pays étranger. (*relevant foreign income or profits*)

Interpretation

(2) This section, section 12.7 and subsection 113(5), as well as related provisions of the Act and the *Income Tax Regulations*, relate to the implementation of *Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2 — 2015 Final Report* published by the Organisation for Economic Co-operation and Development and, unless the context otherwise requires, are to be interpreted consistently with that report, as amended from time to time.

Interprétation

(2) Le présent article, l'article 12.7 et le paragraphe 113(5), ainsi que les dispositions connexes de la loi et du *Règlement de l'impôt sur le revenu*, traitent de la mise en œuvre du rapport intitulé *Neutraliser les effets des dispositifs hybrides, Action 2 – Rapport final 2015* de l'Organisation de coopération et développement économiques publié et, sauf si le contexte l'exige, ils doivent être interprétés conformément à ce rapport, avec ses modifications successives.

Primary rule — conditions for application

(3) Subsection (4) applies in respect of a payment if

(a) in the absence of this section and subsection 18(4), an amount would be deductible, in respect of the payment, in computing a taxpayer's income from a business or property for a taxation year; and

(b) that amount is the deduction component of a hybrid mismatch arrangement under which the payment arises.

Règle primaire — conditions d'application

(3) Le paragraphe (4) s'applique relativement à un paiement si les énoncés ci-après se vérifient :

a) en l'absence du présent article et du paragraphe 18(4), un montant serait déductible, relativement au paiement, dans le calcul du revenu d'un contribuable tiré d'une entreprise ou d'un bien pour une année d'imposition;

b) ce montant correspond à la composante de déduction d'un dispositif hybride dont découle le paiement.

Primary rule — consequences

(4) If this subsection applies in respect of a payment, notwithstanding any other provision of this Act, in computing a taxpayer's income from a business or property for a taxation year, no deduction shall be made in respect of the payment to the extent of the hybrid mismatch amount in respect of the payment.

Règle primaire — conséquences

(4) Si le présent paragraphe s'applique relativement à un paiement, malgré les autres dispositions de la présente loi, dans le calcul du revenu d'un contribuable tiré d'une entreprise ou d'un bien pour une année d'imposition, aucune déduction ne peut être faite relativement au paiement jusqu'à concurrence du montant de l'asymétrie hybride relativement au paiement.

Structured arrangements — exception

(5) If subsection (4) or 12.7(3) would, in the absence of this subsection, apply in respect of a payment in computing a taxpayer's income from a business or property for a taxation year, that subsection does not apply in respect of the payment if

(a) there would be no hybrid mismatch arrangement in respect of the payment if the payment did not arise under, or in connection with, a structured arrangement;

(b) at the time that the taxpayer entered into, or acquired an interest in any part of a transaction that is, or is part of, the structured arrangement, it was not reasonable to expect that any of the following entities were aware of the deduction/non-inclusion mismatch arising from the payment:

Dispositifs structurés — exception

(5) Si, en l'absence du présent paragraphe, les paragraphes (4) ou 12.7(3) s'appliqueraient relativement à un paiement dans le calcul du revenu d'un contribuable tiré d'une entreprise ou d'un bien pour une année d'imposition, ces paragraphes ne s'appliquent pas relativement au paiement si les énoncés ci-après se vérifient :

a) aucun dispositif hybride ne serait établi relativement au paiement si celui-ci ne découlait pas d'un dispositif structuré ou ne s'y rapportait pas;

b) au moment où le contribuable conclut l'opération, ou a acquis un intérêt dans une partie de celle-ci, qui est le dispositif structuré, ou en fait partie, il n'était pas raisonnable de s'attendre à ce que l'une des entités ci-après soit au courant de l'asymétrie de déduction/non-inclusion découlant du paiement :

(i) the taxpayer,

(ii) an entity with which the taxpayer does not deal at arm's length, or

(iii) a specified entity in respect of the taxpayer; and

(c) none of the entities described in subparagraphs (b)(i) to (iii) shared in the value of any economic benefit resulting from the deduction/non-inclusion mismatch.

(i) le contribuable,

(ii) une entité avec laquelle le contribuable a un lien de dépendance,

(iii) une entité déterminée relativement au contribuable;

c) aucune des entités visées aux sous-alinéas b)(i) à (iii) n'a participé à la valeur de tout avantage économique découlant de l'asymétrie de déduction/non-inclusion.

Deduction/non-inclusion mismatch — conditions

(6) For the purposes of this section and section 12.7, a payment gives rise to a deduction/non-inclusion mismatch if

(a) the following condition is met:

A > B

where

A is the total of all amounts, each of which would, in the absence of this section and subsection 18(4), be deductible in respect of the payment, in computing the income of a taxpayer from a business or property under this Part for a taxation year (referred to in this paragraph as the "relevant year"), and

B is the total of all amounts each of which, in respect of the payment,

(i) can reasonably be expected to be — and actually is — foreign ordinary income of an entity for a foreign taxation year that begins on or before the day that is 12 months after the end of the relevant year, or

(ii) is Canadian ordinary income of a taxpayer for a taxation year that begins on or before the day that is 12 months after the end of the relevant year; or

(b) the following condition is met:

C > D

where

C is the total of all amounts, each of which, in the absence of any foreign expense restriction rule, would be — or would reasonably be expected to be — deductible, in respect of the payment, in computing relevant foreign income or profits of an entity for a foreign taxation year (referred to in this paragraph as the "relevant foreign year"), and

D is the total of all amounts, each of which, in respect of the payment,

Asymétrie de déduction/non-inclusion — conditions

(6) Pour l'application du présent article et de l'article 12.7, un paiement donne lieu à une asymétrie de déduction/non-inclusion si, selon le cas :

a) la condition ci-après est remplie :

A > B

où :

A représente le total des sommes dont chacune serait, en l'absence du présent article et du paragraphe 18(4), déductible relativement au paiement, dans le calcul du revenu d'un contribuable tiré d'une entreprise ou d'un bien en vertu de la présente partie pour une année d'imposition (appelée « année pertinente » au présent alinéa),

B le total des sommes, relativement au paiement, selon le cas :

(i) dont il est raisonnable de s'attendre à ce que chacune soit du revenu ordinaire étranger, et l'est effectivement, d'une entité pour une année d'imposition étrangère qui commence au plus tard le jour qui suit de douze mois la fin de l'année pertinente,

(ii) dont chacune représente le revenu ordinaire canadien d'un contribuable pour une année d'imposition qui commence au plus tard le jour qui suit de douze mois la fin de l'année pertinente;

b) la condition ci-après est remplie :

C > D

où :

C représente le total des sommes dont chacune (compte non tenu de toute règle étrangère de restriction des dépenses) serait, ou dont on pourrait raisonnablement s'attendre à ce qu'elle soit, déductible, relativement au paiement, dans le calcul des revenus ou bénéfices étrangers pertinents d'une entité pour une année d'imposition

(i) would, in the absence of section 12.7, be Canadian ordinary income of a taxpayer for a taxation year that begins on or before the day that is 12 months after the end of the relevant foreign year, or

(ii) can reasonably be expected to be — and actually is — foreign ordinary income of another entity for a foreign taxation year that begins on or before the day that is 12 months after the end of the relevant foreign year.

étrangère (appelée « année étrangère pertinente » au présent alinéa),

D le total des sommes, relativement au paiement, selon le cas :

(i) dont chacune représenterait (en l'absence de l'article 12.7) le revenu ordinaire canadien d'un contribuable pour une année d'imposition qui commence au plus tard le jour qui suit de douze mois la fin de l'année étrangère pertinente,

(ii) dont on peut raisonnablement s'attendre à ce que chacune soit, et est effectivement, du revenu ordinaire étranger d'une autre entité pour une année d'imposition étrangère qui commence au plus tard le jour qui suit de douze mois la fin de l'année étrangère pertinente.

Deduction/non-inclusion mismatch — application

(7) For the purposes of this section and section 12.7, if a payment gives rise to a deduction/non-inclusion mismatch,

(a) the amount, if any, determined for A in paragraph (6)(a) in respect of the payment is the deduction component of the deduction/non-inclusion mismatch;

(b) the amount, if any, determined for C in paragraph (6)(b) in respect of the payment is the foreign deduction component of the deduction/non-inclusion mismatch; and

(c) the amount of the deduction/non-inclusion mismatch arising from the payment is determined by the formula

A – B

where

A is

(i) if paragraph (6)(a) applies in respect of the payment, the deduction component of the deduction/non-inclusion mismatch, or

(ii) if paragraph (6)(b) applies in respect of the payment, the foreign deduction component of the deduction/non-inclusion mismatch, and

B is

(i) if subparagraph (i) of the description of A applies,

(A) where the amount determined for B in paragraph (6)(a) in respect of the payment is equal to 10% or less of the amount determined for A, nil, and

Asymétrie de déduction/non-inclusion — application

(7) Pour l'application du présent article et de l'article 12.7, si un paiement donne lieu à une asymétrie de déduction/non-inclusion, les règles ci-après s'appliquent :

a) la valeur de l'élément A de la formule figurant à l'alinéa (6)a) relativement au paiement est la composante de déduction de l'asymétrie de déduction/non-inclusion;

b) la valeur de l'élément C de la formule figurant à l'alinéa (6)b) relativement au paiement est la composante de déduction étrangère de l'asymétrie de déduction/non-inclusion;

c) la somme de l'asymétrie de déduction/non-inclusion découlant du paiement est obtenue par la formule suivante :

A – B

où :

A représente :

(i) si l'alinéa (6)a) s'applique relativement au paiement, la composante de déduction de l'asymétrie de déduction/non-inclusion,

(ii) si l'alinéa (6)b) s'applique relativement au paiement, la composante de déduction étrangère de l'asymétrie de déduction/non-inclusion,

B :

(i) si le sous-alinéa (i) de l'élément A s'applique :

(A) lorsque la valeur de l'élément B de la formule figurant à l'alinéa (6)a) relativement

(B) in any other case, the amount determined for B in paragraph (6)(a) in respect of the payment, or

(ii) if subparagraph (ii) of the description of A applies,

(A) where the amount determined for D in paragraph (6)(b) in respect of the payment is equal to 10% or less of the amount determined for A, nil, and

(B) in any other case, the amount determined for D in paragraph (6)(b) in respect of the payment.

au paiement est égale ou inférieure à 10 % de la somme obtenue pour l'élément A, zéro,

(B) dans les autres cas, la valeur de l'élément B de la formule figurant à l'alinéa (6)a) relativement au paiement,

(ii) si le sous-alinéa (ii) de l'élément A s'applique :

(A) lorsque la valeur de l'élément D de la formule figurant à l'alinéa (6)b) relativement au paiement est égale ou inférieure à 10 % de la somme obtenue pour l'élément A, zéro,

(B) dans les autres cas, la valeur de l'élément D de la formule figurant à l'alinéa (6)b) relativement au paiement.

No double counting

(8) Any amount that has already been included, directly or indirectly, in computing foreign ordinary income or Canadian ordinary income of a particular entity in respect of a payment shall not be included, directly or indirectly, in computing foreign ordinary income or Canadian ordinary income of the particular entity or any other entity in respect of the payment.

Aucun double comptage

(8) Est exclu, directement ou indirectement, du calcul de revenu ordinaire étranger ou de revenu ordinaire canadien d'une entité donnée ou de toute autre entité relativement au paiement, tout montant ayant déjà été inclus, directement ou indirectement, dans le calcul de revenu ordinaire étranger ou de revenu ordinaire canadien de l'entité donnée relativement au paiement.

Notional interest expense — deemed payment

(9) For the purposes of this section (other than this subsection) and section 12.7, if, in the absence of any foreign expense restriction rule, an amount (referred to in this subsection as the "deductible amount") would be, or can reasonably be expected to be, deductible in respect of a notional interest expense on a debt in computing the relevant foreign income or profits of an entity for a foreign taxation year

(a) the entity is deemed to make a payment in the year under the debt to the creditor in respect of the debt, in an amount equal to the deductible amount, and the creditor is deemed to be a recipient of the payment;

(b) the deductible amount is deemed to be in respect of the payment;

(c) any amount that is foreign ordinary income or Canadian ordinary income of the creditor in respect of notional interest income on the debt, that is calculated in respect of the same time period as the notional interest expense, is deemed to arise in respect of the payment; and

(d) any deduction/non-inclusion mismatch arising from the payment is deemed to satisfy the condition in paragraph (10)(d).

Dépenses en intérêts théoriques — paiement réputé

(9) Pour l'application du présent article (à l'exception du présent paragraphe) et de l'article 12.7, si, en l'absence d'une règle étrangère de restriction des dépenses, une somme (appelée « somme déductible » au présent paragraphe) serait, ou dont il est raisonnable de s'attendre à ce qu'elle soit, déductible à l'égard d'une dépense en intérêts théorique sur une dette, dans le calcul des revenus ou bénéfices étrangers pertinents d'une entité pour une année d'imposition étrangère, les règles ci-après s'appliquent :

a) l'entité est réputée effectuer un paiement dans l'année au titre de la dette au créancier relativement à la dette d'une somme égale à la somme déductible, et le créancier est réputé être un bénéficiaire de ce paiement;

b) la somme déductible est réputée être relative au paiement;

c) tout montant qui est du revenu ordinaire étranger ou du revenu ordinaire canadien du créancier relativement aux revenus d'intérêts théoriques sur la dette, qui est calculé relativement à la même période comme la dépense en intérêts théorique, est réputé découler du paiement;

d) toute asymétrie de déduction/non-inclusion découlant du paiement est réputée remplir la condition énoncée à l'alinéa (10)d).

Hybrid financial instrument arrangement — conditions

(10) For the purposes of this section and section 12.7, a payment arises under a hybrid financial instrument arrangement if

(a) the payment (other than a payment described in paragraphs (14)(a) to (d)) arises under, or in connection with, a financial instrument;

(b) any of the following conditions is satisfied:

(i) a payer of the payment does not deal at arm's length with, or is a specified entity in respect of, a recipient of the payment, or

(ii) the payment arises under, or in connection with, a structured arrangement;

(c) the payment gives rise to a deduction/non-inclusion mismatch; and

(d) it can reasonably be considered that the deduction/non-inclusion mismatch

(i) arises in whole or in part because of a difference in the treatment of the financial instrument — or of one or more transactions, either alone or together, where the transaction or transactions are part of a transaction or series of transactions that includes the payment or relates to the financial instrument — for tax purposes under the laws of more than one country that is attributable to the terms or conditions of the financial instrument or transaction or transactions, or

(ii) would arise in whole or in part because of a difference described in subparagraph (i), if any other reason for the deduction/non-inclusion mismatch were disregarded.

Dispositif d'instrument financier hybride — conditions

(10) Pour l'application du présent article et de l'article 12.7, un paiement découle d'un dispositif d'instrument financier hybride si les conditions ci-après sont réunies :

a) le paiement (sauf un paiement visé aux alinéas (14)a) à d)) découle d'un instrument financier, ou s'y rapporte;

b) l'une des conditions suivantes est remplie :

(i) un payeur du paiement a un lien de dépendance avec un bénéficiaire du paiement, ou est une entité déterminée relativement à un bénéficiaire du paiement,

(ii) le paiement découle d'un dispositif structuré, ou s'y rapporte;

c) le paiement donne lieu à une asymétrie de déduction/non-inclusion;

d) il est raisonnable de considérer que l'asymétrie de déduction/non-inclusion :

(i) soit découle en tout ou en partie d'une différence dans le traitement de l'instrument financier (ou d'une ou de plusieurs opérations, seules ou ensemble, lorsque l'opération ou les opérations font partie d'une opération ou d'une série d'opérations qui incluent le paiement ou qui se rapportent à l'instrument financier) à des fins fiscales en vertu des lois de plus d'un pays qui est attribuable aux modalités de l'instrument financier ou à une opération ou à des opérations,

(ii) soit découlerait en tout ou en partie d'une différence décrite au sous-alinéa (i), s'il n'était pas tenu compte de toute autre raison pour l'asymétrie de déduction/non-inclusion.

Hybrid financial instrument arrangement — amount

(11) For the purposes of this section and section 12.7, if a payment arises under a hybrid financial instrument arrangement,

(a) the amount of the hybrid financial instrument mismatch, in respect of the payment, is the portion of the amount of the deduction/non-inclusion mismatch arising from the payment that meets the condition in subparagraph (10)(d)(i) or (ii);

Dispositif d'instrument financier hybride — montant

(11) Pour l'application du présent article et de l'article 12.7, si un paiement découle d'un dispositif d'instrument financier hybride, les règles ci-après s'appliquent :

a) le montant de l'asymétrie d'instrument financier hybride, relativement au paiement, correspond à la partie de la somme de l'asymétrie de déduction/non-inclusion découlant du paiement qui remplit la condition énoncée aux sous-alinéas (10)d)(i) ou (ii);

(b) the deduction component, if any, of the deduction/non-inclusion mismatch is the deduction component of the hybrid financial instrument arrangement in respect of the payment; and

(c) the foreign deduction component, if any, of the deduction/non-inclusion mismatch is the foreign deduction component of the hybrid financial instrument arrangement in respect of the payment.

b) la composante de déduction, le cas échéant, de l'asymétrie de déduction/non-inclusion est la composante de déduction du dispositif d'instrument financier hybride relativement au paiement;

c) la composante de déduction étrangère, le cas échéant, de l'asymétrie de déduction/non-inclusion est la composante de déduction étrangère du dispositif d'instrument financier hybride relativement au paiement.

Hybrid transfer arrangement — conditions

(12) For the purposes of this section and section 12.7, a payment (other than an exempt dealer compensation payment) arises under a hybrid transfer arrangement if

(a) the payment arises under, or in connection with,

(i) a transaction or series of transactions (referred to in this subsection as the "transfer arrangement") that includes a loan or a disposition or other transfer by an entity to another entity (referred to in this subsection as the "transferor" and "transferee", respectively) of all or a portion of a financial instrument (referred to in this subsection as the "transferred instrument"), or

(ii) the transferred instrument;

(b) any of the following conditions is satisfied:

(i) at any time during the transfer arrangement

(A) a payer of the payment does not deal at arm's length with, or is a specified entity in respect of, a recipient of the payment, or

(B) the transferor does not deal at arm's length with, or is a specified entity in respect of, the transferee, or

(ii) the payment arises under, or in connection with, a structured arrangement;

(c) the payment gives rise to a deduction/non-inclusion mismatch; and

(d) it can reasonably be considered that the deduction/non-inclusion mismatch arises (or would arise, if any reason for the mismatch other than the reasons described in subparagraphs (i) and (ii) were disregarded), in whole or in part, because

(i) if the payment arises as compensation for a particular payment under the transferred instrument,

Dispositif de transfert hybride — conditions

(12) Pour l'application du présent article et de l'article 12.7, un paiement (sauf un paiement compensatoire (courtier) exonéré) découle d'un dispositif de transfert hybride, si les circonstances ci-après s'avèrent :

a) le paiement découle de l'un des éléments ci-après ou s'y rapporte :

(i) une opération ou série d'opérations (appelée « dispositif de transfert » au présent paragraphe) qui inclut un prêt ou une disposition ou autre transfert par une entité à une autre entité (appelées respectivement « cédant » et « cessionnaire » au présent paragraphe) de la totalité ou d'une partie d'un instrument financier (appelée « instrument transféré » au présent paragraphe),

(ii) l'instrument transféré;

b) une ou plusieurs des conditions ci-après sont remplies :

(i) à un moment donné durant le dispositif de transfert :

(A) soit un payeur du paiement a un lien de dépendance avec un bénéficiaire du paiement, ou est une entité déterminée relativement à un bénéficiaire du paiement,

(B) soit le cédant a un lien de dépendance avec le cessionnaire, ou est une entité déterminée relativement au cessionnaire,

(ii) le paiement découle d'un dispositif structuré ou s'y rapporte;

c) le paiement donne lieu à une asymétrie de déduction/non-inclusion;

d) il est raisonnable de considérer que l'asymétrie de déduction/non-inclusion se produit (ou se produirait compte non tenu de toute raison expliquant l'asymétrie, sauf celles décrites aux sous-alinéas (i) et (ii)), en tout ou en partie, car :

(A) the tax laws of one country treat all or a portion of the payment as though it has the same character as, or represents, the particular payment, in determining the tax consequences to an entity that is a recipient of the payment but not of the particular payment, and

(B) the tax laws of another country treat all or a portion of the payment as a deductible expense of another entity, or

(ii) in any other case,

(A) the tax laws of one country treat one or more transactions included in the transfer arrangement, either alone or together, as or as equivalent to a borrowing or other indebtedness, or treat all or a portion of the payment as arising under, or in connection with, a borrowing or other indebtedness, and the tax laws of another country do not treat the transaction or transactions, or the payment, as the case may be, in that manner, or

(B) the tax laws of one country treat the payment, or any other payment arising under, or in connection with, the transfer arrangement or transferred instrument, as though the payment or other payment, as the case may be, was derived by one entity and the tax laws of another country treat the payment or other payment, as the case may be, as though it was derived by another entity, because of a difference in how the countries treat one or more transactions included in the transfer arrangement, either alone or together.

(i) si le paiement se produit en tant que compensation pour un paiement donné en vertu de l'instrument transféré, à la fois :

(A) les lois fiscales d'un pays traitent la totalité ou une partie du paiement comme si elle était de la même nature que le paiement donné, ou le représentait, dans le cadre de la détermination des conséquences fiscales pour une entité qui est bénéficiaire du paiement, mais pas du paiement donné,

(B) les lois fiscales d'un autre pays traitent la totalité ou une partie du paiement comme une dépense déductible d'une autre entité,

(ii) dans les autres cas :

(A) soit les lois fiscales d'un pays traitent une ou plusieurs opérations incluses dans le dispositif de transfert, seules ou ensemble, comme un emprunt ou autre dette ou leur équivalent, ou traitent la totalité ou une partie du paiement comme découlant d'un emprunt ou autre dette ou s'y rapportant, et les lois fiscales d'un autre pays ne traitent pas l'opération ou les opérations, ou le paiement, selon le cas, de cette manière,

(B) soit les lois fiscales d'un pays traitent le paiement, ou tout autre paiement découlant du dispositif de transfert ou de l'instrument transféré, ou s'y rapportant, comme si le paiement ou l'autre paiement, selon le cas, était tiré par une entité et les lois fiscales d'un autre pays traitent le paiement ou l'autre paiement, selon le cas, comme s'il était tiré par une autre entité, en raison d'une différence dans la façon dont les pays traitent seules ou ensemble une ou plusieurs opérations incluses dans le dispositif de transfert.

Hybrid transfer arrangement — amount

(13) For the purposes of this section and section 12.7, if a payment arises under a hybrid transfer arrangement,

(a) the amount of the hybrid transfer mismatch, in respect of the payment, is the portion of the amount of the deduction/non-inclusion mismatch arising from the payment that meets a condition in subparagraph (12)(d)(i) or (ii);

(b) the deduction component, if any, of the deduction/non-inclusion mismatch is the deduction component of the hybrid transfer arrangement in respect of the payment; and

Dispositif de transfert hybride — montant

(13) Pour l'application du présent article et de l'article 12.7, si un paiement découle d'un dispositif de transfert hybride, les règles ci-après s'appliquent :

a) le montant de l'asymétrie de transfert hybride, relativement au paiement, correspond à la partie de la somme de l'asymétrie de déduction/non-inclusion découlant du paiement qui satisfait à une condition prévue aux sous-alinéas (12)d)(i) ou (ii);

b) la composante de déduction, le cas échéant, de l'asymétrie de déduction/non-inclusion est la

(c) the foreign deduction component, if any, of the deduction/non-inclusion mismatch is the foreign deduction component of the hybrid transfer arrangement in respect of the payment.

c) la composante de déduction étrangère, le cas échéant, de l'asymétrie de déduction/non-inclusion est la composante de déduction étrangère du dispositif de transfert hybride relativement au paiement.

Substitute payment arrangement — conditions

(14) For the purposes of this section and section 12.7, a payment arises under a substitute payment arrangement if

(a) the payment arises under, or in connection with, an arrangement under which all or a portion of a financial instrument is loaned or disposed of or otherwise transferred by an entity to another entity (referred to in this subsection as the "transferor" and "transferee", respectively);

(b) the transferee, or an entity that does not deal at arm's length with the transferee, is a payer of the payment;

(c) the transferor, or an entity that does not deal at arm's length with the transferor, is a recipient of the payment;

(d) all or a portion of the payment can reasonably be considered to represent or otherwise reflect, or be determined by reference to

(i) another payment (referred to in this subsection and subsection (15) as the "underlying return") that arises under, or in connection with, the financial instrument, or

(ii) revenue, profit, cash flow, commodity price or any other similar criterion;

(e) any of the following conditions is satisfied:

(i) at any time during that series of transactions that includes the arrangement,

(A) a payer of the payment does not deal at arm's length with, or is a specified entity in respect of, a recipient of the payment, or

(B) the transferor does not deal at arm's length with, or is a specified entity in respect of, the transferee, or

(ii) the payment arises under, or in connection with, a structured arrangement;

(f) the payment

Dispositif de paiement par substitution — conditions

(14) Pour l'application du présent article et de l'article 12.7, un paiement découle d'un dispositif de paiement par substitution si les conditions suivantes sont remplies :

a) le paiement découle d'un dispositif en vertu duquel la totalité ou une partie d'un instrument financier est prêtée ou disposée ou autrement transférée par une entité à une autre entité (appelées respectivement « cédant » et « cessionnaire » au présent paragraphe) ou s'y rapporte;

b) le cessionnaire, ou une entité qui a un lien de dépendance avec ce dernier, est un payeur du paiement;

c) le cédant, ou une entité qui a un lien de dépendance avec ce dernier, est un bénéficiaire du paiement;

d) il est raisonnable de considérer que la totalité ou une partie du paiement représente ou autrement reflète, ou est déterminée par rapport à :

(i) soit un autre paiement (appelé « rendement sous-jacent » au présent paragraphe et au paragraphe (15)) qui découle de l'instrument financier, ou qui s'y rapporte,

(ii) soit les revenus, les bénéfices, le flux de trésorerie, le prix des marchandises ou tout autre critère semblable;

e) l'une des conditions suivantes est remplie :

(i) à un moment donné dans le cadre de la série d'opérations qui inclut le dispositif, selon le cas :

(A) un payeur du paiement a un lien de dépendance avec un bénéficiaire du paiement ou est une entité déterminée relativement à un bénéficiaire du paiement,

(B) le cédant a un lien de dépendance avec le cessionnaire ou est une entité déterminée relativement au cessionnaire,

(ii) le paiement découle d'un dispositif structuré ou s'y rapporte;

(i) would give rise to a deduction/non-inclusion mismatch if any Canadian ordinary income of a taxpayer for a taxation year and any foreign ordinary income of an entity for a foreign taxation year, in respect of the payment, were limited to the portion of those amounts that can reasonably be considered to relate to the portion of the payment that is described in paragraph (d), or

(ii) if the condition in subparagraph (i) is not met, would meet the condition in that subparagraph if any amount that, in the absence of this section, subsection 18(4) or any foreign expense restriction rule, would be — or would reasonably be expected to be — deductible by the transferee in respect of the underlying return were instead considered to be deductible in respect of the payment, to the extent that the amount

(A) would be — or would reasonably be expected to be — deductible by the transferee in computing its income from a business or property for a taxation year or its relevant foreign income or profits for a foreign taxation year, as the case may be, and

(B) would be — or would reasonably be expected to be — so deductible because the underlying return accrued (or is considered to accrue) for a period before the transfer;

(g) one of the following conditions is satisfied:

(i) the transferee or an entity that does not deal at arm's length with the transferee is a recipient of the underlying return — or, if subparagraph (d)(ii) applies, a distribution under the financial instrument — and the amount of the underlying return or the distribution, as the case may be, exceeds the total of all amounts, in respect of the underlying return or the distribution, as the case may be, each of which can reasonably be expected to be — and actually is — foreign ordinary income for a foreign taxation year or Canadian ordinary income for a taxation year, as the case may be, of the recipient,

(ii) the condition in subparagraph (i) would be satisfied if the transferee were the recipient of the underlying return, or, if subparagraph (d)(ii) applies, a distribution under the financial instrument, or

(iii) if the transferor were the recipient of the underlying return, or, if subparagraph (d)(ii) applies, a distribution under the financial instrument,

(A) an amount in respect of the underlying return or distribution, as the case may be, would

f) le paiement, selon le cas :

(i) donnerait lieu à une asymétrie de déduction/non-inclusion, si tout revenu ordinaire canadien d'un contribuable pour une année d'imposition et tout revenu ordinaire étranger d'une entité pour une année d'imposition étrangère, relativement au paiement, étaient limités à la partie de ces montants qui peut raisonnablement être considérée comme se rapportant à la partie du paiement visée à l'alinéa d),

(ii) si la condition énoncée au sous-alinéa (i) n'est pas remplie, remplirait la condition énoncée à ce sous-alinéa, si toute somme qui, en l'absence du présent article, du paragraphe 18(4) ou de toute règle étrangère de restriction des dépenses, était, ou dont il est raisonnable de s'attendre à ce qu'elle soit, déductible par le cessionnaire relativement au rendement sous-jacent était plutôt considérée comme déductible relativement au paiement, dans la mesure où, à la fois :

(A) la somme serait, ou il serait raisonnable de s'attendre à ce qu'elle soit, déductible par le cessionnaire dans le calcul de son revenu tiré d'une entreprise ou d'un bien pour une année d'imposition ou de ses revenus ou bénéfices étrangers pertinents pour une année d'imposition étrangère, selon le cas,

(B) la somme serait, ou il est raisonnable de s'attendre à ce qu'elle soit, déductible parce que le rendement sous-jacent s'est accumulé (ou est considéré s'accumuler) pendant une période précédant le transfert;

g) l'une des conditions ci-après est remplie :

(i) le cessionnaire ou une entité qui a un lien de dépendance avec le cessionnaire est un bénéficiaire du rendement sous-jacent ou, en cas d'application du sous-alinéa d)(ii), d'une distribution effectuée dans le cadre de l'instrument financier, et le montant du rendement sous-jacent ou de la distribution, le cas échéant, dépasse le total des montants, relativement au rendement sous-jacent ou à la distribution, le cas échéant, dont il est raisonnable de s'attendre à ce que chacun soit, et effectivement est, du revenu ordinaire étranger pour une année d'imposition étrangère ou du revenu ordinaire canadien pour une année d'imposition, selon le cas, du bénéficiaire,

(ii) la condition énoncée au sous-alinéa (i) serait remplie si le cessionnaire était le bénéficiaire du

reasonably be expected to be foreign ordinary income for a foreign taxation year or Canadian ordinary income for a taxation year, as the case may be, of the transferor,

(B) the underlying return or distribution, as the case may be, would arise under a hybrid mismatch arrangement, or

(C) a foreign hybrid mismatch rule would reasonably be expected to apply in respect of the underlying return or distribution, as the case may be; and

(h) one of the following entities is not resident in Canada:

(i) the transferor,

(ii) the transferee,

(iii) a recipient of the payment,

(iv) a payer of the payment,

(v) the issuer of the financial instrument,

(vi) a recipient of the underlying return, and

(vii) if an entity described in any of subparagraphs (i) to (vi) is a partnership, a member of that entity.

rendement sous-jacent, ou, si le sous-alinéa d)(ii) s'applique, d'une distribution effectuée dans le cadre de l'instrument financier,

(iii) si le cédant était le bénéficiaire du rendement sous-jacent ou, en cas d'application du sous-alinéa d)(ii), d'une distribution effectuée dans le cadre de l'instrument financier, selon le cas :

(A) relativement au rendement sous-jacent ou à la distribution, le cas échéant, il est raisonnable de s'attendre à ce qu'une somme soit du revenu ordinaire étranger pour une année d'imposition étrangère ou du revenu ordinaire canadien pour une année d'imposition, selon le cas, du cédant,

(B) le rendement sous-jacent ou la distribution, selon le cas, découlerait d'un dispositif hybride,

(C) il est raisonnable de s'attendre à ce qu'une règle étrangère d'asymétrie hybride s'applique relativement au rendement sous-jacent ou à la distribution, selon le cas;

h) l'une des entités ci-après ne réside pas au Canada :

(i) le cédant,

(ii) le cessionnaire,

(iii) un bénéficiaire du paiement,

(iv) un payeur du paiement,

(v) l'émetteur de l'instrument financier,

(vi) un bénéficiaire du rendement sous-jacent,

(vii) si une entité visée à l'un des sous-alinéas (i) à (vi) est une société de personnes, un associé de cette entité.

Substitute payment arrangement — amount

(15) For the purposes of this section and section 12.7, if a payment arises under a substitute payment arrangement,

(a) the amount of the substitute payment mismatch, in respect of the payment, is the lesser of

(i) the amount of the deduction/non-inclusion mismatch arising from the payment,

(A) if the condition in subparagraph (14)(f)(i) applies, determined based on the assumption in that subparagraph, or

Dispositif de paiement par substitution — montant

(15) Pour l'application du présent article et de l'article 12.7, si un paiement découle d'un dispositif de paiement par substitution, les règles ci-après s'appliquent :

a) le montant de l'asymétrie de paiement par substitution, relativement au paiement, est le moins élevé des montants suivants :

(i) le montant de l'asymétrie de déduction/non-inclusion découlant du paiement :

(A) si la condition énoncée au sous-alinéa (14)f)(i) s'applique, déterminé selon l'hypothèse énoncée à ce sous-alinéa,

(B) if the condition in subparagraph (14)(f)(ii) applies, determined based on the assumption in that subparagraph, and

(ii) the amount of the payment, or the portion of the payment, as the case may be, described in paragraph (14)(d);

(b) the deduction component, if any, of the deduction/non-inclusion mismatch is the deduction component of the substitute payment arrangement in respect of the payment;

(c) the foreign deduction component, if any, of the deduction/non-inclusion mismatch is the foreign deduction component of the substitute payment arrangement in respect of the payment; and

(d) if the condition in subparagraph (14)(f)(ii) is met in respect of the payment, any amount that, in the absence of this section, subsection 18(4) or any foreign expense restriction rule, would be — or would reasonably be expected to be — deductible by the transferee in respect of the underlying return that meets the conditions in clauses (14)(f)(ii)(A) and (B) is deemed to be deductible by the transferee in respect of the payment for the purposes of applying subsections (3) and (4) and section 12.7.

(B) si la condition énoncée au sous-alinéa (14)f)(ii) s'applique, déterminé selon l'hypothèse énoncée à ce sous-alinéa,

(ii) le montant du paiement, ou la partie de celui-ci, le cas échéant, visé à l'alinéa (14)d);

b) la composante de déduction, le cas échéant, de l'asymétrie de déduction/non-inclusion est la composante de déduction du dispositif de paiement par substitution relativement au paiement;

c) la composante de déduction étrangère, le cas échéant, de l'asymétrie de déduction/non-inclusion est la composante de déduction étrangère du dispositif de paiement par substitution relativement au paiement;

d) si la condition énoncée au sous-alinéa (14)f)(ii) est remplie relativement au paiement, toute somme qui, en l'absence du présent article, du paragraphe 18(4) ou de toute règle étrangère de restriction des dépenses, serait, ou dont il est raisonnable de s'attendre à qu'elle soit, déductible par le cessionnaire relativement au rendement sous-jacent qui remplit les conditions énoncées aux divisions (14)f)(ii)(A) et (B) est réputée être déductible par le cessionnaire relativement au paiement pour l'application des paragraphes (3) et (4) et de l'article 12.7.

Substituted instruments

(16) For the purposes of this section and section 12.7, any financial instrument that is substituted for a particular financial instrument is deemed to be the particular financial instrument.

Instruments substitués

(16) Pour l'application du présent article et de l'article 12.7, tout instrument financier qui est substitué à un instrument financier donné est réputé être l'instrument financier donné.

Specified entity — deeming rules

(17) For the purposes of the definition *specified entity* in subsection (1), the following rules apply:

(a) in determining the equity interests owned, directly or indirectly, by any entity (in this paragraph referred to as the "first entity") in any other entity at any time,

(i) the rights of the first entity, and any entities with which it does not deal at arm's length, that are rights referred to in the portion of the definition *specified shareholder* in subsection 18(5) after paragraph (b) of that definition or in paragraph (a) or (b) of the definition *specified beneficiary* in that subsection, or that are similar rights in respect of partnerships or any other entity, are deemed to be immediate and absolute and to have been exercised at that time, and

Entité déterminée – règles spéciales

(17) Pour l'application de la définition de *entité déterminée* au paragraphe (1), les règles suivantes s'appliquent :

a) pour déterminer les participations au capital détenues, directement ou indirectement, par une entité (appelée « première entité » au présent alinéa) dans une autre entité à un moment donné, à la fois :

(i) les droits de la première entité et de toute entité avec laquelle elle a un lien de dépendance qui sont des droits mentionnés dans le passage après l'alinéa b) de la définition de *actionnaire déterminé* au paragraphe 18(5) ou dans les alinéas a) ou b) de la définition de *bénéficiaire déterminé* à ce paragraphe, ou qui sont des droits similaires relativement aux sociétés de personnes ou toute autre entité, sont réputés être immédiats et absolus et avoir été exercés à ce moment donné,

(ii) paragraph (c) of the definition *specified beneficiary* in subsection 18(5) is deemed to apply at that time and the references in that definition to "particular person" are to be read as references to "first entity"; and

(b) notwithstanding paragraph (a), a particular entity is deemed not to be a specified entity in respect of another entity at any time if

(i) the particular entity would, but for this paragraph, be a specified entity in respect of the other entity at that time,

(ii) there was in effect at that time an agreement or arrangement under which, on the satisfaction of a condition or the occurrence of an event that it is reasonable to expect will be satisfied or will occur, the particular entity will cease to be a specified entity in respect of the other entity, and

(iii) the purpose for which the particular entity became a specified entity was the safeguarding of rights or interests of the particular entity or an entity with which the particular entity is not dealing at arm's length in respect of any indebtedness owing at any time to the particular entity or an entity with which the particular entity is not dealing at arm's length.

(ii) l'alinéa c) de la définition de *bénéficiaire déterminé* au paragraphe 18(5) est réputé s'appliquer à ce moment donné et la mention « personne donnée » à cette définition vaut mention de « première entité »;

b) malgré l'alinéa a), une entité donnée est réputée ne pas être une entité déterminée relativement à une autre entité à un moment donné si les conditions ci-après sont réunies :

(i) l'entité serait à ce moment, en l'absence du présent alinéa, une entité déterminée relativement à l'autre entité,

(ii) est en vigueur à ce moment un contrat ou un arrangement qui stipule que, à la réalisation d'une condition ou d'un événement auquel il est raisonnable de s'attendre, l'entité cessera d'être une entité déterminée relativement à l'autre entité,

(iii) la raison pour laquelle l'entité est devenue une entité déterminée est la sauvegarde de ses droits ou des droits d'une entité avec laquelle elle a un lien de dépendance, afférents à tout titre de créance dont elle est créancière, ou dont une entité avec laquelle elle a un lien de dépendance est créancière, à un moment quelconque.

Tiered partnerships

(18) For the purposes of this section and section 12.7, a person or partnership that is a member of a particular partnership that is a member of another partnership is deemed to be a member of the other partnership, and the person or partnership is deemed to have, directly, rights to the income or capital of the other partnership to the extent of the person or partnership's direct and indirect rights to that income or capital.

Paliers de sociétés de personnes

(18) Pour l'application du présent article et de l'article 12.7, une personne ou une société de personnes qui est ou est réputée être, en vertu du présent paragraphe, l'associé d'une société de personnes donnée qui est elle-même l'associé d'une autre société de personnes est réputée être l'associé de cette dernière et est réputée avoir, directement, des droits sur le revenu ou le capital de l'autre société de personnes, jusqu'à concurrence de ses droits directs ou indirects sur ce revenu ou ce capital.

Multiple recipients

(19) For the purposes of this section and section 12.7, if there would, in the absence of this subsection, be multiple recipients of a particular payment, each portion of the particular payment that arises to each recipient is deemed to be a separate payment.

Bénéficiaires multiples

(19) Pour l'application du présent article et de l'article 12.7, s'il y avait, en l'absence du présent paragraphe, des bénéficiaires multiples d'un paiement donné, chaque portion du paiement donné qui se produit pour chaque bénéficiaire est réputée être un paiement distinct.

Anti-avoidance

(20) The *tax consequences* (as defined in subsection 245(1)) to a person shall be determined in order to deny a *tax benefit* (as defined in subsection 245(1)) to the extent necessary to eliminate any deduction/non-inclusion mismatch, or other outcome that is substantially similar to a

Anti-évitement

(20) Les *attributs fiscaux* (au sens du paragraphe 245(1)) pour une personne doivent être déterminés de façon à supprimer un *avantage fiscal* (au sens du paragraphe 245(1)) dans la mesure nécessaire pour éliminer toute asymétrie de déduction/non-inclusion ou un autre résultat qui est substantiellement semblable à une

deduction/non-inclusion mismatch, arising from a payment if

(a) it can reasonably be considered that one of the main purposes of a transaction or series of transactions that includes the payment is to avoid or limit the application of subsection (4), 12.7(3) or 113(5) in respect of the payment; and

(b) any of the following conditions is met:

(i) the payment is a dividend and an amount would be — or would reasonably be expected to be — deductible in respect of the payment in computing relevant foreign income or profits of an entity for a foreign taxation year,

(ii) the mismatch or other outcome arises in whole or in part because of a difference in tax treatment of any transaction or series of transactions under the laws of more than one country that is attributable to the terms or conditions of the transaction or one or more transactions included in the series, or

(iii) the mismatch or other outcome would arise in whole or in part because of a difference described in subparagraph (ii), if any other reason for the mismatch or other outcome were disregarded.

asymétrie de déduction/non-inclusion, découlant d'un paiement si, à la fois :

a) il est raisonnable de considérer que l'un des principaux objets d'une opération ou d'une série d'opérations qui comprend le paiement est de permettre d'éviter ou de restreindre l'application des paragraphes (4), 12.7(3) ou 113(5) relativement au paiement;

b) l'une des conditions suivantes est remplie :

(i) le paiement est un dividende et une somme serait, ou il serait raisonnable de s'attendre à ce qu'elle soit, déductible relativement au paiement dans le calcul des revenus ou bénéfices étrangers pertinents d'une entité pour une année d'imposition étrangère,

(ii) l'asymétrie ou l'autre résultat découle en tout ou en partie d'une différence dans le traitement fiscal d'une opération ou d'une série d'opérations en vertu des lois de plus d'un pays qui est attribuable aux modalités de l'opération ou de l'une ou de plusieurs opérations comprises dans la série,

(iii) l'asymétrie ou l'autre résultat découlerait en tout ou en partie d'une différence visée au sous-alinéa (ii), à condition que tout autre motif pour l'asymétrie ou un autre résultat ne soit pas pris en compte.

Filing Requirement

(21) Each taxpayer shall file with its return of income for a taxation year a prescribed form containing prescribed information if, in computing the taxpayer's income for the taxation year,

(a) an amount is not deductible in respect of a payment because of subsection (4); or

(b) subsection 12.7(3) includes an amount in respect of a payment.

Exigence relative à la production de déclarations de revenus

(21) Chaque contribuable est tenu de produire, avec sa déclaration de revenu pour une année d'imposition, un formulaire prescrit contenant les renseignements prescrits si, dans le calcul de son revenu pour l'année, selon le cas :

a) une somme n'est pas déductible au titre d'un paiement par l'effet du paragraphe (4);

b) le paragraphe 12.7(3) inclut une somme relativement à un paiement.

(2) Paragraph (a) of the definition *foreign expense restriction rule* in subsection 18.4(1) of the Act, as enacted by subsection (1), is replaced by the following:

(a) have an effect, or be intended to have an effect, that is substantially similar to subsection 18(4) or 18.2(2); or

(2) L'alinéa a) de la définition *règle étrangère de restriction des dépenses*, au paragraphe 18.4(1) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :

a) ayant un effet, ou étant destinée à avoir un effet, substantiellement semblable aux paragraphes 18(4) ou 18.2(2);

(3) Paragraph 18.4(3)(a) of the Act, as enacted by subsection (1), is replaced by the following:

(3) L'alinéa 18.4(3)a) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :

(a) in the absence of this section and subsections 18(4) and 18.2(2), an amount would be deductible, in respect of the payment, in computing a taxpayer's income from a business or property for a taxation year; and

(4) The description of A in paragraph 18.4(6)(a) of the Act, as enacted by subsection (1), is replaced by the following:

A is the total of all amounts, each of which would, in the absence of this section and subsections 18(4) and 18.2(2), be deductible in respect of the payment, in computing the income of a taxpayer from a business or property under this Part for a taxation year (referred to in this paragraph as the "relevant year"), and

(5) The portion of subparagraph 18.4(14)(f)(ii) of the Act before clause (A), as enacted by subsection (1), is replaced by the following:

(ii) if the condition in subparagraph (i) is not met, would meet the condition in that subparagraph if any amount that, in the absence of this section, subsections 18(4) and 18.2(2) or any foreign expense restriction rule, would be — or would reasonably be expected to be — deductible by the transferee in respect of the underlying return were instead considered to be deductible in respect of the payment, to the extent that the amount

(6) Paragraph 18.4(15)(d) of the Act, as enacted by subsection (1), is replaced by the following:

(d) if the condition in subparagraph (14)(f)(ii) is met in respect of the payment, any amount that, in the absence of this section, subsections 18(4) and 18.2(2) or any foreign expense restriction rule, would be — or would reasonably be expected to be — deductible by the transferee in respect of the underlying return that meets the conditions in clauses 14(f)(ii)(A) and (B) is deemed to be deductible by the transferee in respect of the payment for the purposes of applying subsections (3) and (4) and section 12.7.

(7) Subsection (1) applies in respect of payments arising on or after July 1, 2022, except that subsection 18.4(21) of the Act, as enacted by subsection (1), does not apply in respect of a payment that arises before July 1, 2023.

(8) Subsections (2) to (6) apply in respect of taxation years of a taxpayer that begin on or after

a) en l'absence du présent article et des paragraphes 18(4) et 18.2(2), un montant serait déductible, relativement au paiement, dans le calcul du revenu d'un contribuable tiré d'une entreprise ou d'un bien pour une année d'imposition;

(4) L'élément A de la formule figurant à l'alinéa 18.4(6)a) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :

A représente le total des sommes dont chacune serait, en l'absence du présent article et des paragraphes 18(4) et 18.2(2), déductible relativement au paiement, dans le calcul du revenu d'un contribuable tiré d'une entreprise ou d'un bien en vertu de la présente partie pour une année d'imposition (appelée « année pertinente » au présent alinéa),

(5) Le passage du sous-alinéa 18.4(14)f)(ii) de la même loi précédant la division (A), édicté par le paragraphe (1), est remplacé par ce qui suit :

(ii) si la condition énoncée au sous-alinéa (i) n'est pas remplie, remplirait la condition énoncée à ce sous-alinéa, si toute somme qui, en l'absence du présent article, des paragraphes 18(4) et 18.2(2), ou toute règle étrangère de restriction des dépenses, serait, ou dont on pourrait raisonnablement s'attendre à ce qu'elle soit, déductible par le cessionnaire relativement au rendement sous-jacent était plutôt considérée comme déductible relativement au paiement, dans la mesure où, à la fois :

(6) L'alinéa 18.4(15)d) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :

d) si la condition énoncée au sous-alinéa (14)f)(ii) est remplie relativement au paiement, toute somme qui, en l'absence du présent article, des paragraphes 18(4) et 18.2(2) ou de toute règle étrangère de restriction des dépenses, serait, ou dont on pourrait raisonnablement s'attendre à qu'elle soit, déductible par le cessionnaire relativement au rendement sous-jacent qui remplit les conditions énoncées aux divisions (14)f)(ii)(A) et (B) est réputée être déductible par le cessionnaire relativement au paiement pour l'application des paragraphes (3) et (4) et de l'article 12.7.

(7) Le paragraphe (1) s'applique relativement aux paiements se produisant après le 30 juin 2022. Toutefois, le paragraphe 18.4(21) de la même loi, édicté par le paragraphe (1), ne s'applique pas relativement à un paiement qui se produit avant le 1er juillet 2023.

(8) Les paragraphes (2) à (6) s'appliquent relativement aux années d'imposition d'un

October 1, 2023. However, subsections (2) to (6) also apply in respect of a taxation year of a taxpayer that begins before, and ends after, October 1, 2023 if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.

9 (1) Subsection 20(1) of the Act is amended by striking out "and" at the end of paragraph (ww), by adding "and" at the end of paragraph (xx) and by adding the following after paragraph (xx):

Adjustment for hybrid mismatch

(yy) if subsection 18.4(4) has applied to deny a taxpayer a deduction, for the year or a preceding taxation year, for all or a portion of an amount in respect of a payment arising under a hybrid mismatch arrangement, and the taxpayer demonstrates that an amount is foreign ordinary income of an entity in respect of the payment (other than any amount of foreign ordinary income already taken into account in determining the amount of the deduction that was previously denied or a deduction under this paragraph) for a foreign taxation year that ends on or before the day that is 12 months after the end of the year,

(i) the lesser of

(A) the amount by which the deduction that was denied exceeds the total of all amounts already deducted under this paragraph in respect of the payment for the year or any previous year, and

(B) the amount of the foreign ordinary income, and

(ii) the amount that is deductible under this paragraph is deemed to be deductible in respect of the payment.

(2) Subsection (1) applies in respect of payments arising on or after July 1, 2022.

contribuable commençant après septembre 2023. Toutefois, ils s'appliquent aussi relativement à une année d'imposition d'un contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :

a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération, d'un événement ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;

b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.

9 (1) Le paragraphe 20(1) de la même loi est modifié par adjonction, après l'alinéa xx), de ce qui suit :

Ajustement de l'asymétrie hybride

yy) si le paragraphe 18.4(4) s'est appliqué pour refuser à un contribuable une déduction, pour l'année ou une année d'imposition précédente, pour la totalité ou une partie d'une somme relative à un paiement découlant d'un dispositif hybride, et que le contribuable démontre qu'une somme constitue du revenu ordinaire étranger d'une entité relativement au paiement (sauf tout montant de revenu ordinaire étranger déjà pris en compte dans le calcul du montant de la déduction qui a été refusée antérieurement ou d'une déduction en application du présent alinéa) pour une année d'imposition étrangère qui se termine au plus tard le jour qui suit de douze mois la fin de l'année :

(i) la moindre des sommes suivantes :

(A) l'excédent du montant de la déduction refusée sur le total des sommes déjà déduites en application du présent alinéa relativement au paiement pour l'année ou toute année antérieure,

(B) la somme du revenu ordinaire étranger,

(ii) la somme qui est déductible en application du présent alinéa est réputée être déductible relativement au paiement.

(2) Le paragraphe (1) s'applique relativement aux paiements se produisant après le 30 juin 2022.

10 (1) The portion of subparagraph 40(1)(a)(iii) of the Act before clause (A) is replaced by the following:

(iii) subject to subsections (1.1) to (1.3), such amount as the taxpayer may claim

10 (1) Le passage du sous-alinéa 40(1)a)(iii) de la même loi précédant la division (A) est remplacé par ce qui suit :

(iii) sous réserve des paragraphes (1.1) à (1.3), le montant dont il peut demander la déduction, dans le cas d'un particulier – à l'exclusion d'une fiducie –, sur le formulaire prescrit présenté avec la déclaration de revenu prévue à la présente partie pour l'année et, dans les autres cas, dans la déclaration de revenu produite en vertu de la présente partie pour l'année, jusqu'à concurrence du moins élevé des montants suivants :

(2) Section 40 of the Act is amended by adding the following after subsection (1.1):

Reserve — intergenerational business transfers

(1.2) In computing the amount that a taxpayer may claim under subparagraph (1)(a)(iii) on a disposition of shares of the capital stock of a corporation resident in Canada to another corporation, that subparagraph is to be read as if the references to "1/5" and "4" were references to "1/10" and "9" respectively, if the conditions set out in subsection 84.1(2.31) or (2.32) are satisfied in respect of the disposition.

Reserve — dispositions to employee ownership trusts

(1.3) In computing the amount that a taxpayer may claim under subparagraph (1)(a)(iii) in computing the taxpayer's gain from the disposition of a share of the capital stock of a qualifying business, that subparagraph is to be read as if the references in that subparagraph to "1/5" and "4" were references to "1/10" and "9" respectively, if the shares of the qualifying business were disposed of by the taxpayer to an employee ownership trust, or to a Canadian-controlled private corporation that is controlled and wholly-owned by an employee ownership trust, pursuant to a qualifying business transfer.

(2) L'article 40 de la même loi est modifié par adjonction, après le paragraphe (1.1), de ce qui suit :

Transferts intergénérationnels d'entreprises

(1.2) Pour le calcul de la somme dont un contribuable peut demander la déduction, en vertu du sous-alinéa (1)a)(iii), lors de la disposition d'actions du capital-actions d'une société résidant au Canada en faveur d'une autre société, les mentions « 1/5 » et « 4 » à ce sous-alinéa valent mention respectivement de « 1/10 » et « 9 » si les conditions des paragraphes 84.1(2.31) ou (2.32) sont remplies relativement à la disposition.

Dispositions en faveur de fiducies collectives des employés

(1.3) Pour le calcul de la somme dont un contribuable peut demander la déduction, selon le sous-alinéa (1)a)(iii), dans le calcul de son gain provenant de la disposition d'une action du capital-actions d'une entreprise admissible, les mentions « 1/5 » et « 4 » à ce sous-alinéa valent mention respectivement de « 1/10 » et « 9 » si le contribuable a disposé des actions de l'entreprise admissible en faveur d'une fiducie collective des employés, ou d'une société privée sous contrôle canadien dont les actions sont détenues à cent pour cent par une fiducie collective des employés et qui est contrôlée par celle-ci, conformément à un transfert admissible d'entreprise.

(3) Subsections (1) and (2) apply in respect of transactions that occur on or after January 1, 2024.

(3) Les paragraphes (1) et (2) s'appliquent aux opérations se produisant après le 31 décembre 2023.

11 (1) Subparagraph 53(1)(e)(xiii) of the Act is replaced by the following:

(xiii) any amount required by subsection 127(30) or section 211.92 to be added to the taxpayer's tax otherwise payable under this Part for a taxation year that ended before that time in respect of the interest in the partnership;

11 (1) Le sous-alinéa 53(1)e)(xiii) de la même loi est remplacé par ce qui suit :

(xiii) tout montant à ajouter, en application du paragraphe 127(30) ou de l'article 211.92, à l'impôt payable par ailleurs par le contribuable en vertu de la présente partie pour une année d'imposition s'étant terminée avant ce moment relativement à la participation dans la société de personnes;

(2) Subparagraph 53(1)(e)(xiii) of the Act, as amended by subsection (1), is replaced by the following:

(xiii) any amount required by subsection 127(30) or 127.45(17) or section 211.92 to be added to the taxpayer's tax otherwise payable under this Part for a taxation year that ended before that time in respect of the interest in the partnership;

(2) Le sous-alinéa 53(1)e)(xiii) de la même loi, modifié par le paragraphe (1), est remplacé par ce qui suit :

(xiii) tout montant à ajouter, en application des paragraphes 127(30) ou 127.45(17) ou de l'article 211.92, à l'impôt payable par ailleurs par le contribuable en vertu de la présente partie pour une année d'imposition s'étant terminée avant ce moment relativement à la participation dans la société de personnes;

(3) Paragraph 53(2)(c) of the Act is amended by adding the following after subparagraph (vi):

(vi.1) an amount equal to that portion of all amounts of a CCUS tax credit deducted under subsection 127.44(3) in computing the tax otherwise payable by the taxpayer under this Part for the taxpayer's taxation years ending before that time that may reasonably be attributed to amounts added in computing the tax credit of the taxpayer because of subsection 127.44(11),

(3) L'alinéa 53(2)c) de la même loi est modifié par adjonction, après le sous-alinéa (vi), de ce qui suit :

(vi.1) une somme égale à la fraction des montants d'un crédit d'impôt pour le CUSC déduits en vertu du paragraphe 127.44(3) dans le calcul de l'impôt par ailleurs payable par le contribuable en vertu de la présente partie pour ses années d'imposition se terminant avant ce moment qu'il est raisonnable d'attribuer aux montants ajoutés dans le calcul du crédit d'impôt du contribuable en vertu du paragraphe 127.44(11),

(4) Paragraph 53(2)(c) of the Act, as amended by subsection (3), is amended by adding the following after subparagraph (vi.1):

(vi.2) an amount equal to that portion of all amounts of a clean technology investment tax credit deducted under subsection 127.45(6) in computing the tax otherwise payable by the taxpayer under this Part for the taxpayer's taxation years ending before that time that may reasonably be attributed to amounts added in computing the tax credit of the taxpayer because of subsection 127.45(8),

(4) L'alinéa 53(2)c) de la même loi, modifié par le paragraphe (3), est modifié par adjonction, après le sous-alinéa (vi.1), de ce qui suit :

(vi.2) une somme égale à la fraction des montants d'un crédit d'impôt à l'investissement dans les technologies propres déduits en vertu du paragraphe 127.45(6) dans le calcul de l'impôt par ailleurs payable par le contribuable en vertu de la présente partie pour ses années d'imposition se terminant avant ce moment qu'il est raisonnable d'attribuer aux montants ajoutés dans le calcul du crédit d'impôt du contribuable en vertu du paragraphe 127.45(8),

(5) Subsections (1) and (3) are deemed to have come into force on January 1, 2022.

(5) Les paragraphes (1) et (3) sont réputés être entrés en vigueur le 1er janvier 2022.

(6) Subsections (2) and (4) are deemed to have come into force on March 28, 2023.

(6) Les paragraphes (2) et (4) sont réputés être entrés en vigueur le 28 mars 2023.

12 (1) Paragraphs (f.1) and (g) of the definition *principal-business corporation* in subsection 66(15) of the Act are replaced by the following:

(f.1) the production or marketing of calcium chloride, gypsum, kaolin, lithium, sodium chloride or potash,

12 (1) Les alinéas f.1) et g) de la définition de *société exploitant une entreprise principale*, au paragraphe 66(15) de la même loi, sont remplacés par ce qui suit :

f.1) la production ou la commercialisation du chlorure de calcium, du gypse, du kaolin, du lithium, du chlorure de sodium ou de la potasse;

(g) the manufacturing of products, where the manufacturing involves the processing of calcium chloride, gypsum, kaolin, lithium, sodium chloride or potash,

(2) Section 66 of the Act is amended by adding the following after subsection (20):

Lithium brine well

(21) For the purposes of paragraph (f) of the definition *Canadian exploration expense* in subsection 66.1(6) and paragraphs (c.2) and (d) of the definition *Canadian development expense* in subsection 66.2(5),

(a) a mine includes a well for the extraction of material from a lithium brine deposit;

(b) all wells of a taxpayer for the extraction of material from one or more lithium brine deposits, the material produced from which is sent to the same plant for processing, are deemed to be one mine of the taxpayer; and

(c) all wells of a taxpayer for the extraction of material from one or more lithium brine deposits that the Minister, in consultation with the Minister of Natural Resources, determines constitute one project, are deemed to be one mine of the taxpayer.

(3) Subsections (1) and (2) are deemed to have come into force on March 28, 2023.

13 (1) Paragraphs (c.2) and (d) of the definition *Canadian development expense* in subsection 66.2(5) of the Act are replaced by the following:

(c.2) any expense, or portion of any expense, that is not a Canadian exploration expense, incurred by the taxpayer after March 20, 2013 for the purpose of bringing a new mine in a mineral resource in Canada, other than a bituminous sands deposit or an oil shale deposit, into production in reasonable commercial quantities and incurred before the new mine comes into production in such quantities, including an expense for clearing, removing overburden, stripping, sinking a mine shaft, constructing an adit or other underground entry or drilling a well for the extraction of lithium from brines,

(d) any expense (other than an amount included in the capital cost of depreciable property) incurred by the taxpayer after 1987

g) la fabrication de produits nécessitant le traitement du chlorure de calcium, du gypse, du kaolin, du lithium, du chlorure de sodium ou de la potasse;

(2) L'article 66 de la même loi est modifié par adjonction, après le paragraphe (20), de ce qui suit :

Puits de saumure qui contient du lithium

(21) Pour l'application de l'alinéa f) de la définition de *frais d'exploration au Canada* au paragraphe 66.1(6) et des alinéas c.2) et d) de la définition de *frais d'aménagement au Canada* au paragraphe 66.2(5) :

a) une mine comprend un puits pour l'extraction de matières à partir d'un gisement de saumure contenant du lithium;

b) tous les puits d'un contribuable d'où sont extraites des matières provenant d'un ou de plusieurs gisements de saumure contenant du lithium, qui sont envoyées à la même usine pour traitement, sont réputés constituer une seule mine du contribuable;

c) tous les puits d'un contribuable d'où sont extraites des matières provenant d'un ou de plusieurs gisements de saumure contenant du lithium et qui, tel que déterminé par le ministre en consultation avec le ministre des Ressources naturelles, constituent un seul projet, sont réputés constituer une seule mine du contribuable.

(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 28 mars 2023.

13 (1) Les alinéas c.2) et d) de la définition de *frais d'aménagement au Canada*, au paragraphe 66.2(5) de la même loi, sont remplacés par ce qui suit :

c.2) toute dépense ou partie de dépense, ne représentant pas des frais d'exploration au Canada, engagée par le contribuable après le 20 mars 2013 en vue d'amener une nouvelle mine, située dans une ressource minérale au Canada, sauf un gisement de sables bitumineux ou de schiste bitumineux, au stade de la production en quantités commerciales raisonnables, mais avant l'entrée en production de cette mine en de telles quantités; sont compris parmi ces dépenses les frais de déblaiement, d'enlèvement des terrains de couverture, de dépouillement, de creusage d'un puits de mine, de construction d'une galerie à flanc de coteau ou d'une autre entrée souterraine et de forage de puits pour l'extraction de lithium à partir de saumures;

(i) in sinking or excavating a mine shaft, main haulage way or similar underground work designed for continuing use, for a mine in a mineral resource in Canada built or excavated after the mine came into production,

(ii) in extending any such shaft, haulage way or work referred to in subparagraph (i), or

(iii) in drilling or completing a well for the extraction of lithium from brines in Canada after the mine came into production,

d) une dépense (à l'exclusion d'un montant inclus dans le coût en capital de biens amortissables) engagée par le contribuable après 1987 en vue de, selon le cas :

(i) creuser un puits de mine, une voie principale de roulage ou d'autres travaux souterrains semblables destinés à un usage continu, creusés ou construits après l'entrée en production d'une mine située dans une ressource minérale au Canada,

(ii) prolonger ces puits, voies ou travaux visés au sous-alinéa (i),

(iii) forer ou achever un puits pour l'extraction de lithium à partir de saumures au Canada après l'entrée en production de la mine;

(2) Subsection (1) applies in respect of expenses incurred on or after March 28, 2023.

(2) Le paragraphe (1) s'applique relativement aux dépenses engagées à compter du 28 mars 2023.

14 (1) Subclause 66.8(1)(a)(ii)(B)(I) of the Act is replaced by the following:

(I) the total of all amounts required by subsections 127(8) and 127.44(11) in respect of the partnership to be added in computing the investment tax credit or the *CCUS tax credit* (as defined in subsection 127.44(1)) of the taxpayer in respect of the fiscal period, and

14 (1) La subdivision 66.8(1)a)(ii)(B)(I) de la même loi est remplacée par ce qui suit :

(I) le total des montants déterminés à l'égard de la société de personnes que les paragraphes 127(8) et 127.44(11) prévoient d'ajouter dans le calcul du crédit d'impôt à l'investissement ou du *crédit d'impôt pour le CUSC* (au sens du paragraphe 127.44(1)) du contribuable pour l'exercice,

(2) Subclause 66.8(1)(a)(ii)(B)(I) of the Act, as amended by subsection (1), is replaced by the following:

(I) the total of all amounts required by subsections 127(8), 127.44(11) and 127.45(8) in respect of the partnership to be added in computing the investment tax credit, the *CCUS tax credit* (as defined in subsection 127.44(1)) or the *clean technology investment tax credit* (as defined in subsection 127.45(1)) of the taxpayer in respect of the fiscal period, and

(2) La subdivision 66.8(1)a)(ii)(B)(I) de la même loi, modifiée par le paragraphe (1), est remplacée par ce qui suit :

(I) le total des montants déterminés à l'égard de la société de personnes que les paragraphes 127(8), 127.44(11) et 127.45(8) prévoient d'ajouter dans le calcul du crédit d'impôt à l'investissement, du *crédit d'impôt pour le CUSC* (au sens du paragraphe 127.44(1)) ou du *crédit d'impôt à l'investissement dans les technologies propres* (au sens du paragraphe 127.45(1)) du contribuable pour l'exercice,

(3) Subsection (1) is deemed to have come into force on January 1, 2022.

(3) Le paragraphe (1) est réputé être entré en vigueur le 1 janvier 2022.

(4) Subsection (2) is deemed to have come into force on March 28, 2023.

(4) Le paragraphe (2) est réputé être entré en vigueur le 28 mars 2023.

15 (1) The portion of the definition *commercial debt obligation* in subsection 80(1) of the Act after paragraph (b) is replaced by the following:

15 (1) Le passage de la définition de *créance commerciale* précédant l'alinéa a), au paragraphe 80(1) de la même loi, est remplacé par ce qui suit :

an amount in respect of the interest was or would have been deductible in computing the debtor's income, taxable income or taxable income earned in Canada, as the case may be, if this Act were read without reference to paragraph 18(1)(g), subsections 18(2), (3.1) and (4) and 18.2(2) and section 21; (*créance commerciale*)

(2) Subsection (1) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023.

16 (1) Subsection 80.4(3) of the Act is amended by striking out "or" at the end of paragraph (a), by adding "or" at the end of paragraph (b) and by adding the following after paragraph (b):

(c) that satisfies the conditions set out in subsection 15(2.51) and is repaid within 15 years after the qualifying business transfer referred to in that subsection.

(2) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.

17 (1) Paragraph 84.1(2)(e) of the Act is replaced by the following:

(e) notwithstanding any other paragraph in this subsection, if this paragraph applies because of subsection (2.31) or (2.32) to a disposition of subject shares by a taxpayer to a purchaser corporation, the taxpayer and the purchaser corporation are deemed to deal with each other at arm's length at the time of the disposition of the subject shares.

(2) Subsection 84.1(2.3) of the Act is replaced by the following:

Rules for subsections (2.31) and (2.32)

(2.3) For the purposes of this subsection and subsections (2.31) and (2.32),

(a) a *child* of a taxpayer has the same meaning as in subsection 70(10) and also includes

(i) a niece or nephew of the taxpayer,

(ii) a niece or nephew of the taxpayer's spouse or common-law partner,

(iii) a spouse or common-law partner of a niece or nephew referred to in subparagraph (i) or (ii), and

(iv) a child of a niece or nephew referred to in subparagraph (i) or (ii);

créance commerciale Créance émise par un débiteur et sur laquelle un montant au titre d'intérêts est déductible dans le calcul du revenu, du revenu imposable ou du revenu imposable gagné au Canada du débiteur compte non tenu de l'alinéa 18(1)g), des paragraphes 18(2), (3.1), (4) et 18.2(2) et de l'article 21, si ces intérêts :

(2) Le paragraphe (1) s'applique relativement aux années d'imposition d'un contribuable commençant après septembre 2023.

16 (1) Le paragraphe 80.4(3) de la même loi est modifié par adjonction, après l'alinéa b), de ce qui suit :

c) qui remplit les conditions énoncées au paragraphe 15(2.51) et dont le montant est remboursé dans les 15 ans suivant le transfert d'entreprise admissible visé à ce paragraphe.

(2) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.

17 (1) L'alinéa 84.1(2)e) de la même loi est remplacé par ce qui suit :

e) malgré tout autre alinéa du présent paragraphe, si le présent alinéa s'applique compte tenu des paragraphes (2.31) ou (2.32) à la disposition d'actions concernées par un contribuable en faveur d'un acheteur, le contribuable et l'acheteur sont réputés ne pas avoir entre eux de lien de dépendance au moment de la disposition des actions concernées.

(2) Le paragraphe 84.1(2.3) de la même loi est remplacé par ce qui suit :

Application des paragraphes (2.31) et (2.32)

(2.3) Pour l'application du présent paragraphe et des paragraphes (2.31) et (2.32) :

a) un *enfant* d'un contribuable s'entend au sens du paragraphe 70(10) et y sont assimilées les personnes suivantes :

(i) sa nièce ou son neveu,

(ii) une nièce ou un neveu de son époux ou conjoint de fait,

(iii) un époux ou conjoint de fait d'une nièce ou d'un neveu visé aux sous-alinéas (i) ou (ii),

(iv) un enfant d'une nièce ou d'un neveu visé aux sous-alinéas (i) ou (ii);

(b) in applying subparagraphs (2.31)(c)(iii) and (2.32)(c)(iii), if the relevant group entity is a partnership,

(i) the partnership is deemed to be a corporation (in this paragraph referred to as the "deemed corporation"),

(ii) the deemed corporation is deemed to have a capital stock of a single class of shares, with a total of 100 issued and outstanding shares,

(iii) each member (in this paragraph referred to as a "deemed shareholder") of the partnership is deemed to be a shareholder of the deemed corporation,

(iv) each deemed shareholder of the deemed corporation is deemed to hold a number of shares in the capital stock of the deemed corporation determined by the formula

A × 100

where

A is equal to

(A) the deemed shareholder's specified proportion for the last fiscal period of the deemed corporation, or

(B) if the deemed shareholder does not have a specified proportion described in clause (A), the proportion that is the fair market value of the deemed shareholder's interest in the deemed corporation at that time relative to the fair market value of all interests in the deemed corporation at that time, and

(v) the deemed corporation's fiscal period is deemed to be its taxation year;

(c) ***own, directly or indirectly***, in respect of a property, means

(i) direct ownership of the property, and

(ii) an ownership interest or, for civil law, a right in the shares of a corporation, an interest in a partnership or an interest in a trust that has a direct or indirect interest or, for civil law, a right, in the property, except that for the purposes of paragraphs (2.31)(d) and (e) and (2.32)(d) and (e), this subparagraph does not apply as a look-through rule for an interest, or for civil law, a right in non-voting preferred shares or debt of

b) pour l'application des sous-alinéas (2.31)c)(iii) et (2.32)c)(iii), si l'entité pertinente du groupe est une société de personnes :

(i) la société de personnes est réputée être une société (appelée « société réputée » au présent alinéa),

(ii) la société réputée est réputée avoir un capital-actions constitué d'une seule catégorie d'actions, avec un total de 100 actions émises et en circulation,

(iii) chaque associé (appelé « actionnaire réputé » au présent alinéa) de la société de personnes est réputé être un actionnaire de la société réputée,

(iv) chaque actionnaire réputé de la société réputée est réputé détenir un nombre d'actions du capital-actions de la société réputée déterminé par la formule suivante :

A × 100

où :

A représente :

(A) la proportion déterminée de l'actionnaire réputé pour le dernier exercice de la société réputée,

(B) si l'actionnaire réputé n'a pas de proportion déterminée visée à la division (A), la proportion que représente la juste valeur marchande de la participation de l'actionnaire réputé dans la société réputée à ce moment relativement à la juste valeur marchande de l'ensemble des participations dans la société réputée à ce moment,

(v) l'exercice de la société réputée est réputé être son année d'imposition;

c) ***détient, directement ou indirectement*** relativement à un bien s'entend de ce qui suit :

(i) la propriété directe du bien,

(ii) une participation dans les actions d'une société, une participation dans une société de personnes ou une participation dans une fiducie ayant une participation directe ou indirecte, ou, pour l'application du droit civil, un droit sur le bien, sauf pour l'application des alinéas (2.31)d) et e) ainsi que (2.32)d) et e), le présent sous-alinéa ne s'applique pas comme une règle de transparence relativement à un intérêt, ou pour l'application du droit civil, un droit sur une action privilégiée sans droit de vote ou une dette, selon le cas :

(A) the purchaser corporation (within the meaning of subsections (2.31) and (2.32)),

(B) the subject corporation (within the meaning of subsections (2.31) and (2.32)), or

(C) any relevant group entity (within the meaning of subsections (2.31) and (2.32));

(d) if a person or partnership's share of the accumulating income or capital of a trust in respect of which the person or partnership has an interest as a beneficiary depends on the exercise by a person (in this paragraph referred to as a "trustee") of, or the failure by any trustee to exercise, a discretionary power, that trustee is deemed to have fully exercised the power, or to have failed to exercise the power, as the case may be;

(e) if one or more children referred to in

(i) subparagraph (2.31)(f)(i) have disposed of, or caused the disposition of, all of the shares in the capital stock of the purchaser corporation, the subject corporation or all relevant group entities to an arm's length person or group of persons, the conditions set out in paragraphs (2.31)(f) and (g) are deemed to be met as of the time of the disposition, provided that all equity interests in all relevant businesses owned, directly or indirectly, by each child referred to in subparagraph (2.31)(f)(i) are included in the disposition, or

(ii) subparagraph (2.32)(g)(i) have disposed of, or caused the disposition of, all of the shares in the capital stock of the purchaser corporation, the subject corporation or all relevant group entities to an arm's length person or group of persons, the conditions set out in paragraphs (2.32)(g) and (h) are deemed to be met as of the time of the disposition, provided that all equity interests in all relevant businesses owned, directly or indirectly, by each child referred to in subparagraph (2.32)(g)(i) are included in the disposition; and

(f) if one or more children referred to in

(i) subparagraph (2.31)(f)(i) have disposed of, or caused the disposition of, any of the shares in the capital stock of the purchaser corporation, the subject corporation or a relevant group entity to another child or group of children of the taxpayer (in this paragraph referred to as the "new child" or the "new children"), the conditions set out in paragraphs (2.31)(f) and (g) are deemed

(A) de l'acheteur (au sens des paragraphes (2.31) et (2.32)),

(B) de la société en cause (au sens des paragraphes (2.31) et (2.32)),

(C) de toute entité pertinente du groupe (au sens des paragraphes (2.31) et (2.32));

d) si la part d'une personne ou société de personnes du revenu ou du capital accumulés d'une fiducie dans laquelle elle détient une participation à titre de bénéficiaire est fonction de l'exercice ou de l'absence d'exercice, par une personne (appelée « fiduciaire » au présent alinéa), d'un pouvoir discrétionnaire, le fiduciaire est réputé avoir exercé entièrement ce pouvoir, ou avoir fait défaut de l'exercer, selon le cas;

e) si un ou plusieurs des enfants visés :

(i) au sous-alinéa (2.31)f)(i), ont disposé ou ont donné lieu à la disposition de toutes les actions du capital-actions de l'acheteur, de la société en cause ou de toutes les entités pertinentes du groupe en faveur d'une personne ou d'un groupe de personnes sans lien de dépendance, les conditions visées aux alinéas (2.31)f) et g) sont réputées avoir été remplies au moment de la disposition pourvu que toutes les participations dans toutes les entreprises pertinentes détenues, directement ou indirectement, par chaque enfant visé à l'alinéa (2.31)f)(i), soient incluses dans la disposition,

(ii) au sous-alinéa (2.32)g)(i), ont disposé ou ont donné lieu à la disposition de toutes les actions du capital-actions de l'acheteur, de la société en cause ou de toutes les entités pertinentes du groupe en faveur d'une personne ou d'un groupe de personnes sans lien de dépendance, les conditions visées aux alinéas (2.32)g) et h) sont réputées avoir été remplies au moment de la disposition pourvu que toutes les participations dans toutes les entreprises pertinentes détenues, directement ou indirectement, par chaque enfant visé à l'alinéa (2.32)g)(i), soient incluses dans la disposition;

f) si un ou plusieurs des enfants visés :

(i) au sous-alinéa (2.31)f)(i), ont disposé ou ont donné lieu à la disposition de toute action du capital-actions de l'acheteur, de la société en cause ou des entités pertinentes du groupe en faveur d'un autre enfant ou groupe d'enfants du contribuable (appelés « nouvel enfant » ou « nouveaux enfants » au présent alinéa), les conditions des alinéas (2.31)f) et g) sont réputées :

(A) to be met as of the time of the disposition, and

(B) to continue to apply to the new child (or the new children) and any other member of the group of children that controls the subject corporation and the purchaser corporation at the time of the disposition, or

(ii) subparagraph (2.32)(g)(i) have disposed of, or caused the disposition of, any of the shares in the capital stock of the purchaser corporation, the subject corporation, or a relevant group entity to another child or group of children of the taxpayer (in this paragraph referred to as the "new child" or the "new children"), the conditions set out in paragraphs (2.32)(g) and (h) are deemed

(A) to be met as of the time of the disposition, and

(B) to continue to apply to the new child (or the new children) and any other member of the group of children that controls the subject corporation and the purchaser corporation at the time of the disposition;

(g) if a child, or each of the children, referred to in

(i) subparagraph (2.31)(f)(ii) has died or has, after the disposition of the subject shares, suffered one or more severe and prolonged impairments in physical or mental functions, the conditions set out in paragraphs (2.31)(f) and (g) are deemed to be met as of the time of the death or mental or physical impairment, or

(ii) subparagraph (2.32)(g)(ii) has died or has, after the disposition of the subject shares, suffered one or more severe and prolonged impairments in physical or mental functions, the conditions set out in paragraphs (2.32)(g) and (h) are deemed to be met as of the time of the death or mental or physical impairment;

(h) if a business of a subject corporation or a relevant group entity has ceased to be carried on due to the disposition of all of the assets that were used to carry on the business in order to satisfy debts owed to creditors of the corporation or of the entity, the conditions set out in respect of the business in subparagraphs (2.31)(f)(ii) and (iii) and (2.31)(g)(i) or (2.32)(g)(ii) and (iii) and (2.32)(h)(i), as applicable, are deemed to be met as of the time of the disposition; and

(i) in applying paragraphs (2.31)(g) and (2.32)(h), ***management*** refers to the direction or supervision of

(A) avoir été remplies au moment de la disposition,

(B) continuer de s'appliquer au nouvel enfant (ou aux nouveaux enfants) et les autres membres du groupe d'enfants qui contrôle la société en cause et l'acheteur au moment de la disposition;

(ii) au sous-alinéa (2.32)g)(i) ont disposé ou ont donné lieu à la disposition de toute action du capital-actions de l'acheteur, de la société en cause ou des entités pertinentes du groupe en faveur d'un autre enfant ou groupe d'enfants du contribuable (appelés « nouvel enfant » ou « nouveaux enfants » au présent alinéa), les conditions des alinéas (2.32)g) et h) sont réputées :

(A) avoir été remplies au moment de la disposition,

(B) continuer de s'appliquer au nouvel enfant (ou aux nouveaux enfants) et les autres membres du groupe d'enfants qui contrôle la société en cause et l'acheteur au moment de la disposition;

g) si un ou chacun des enfants visés :

(i) au sous-alinéa (2.31)f)(ii) est décédé ou a subi, après la disposition des actions concernées, une ou plusieurs déficiences graves et prolongées des fonctions physiques ou mentales, les conditions prévues aux alinéas (2.31)f) et g) sont réputées avoir été remplies au moment du décès ou de la déficience physique ou mentale,

(ii) au sous-alinéa (2.32)g)(ii) est décédé ou a subi, après la disposition des actions concernées, une ou plusieurs déficiences graves et prolongées des fonctions physiques ou mentales, les conditions prévues aux alinéas (2.32)g) et h) sont réputées avoir été remplies au moment du décès ou de la déficience physique ou mentale;

h) si une entreprise d'une société en cause ou d'une entité pertinente du groupe a cessé d'être exploitée en raison de la disposition de tous les éléments d'actif qui servaient à l'exploitation de l'entreprise en acquittement des dettes dues aux créanciers de la société ou de l'entité, les conditions énoncées, relativement à l'entreprise, aux alinéas (2.31)f)(ii) et (iii) et (2.31)g)(i) ou (2.32)g)(ii) et (iii) et (2.32)h)(i), selon le cas, sont réputées avoir été remplies au moment de la disposition;

i) pour l'application des alinéas (2.31)g) et (2.32)h), la ***gestion*** renvoie à la direction ou supervision des activités de l'entreprise, mais n'inclut pas la prestation de conseils.

business activities but does not include the provision of advice.

Immediate intergenerational business transfer

(2.31) Paragraph (2)(e) applies at the time of a disposition of subject shares (in this subsection referred to as the "disposition time") by a taxpayer to a purchaser corporation if the following conditions are met:

(a) the taxpayer has not previously, at any time after 2023, sought an exception to the application of subsection (1) under paragraph (2)(e) in respect of a disposition of shares that, at that time, derived their value from an active business that is relevant to the determination of whether the subject shares satisfy the condition set out in subparagraph (b)(iii);

(b) at the disposition time,

(i) the taxpayer is an individual (other than a trust),

(ii) the purchaser corporation is controlled by one or more children (within the meaning of paragraph (2.3)(a), in this subsection referred to as the "child" or "children") of the taxpayer, each of whom is 18 years of age or older, and

(iii) the subject shares are *qualified small business corporation shares* or *shares of the capital stock of a family farm or fishing corporation* (as those terms are defined in subsection 110.6(1));

(c) at all times after the disposition time, the taxpayer does not — either alone or together with a spouse or common-law partner of the taxpayer — control, directly or indirectly in any manner whatever,

(i) the subject corporation,

(ii) the purchaser corporation, or

(iii) any other person or partnership (in this subsection referred to as a "relevant group entity") that carries on, at the disposition time, an active business (referred to in this subsection as a "relevant business") that is relevant to the determination of whether the subject shares satisfy the condition set out in subparagraph (b)(iii);

(d) at all times after the disposition time, the taxpayer does not – either alone or together with a spouse or common law partner of the taxpayer – own, directly or indirectly,

(i) 50% or more of any class of shares, other than shares of a *specified class* as defined in subsection

Transferts intergénérationnels d'entreprises immédiats

(2.31) L'alinéa (2)e) s'applique au moment de la disposition d'actions concernées (appelé « moment de la disposition » au présent paragraphe) par un contribuable en faveur d'un acheteur si les conditions ci-après sont remplies :

a) le contribuable n'a jamais demandé après 2023 d'exception à l'application du paragraphe (1) en vertu de l'alinéa (2)e) relativement à la disposition d'actions dont la valeur, à ce moment, découle d'une entreprise exploitée activement qui est pertinente pour déterminer si les actions concernées remplissent la condition énoncée au sous-alinéa b)(iii);

b) au moment de la disposition, à la fois :

(i) le contribuable est un particulier (autre qu'une fiducie),

(ii) l'acheteur est contrôlé par un ou plusieurs enfants (au sens de l'alinéa (2.3)a), appelés « enfant » ou « enfants » au présent paragraphe) du contribuable, dont chacun est âgé de 18 ans ou plus,

(iii) les actions concernées sont des *actions admissibles de petite entreprise* ou des *actions du capital-actions d'une société agricole ou de pêche familiale* (au sens du paragraphe 110.6(1));

c) à tout moment postérieur au moment de la disposition, le contribuable, seul ou avec son époux ou conjoint de fait, ne contrôle pas directement ou indirectement, de quelque manière que ce soit, selon le cas :

(i) la société en cause,

(ii) l'acheteur,

(iii) toute autre personne ou société de personnes (appelées « entité pertinente du groupe » au présent paragraphe) qui exploite, au moment de la disposition, une entreprise exploitée activement (appelée « entreprise pertinente » au présent paragraphe) qui est pertinente pour déterminer si les actions concernées remplissent la condition énoncée au sous-alinéa b)(iii);

d) à tout moment postérieur au moment de la disposition, le contribuable, seul ou avec son époux ou conjoint de fait, ne possède pas, directement ou indirectement, selon le cas :

256(1.1) (in this subsection referred to as "non-voting preferred shares"), of the capital stock of the subject corporation or of the purchaser corporation, or

(ii) 50% or more of any class of equity interest (other than non-voting preferred shares) in any relevant group entity;

(e) within 36 months after the disposition time and at all times thereafter, the taxpayer and a spouse or common-law partner of the taxpayer do not own, directly or indirectly,

(i) any shares, other than non-voting preferred shares of the capital stock of the subject corporation or of the purchaser corporation, or

(ii) any equity interest (other than non-voting preferred shares) in any relevant group entity;

(f) subject to subsection (2.3), from the disposition time until 36 months after that time,

(i) the child or group of children, as the case may be, controls the purchaser corporation,

(ii) the child, or at least one member of the group of children, as the case may be, is actively engaged on a regular, continuous and substantial basis (within the meaning of paragraph 120.4(1.1)(a)) in a relevant business of the subject corporation or a relevant group entity, and

(iii) each relevant business of the subject corporation and any relevant group entity is carried on as an active business;

(g) subject to subsection (2.3), within 36 months after the disposition time or such greater period as is reasonable in the circumstances, the taxpayer and a spouse or common-law partner of the taxpayer take reasonable steps to

(i) transfer management of each relevant business of the subject corporation and any relevant group entity to the child or at least one member of the group of children referred to in subparagraph (f)(ii), and

(ii) permanently cease to manage each relevant business of the subject corporation and any relevant group entity; and

(h) the taxpayer and the child, or the taxpayer and each member of the group of children, as the case may be,

(i) 50 % ou plus d'une catégorie d'actions, sauf des actions d'une *catégorie exclue* au sens du paragraphe 256(1.1) (appelées « actions privilégiées sans droit de vote » au présent paragraphe), du capital-actions de la société en cause ou de l'acheteur,

(ii) 50 % ou plus d'une catégorie de participations (sauf des actions privilégiées sans droit de vote) dans une entité pertinente du groupe;

e) dans les trente-six mois suivant le moment de la disposition et à tout moment postérieur, le contribuable et son époux ou conjoint de fait ne possèdent, directement ou indirectement, selon le cas :

(i) aucune action, sauf des actions privilégiées sans droit de vote du capital-actions de la société en cause ou de l'acheteur,

(ii) aucune participation (sauf des actions privilégiées sans droit de vote) dans une entité pertinente du groupe;

f) sous réserve du paragraphe (2.3), au cours des trente-six mois suivant le moment de la disposition, à la fois :

(i) l'enfant ou le groupe d'enfants, selon le cas, contrôle l'acheteur,

(ii) l'enfant ou au moins un membre du groupe d'enfants, selon le cas, participe activement, de façon régulière, continue et importante (au sens de l'alinéa 120.4(1.1)a)) à une entreprise pertinente de la société en cause ou d'une entité pertinente du groupe,

(iii) chaque entreprise pertinente de la société en cause et de toute entité pertinente du groupe est exploitée en tant qu'entreprise exploitée activement;

g) sous réserve du paragraphe (2.3), dans les trente-six mois suivant le moment de la disposition ou toute période plus longue étant raisonnable dans les circonstances, le contribuable et son époux ou conjoint de fait prennent des mesures raisonnables pour, à la fois :

(i) transférer la gestion de chaque entreprise pertinente de la société en cause et de toute entité pertinente du groupe à l'enfant ou à au moins l'un des membres du groupe d'enfants visés au sous-alinéa f)(ii),

(ii) cesser de façon permanente de gérer chaque entreprise pertinente de la société en cause et de toute entité pertinente du groupe;

(i) jointly elect, in prescribed form, for paragraph (2)(e) to apply in respect of the disposition of the subject shares, and

(ii) file the election with the Minister on or before the taxpayer's filing-due date for the taxation year that includes the disposition time.

h) le contribuable et l'enfant, ou le contribuable et chaque membre du groupe d'enfants, remplissent les conditions suivantes :

(i) ils font un choix conjoint d'appliquer l'alinéa (2)e), sur le formulaire prescrit, relativement à la disposition des actions concernées,

(ii) ils produisent le choix auprès du ministre au plus tard à la date d'échéance de production du contribuable pour l'année d'imposition qui comprend le moment de la disposition.

Gradual intergenerational business transfer

(2.32) Paragraph (2)(e) applies at the time of a disposition of subject shares (referred to in this subsection as the "disposition time") by a taxpayer to a purchaser corporation if the following conditions are met:

(a) the taxpayer has not previously, at any time after 2023, sought an exception to the application of subsection (1) pursuant to paragraph (2)(e) in respect of a disposition of shares that, at that time, derived their value from an active business that is relevant to the determination of whether the subject shares satisfy the condition set out in subparagraph (b)(iii);

(b) at the disposition time,

(i) the taxpayer is an individual (other than a trust),

(ii) the purchaser corporation is controlled by one or more children (within the meaning of paragraph (2.3)(a), and referred to in this subsection as the "child" or "children") of the taxpayer, each of whom is 18 years of age or older, and

(iii) the subject shares are *qualified small business corporation shares* or *shares of the capital stock of a family farm or fishing corporation* (as those terms are defined in subsection 110.6(1));

(c) at all times after the disposition time, the taxpayer does not — either alone or together with a spouse or common-law partner of the taxpayer — control

(i) the subject corporation,

(ii) the purchaser corporation, or

(iii) any person or partnership (referred to in this subsection as a "relevant group entity") that carries on, at the disposition time, an active business (referred to in this subsection as a "relevant business") that is relevant to the determination of whether the subject shares satisfy the condition in subparagraph (b)(iii);

Transfert intergénérationnel d'entreprises progressif

(2.32) L'alinéa (2)e) s'applique au moment de la disposition d'actions concernées (appelé « moment de la disposition » au présent paragraphe) par un contribuable en faveur d'un acheteur si les conditions ci-après sont remplies :

a) le contribuable n'a jamais demandé après 2023 d'exception à l'application du paragraphe (1) conformément à l'alinéa (2)e) relativement à la disposition d'actions dont la valeur, à ce moment, découle d'une entreprise exploitée activement pertinente aux fins de déterminer si les actions concernées remplissent la condition énoncée au sous-alinéa b)(iii);

b) au moment de la disposition, à la fois :

(i) le contribuable est un particulier (autre qu'une fiducie),

(ii) l'acheteur est contrôlé par un ou plusieurs enfants (au sens de l'alinéa (2.3)a), appelé « enfant » ou « enfants » au présent paragraphe) du contribuable, dont chacun est âgé de 18 ans ou plus,

(iii) les actions concernées sont des *actions admissibles de petite entreprise* ou des *actions du capital-actions d'une société agricole ou de pêche familiale* (au sens du paragraphe 110.6(1));

c) à tout moment postérieur au moment de la disposition, le contribuable, seul ou avec son époux ou conjoint de fait, ne contrôle pas, selon le cas :

(i) la société en cause,

(ii) l'acheteur,

(iii) toute personne ou société de personnes (appelées « entité pertinente du groupe » au présent paragraphe) qui exploite, au moment de la disposition, une entreprise exploitée activement (appelée « entreprise pertinente » au présent paragraphe) qui est pertinente pour déterminer si les actions

(d) at all times after the disposition time, the taxpayer does not — either alone or together with a spouse or common-law partner of the taxpayer — own, directly or indirectly,

(i) 50% or more of any class of shares, other than shares of a *specified class* as defined in subsection 256(1.1) (in this subsection referred to as "non-voting preferred shares"), of the capital stock of the subject corporation or of the purchaser corporation, or

(ii) 50% or more of any class of equity interest (other than non-voting preferred shares) in any relevant group entity;

(e) within 36 months after the disposition time and at all times thereafter, the taxpayer and a spouse or common-law partner of the taxpayer do not own, directly or indirectly,

(i) any shares, other than non-voting preferred shares of the capital stock of the subject corporation or of the purchaser corporation, or

(ii) any equity interest (other than non-voting preferred shares) in any relevant group entity;

(f) within 10 years after the disposition time (referred to in this subsection as the "final sale time") and at all times after the final sale time, the taxpayer and a spouse or common-law partner of the taxpayer do not own, directly or indirectly,

(i) in the case of a disposition of subject shares that are, at the disposition time, *shares of the capital stock of a family farm or fishing corporation* (as those terms are defined in subsection 110.6(1)), interests (including any debt or equity interest) in any of the subject corporation, the purchaser corporation, and any relevant group entity with a fair market value that exceeds 50% of the fair market value of all the interests that were owned, directly or indirectly, by the taxpayer and a spouse or common-law partner of the taxpayer immediately before the disposition time, or

(ii) in the case of a disposition of subject shares that are, at the disposition time, *qualified small business corporation shares* as those terms are defined in subsection 110.6(1) (other than subject shares described in subparagraph (i)), interests (including any debt or equity interest) in any of the subject corporation, the purchaser corporation and any relevant group entity with a fair market value that exceeds 30% of the fair market value of all the concernées remplissent la condition énoncée au sous-alinéa b)(iii);

d) à tout moment postérieur au moment de la disposition, le contribuable, seul ou avec son époux ou conjoint de fait, ne possède pas, directement ou indirectement, selon le cas :

(i) 50 % ou plus d'une catégorie d'actions, sauf des actions d'une *catégorie exclue* au sens du paragraphe 256(1.1) (appelées « actions privilégiées sans droit de vote » au présent paragraphe), du capital-actions de la société en cause ou de l'acheteur,

(ii) 50 % ou plus d'une catégorie de participations (sauf des actions privilégiées sans droit de vote) dans une entité pertinente du groupe;

e) dans les trente-six mois suivant le moment de la disposition et à tout moment postérieur, le contribuable et son époux ou conjoint de fait ne possèdent, directement ou indirectement, selon le cas :

(i) aucune action, sauf des actions privilégiées sans droit de vote du capital-actions de la société en cause ou de l'acheteur,

(ii) aucune participation (sauf des actions privilégiées sans droit de vote) dans une entité pertinente du groupe;

f) dans les 10 ans suivant le moment de la disposition (appelé « moment de la vente finale » au présent paragraphe) et à tout moment postérieur au moment de la vente finale, le contribuable et son époux ou conjoint de fait ne possèdent pas, directement ou indirectement :

(i) dans le cas d'une disposition d'actions concernées qui sont, au moment de la disposition, des *actions du capital-actions d'une société agricole ou de pêche familiale* (au sens du paragraphe 110.6(1)), des intérêts (y compris des dettes ou participations) dans la société en cause, l'acheteur et toute entité pertinente du groupe ayant une juste valeur marchande qui excède 50 % de la juste valeur marchande de tous les intérêts qui étaient détenus, directement ou indirectement, par le contribuable et son époux ou conjoint de fait immédiatement avant le moment de la disposition,

(ii) dans le cas d'une disposition d'actions concernées qui sont, au moment de la disposition, des *actions admissibles de petite entreprise* au sens du paragraphe 110.6(1) (sauf des actions concernées visées au sous-alinéa (i)), des intérêts (y compris des dettes ou participations) dans la société en

interests that were owned, directly or indirectly, by the taxpayer and a spouse or common-law partner of the taxpayer immediately before the disposition time;

(g) subject to subsection (2.3), from the disposition time until the later of 60 months after the disposition time and the final sale time,

(i) the child or group of children, as the case may be, controls the purchaser corporation,

(ii) the child, or at least one member of the group of children, as the case may be, is actively engaged on a regular, continuous and substantial basis (within the meaning of paragraph 120.4(1.1)(a)) in a relevant business of the subject corporation or a relevant group entity, and

(iii) any relevant business of the subject corporation and any relevant group entity is carried on as an active business;

(h) subject to subsection (2.3), within 60 months of the disposition time or such greater period as is reasonable in the circumstances, the taxpayer and a spouse or common-law partner of the taxpayer take reasonable steps to

(i) transfer management of each relevant business of the subject corporation and any relevant group entity to the child or at least one member of the group of children referred to in subparagraph (g)(ii), and

(ii) permanently cease to manage each relevant business of the subject corporation and any relevant group entity; and

(i) the taxpayer and the child, or the taxpayer and each member of the group of children, as the case may be,

(i) jointly elect, in prescribed form, for paragraph (2)(e) to apply in respect of the disposition of the subject shares, and

(ii) file the election with the Minister on or before the taxpayer's filing-due date for the taxation year that includes the disposition time.

cause, l'acheteur et toute entité pertinente du groupe ayant une juste valeur marchande qui excède 30 % de la juste valeur marchande de tous les intérêts qui étaient détenus, directement ou indirectement, par le contribuable et son époux ou conjoint de fait immédiatement avant le moment de la disposition;

g) sous réserve du paragraphe (2.3), à compter du moment de la disposition et jusqu'au dernier en date de soixante mois après le moment de la disposition et le moment de la vente finale, à la fois :

(i) l'enfant ou le groupe d'enfants, selon le cas, contrôle l'acheteur,

(ii) l'enfant ou au moins un membre du groupe d'enfants, selon le cas, participe activement, de façon régulière, continue et importante (au sens de l'alinéa 120.4(1.1)a)) à une entreprise pertinente de la société en cause ou d'une entité pertinente du groupe,

(iii) chaque entreprise pertinente de la société en cause et de toute entité pertinente du groupe est exploitée activement;

h) sous réserve du paragraphe (2.3), dans les soixante mois suivant le moment de la disposition ou toute période plus longue étant raisonnable dans les circonstances, le contribuable et son époux ou conjoint de fait prennent des mesures raisonnables pour, à la fois :

(i) transférer la gestion de chaque entreprise pertinente de la société en cause et de toute entité pertinente du groupe à l'enfant ou à au moins l'un des membres du groupe d'enfants visés au sous-alinéa g)(ii),

(ii) cesser de façon permanente de gérer chaque entreprise pertinente de la société en cause et de toute entité pertinente du groupe;

i) le contribuable et l'enfant, ou le contribuable et chaque membre du groupe d'enfants, remplissent les conditions suivantes :

(i) ils font un choix conjoint d'appliquer l'alinéa (2)e), sur le formulaire prescrit, relativement à la disposition des actions concernées,

(ii) ils produisent le choix auprès du ministre au plus tard à la date d'échéance de production du contribuable pour l'année d'imposition qui comprend le moment de la disposition.

(3) Subsections (1) and (2) apply to dispositions of shares that occur on or after January 1, 2024.

18 (1) Paragraph 87(2)(j.6) of the Act is replaced by the following:

Continuing corporation

(j.6) for the purposes of paragraphs 12(1)(t) and (x), subsections 12(2.2) and 13(7.1), (7.4) and (24), paragraphs 13(27)(b) and (28)(c), subsections 13(29) and 18(9.1), paragraphs 20(1)(e), (e.1), (v) and (hh), sections 20.1 and 32, paragraph 37(1)(c), subsection 39(13), subparagraphs 53(2)(c)(vi) and (h)(ii), paragraph 53(2)(s), subsections 53(2.1), 66(11.4), 66.7(11), 84.1(2.31) and (2.32) and 127(10.2), section 139.1, subsection 152(4.3), the determination of D in the definition *undepreciated capital cost* in subsection 13(21) and the determination of L in the definition *cumulative Canadian exploration expense* in subsection 66.1(6), the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(2) Subsection 87(2) of the Act is amended by adding the following after paragraph (qq):

Certain investment tax credits

(qq.1) for the purposes of section 127.44 and Part XII.7, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(3) Paragraph 87(2)(qq.1) of the Act, as enacted by subsection (2), is replaced by the following:

Certain investment tax credits

(qq.1) for the purposes of sections 127.44 and 127.45 and Part XII.7, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation;

(4) Paragraph 87(2.1)(a) of the Act is replaced by the following:

(a) determining the new corporation's non-capital loss, net capital loss, restricted farm loss, farm loss, limited partnership loss or restricted interest and financing expense, as the case may be, for any taxation year,

(5) Subsection 87(2.1) of the Act is amended by adding the following after paragraph (a):

(3) Les paragraphes (1) et (2) s'appliquent aux dispositions d'actions se produisant après le 31 décembre 2023.

18 (1) L'alinéa 87(2)j.6) de la même loi est remplacé par ce qui suit :

Continuation

j.6) pour l'application des alinéas 12(1)t) et x), des paragraphes 12(2.2) et 13(7.1), (7.4) et (24), des alinéas 13(27)b) et (28)c), des paragraphes 13(29) et 18(9.1), des alinéas 20(1)e), e.1), v) et hh), des articles 20.1 et 32, de l'alinéa 37(1)c), du paragraphe 39(13), des sous-alinéas 53(2)c)(vi) et h)(ii), de l'alinéa 53(2)s), des paragraphes 53(2.1), 66(11.4), 66.7(11), 84.1(2.31) et (2.32) et 127(10.2), de l'article 139.1, du paragraphe 152(4.3), de l'élément D de la formule figurant à la définition de *fraction non amortie du coût en capital* au paragraphe 13(21) et de l'élément L de la formule figurant à la définition de *frais cumulatifs d'exploration au Canada* au paragraphe 66.1(6), la nouvelle société est réputée être la même société que chaque société remplacée et en être la continuation;

(2) Le paragraphe 87(2) de la même loi est modifié par adjonction, après l'alinéa qq), de ce qui suit :

Certains crédits d'impôt à l'investissement

qq.1) pour l'application de l'article 127.44 et de la partie XII.7, la nouvelle société est réputée être la même société que chaque société remplacée et en être la continuation;

(3) L'alinéa 87(2)qq.1) de la même loi, édicté par le paragraphe (2), est remplacé par ce qui suit :

Certains crédits d'impôt à l'investissement

qq.1) pour l'application des articles 127.44 et 127.45 et de la partie XII.7, la nouvelle société est réputée être la même société que chaque société remplacée et en être la continuation;

(4) L'alinéa 87(2.1)a) de la même loi est remplacé par ce qui suit :

a) déterminer la perte autre qu'une perte en capital, la perte en capital nette, la perte agricole restreinte, la perte agricole, la perte comme commanditaire ou la dépense d'intérêts et de financement restreinte de la nouvelle société, selon le cas, pour une année d'imposition;

(5) Le paragraphe 87(2.1) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :

(a.1) determining, for any taxation year, the new corporation's absorbed capacity, excess capacity and transferred capacity in determining its cumulative unused excess capacity for a taxation year, and

(a.1) déterminer, pour une année d'imposition la capacité absorbée, la capacité excédentaire et la capacité transférée de la nouvelle société pour le calcul de sa capacité excédentaire cumulative inutilisée pour une année d'imposition;

(6) Paragraph 87(2.1)(b) of the Act is replaced by the following:

(b) determining the extent to which subsections 111(3) to (5.4) and paragraph 149(10)(c) apply to restrict the deductibility by the new corporation of any non-capital loss, net capital loss, restricted farm loss, farm loss, limited partnership loss or restricted interest and financing expense, as the case may be,

(6) L'alinéa 87(2.1)b) de la même loi est remplacé par ce qui suit :

b) déterminer dans quelle mesure les paragraphes 111(3) à (5.4) et l'alinéa 149(10)c) s'appliquent de manière que soit restreint le montant que la nouvelle société peut déduire à titre de perte autre qu'une perte en capital, de perte en capital nette, de perte agricole restreinte, de perte agricole, de perte comme commanditaire ou de dépense d'intérêts et de financement restreinte, selon le cas;

(7) Paragraph 87(2.1)(d) of the Act is replaced by the following:

(d) the income of the new corporation (other than as a result of an amount of interest and financing expenses being deductible by the new corporation because of paragraph (a.1)) or any of its predecessors, or

(7) L'alinéa 87(2.1)d) de la même loi est remplacé par ce qui suit :

d) du revenu de la nouvelle société (autrement que par suite d'un montant de dépenses d'intérêts et de financement que la nouvelle société peut déduire par l'effet de l'alinéa a.1)), ou de toute société remplacée;

(8) Subsection 87 of the Act is amended by adding the following after subsection (2.11):

Adjusted taxable income — non-capital losses

(2.12) Where there has been an amalgamation of two or more corporations, for the purpose of determining the amount for paragraph (h) in the description of B in the definition *adjusted taxable income* in subsection 18.2(1) in respect of an amount deducted by the new corporation under paragraph 111(1)(a) in computing its taxable income for a taxation year, the new corporation is deemed to be the same corporation as, and a continuation of, a particular predecessor corporation if it may reasonably be considered that

(a) the amount deducted is in respect of all or any portion of a non-capital loss for another taxation year; and

(b) the non-capital loss or the portion of the non-capital loss, as the case may be, is a non-capital loss of the particular predecessor corporation for the other taxation year.

(8) Le paragraphe 87 de la même loi est modifié par adjonction, après le paragraphe (2.11), de ce qui suit :

Revenu imposable rajusté — pertes autres que des pertes en capital

(2.12) En cas de fusion de deux ou de plusieurs sociétés, aux fins de calcul de la somme à l'alinéa h) de la formule figurant à l'élément B de la définition de *revenu imposable rajusté* au paragraphe 18.2(1) relativement à une somme déduite par la nouvelle société en application de l'alinéa 111(1)a) dans le calcul de son revenu imposable pour une année d'imposition, la nouvelle société est réputée être la même société que chaque société remplacée donnée et en être la continuation s'il est raisonnable de considérer que, à la fois :

a) la somme déduite est au titre de la totalité ou d'une partie d'une perte autre qu'une perte en capital pour une autre année d'imposition;

b) la perte autre qu'une perte en capital ou la partie de la perte autre qu'une perte en capital, selon le cas, est une perte autre qu'une perte en capital de la société remplacée donnée pour l'autre année d'imposition.

(9) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.

(9) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.

(10) Subsection (2) is deemed to have come into force on January 1, 2022.

(11) Subsection (3) is deemed to have come into force on March 28, 2022.

(12) Subsections (4) and (6) apply in respect of amalgamations that occur on or after October 1, 2023.

(13) Subsections (5), (7) and (8) apply in respect of amalgamations that occur in any taxation year.

19 (1) Subsection 88(1) of the Act is amended by adding the following after paragraph (e.3):

(e.31) for the purposes of section 127.44 and Part XII.7 at the end of any particular taxation year ending after the subsidiary was wound up, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary;

(2) Paragraph 88(1)(e.31) of the Act, as enacted by subsection (1), is replaced by the following:

(e.31) for the purposes of sections 127.44 and 127.45 and Part XII.7 at the end of any particular taxation year ending after the subsidiary was wound up, the parent is deemed to be the same corporation as, and a continuation of, the subsidiary;

(3) The portion of subsection 88(1.1) of the Act before paragraph (a) is replaced by the following:

Non-capital losses, etc., of subsidiary

(1.1) Where a Canadian corporation (in this subsection and subsection (1.11) referred to as the "subsidiary") has been wound up and not less than 90% of the issued shares of each class of the capital stock of the subsidiary were, immediately before the winding-up, owned by another Canadian corporation (in this subsection and subsection (1.11) referred to as the "parent") and all the shares of the subsidiary that were not owned by the parent immediately before the winding-up were owned at that time by a person or persons with whom the parent was dealing at arm's length, for the purpose of computing the taxable income of the parent under this Part and the tax payable under Part IV by the parent for any taxation year commencing after the commencement of the winding-up, such portion of any non-capital loss, restricted farm loss, farm loss or limited partnership loss of the subsidiary as may reasonably be regarded as its loss from carrying on a particular business (in this subsection

(10) Le paragraphe (2) est réputé être entré en vigueur le 1er janvier 2022.

(11) Le paragraphe (3) est réputé être entré en vigueur le 28 mars 2023.

(12) Les paragraphes (4) et (6) s'appliquent relativement aux fusions qui se produisent après septembre 2023.

(13) Les paragraphes (5), (7) et (8) s'appliquent relativement aux fusions qui se produisent au cours d'une année d'imposition.

19 (1) Le paragraphe 88(1) de la même loi est modifié par adjonction, après l'alinéa e.3), de ce qui suit :

e.31) pour l'application de l'article 127.44 et de la partie XII.7 à la fin d'une année d'imposition donnée se terminant après la liquidation de la filiale, la société mère est réputée être la même société que la filiale, et en être la continuation;

(2) L'alinéa 88(1)e.31) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :

e.31) pour l'application des articles 127.44 et 127.45 et de la partie XII.7 à la fin d'une année d'imposition donnée se terminant après la liquidation de la filiale, la société mère est réputée être la même société que la filiale, et en être la continuation;

(3) Le passage du paragraphe 88(1.1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Pertes autres que des pertes en capital, etc. de filiale

(1.1) Lorsqu'une société canadienne (appelée « filiale » au présent paragraphe et au paragraphe (1.11)) a été liquidée, qu'au moins 90 % des actions émises de chaque catégorie du capital-actions de la filiale appartenaient, immédiatement avant la liquidation, à une autre société canadienne (appelée « société mère » au présent paragraphe et au paragraphe (1.11)) et que toutes les actions de la filiale n'appartenant pas à la société mère immédiatement avant la liquidation appartenaient à ce moment à une ou plusieurs personnes avec lesquelles la société mère n'avait aucun de dépendance, pour le calcul du revenu imposable de la société mère en vertu de la présente partie et de l'impôt payable par elle en vertu de la partie IV pour toute année d'imposition commençant après le début de la liquidation, la fraction d'une perte autre qu'une perte en capital, d'une perte agricole restreinte, d'une perte agricole ou d'une perte comme commanditaire subie par la filiale qu'il est raisonnable de

referred to as the "subsidiary's loss business") and any other portion of any non-capital loss or limited partnership loss of the subsidiary as may reasonably be regarded as being derived from any other source or being in respect of a claim made under section 110.5 for any particular taxation year of the subsidiary (in this subsection referred to as the "subsidiary's loss year"), and the portion of the restricted interest and financing expense of the subsidiary for any particular taxation year of the subsidiary (in this subsection referred to as the "subsidiary's expense year") that may reasonably be regarded as an expense or loss incurred by the subsidiary in the course of carrying on a particular business (in this subsection referred to as the "subsidiary's expense business") and any other portion of the restricted interest and financing expense of the subsidiary that may reasonably be regarded as being incurred in respect of any other source, to the extent that it

considérer comme résultant de l'exploitation d'une entreprise donnée (appelée « entreprise déficitaire de la filiale » au présent paragraphe), de même que toute autre fraction d'une perte autre qu'une perte en capital ou d'une perte comme commanditaire subie par la filiale qu'il est raisonnable de considérer comme dérivant d'une autre source et toute autre fraction d'une perte autre qu'une perte en capital subie par la filiale qu'il est raisonnable de considérer comme relative à une demande faite en vertu de l'article 110.5 pour une année d'imposition donnée de la filiale (appelée « année de la perte subie par la filiale » au présent paragraphe), et la fraction d'une dépense d'intérêts et de financement restreinte de la filiale pour une année d'imposition de celle-ci (appelée « année de dépenses de la filiale » au présent paragraphe), qu'il est raisonnable de considérer comme une dépense engagée ou la perte qu'elle a subie dans l'exploitation d'une entreprise donnée (appelée « entreprise de dépenses de la filiale » au présent paragraphe) et toute autre fraction d'une dépense d'intérêts et de financement restreinte de la filiale qu'il est raisonnable de considérer comme engagée relativement à une autre source, dans la mesure où la fraction :

(4) The portion of subsection 88(1.1) of the Act after paragraph (b) and before paragraph (c) is replaced by the following:

shall, for the purposes of this subsection, paragraphs 111(1)(a), (a.1), (c), (d) and (e), subsection 111(3) and Part IV,

(4) Le passage du paragraphe 88(1.1) de la même loi suivant l'alinéa b) et précédant l'alinéa c) est remplacé par ce qui suit :

est, pour l'application du présent paragraphe, des alinéas 111(1)a), a.1), c), d) et e), du paragraphe 111(3) et de la partie IV :

(5) Subsection 88(1.1) of the Act is amended by striking out "and" at the end of paragraph (d) and by adding the following after paragraph (d.1):

(d.2) in the case of the portion of any restricted interest and financing expense of the subsidiary that may reasonably be regarded as being incurred in carrying on the subsidiary's expense business, be deemed, for the taxation year of the parent in which the subsidiary's expense year ended, to be a restricted interest and financing expense of the parent from carrying on the subsidiary's expense business that was not deductible by the parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up, and

(d.3) in the case of any other portion of any restricted interest and financing expense of the subsidiary that may reasonably be regarded as being incurred in respect of any other source, be deemed, for the taxation year of the parent in which the subsidiary's expense year ended, to be a restricted interest and financing expense of the parent that was incurred in respect of that other source and that was not deductible by the

(5) Le paragraphe 88(1.1) de la même loi est modifié par adjonction, après l'alinéa d.1), de ce qui suit :

d.2) dans le cas de la fraction d'une dépense d'intérêts et de financement restreinte de la filiale qu'il est raisonnable de considérer comme engagée dans l'exploitation de l'entreprise de dépenses de celle-ci, réputée être, pour l'année d'imposition de la société mère au cours de laquelle s'est terminée l'année de dépenses de la filiale, d'une dépense d'intérêts et de financement restreinte de la société mère provenant de l'exploitation de l'entreprise de dépenses de la filiale qui n'était pas déductible par la société mère dans le calcul de son revenu imposable pour toute année d'imposition qui a commencé avant le début de la liquidation;

d.3) dans le cas d'une autre fraction d'une dépense d'intérêts et de financement restreinte de la filiale qu'il est raisonnable de considérer comme engagée relativement à une autre source, réputée être, pour l'année d'imposition de la société mère au cours de laquelle s'est terminée l'année de dépenses de la filiale, d'une dépense d'intérêts et de financement restreinte de la

parent in computing its taxable income for any taxation year that commenced before the commencement of the winding-up,

(6) The portion of paragraph 88(1.1)(e) of the Act before subparagraph (i) is replaced by the following:

(e) if control of the parent has been acquired by a person or group of persons at any time after the commencement of the winding-up, or control of the subsidiary has been acquired by a person or group of persons at any time whatever, no amount in respect of the subsidiary's non-capital loss, farm loss or restricted interest and financing expense for a taxation year ending before that time is deductible in computing the taxable income of the parent for a particular taxation year ending after that time, except that such portion of the subsidiary's non-capital loss or farm loss as may reasonably be regarded as its loss from carrying on a business, or restricted interest and financing expense as may reasonably be regarded as being the subsidiary's expense or loss incurred in the course of carrying on a business and, where a business was carried on by the subsidiary in that year, such portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing its taxable income for the year, is deductible only

(7) The portion of paragraph 88(1.1)(e) of the Act after subparagraph (ii) is replaced by the following:

and for the purpose of this paragraph, where this subsection applied to the winding-up of another corporation in respect of which the subsidiary was the parent and this paragraph applied in respect of losses and restricted interest and financing expenses of that other corporation, the subsidiary shall be deemed to be the same corporation as, and a continuation of, that other corporation with respect to those losses and restricted interest and financing expenses,

(8) Subsection 88(1.1) of the Act is amended by adding "and" at the end of paragraph (f) and by adding the following after that paragraph:

(g) any portion of a restricted interest and financing expense of the subsidiary that would otherwise be

société mère engagée relativement à cette autre source et qui n'était pas déductible par la société mère dans le calcul de son revenu imposable pour toute année d'imposition qui a commencé avant le début de la liquidation;

(6) Le passage de l'alinéa 88(1.1)e) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :

e) en cas d'acquisition du contrôle de la société mère par une personne ou un groupe de personnes après le début de la liquidation, ou en cas d'acquisition du contrôle de la filiale par une personne ou un groupe de personnes à un moment quelconque, aucun montant n'est déductible au titre de la perte autre qu'une perte en capital, de la perte agricole ou de la dépense d'intérêts et de financement restreinte de la filiale pour une année d'imposition se terminant avant le moment de l'acquisition, dans le calcul du revenu imposable de la société mère pour une année d'imposition donnée se terminant après ce moment; toutefois, la fraction de la perte autre qu'une perte en capital ou de la perte agricole de la filiale qu'il est raisonnable de considérer comme résultant de l'exploitation d'une entreprise, ou de la dépense d'intérêts et de financement restreinte qu'il est raisonnable de considérer comme étant la dépense engagée ou la perte subie par la filiale dans l'exploitation d'une entreprise, si la filiale exploitait une entreprise au cours de cette année, la fraction de la perte autre qu'une perte en capital qu'il est raisonnable de considérer comme se rapportant à un montant déductible en application de l'alinéa 110(1)k) dans le calcul de son revenu imposable pour l'année, sont déductibles :

(7) Le passage de l'alinéa 88(1.1)e) de la même loi suivant le sous-alinéa (ii) est remplacé par ce qui suit :

pour l'application du présent alinéa, dans le cas où le présent paragraphe s'applique à la liquidation d'une autre société dont la filiale était la société mère et où le présent alinéa s'applique aux pertes et aux dépenses d'intérêts et de financement restreintes de cette autre société, la filiale est réputée être la même société que cette autre société et en être la continuation en ce qui concerne ces pertes et ces dépenses d'intérêts et de financement restreintes;

(8) Le paragraphe 88(1.1) de la même loi est modifié par adjonction, après l'alinéa f), de ce qui suit :

g) toute partie d'une dépense d'intérêts et de financement restreinte de la filiale qui par ailleurs serait

deemed by paragraph (d.2) or (d.3) to be a restricted interest and financing expense of the parent for a particular taxation year beginning after the commencement of the winding-up shall be deemed, for the purpose of computing the parent's taxable income for taxation years beginning after the commencement of the winding-up, to be a restricted interest and financing expense of the parent for its immediately preceding taxation year and not for the particular year, where the parent so elects in its return of income under this Part for the particular year.

(9) Section 88 of the Act is amended by adding the following after subsection (1.1):

Cumulative unused excess capacity of subsidiary

(1.11) If a subsidiary has been wound up in the circumstances described in subsection (1.1), for the purpose of computing the cumulative unused excess capacity of the parent for any taxation year of the parent that commenced after the commencement of the winding up, the absorbed capacity, the excess capacity and any transferred capacity, of the subsidiary for any particular taxation year are deemed to be an amount of absorbed capacity, an amount of excess capacity and an amount of transferred capacity, respectively, of the parent for the taxation year of the parent in which the subsidiary's particular taxation year ended.

Adjusted taxable income — non-capital losses of subsidiary

(1.12) If paragraph (1.1)(c), (d) or (d.1) deems a particular portion of a non-capital loss for a taxation year (referred to in this paragraph as the "subsidiary loss year") of a subsidiary that has been wound up to be the parent's non-capital loss for a taxation year (referred to in this paragraph as the "parent loss year") and the parent deducts an amount in respect of the parent's non-capital loss under paragraph 111(1)(a) in computing taxable income for a particular taxation year, for the purpose of determining the amount included under paragraph (h) of the description of B in the definition *adjusted taxable income* in subsection 18.2(1) in respect of the parent's non-capital loss in computing the parent's adjusted taxable income for the particular taxation year, any amount of the subsidiary for the subsidiary loss year that is referred to in the description of W or X in the definition *adjusted taxable income* in subsection 18.2(1) and that relates to the source from which the particular portion is derived (and any amount deemed by this subsection to be an amount of the subsidiary for the subsidiary loss

réputée, par les alinéas d.2) ou d.3), être une dépense d'intérêts et de financement de la société mère pour une année d'imposition donnée commençant après le début de la liquidation est réputée, aux fins du calcul du revenu imposable de la société mère pour les années d'imposition commençant après le début de la liquidation, être une dépense d'intérêts et de financement restreinte de la société mère pour son année d'imposition qui précède l'année donnée et non pour l'année donnée, lorsque la société mère fait un choix, dans sa déclaration de revenu en vertu de la présente partie pour l'année donnée.

(9) L'article 88 de la même loi est modifié par adjonction, après le paragraphe (1.1), de ce qui suit :

Capacité excédentaire cumulative inutilisée de la filiale

(1.11) Si une filiale a été liquidée dans les circonstances visées au paragraphe (1.1), pour le calcul de la capacité excédentaire cumulative inutilisée de la société mère pour toute année d'imposition de celle-ci commençant après le début de la liquidation, la capacité absorbée, la capacité excédentaire et tout montant de capacité transférée de la filiale pour une année d'imposition donnée sont réputés être une capacité absorbée, une capacité excédentaire et un montant de capacité transférée respectivement de la société mère pour l'année d'imposition de celle-ci dans laquelle l'année d'imposition donnée de la filiale s'est terminée.

Revenu imposable rajusté — pertes autres qu'une perte en capital d'une filiale

(1.12) Si, selon les alinéas (1.1)c), d) ou d.1), une partie donnée d'une perte autre qu'une perte en capital pour une année d'imposition (appelée « année de perte de la filiale » au présent alinéa) d'une filiale liquidée est réputée être la perte autre qu'une perte en capital de la société mère pour une année d'imposition (appelée « année de perte de la société mère » au présent alinéa), et la société mère déduit une somme au titre de sa perte autre qu'une perte en capital en application de l'alinéa 111(1)a) dans le calcul du revenu imposable pour une année d'imposition donnée, pour le calcul de la somme incluse en application de l'alinéa h) de l'élément B de la formule figurant à la définition de *revenu imposable rajusté* au paragraphe 18.2(1) relativement à la perte autre qu'une perte en capital de la société mère dans le calcul de son revenu imposable rajusté pour l'année, toute somme de la filiale pour l'année de perte de la filiale visée à l'élément W ou X de la formule figurant à la définition de *revenu imposable rajusté* au paragraphe 18.2(1) et qui se rapporte à la source d'où est tirée la partie donnée (et toute somme réputée par le présent paragraphe être une somme de la

year relating to the source) is deemed to be an amount of the parent relating to the source for the parent loss year.

(10) Paragraph 88(2)(c) of the Act is replaced by the following:

(c) for the purpose of computing the income of the corporation for its taxation year that includes the particular time, paragraph 12(1)(t) shall be read as follows:

"12(1)(t) the amount deducted under subsection 127(5) or (6) or 127.44(3) in computing the taxpayer's tax payable for the year or a preceding taxation year to the extent that it was not included under this paragraph in computing the taxpayer's income for a preceding taxation year or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e) or subparagraph 53(2)(c)(vi), (c)(vi.1) or (h)(ii) or the amount determined for I in the definition *undepreciated capital cost* in subsection 13(21) or L in the definition *cumulative Canadian exploration expense* in subsection 66.1(6);".

(11) Paragraph 88(2)(c) of the Act, as amended by subsection (10), is replaced by the following:

(c) for the purpose of computing the income of the corporation for its taxation year that includes the particular time, paragraph 12(1)(t) shall be read as follows:

"12(1)(t) the amount deducted under subsection 127(5) or (6), 127.44(3) or 127.45(6) in computing the taxpayer's tax payable for the year or a preceding taxation year to the extent that it was not included under this paragraph in computing the taxpayer's income for a preceding taxation year or is not included in an amount determined under paragraph 13(7.1)(e) or 37(1)(e) or subparagraph 53(2)(c)(vi) to (c)(vi.2) or (h)(ii) or the amount determined for I in the definition *undepreciated capital cost* in subsection 13(21) or L in the definition *cumulative Canadian exploration expense* in subsection 66.1(6);".

(12) Subsections (1) and (10) are deemed to have come into force on January 1, 2022.

(13) Subsections (2) and (11) are deemed to have come into force on March 28, 2023.

filiale pour l'année de perte de la filiale relativement à la source) est réputée être un montant de la société mère relativement à la source pour l'année de perte de celle-ci.

(10) L'alinéa 88(2)c) de la même loi est remplacé par ce qui suit :

c) pour le calcul du revenu de la société pour son année d'imposition qui comprend le moment donné, l'alinéa 12(1)t) est remplacé par ce qui suit :

« 12(1)t) la somme déduite en application des paragraphes 127(5) ou (6) ou 127.44(3) dans le calcul de l'impôt payable par le contribuable pour l'année ou pour une année d'imposition antérieure dans la mesure où cette somme n'a pas été incluse dans le calcul du revenu du contribuable pour une année d'imposition antérieure en application du présent alinéa ou n'est pas incluse dans une somme déterminée en vertu des alinéas 13(7.1)e) ou 37(1)e) ou des sous-alinéas 53(2)c)(vi), c)(vi.1) ou h)(ii) ou représentée par l'élément I de la formule figurant à la définition de *fraction non amortie du coût en capital* au paragraphe 13(21) ou l'élément L de la formule figurant à la définition de *frais cumulatifs d'exploration au Canada* au paragraphe 66.1(6); ».

(11) L'alinéa 88(2)c) de la même loi, modifié par le paragraphe (10), est remplacé par ce qui suit :

c) pour le calcul du revenu de la société pour son année d'imposition qui comprend le moment donné, l'alinéa 12(1)t) est remplacé par ce qui suit :

« 12(1)t) la somme déduite en application des paragraphes 127(5) ou (6), 127.44(3) ou 127.45(6) dans le calcul de l'impôt payable par le contribuable pour l'année ou pour une année d'imposition antérieure dans la mesure où cette somme n'a pas été incluse dans le calcul du revenu du contribuable pour une année d'imposition antérieure en application du présent alinéa ou n'est pas incluse dans une somme déterminée en vertu des alinéas 13(7.1)e) ou 37(1)e) ou des sous-alinéas 53(2)c)(vi) à c)(vi.2) ou h)(ii) ou représentée par l'élément I de la formule figurant à la définition de *fraction non amortie du coût en capital* au paragraphe 13(21) ou l'élément L de la formule figurant à la définition de *frais cumulatifs d'exploration au Canada* au paragraphe 66.1(6); ».

(12) Les paragraphes (1) et (10) sont réputés être entrés en vigueur le 1er janvier 2022.

(13) Les paragraphes (2) et (11) sont réputés être entrés en vigueur le 28 mars 2023.

(14) Subsections (3) to (8) apply in respect of windings-up that begin on or after October 1, 2023.

(15) Subsection (9) applies in respect of windings-up that begin in any taxation year.

20 (1) Paragraph (a) of the description of D in the definition *low rate income pool* in subsection 89(1) of the Act is replaced by the following:

(a) if the non-CCPC was a substantive CCPC at any time in its preceding taxation year or would, but for paragraph (d) of the definition *Canadian-controlled private corporation* in subsection 125(7), be a Canadian-controlled private corporation in its preceding taxation year, 80% of its aggregate investment income for its preceding taxation year, and

(2) The description of G in the definition *low rate income pool* in subsection 89(1) of the Act is replaced by the following:

G is the total of all amounts each of which is a taxable dividend (other than an eligible dividend, a capital gains dividend within the meaning assigned by subsection 130.1(4) or 131(1) or a taxable dividend deductible by the non-CCPC under subsection 130.1(1) in computing its income for the particular taxation year or for its preceding taxation year) that became payable by the non-CCPC

(a) in the particular taxation year but before the particular time, or

(b) in the preceding taxation year, but only to the extent of the lesser of

(i) the amount included under the description of D in the particular taxation year, and

(ii) the portion of the taxable dividend that did not reduce the non-CCPC's low rate income pool in the preceding taxation year, and

(3) Subsections (1) and (2) apply to taxation years that begin on or after April 7, 2022.

21 (1) The portion of subsection 91(1.2) of the Act before paragraph (a) is replaced by the following:

(14) Les paragraphes (3) à (8) s'appliquent relativement aux liquidations commençant après septembre 2023.

(15) Le paragraphe (9) s'applique relativement aux liquidations commençant au cours d'une année d'imposition.

20 (1) L'alinéa a) de l'élément D de la formule figurant à la définition de *compte de revenu à taux réduit*, au paragraphe 89(1) de la même loi, est remplacé par ce qui suit :

a) dans le cas où la société donnée était une SPCC en substance à un moment donné au cours de son année d'imposition précédente ou serait, en l'absence de l'alinéa d) de la définition de *société privée sous contrôle canadien* au paragraphe 125(7), une société privée sous contrôle canadien au cours de son année d'imposition précédente, 80 % de son revenu de placement total pour son année d'imposition précédente,

(2) L'élément G de la formule figurant à la définition de *compte de revenu à taux réduit*, au paragraphe 89(1) de la même loi, est remplacé par ce qui suit :

G le total des sommes représentant chacune un dividende imposable (sauf un dividende déterminé, un dividende sur les gains en capital au sens des paragraphes 130.1(4) ou 131(1) et un dividende imposable déductible par la société donnée en application du paragraphe 130.1(1) dans le calcul de son revenu pour l'année donnée ou pour son année d'imposition précédente) qui est devenu payable par la société donnée :

a) soit au cours de l'année donnée mais avant le moment donné,

b) soit au cours de l'année d'imposition précédente, mais seulement jusqu'à concurrence du moins élevé des montants suivants :

(i) le montant inclus à l'élément D au cours de l'année donnée,

(ii) la fraction du dividende imposable qui n'a pas réduit le compte de revenu à taux réduit de la société donnée dans l'année d'imposition précédente;

(3) Les paragraphes (1) et (2) s'appliquent aux années d'imposition commençant à compter du 7 avril 2022.

21 (1) Le passage du paragraphe 91(1.2) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Deemed year-end

(1.2) If this subsection applies at a particular time in respect of a foreign affiliate of a particular taxpayer resident in Canada, then for the purposes of this section, sections 18.2 and 92 and clause 95(2)(f.11)(ii)(D),

(2) Subsection (1) applies in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer beginning on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer that begins before, and ends after, October 1, 2023 if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.

22 (1) Paragraph 92(1)(a) of the Act is replaced by the following:

(a) there shall be added in respect of that share any amount included in respect of that share under subsection 91(1) or (3) in computing the taxpayer's income for the year or any preceding taxation year (or that would have been required to have been so included in computing the taxpayer's income but for subsection 56(4.1) and sections 74.1 to 75 of this Act and section 74 of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952), except that, if the amount so included is greater than it otherwise would have been because of the application of clause 95(2)(f.11)(ii)(D), the amount added under this paragraph shall be the amount that would have been so included in the absence of that clause; and

(2) Subsection (1) applies in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer beginning on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year of a foreign

Présomption de fin d'année

(1.2) En cas d'application du présent paragraphe à un moment donné relativement à une société étrangère affiliée d'un contribuable donné résidant au Canada, les règles ci-après s'appliquent au présent article, aux articles 18.2 et 92 et à la division 95(2)f.11)(ii)(D) :

(2) Le paragraphe (1) s'applique relativement à une année d'imposition d'une société étrangère affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant après septembre 2023. Toutefois, il s'applique aussi relativement à une année d'imposition d'une société affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :

a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération, d'un événement ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;

b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.

22 (1) L'alinéa 92(1)a) de la même loi est remplacé par ce qui suit :

a) est ajoutée relativement à l'action toute somme qui est incluse relativement à l'action, en application des paragraphes 91(1) ou (3), dans le calcul du revenu du contribuable pour l'année ou pour une année d'imposition antérieure (ou qui aurait été à inclure dans ce calcul en l'absence du paragraphe 56(4.1) et des articles 74.1 à 75 de la présente loi et de l'article 74 de la *Loi de l'impôt sur le revenu*, chapitre 148 des Statuts revisés du Canada de 1952). Toutefois, si la somme ainsi incluse est supérieure à celle qui l'aurait été par l'effet de l'application de la division 95(2)f.11)(ii)(D), la somme ajoutée en vertu du présent alinéa est celle qui aurait été ainsi incluse en l'absence de cette division;

(2) Le paragraphe (1) s'applique relativement à une année d'imposition d'une société étrangère affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant après septembre 2023. Toutefois, il

affiliate of a taxpayer that ends in a taxation year of the taxpayer that begins before, and ends after, October 1, 2023 if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.

23 (1) The portion of subsection 94.2(2) of the Act before paragraph (a) is replaced by the following:

Deemed corporation

(2) If this subsection applies at any time to a beneficiary under, or a particular person in respect of, a trust, then for the purposes of applying this section, section 18.2, subsections 91(1) to (4), paragraph 94.1(1)(a), section 95, the definition *restricted interest and financing expense* in subsection 111(8) and section 233.4 to the beneficiary under, and, if applicable, to the particular person in respect of, the trust

(2) Subsection (1) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year that begins before, and ends after, October 1, 2023 if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.

s'applique aussi relativement à une année d'imposition d'une société affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :

a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération, d'un événement ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;

b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.

23 (1) Le passage du paragraphe 94.2(2) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Société réputée

(2) En cas d'application du présent paragraphe à un moment donné au bénéficiaire d'une fiducie ou à une personne donnée relativement à une fiducie, pour l'application du présent article, de l'article 18.2, des paragraphes 91(1) à (4), de l'alinéa 94.1(1)a), de l'article 95, de la définition de *dépense d'intérêts et de financement restreinte* au paragraphe 111(8) et de l'article 233.4 au bénéficiaire et, le cas échéant, à la personne donnée relativement à la fiducie :

(2) Le paragraphe (1) s'applique relativement aux années d'imposition d'un contribuable commençant après septembre 2023. Toutefois, il s'applique aussi relativement à une année d'imposition commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :

a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération, d'un événement ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;

b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou

18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.

24 (1) Paragraph (b) of the description of A in the definition *foreign accrual property income* in subsection 95(1) of the Act is replaced by the following:

(b) a dividend from another foreign affiliate of the taxpayer, except for any portion of the dividend that would be deemed under subsection 113(5) not to be a dividend received by the affiliate on a share of the capital stock of the other affiliate for the purposes of section 113, if the affiliate were a corporation resident in Canada,

24 (1) L'alinéa b) de l'élément A de la formule figurant à la définition de *revenu étranger accumulé, tiré de biens*, au paragraphe 95(1) de la même loi, est remplacé par ce qui suit :

b) d'un dividende d'une autre société étrangère affiliée du contribuable, sauf une partie du dividende qui serait réputée, en vertu du paragraphe 113(5), ne pas être un dividende reçu par la société affiliée sur une action du capital-actions de l'autre société affiliée pour l'application de l'article 113, si la société affiliée était une société résidant au Canada,

(2) Paragraph (a) of the description of H in the definition *foreign accrual property income* in subsection 95(1) of the Act is replaced by the following:

(a) if the affiliate was a member of a partnership at the end of the fiscal period of the partnership that ended in the year and the partnership received a dividend at a particular time in that fiscal period from a corporation that would be, if the reference in subsection 93.1(1) to "corporation resident in Canada" were a reference to "taxpayer resident in Canada", a foreign affiliate of the taxpayer for the purposes of sections 93 and 113 at that particular time, then the portion of the amount of that dividend that

(i) is included in the value determined for A in respect of the affiliate for the year and that would be, if the reference in subsection 93.1(2) to "corporation resident in Canada" were a reference to "taxpayer resident in Canada", deemed by paragraph 93.1(2)(a) to have been received by the affiliate for the purposes of sections 93 and 113, and

(ii) would not be deemed under subsection 113(5) not to be a dividend received by the affiliate on a share of the capital stock of the other affiliate for the purposes of section 113, if the affiliate were a corporation resident in Canada, and

(2) L'alinéa a) de l'élément H de la formule figurant à la définition de *revenu étranger accumulé, tiré de biens*, au paragraphe 95(1) de la même loi, est remplacé par ce qui suit :

a) si la société affiliée est un associé d'une société de personnes à la fin de l'exercice de celle-ci s'étant terminé dans l'année et que la société de personnes a reçu, à un moment donné de cet exercice, un dividende d'une société qui serait une société étrangère affiliée du contribuable à ce moment pour l'application des articles 93 et 113 si le passage « une société résidant au Canada » au paragraphe 93.1(1) était remplacé par « un contribuable résidant au Canada », la partie de ce dividende qui, à la fois :

(i) est incluse dans la valeur de l'élément A relativement à la société affiliée pour l'année et qui serait réputée, en vertu de l'alinéa 93.1(2)a), avoir été reçue par elle pour l'application de ces articles si le passage « une société résidant au Canada » au paragraphe 93.1(2) était remplacé par « un contribuable résidant au Canada », avec les adaptations grammaticales nécessaires,

(ii) ne serait pas réputée, en vertu du paragraphe 113(5), ne pas être un dividende reçu par la société affiliée sur une action du capital-actions de l'autre société affiliée pour l'application de l'article 113, si la société affiliée était une société résidant au Canada,

(3) Clause 95(2)(f.11)(ii)(A) of the Act is replaced by the following:

(A) this Act is to be read without reference to subsections 12.7(3), 17(1), 18(4) and 18.4(4) and section 91, except that, where the foreign affiliate is a member of a partnership, section 91 is to be applied to determine the income or loss of the partnership and for that purpose subsection 96(1) is to be applied to determine the foreign

(3) La division 95(2)f.11)(ii)(A) de la même loi est remplacée par ce qui suit :

(A) la présente loi s'applique compte non tenu des paragraphes 12.7(3), 17(1), 18(4) et 18.4(4) et de l'article 91; toutefois, lorsque la société affiliée est l'associé d'une société de personnes, le revenu ou la perte de la société de personnes est déterminé selon l'article 91 et la part de ce revenu

affiliate's share of that income or loss of the partnership,

(4) Clause 95(2)(f.11)(ii)(A) of the Act, as enacted by subsection (3), is replaced by the following:

(A) this Act is to be read without reference to subsections 12.7(3), 17(1), 18(4), 18.2(2) and 18.4(4) and section 91, except that, where the foreign affiliate is a member of a partnership, section 91 is to be applied to determine the income or loss of the partnership and for that purpose subsection 96(1) is to be applied to determine the foreign affiliate's share of that income or loss of the partnership,

(5) Clause 95(2)(f.11)(ii)(A) of the Act, as enacted by subsection (4), is replaced by the following:

(A) this Act is to be read without reference to subsections 17(1), 18(4), 18.2(2) and 18.4(4) and section 91, except that, where the foreign affiliate is a member of a partnership, section 91 is to be applied to determine the income or loss of the partnership and for that purpose subsection 96(1) is to be applied to determine the foreign affiliate's share of that income or loss of the partnership,

(6) Subparagraph 95(2)(f.11)(ii) of the Act is amended by striking out "and" at the end of clause (B) and by adding the following after clause (C):

(D) if the foreign affiliate is a controlled foreign affiliate of the taxpayer at the end of the taxation year, and the taxpayer is not an *excluded entity* (as defined in subsection 18.2(1)) for its taxation year (referred to in this clause as the "taxpayer year") in which the taxation year ends,

(I) notwithstanding any other provision of this Act, no deduction shall be made in respect of any amount that is included in the affiliate's *relevant affiliate interest and financing expenses* (as defined in subsection 18.2(1)) for the taxation year, to the extent of the proportion of that amount that is determined by the first formula in subsection 18.2(2) in respect of the taxpayer for the taxpayer year, and

(II) an amount is to be included, in determining the amount described in subparagraph

ou de cette perte qui revient à la société affiliée est déterminée selon le paragraphe 96(1),

(4) La division 95(2)f.11)(ii)(A) de la même loi, édictée par le paragraphe (3), est remplacée par ce qui suit :

(A) la présente loi s'applique compte non tenu des paragraphes 12.7(3), 17(1), 18(4), 18.2(2), 18.4(4) et de l'article 91; toutefois, lorsque la société affiliée est l'associé d'une société de personnes, le revenu ou la perte de la société de personnes est déterminé selon l'article 91 et la part de ce revenu ou de cette perte qui revient à la société affiliée est déterminée selon le paragraphe 96(1),

(5) La division 95(2)f.11)(ii)(A) de la même loi, édictée par le paragraphe (4), est remplacée par ce qui suit :

(A) la présente loi s'applique compte non tenu des paragraphes 17(1), 18(4), 18.2(2) et 18.4(4) et de l'article 91; toutefois, lorsque la société affiliée est l'associé d'une société de personnes, le revenu ou la perte de la société de personnes est déterminé selon l'article 91 et la part de ce revenu ou de cette perte qui revient à la société affiliée est déterminée selon le paragraphe 96(1),

(6) Le sous-alinéa 95(2)f.11)(ii) de la même loi est modifié par adjonction, après la division (C), de ce qui suit :

(D) si la société étrangère affiliée est une société étrangère affiliée contrôlée du contribuable à la fin de l'année d'imposition et que le contribuable n'est pas une *entité exclue* (au sens du paragraphe 18.2(1)) pour son année d'imposition (appelée « année du contribuable » à la présente division) dans laquelle prend fin l'année d'imposition :

(I) malgré toute autre disposition de la présente loi, aucune déduction ne peut être faite, relativement à toute somme incluse dans les *dépenses d'intérêts et de financement de la société affiliée pertinentes* (au sens du paragraphe 18.2(1)) de la société affiliée pour l'année d'imposition, jusqu'à concurrence de la proportion de cette somme obtenue par la première formule figurant au paragraphe 18.2(2) relativement au contribuable pour l'année du contribuable,

(f)(ii) for the taxation year, that is equal to the amount that would be included under paragraph 12(1)(l.2) in determining the amount described in subparagraph (f)(ii) for the taxation year if

1 clause (A) were read without regard to its reference to subsection 18.2(2), and

2 the proportion that applied for the purposes of subparagraph (ii) of the description of B in paragraph 12(1)(l.2) were the proportion that is determined by the first formula in subsection 18.2(2) in respect of the taxpayer for the taxpayer year, and

(E) notwithstanding any other provision of this Act, no deduction shall be made in respect of one or more amounts (each referred to in this clause as an "elected amount") if

(I) the elected amount would, in the absence of this clause, clause (D) and subsection 18.2(19),

1 be included in the foreign affiliate's *relevant affiliate interest and financing expenses* (as defined in subsection 18.2(1)) for the taxation year, and

2 be deductible in determining the amount described in subparagraph (f)(ii),

(II) the total of the elected amounts is equal to the lesser of the following amounts (determined without regard to this clause, clause (D) and subsection 18.2(19)):

1 the foreign affiliate's *foreign accrual property loss* (as defined in subsection 5903(3) of the *Income Tax Regulations*) for the taxation year, and

2 the foreign affiliate's *relevant affiliate interest and financing expenses* (as defined in subsection 18.2(1)) for the taxation year,

(III) the taxpayer files with the Minister, in respect of the elected amounts, an election in writing in prescribed manner under this clause,

(IV) the election specifies

1 each of the elected amounts,

(II) une somme égale à la somme qui serait incluse en vertu de l'alinéa 12(1)l.2) dans le calcul de la somme visée au sous-alinéa f)(ii) pour l'année d'imposition doit être incluse dans le calcul de la somme visée au sous-alinéa f)(ii) pour l'année d'imposition si, à la fois :

1 la division (A) s'appliquait compte non tenu de la mention du paragraphe 18.2(2),

2 la proportion qui s'appliquait pour l'application du sous-alinéa (ii) de l'élément B de la formule figurant à l'alinéa 12(1)(l.2) était celle obtenue par la première formule figurant au paragraphe 18.2(2) relativement au contribuable pour l'année du contribuable,

(E) malgré les autres dispositions de la présente loi, aucune déduction ne peut être faite relativement à un ou plusieurs montants (chacun étant appelé « montant choisi » au présent paragraphe) si, à la fois :

(I) le montant choisi, en l'absence de la présente division, de la division (D) et du paragraphe 18.2(19) :

1 était inclus dans les *dépenses d'intérêts et de financement de la société affiliée pertinentes* (au sens du paragraphe 18.2(1)) de la société étrangère affiliée pour l'année d'imposition,

2 était déduit lors du calcul du montant visé au sous-alinéa f)(ii),

(II) le total des montants choisis correspond au moins élevé des montants suivants (calculé compte non tenu de la présente division, de la division (D) et du paragraphe 18.2(19)) :

1 la *perte étrangère accumulée, relative à des biens* (au sens du paragraphe 5903(3) du *Règlement de l'impôt sur le revenu*) de la société étrangère affiliée pour l'année d'imposition,

2 les *dépenses d'intérêts et de financement de la société affiliée pertinentes* (au sens du paragraphe 18.2(1)) de la société étrangère affiliée pour l'année d'imposition,

(III) le contribuable présente au ministre, relativement aux montants choisis, un choix

2 the foreign affiliate's *relevant affiliate interest and financing expenses* (as defined in subsection 18.2(1)) (determined without regard to this clause and subsection 18.2(19)) for the taxation year,

3 the foreign affiliate's *relevant affiliate interest and financing expenses* (as defined in subsection 18.2(1)) for the taxation year,

4 the foreign affiliate's *foreign accrual property loss* (as defined in subsection 5903(3) of the *Income Tax Regulations*) (determined without regard to this clause, clause (D) and subsection 18.2(19)) for the taxation year, and

5 the foreign affiliate's *foreign accrual property loss* (as defined in subsection 5903(3) of the *Income Tax Regulations*) or foreign accrual property income, as the case may be, for the taxation year, and

(V) the election is filed on or before the filing-due date of the taxpayer for its taxation year in which the taxation year ends;

écrit en vertu de la présente division selon les modalités réglementaires,

(IV) le choix précise les montants suivants :

1 chacun des montants choisis,

2 les *dépenses d'intérêts et de financement de la société affiliée pertinentes* (au sens du paragraphe 18.2(1)) de la société étrangère affiliée (calculées compte non tenu de la présente division et du paragraphe 18.2(19)) pour l'année d'imposition,

3 les *dépenses d'intérêts et de financement de la société affiliée pertinentes* (au sens du paragraphe 18.2(1)) de la société étrangère affiliée pour l'année d'imposition,

4 la *perte étrangère accumulée, relative à des biens* (au sens du paragraphe 5903(3) du *Règlement de l'impôt sur le revenu*) de la société étrangère affiliée (calculée compte non tenu de la présente division, de la division (D) et du paragraphe 18.2(19)) pour l'année d'imposition,

5 la *perte étrangère accumulée, relative à des biens* (au sens du paragraphe 5903(3) du *Règlement de l'impôt sur le revenu*) ou le revenu étranger accumulé, tiré de biens de la société étrangère affiliée, selon le cas, pour l'année d'imposition,

(V) le choix est présenté au plus tard à la date d'échéance de production applicable au contribuable pour son année d'imposition dans laquelle l'année d'imposition prend fin;

(7) Subparagraph 95(2)(f.11)(ii) of the Act, as amended by subsection (6), is amended by striking out "and" at the end of clause (D), by adding "and" at the end of clause (E) and by adding the following after clause (E):

(7) Le sous-alinéa 95(2)f.11)(ii) de la même loi, modifié par le paragraphe (6), est modifié par adjonction, après la division (E), de ce qui suit :

(F) the following rules apply for the purposes of applying subsection 12.7(3) and the related provisions of section 18.4 in respect of a payment of which the foreign affiliate, or a partnership of which the foreign affiliate is a member, is a recipient:

(I) the definitions in subsection 18.4(1) apply for the purposes of this clause,

(F) les règles suivantes s'appliquent aux fins de l'application du paragraphe 12.7(3) et des dispositions connexes de l'article 18.4 relativement à un paiement dont la société étrangère affiliée, ou une société de personnes dont celle-ci est un associé, est bénéficiaire :

(I) les définitions figurant au paragraphe 18.4(1) s'appliquent aux fins de l'application de la présente division,

(II) subsection 12.7(3) is deemed not to apply in respect of the payment if

1 the foreign affiliate's income or loss derived from the payment is included under subparagraph (a)(ii) in computing the foreign affiliate's income or loss from an active business for a taxation year, or

2 in the case of a payment that subsection 18.4(9) deems to be made to the foreign affiliate or the partnership by a particular entity in respect of a notional interest expense on a particular debt, any income or loss that were derived by the foreign affiliate from the payment would, based on the relevant assumptions in respect of the payment, be included under subparagraph (a)(ii) in computing the foreign affiliate's income or loss from an active business for a taxation year,

(III) for the purposes of sub-subclause (II)2, the relevant assumptions in respect of the payment are

1 the payment is an amount of interest paid by the particular entity to the foreign affiliate or the partnership, as the case may be, under a legal obligation to pay interest on the particular debt in the taxation year of the foreign affiliate or the partnership in which an amount in respect of the payment would, in the absence of subclause (II), be included under subsection 12.7(3) in the income of the foreign affiliate or partnership, and

2 any amount that is deductible, in respect of the notional interest expense, is an amount deductible in respect of an expenditure for which the payment was made, and

(IV) the definition *Canadian ordinary income* in subsection 18.4(1) is to be read as if

1 its subparagraph (a)(ii) read as follows:

"(ii) the amount is described in paragraph (b) or (c) of the description of A in the definition *foreign accrual property income* in subsection 95(1), or", and

2 the description of D in its paragraph (b) read as follows:

(II) le paragraphe 12.7(3) est réputé ne pas s'appliquer relativement au paiement si, selon le cas :

1 le revenu ou la perte de la société étrangère affiliée provenant du paiement est inclus dans le calcul du revenu ou de la perte de la société affiliée provenant d'une entreprise exploitée activement pour une année d'imposition en application du sous-alinéa a)(ii),

2 dans le cas d'un paiement qui est réputé, selon le paragraphe 18.4(9), être fait à la société étrangère affiliée ou à la société de personnes par une entité donnée relativement à une dépense d'intérêts théorique sur une dette donnée, tout revenu ou toute perte de la société étrangère affiliée provenant du paiement serait, selon les hypothèses pertinentes relatives au paiement, inclus dans le calcul de son revenu ou de sa perte provenant d'une entreprise exploitée activement pour une année d'imposition en application du sous-alinéa a)(ii),

(III) pour l'application de la sous-subdivision (II)2, les hypothèses pertinentes relatives au paiement sont les suivantes :

1 le paiement représente un montant d'intérêt payé par l'entité donnée à la société étrangère affiliée ou à la société de personnes, selon le cas, en vertu d'une obligation légale de payer des intérêts sur la dette donnée au cours de l'année d'imposition de la société étrangère affiliée ou de la société de personnes dans laquelle une somme relative au paiement serait, en l'absence de la subdivision (II), incluse dans son revenu en application du paragraphe 12.7(3),

2 toute somme qui est déductible, à l'égard de la dépense d'intérêt théorique, est une somme déductible au titre d'une dépense pour laquelle le paiement est effectué,

(IV) la définition de *revenu ordinaire canadien* au paragraphe 18.4(1) s'applique comme si :

1 son sous-alinéa a)(ii) était remplacé par ce qui suit :

« (ii) la somme est visée aux alinéas b) ou c) de l'élément A de la formule figurant à la définition de

"D is the total of all amounts, each of which is an amount, in respect of the payment, that is included in the description of H in the definition *foreign accrual property income* in subsection 95(1) in computing the foreign accrual property income of a member of the partnership for a taxation year; or";

revenu étranger accumulé, tiré de biens au paragraphe 95(1), »,

2 l'élément D de la formule figurant à son alinéa b) était remplacé par ce qui suit :

« D le total des sommes représentant chacune un montant, relativement au paiement, qui est inclus dans l'élément H de la définition de *revenu étranger accumulé, tiré de biens* au paragraphe 95(1) dans le calcul du revenu étranger accumulé, tiré de biens d'un associé de la société de personnes pour une année d'imposition; »;

(8) Subsections (1) and (2) apply in respect of any dividend received on or after July 1, 2024.

(8) Les paragraphes (1) et (2) s'appliquent à tout dividende reçu après le 30 juin 2024.

(9) Subsection (3) applies in respect of payments arising on or after July 1, 2022.

(9) Le paragraphe (3) s'applique aux paiements se produisant après le 30 juin 2022.

(10) Subsections (4) and (6) apply in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer beginning on or after October 1, 2023. However, subsections (4) and (6) also apply in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer that begins before, and ends after, October 1, 2023 if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.

(10) Les paragraphes (4) et (6) s'appliquent relativement à une année d'imposition d'une société étrangère affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant après septembre 2023. Toutefois, ils s'appliquent aussi relativement à une année d'imposition d'une société étrangère affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :

a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération, d'un événement ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;

b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.

(11) Subsections (5) and (7) apply in respect of payments arising on or after July 1, 2024.

(11) Les paragraphes (5) et (7) s'appliquent aux paiements se produisant après le 30 juin 2024.

25 (1) Subparagraph 96(2.1)(b)(ii) of the Act is replaced by the following:

(ii) the amount required by subsection 127(8) or 127.44(11) in respect of the partnership to be added in computing the investment tax credit or the

25 (1) Le sous-alinéa 96(2.1)b)(ii) de la même loi est remplacé par ce qui suit :

(ii) la partie du montant déterminé à l'égard de la société de personnes que les paragraphes 127(8) ou 127.44(11) prévoient d'ajouter dans le calcul du crédit d'impôt à l'investissement ou du *crédit d'impôt*

CCUS tax credit (as defined in subsection 127.44(1)) of the taxpayer for the taxation year,

pour le CUSC (au sens du paragraphe 127.44(1)) du contribuable pour l'année,

(2) Subparagraph 96(2.1)(b)(ii) of the Act, as enacted by subsection (1), is replaced by the following:

(ii) the amount required by subsections 127(8), 127.44(11) or 127.45(8) in respect of the partnership to be added in computing the investment tax credit, the *CCUS tax credit* (as defined in subsection 127.44(1)) or the *clean technology investment tax credit* (as defined in subsection 127.45(1)) of the taxpayer for the taxation year,

(2) Le sous-alinéa 96(2.1)b)(ii) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :

(ii) la partie du montant déterminé à l'égard de la société de personnes que les paragraphes 127(8), 127.44(11) ou 127.45(8) prévoient d'ajouter dans le calcul du crédit d'impôt à l'investissement, du *crédit d'impôt pour le CUSC* (au sens du paragraphe 127.44(1)) ou du *crédit d'impôt à l'investissement dans les technologies propres* (au sens du paragraphe 127.45(1)) du contribuable pour l'année,

(3) The portion of subsection 96(2.2) of the Act before paragraph (a) is replaced by the following:

(3) Le passage du paragraphe 96(2.2) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

At-risk amount

Fraction à risques d'un intérêt dans une société de personnes

(2.2) For the purposes of this section and sections 111, 127, 127.44 and 127.47, the at-risk amount of a taxpayer, in respect of a partnership of which the taxpayer is a limited partner, at any particular time is the amount, if any, by which the total of

(2.2) Pour l'application du présent article et des articles 111, 127, 127.44 et 127.47, la fraction à risques de l'intérêt d'un contribuable dans une société de personnes dont il est commanditaire à un moment donné correspond à l'excédent éventuel du total des montants suivants :

(4) The portion of subsection 96(2.2) of the Act before paragraph (a), as enacted by subsection (3), is replaced by the following:

(4) Le passage du paragraphe 96(2.2) de la même loi précédant l'alinéa a), édicté par le paragraphe (3), est remplacé par ce qui suit :

At-risk amount

Fraction à risques d'un intérêt dans une société de personnes

(2.2) For the purposes of this section and sections 111, 127, 127.44, 127.45 and 127.47, the at-risk amount of a taxpayer, in respect of a partnership of which the taxpayer is a limited partner, at any particular time is the amount, if any, by which the total of

(2.2) Pour l'application du présent article et des articles 111, 127, 127.44, 127.45 et 127.47, la fraction à risques de l'intérêt d'un contribuable dans une société de personnes dont il est commanditaire à un moment donné correspond à l'excédent éventuel du total des montants suivants :

(5) The portion of subsection 96(2.4) of the Act before paragraph (a) is replaced by the following:

(5) Le passage du paragraphe 96(2.4) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Limited partner

Commanditaire

(2.4) For the purposes of this section and sections 111, 127, 127.44 and 127.47 a taxpayer who is a member of a partnership at a particular time is a limited partner of the partnership at that time if the member's partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and if, at that time or within three years after that time,

(2.4) Pour l'application du présent article et des articles 111, 127, 127.44 et 127.47, le contribuable qui est, à un moment donné, un associé d'une société de personnes est commanditaire de cette société de personnes si sa participation dans celle-ci n'est pas, à ce moment, une participation exonérée au sens du paragraphe (2.5) et si, à ce moment ou dans les trois ans suivants :

(6) The portion of subsection 96(2.4) of the Act before paragraph (a), as enacted by subsection (5), is replaced by the following:

Limited partner

(2.4) For the purposes of this section and sections 111, 127, 127.44, 127.45 and 127.47 a taxpayer who is a member of a partnership at a particular time is a limited partner of the partnership at that time if the member's partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and if, at that time or within three years after that time,

(6) Le passage du paragraphe 96(2.4) de la même loi précédant l'alinéa a), édicté par le paragraphe (5), est remplacé par ce qui suit :

Commanditaire

(2.4) Pour l'application du présent article et des articles 111, 127, 127.44, 127.45 et 127.47, le contribuable qui est, à un moment donné, un associé d'une société de personnes est commanditaire de cette société de personnes si sa participation dans celle-ci n'est pas, à ce moment, une participation exonérée au sens du paragraphe (2.5) et si, à ce moment ou dans les trois ans suivants :

(7) The portion of subsection 96(3) of the Act before paragraph (a) is replaced by the following:

Agreement or election of partnership members

(3) If a taxpayer who was a member of a partnership at any time in a fiscal period has, for any purpose relevant to the computation of the taxpayer's income from the partnership for the fiscal period, made or executed an agreement, designation or election under or in respect of the application of any of subsections 10.1(1), 13(4), (4.2) and (16), the definition *excluded interest* in subsection 18.2(1), subsections 20(9) and 21(1) to (4), section 22, subsection 29(1), section 34, clause 37(8)(a)(ii)(B), subsections 44(1) and (6), 50(1) and 80(5) and (9) to (11), section 80.04, subsections 86.1(2), 88(3.1), (3.3) and (3.5) and 90(3), the definition *relevant cost base* in subsection 95(4) and subsections 97(2), 139.1(16) and (17) and 249.1(4) and (6) that, if this Act were read without reference to this subsection, would be a valid agreement, designation or election,

(7) Le passage du paragraphe 96(3) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Convention ou choix d'un associé

(3) Si un contribuable qui est l'associé d'une société de personnes au cours d'un exercice a fait ou signé un choix ou une convention à une fin quelconque liée au calcul de son revenu tiré de la société de personnes pour l'exercice, ou a indiqué une somme à une telle fin, en application de l'un des paragraphes 10.1(1), 13(4), (4.2) et (16), de la définition de *intérêts exclus* au paragraphe 18.2(1), des paragraphes 20(9) et 21(1) à (4), de l'article 22, du paragraphe 29(1), de l'article 34, de la division 37(8)a)(ii)(B), des paragraphes 44(1) et (6), 50(1) et 80(5) et (9) à (11), de l'article 80.04, des paragraphes 86.1(2), 88(3.1), (3.3) et (3.5) et 90(3), de la définition de *prix de base approprié* au paragraphe 95(4) et des paragraphes 97(2), 139.1(16) et (17) et 249.1(4) et (6), lequel choix ou laquelle convention ou indication de somme serait valide en l'absence du présent paragraphe, les règles ci-après s'appliquent :

(8) Subsections (1), (3) and (5) are deemed to have come into force on January 1, 2022.

(8) Les paragraphes (1), (3) et (5) sont réputés être entrés en vigueur le 1er janvier 2022.

(9) Subsections (2), (4) and (6) are deemed to have come into force on March 28, 2023.

(9) Les paragraphes (2), (4) et (6) sont réputés être entrés en vigueur le 28 mars 2023.

(10) Subsection (7) applies in respect of taxation years that begin on or after October 1, 2023.

(10) Le paragraphe (7) s'applique relativement aux années d'imposition commençant après septembre 2023.

26 (1) Paragraph (a.1) of the definition *trust* in subsection 108(1) of the Act is replaced by the following:

(a.1) a trust (other than a trust described in paragraph (a), (d) or (h), a trust to which subsection 7(2) or (6) applies or a trust prescribed for the purpose of subsection 107(2)) all or substantially all of the property of which is held for the purpose of providing benefits to individuals each of whom is provided with

26 (1) L'alinéa a.1) de la définition de *fiducie*, au paragraphe 108(1) de la même loi, est remplacé par ce qui suit :

a.1) la fiducie (sauf celle visée aux alinéas a), d) ou h), celle à laquelle les paragraphes 7(2) ou (6) s'appliquent et celle qui est visée par règlement pour l'application du paragraphe 107(2)) dont la totalité ou la presque totalité des biens sont détenus en vue d'assurer des prestations à des particuliers auxquels des

benefits in respect of, or because of, an office or employment or former office or employment of any individual,

(2) The definition *trust* in subsection 108(1) of the Act is amended by striking out "or" at the end of paragraph (f), by adding "or" at the end of paragraph (g) and by adding the following after paragraph (g):

(h) an employee ownership trust.

(3) Subsections (1) and (2) apply in respect of transactions that occur on or after January 1, 2024.

27 (1) Subsection 111(1) of the Act is amended by adding the following after paragraph (a):

Restricted interest and financing expenses

(a.1) restricted interest and financing expenses for taxation years preceding the year, but no amount is deductible for the year in respect of restricted interest and financing expenses except to the extent of the amount determined by the formula

A + B

where

A is the amount that would be the taxpayer's excess capacity for the year if the amount determined for C in paragraph (b) of the definition *excess capacity* in subsection 18.2(1) were nil, and

B is the total of all amounts, each of which is an amount of *received capacity* (as defined in subsection 18.2(1)) of the taxpayer for the year;

(2) Clause 111(1)(e)(ii)(A) of the Act is replaced by the following:

(A) the amount required by subsection 127(8) or 127.44(11) in respect of the partnership to be added in computing the investment tax credit or the *CCUS tax credit* (as defined in subsection 127.44(1)) of the taxpayer for the taxation year,

(3) Clause 111(1)(e)(ii)(A) of the Act, as enacted by subsection (2), is replaced by the following:

(A) the amount required by subsections 127(8), 127.44(11) or 127.45(8) in respect of the partnership to be added in computing the investment

prestations sont assurées dans le cadre ou au titre de la charge ou de l'emploi actuel ou ancien d'un particulier;

(2) La définition de *fiducie*, au paragraphe 108(1) de la même loi, est modifiée par adjonction, après l'alinéa g), de ce qui suit :

h) une fiducie collective des employés.

(3) Les paragraphes (1) et (2) s'appliquent aux opérations se produisant après le 31 décembre 2023.

27 (1) Le paragraphe 111(1) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :

Dépenses d'intérêts et de financement restreintes

a.1) ses dépenses d'intérêts et de financement restreintes pour les années d'imposition précédant l'année; toutefois, la somme déductible pour l'année à titre de dépenses d'intérêts et de financement restreintes ne peut excéder la somme obtenue par la formule suivante :

A + B

où :

A représente le montant qui serait la capacité excédentaire du contribuable pour l'année si la valeur de l'élément C de l'alinéa b) de la formule figurant à la définition de *capacité excédentaire* au paragraphe 18.2(1) était nulle,

B le total des montants représentant chacun un montant de *capacité reçue* (au sens du paragraphe 18.2(1)) du contribuable pour l'année;

(2) La division 111(1)e)(ii)(A) de la même loi est remplacée par ce qui suit :

(A) la partie du montant déterminé à l'égard de la société de personnes que les paragraphes 127(8) ou 127.44(11) prévoient d'ajouter au crédit d'impôt à l'investissement ou au *crédit d'impôt pour le CUSC* (au sens du paragraphe 127.44(1)) du contribuable pour l'année,

(3) La division 111(1)e)(ii)(A) de la même loi, édictée par le paragraphe (2), est remplacée par ce qui suit :

(A) la partie du montant déterminé à l'égard de la société de personnes que les paragraphes 127(8), 127.44(11) ou 127.45(8) prévoient

tax credit, the *CCUS tax credit* (as defined in subsection 127.44(1)) or the *clean technology investment tax credit* (as defined in subsection 127.45(1)) of the taxpayer for the taxation year,

d'ajouter au crédit d'impôt à l'investissement, au *crédit d'impôt pour le CUSC* (au sens du paragraphe 127.44(1)) ou au *crédit d'impôt à l'investissement dans les technologies propres* (au sens du paragraphe 127.45(1)) du contribuable pour l'année,

(4) The portion of subsection 111(3) of the Act before subparagraph (a)(i.1) is replaced by the following:

(4) Le passage du paragraphe 111(3) de la même loi précédant le sous-alinéa a)(i.1) est remplacé par ce qui suit :

Limitation on deductibility

(3) For the purposes of subsection (1),

Restriction des déductions

(3) Pour l'application du paragraphe (1) :

(a) an amount in respect of a non-capital loss, restricted interest and financing expense, restricted farm loss, farm loss or limited partnership loss, as the case may be, for a taxation year is deductible, and an amount in respect of a net capital loss for a taxation year may be claimed, in computing the taxable income of a taxpayer for a particular taxation year only to the extent that it exceeds the total of

a) une somme au titre d'une perte autre qu'une perte en capital, d'une dépense d'intérêts et de financement restreinte, d'une perte agricole restreinte, d'une perte agricole ou d'une perte comme commanditaire pour une année d'imposition n'est déductible, et la déduction d'une somme au titre d'une perte en capital nette pour une année d'imposition ne peut être demandée, dans le calcul du revenu imposable d'un contribuable pour une année d'imposition donnée que dans la mesure où la somme dépasse le total des montants suivants :

(i) amounts deducted under this section in respect of that non-capital loss, restricted interest and financing expense, restricted farm loss, farm loss or limited partnership loss in computing taxable income (or, in the case of a restricted interest and financing expense, in computing a non-capital loss) for taxation years preceding the particular taxation year,

(i) les sommes déduites selon le présent article, au titre de cette perte autre qu'une perte en capital, de cette dépense d'intérêts et de financement restreinte, de cette perte agricole restreinte, perte agricole ou perte comme commanditaire, dans le calcul du revenu imposable (ou, dans le cas d'une dépense d'intérêts et de financement restreinte, dans le calcul d'une perte autre qu'une perte en capital) pour les années d'imposition antérieures à l'année donnée,

(5) Paragraph 111(3)(a) of the Act is amended by striking out "and" at the end of subparagraph (i.1) and by adding the following after subparagraph (ii):

(5) L'alinéa 111(3)a) de la même loi est modifié par adjonction, après le sous-alinéa (ii), de ce qui suit :

(iii) amounts claimed in respect of that limited partnership loss in computing taxable income for taxation years preceding the particular taxation year to the extent that subsection 18.2(2) denied a deduction in respect of those amounts for the preceding taxation year; and

(iii) les sommes demandées relativement à cette perte comme commanditaire dans le calcul du revenu imposable pour les années d'imposition précédant l'année d'imposition donnée dans la mesure où le paragraphe 18.2(2) a refusé une déduction relativement à ces sommes pour l'année d'imposition précédente;

(6) The portion of paragraph 111(3)(b) of the Act before subparagraph (i) is replaced by the following:

(6) Le passage de l'alinéa 111(3)b) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :

(b) no amount is deductible in respect of a non-capital loss, restricted interest and financing expense, net

b) aucune somme n'est déductible au titre d'une perte autre qu'une perte en capital, d'une dépense d'intérêts

capital loss, restricted farm loss, farm loss or limited partnership loss, as the case may be, for a taxation year until

et de financement restreinte, d'une perte en capital nette, d'une perte agricole restreinte, d'une perte agricole ou d'une perte comme commanditaire pour une année d'imposition avant que :

(7) Paragraph 111(3)(b) of the Act is amended by adding the following after subparagraph (i):

(7) L'alinéa 111(3)b) de la même loi est modifié par adjonction, après le sous-alinéa (i), ce qui suit :

(i.1) in the case of a restricted interest and financing expense, the restricted interest and financing expenses,

(i.1) dans le cas d'une dépense d'intérêts et de financement restreinte, les dépenses d'intérêts et de financement restreintes,

(8) The portion of subsection 111(5) of the Act before subparagraph (a)(i) is replaced by the following:

(8) Le passage du paragraphe 111(5) de la même loi précédant le sous-alinéa a)(i) est remplacé par ce qui suit :

Loss restriction event — certain losses and expenses

Fait lié à la restriction de pertes — certaines pertes et certaines dépenses

(5) If at any time a taxpayer is subject to a loss restriction event,

(5) Si à un moment donné un contribuable est assujetti à un fait lié à la restriction de pertes :

(a) no amount in respect of the taxpayer's non-capital loss, restricted interest and financing expense or farm loss for a taxation year that ended before that time is deductible by the taxpayer for a taxation year that ends after that time, except that the portion of the taxpayer's non-capital loss, restricted interest and financing expense or farm loss, as the case may be, for a taxation year that ended before that time as may reasonably be regarded as the taxpayer's loss from carrying on a business or the taxpayer's expense or loss incurred in the course of carrying on a business, as the case may be, and, if a business was carried on by the taxpayer in that year, the portion of the non-capital loss as may reasonably be regarded as being in respect of an amount deductible under paragraph 110(1)(k) in computing the taxpayer's taxable income for that year is deductible by the taxpayer for a particular taxation year that ends after that time

a) aucune somme au titre d'une perte autre qu'une perte en capital, d'une dépense d'intérêts et de financement restreinte ou d'une perte agricole pour une année d'imposition s'étant terminée avant ce moment n'est déductible par le contribuable pour une année d'imposition se terminant après ce moment; toutefois, la partie de la perte autre qu'une perte en capital, de la dépense d'intérêts et de financement restreinte ou de la perte agricole, selon le cas, du contribuable pour une année d'imposition s'étant terminée avant ce moment qu'il est raisonnable de considérer comme étant la perte du contribuable provenant de l'exploitation d'une entreprise ou la dépense engagée ou la perte subie par le contribuable dans le cadre de l'exploitation d'une entreprise, selon le cas, et, si le contribuable exploitait une entreprise au cours de cette année, la partie de la perte autre qu'une perte en capital qu'il est raisonnable de considérer comme se rapportant à une somme déductible en application de l'alinéa 110(1)k) dans le calcul de son revenu imposable pour l'année, ne sont déductibles par le contribuable pour une année d'imposition donnée se terminant après ce moment :

(9) Section 111 of the Act is amended by adding the following after subsection (5):

(9) L'article 111 de la même loi est modifié par adjonction, après le paragraphe (5), de ce qui suit :

Loss restriction event – cumulative unused excess capacity

Fait lié à la restriction de pertes — capacité excédentaire cumulative inutilisée

(5.01) If at any time a particular taxpayer is subject to a loss restriction event, the cumulative unused excess capacity of any taxpayer for any taxation year that ends after that time shall be determined without regard to any absorbed capacity, excess capacity or transferred capacity

(5.01) Si un contribuable donné est assujetti à un fait lié à la restriction de pertes à un moment donné, la capacité excédentaire cumulative inutilisée de tout contribuable pour toute année d'imposition qui se termine après ce moment est déterminée compte non tenu de toute

of the particular taxpayer for any taxation year that ended before that time.

(10) 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)(a.1) or (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

(11) Subsection 111(8) of the Act is amended by adding the following in alphabetical order:

restricted interest and financing expense of a taxpayer for a taxation year means the amount determined by the formula

A + B + C

where

A is the total of all amounts each of which is the portion of an amount that is not deductible in computing the income for the taxation year of the taxpayer from a business or property, or the taxable income of the taxpayer for the year, or does not reduce the amount determined under paragraph 3(b) in respect of the taxpayer for the year, because of subsection 18.2(2),

B is the amount determined under paragraph 12(1)(l.2) in respect of the taxpayer for the taxation year, and

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

D × E

where

D is the portion of an amount that is not deductible because of subclause 95(2)(f.11)(ii)(D)(I), or an amount that is included because of subclause 95(2)(f.11)(ii)(D)(II), in determining, in respect of the taxpayer for an *affiliate taxation year* (as defined in subsection 18.2(1)) of a controlled foreign affiliate of the taxpayer ending in the taxation year, an amount of the affiliate that is described in subparagraph 95(2)(f)(ii), and

E is the taxpayer's *specified participating percentage* (as defined in subsection 18.2(1)) in respect of the affiliate for the affiliate taxation year; (*dépense d'intérêts et de financement restreinte*)

capacité absorbée, capacité excédentaire ou capacité transférée du contribuable donné pour une année d'imposition qui s'est terminée avant ce moment.

(10) L'alinéa b) de l'élément E de la deuxième formule figurant à la définition de *perte autre qu'une perte en capital*, au paragraphe 111(8) de la même loi, est remplacé par ce qui suit :

b) une somme déduite en application des alinéas (1)a.1) ou b) de l'article 110.6, ou déductible en application de l'un des alinéas 110(1)d) à d.3), f), g) et k), de l'article 112 et des paragraphes 113(1) et 138(6), dans le calcul de son revenu imposable pour l'année,

(11) Le paragraphe 111(8) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

dépense d'intérêts et de financement restreinte Quant à un contribuable pour une année d'imposition, s'entend de la somme obtenue par la formule suivante :

A + B + C

où :

A représente le total des sommes dont chacune représente la fraction d'un montant qui n'est pas déductible dans le calcul du revenu du contribuable pour l'année d'imposition provenant d'une entreprise ou d'un bien, ou le revenu imposable du contribuable, ou ne réduit pas la somme déterminée selon l'alinéa 3b) relativement au contribuable pour l'année, pour l'année, par l'effet du paragraphe 18.2(2);

B la somme déterminée selon l'alinéa 12(1)l.2) relativement au contribuable pour l'année d'imposition;

C le total des sommes dont chacune représente une somme obtenue par la formule suivante :

D × E

où :

D représente la fraction d'une somme qui n'est pas déductible par l'effet de la subdivision 95(2)f.11)(ii)(D)(I), ou une somme qui est incluse par l'effet de la subdivision 95(2)f.11)(ii)(D)(II), dans le calcul, relativement au contribuable pour une *année d'imposition de la société affiliée* (au sens du paragraphe 18.2(1)) d'une société étrangère affiliée contrôlée du contribuable se terminant dans l'année d'imposition, une somme de la société affiliée visée au sous-alinéa 95(2)f)(ii);

E le *pourcentage de participation déterminé* (au sens du paragraphe 18.2(1)) du contribuable relativement à la société affiliée pour l'année

d'imposition de la société affiliée. (*restricted interest and financing expense*)

(12) The portion of subsection 111(9) of the Act before paragraph (a) is replaced by the following:

Exception

(9) In this section, a taxpayer's non-capital loss, restricted interest and financing expense, net capital loss, restricted farm loss, farm loss and limited partnership loss for a taxation year during which the taxpayer was not resident in Canada shall be determined as if

(12) Le passage du paragraphe 111(9) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Exception

(9) Au présent article, la perte autre qu'une perte en capital, la dépense d'intérêts et de financement restreinte, la perte en capital nette, la perte agricole restreinte, la perte agricole et la perte comme commanditaire engagée ou subies par un contribuable pour une année d'imposition pendant laquelle il ne résidait pas au Canada sont calculées comme si :

(13) Subsections (1) and (4) to (12) apply in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsections (1) to (10) also apply in respect of a taxation year of a taxpayer that begins before, and ends after, October 1, 2023 if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.

(13) Les paragraphes (1) et (4) à (12) s'appliquent relativement aux années d'imposition d'un contribuable commençant après septembre 2023. Toutefois, les paragraphes (1) à (10) s'appliquent aussi relativement à une année d'imposition d'un contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :

a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération ou d'un événement, ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;

b) il est raisonnable de considérer que l'un des objets de l'opération, l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.

(14) Subsection (2) is deemed to have come into force on January 1, 2022.

(14) Le paragraphe (2) est réputé être entré en vigueur le 1er janvier 2022.

(15) Subsection (3) is deemed to have come into force on March 28, 2023.

(15) Le paragraphe (3) est réputé être entré en vigueur le 28 mars 2023.

28 (1) Section 112 of the Act is amended by adding the following after subsection (2):

28 (1) L'article 112 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :

Mark-to-market property

(2.01) No deduction may be made under subsection (1) or (2) or 138(6) in computing the taxable income of a corporation for a taxation year in respect of a dividend received on a share if

Bien évalué à la valeur du marché

(2.01) Aucune déduction ne peut être faite en application des paragraphes (1) ou (2) ou 138(6) dans le calcul du revenu imposable d'une société pour une année d'imposition à l'égard d'un dividende reçu sur une action si, à la fois :

(a) the corporation is a financial institution at any time in the year; and

(b) the share

(i) is a mark-to-market property of the corporation for the year, or

(ii) would be a mark-to-market property of the corporation for the year if the share was held at any time in the year by the corporation.

Tracking property and preferred shares

(2.02) For the purpose of paragraph (2.01)(b),

(a) a share (other than a share of a financial institution) is deemed to be a mark-to-market property of the corporation for the year if the share

(i) is a tracking property of the corporation at any time in the year, or

(ii) would be a tracking property of the corporation if the share was held at any time in the year by the corporation; and

(b) a taxable preferred share is deemed not to be a mark-to-market property of the corporation for the year unless the share would be described in subparagraph (a)(i) or (ii) if paragraph (a) were read without reference to "(other than a share of a financial institution)".

(2.03) Subsection (2.01) does not apply to a dividend received by an insurance corporation in a taxation year that is

(a) either

(i) received on a share (other than a share described in subparagraph (2.02)(a)(i)) held by the corporation in connection with an insurance contract entered into, issued or acquired in the ordinary course of an insurance business of the corporation, or

(ii) deemed to be received by the corporation as a result of a designation by a mutual fund trust under subsection 104(19) in respect of a unit of the trust that is held by the corporation in connection with an insurance contract entered into, issued or acquired in the ordinary course of an insurance business of the corporation; and

(b) identified in the corporation's return of income under this Part for the year.

a) la société est une institution financière à un moment donné de l'année;

b) l'action, selon le cas :

(i) est un bien évalué à la valeur du marché de la société pour l'année,

(ii) serait un bien évalué à la valeur du marché de la société pour l'année dans le cas où l'action était détenue à un moment donné de l'année par la société.

Bien à évaluer et actions privilégiées

(2.02) Pour l'application de l'alinéa (2.01)b) :

a) une action (sauf une action d'une institution financière) est réputée être un bien évalué à la valeur du marché de la société pour l'année si l'action, selon le cas :

(i) est un bien à évaluer de la société à un moment donné de l'année,

(ii) serait un bien à évaluer de la société dans le cas où l'action était détenue à un moment donné de l'année par la société;

b) une action privilégiée imposable est réputée ne pas être un bien évalué à la valeur du marché de la société pour l'année, sauf si l'action était visée aux sous-alinéas a)(i) ou (ii) si l'alinéa a) s'appliquait compte non tenu de son passage « (sauf une action d'une institution financière) ».

(2.03) Le paragraphe (2.01) ne s'applique pas à un dividende reçu par une compagnie d'assurance au cours d'une année d'imposition qui est, à la fois :

a) soit

(i) reçu sur une action (sauf une action visée au sous-alinéa (2.02)a)(i)) détenue par la compagnie en lien avec un contrat d'assurance conclu, émis ou acquis dans le cours normal d'une entreprise d'assurance de la compagnie,

(ii) réputé avoir été reçu par la compagnie à la suite d'une désignation par une fiducie de fonds commun de placement visée au paragraphe 104(19) relativement à une part de la fiducie qui est détenue par la compagnie en lien avec un contrat d'assurance conclu, émis ou acquis dans le cours normal d'une entreprise d'assurance de la compagnie;

b) identifié dans la déclaration de revenu de la compagnie produite en vertu de la présente partie pour l'année.

(2) Paragraph 112(6)(c) of the Act is replaced by the following:

(c) *financial institution*, *mark-to-market property* and *tracking property* have the same meaning as in subsection 142.2(1).

(3) Subsections (1) and (2) apply in respect of dividends received after 2023.

29 (1) Subsection 113(3) of the Act is amended by adding the following definitions in alphabetical order:

deductible, in relation to an amount in respect of a payment, in computing relevant foreign income or profits, has the same meaning as in subsection 18.4(1). (*déductible*)

entity has the same meaning as in subsection 95(1). (*entité*)

equity interest has the same meaning as in subsection 18.4(1). (*participation au capital*)

foreign expense restriction rule has the same meaning as in subsection 18.4(1). (*régle étrangère de restriction des dépenses*)

foreign hybrid mismatch rule has the same meaning as in subsection 18.4(1). (*règle étrangère d'asymétrie hybride*)

foreign taxation year of an entity has the same meaning as in subsection 18.4(1). (*année d'imposition étrangère*)

relevant foreign income or profits of an entity for a foreign taxation year has the same meaning as in subsection 18.4(1). (*revenus ou bénéfices étrangers pertinents*)

(2) Section 113 of the Act is amended by adding the following after subsection (4):

Deduction restriction

(5) Any amount that, in the absence of this subsection, would be a dividend received by a corporation resident in Canada on a share owned by it of the capital stock of a foreign affiliate of the corporation is deemed, for the purposes of this section (other than this subsection), not to be a dividend received by the corporation on a share of the capital stock of the affiliate to the extent of the total of all amounts, each of which, in respect of the dividend,

(2) L'alinéa 112(6)c) de la même loi est remplacé par ce qui suit :

c) les expressions *bien à évaluer*, *bien évalué à la valeur du marché* et *institution financière* s'entendent au sens du paragraphe 142.2(1).

(3) Les paragraphes (1) et (2) s'appliquent relativement aux dividendes reçus après 2023.

29 (1) Le paragraphe 113(3) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

année d'imposition étrangère S'agissant d'une entité, s'entend au sens du paragraphe 18.4(1). (*foreign taxation year*)

déductible À l'égard d'une somme relativement à un paiement, dans le calcul des revenus ou bénéfices étrangers pertinents, s'entend au sens du paragraphe 18.4(1). (*deductible*)

entité S'entend au sens du paragraphe 95(1). (*entity*)

participation au capital S'entend au sens du paragraphe 18.4(1). (*equity interest*)

règle étrangère d'asymétrie hybride S'entend au sens du paragraphe 18.4(1). (*foreign hybrid mismatch rule*)

règle étrangère de restriction des dépenses S'entend au sens du paragraphe 18.4(1). (*foreign expense restriction rule*)

revenus ou bénéfices étrangers pertinents S'agissant d'une entité pour une année d'imposition étrangère, s'entend au sens du paragraphe 18.4(1). (*relevant foreign income or profits*)

(2) L'article 113 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :

Limitation de la déduction

(5) Toute somme qui, en l'absence du présent paragraphe, serait un dividende reçu par une société résidant au Canada sur une action lui appartenant du capital-actions d'une société étrangère affiliée de la société est réputée, pour l'application du présent article, à l'exception du présent paragraphe, ne pas être un dividende reçu par la société sur une action du capital-actions de la société étrangère affiliée, dans la mesure où le total des montants dont chacun, relativement au dividende, selon le cas :

(a) is an amount that is or can reasonably be expected to be deductible in computing

(i) relevant foreign income or profits, for a foreign taxation year, of

(A) the affiliate, or

(B) another entity (other than the corporation) because that entity has a direct or indirect equity interest in the affiliate, or

(ii) income or profits of the affiliate that are taken into account in determining relevant foreign income or profits of another entity for a foreign taxation year; or

(b) would, in the absence of any foreign hybrid mismatch rule or foreign expense restriction rule, be described in paragraph (a).

a) représente un montant qui est déductible, ou dont il raisonnable de s'attendre à ce qu'il le soit, dans le calcul des montants suivants, selon le cas :

(i) les revenus ou bénéfices étrangers pertinents, pour une année d'imposition étrangère, de ce qui suit :

(A) soit la société affiliée,

(B) soit une autre entité (autre que la société) du fait que celle-ci détient une participation au capital directe ou indirecte dans la société affiliée,

(ii) les revenus ou bénéfices de la société affiliée qui sont pris en compte dans le calcul des revenus ou bénéfices étrangers pertinents d'une autre entité pour une année d'imposition étrangère;

b) serait, en l'absence d'une règle étrangère d'asymétrie hybride ou d'une règle étrangère de restriction des dépenses, visé à l'alinéa a).

Deduction for foreign taxes

(6) If, for the purposes of this section (other than subsection (5)), all or any portion of a particular amount is deemed by subsection (5) not to be a dividend received by a corporation on a share of the capital stock of a foreign affiliate in a taxation year of the corporation, there may be deducted from the corporation's income for the taxation year for the purpose of computing its taxable income for the year an amount equal to the lesser of

(a) the particular amount or portion of the particular amount, as the case may be, and

(b) the amount determined by the formula

A × B

where

A is the non-business-income tax paid by the corporation applicable to the particular amount or portion of the particular amount, as the case may be, and

B is the corporation's relevant tax factor for the year.

Déduction au titre d'impôts étrangers

(6) Si, pour l'application du présent article (sauf le paragraphe (5)), la totalité ou une partie d'un montant donné est réputée par le paragraphe (5) ne pas être un dividende reçu par une société sur une action du capital-actions d'une société étrangère affiliée dans une année d'imposition de la société, une somme égale à la moins élevée des sommes ci-après peut être déduite du revenu pour l'année d'imposition de la société pour le calcul de son revenu imposable pour l'année :

a) la somme donnée ou la partie de celle-ci, selon le cas;

b) la somme obtenue par la formule suivante :

A × B

où :

A représente l'impôt sur le revenu ne provenant pas d'une entreprise payé par la société et applicable à la somme donnée ou à la partie de celle-ci, selon le cas,

B le facteur fiscal approprié à la société pour l'année.

Filing Requirement

(7) Each corporation shall file with its return of income for a taxation year a prescribed form containing prescribed information if subsection (5) deems an amount not to be a dividend received by the corporation on a share of the capital stock of a foreign affiliate.

Exigence relative à la production de déclarations de revenus

(7) Chaque société est tenue de produire, avec sa déclaration de revenu pour une année d'imposition, un formulaire prescrit contenant les renseignements prescrits si, selon le paragraphe (5), une somme est réputée ne pas

être un dividende que la société reçoit sur une action du capital-actions d'une société étrangère affiliée.

(3) Subsections (1) and (2) apply in respect of any dividend received by a corporation resident in Canada on a share owned by the corporation of the capital stock of a foreign affiliate of the corporation on or after July 1, 2022, except that subsection 113(7) of the Act, as enacted by subsection (2), does not apply in respect of any dividend received before July 1, 2023.

(3) Les paragraphes (1) et (2) s'appliquent relativement à tout dividende reçu par une société résidant au Canada sur une action détenue par la société du capital-actions d'une société étrangère affiliée de la société après le 30 juin 2022. Toutefois, le paragraphe 113(7) de la même loi, édicté par le paragraphe (2), ne s'applique pas relativement à tout dividende reçu avant le 1er juillet 2023.

30 (1) Subsection 122.8(1) of the Act is amended by adding the following in alphabetical order:

relevant census means

(a) for the 2023 and 2024 taxation years, the 2016 census published by Statistics Canada; and

(b) in any other case, the last census published by Statistics Canada before the taxation year. (*recensement pertinent*)

30 (1) Le paragraphe 122.8(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

recensement pertinent

a) pour les années d'imposition 2023 et 2024, le recensement de 2016 publié par Statistique Canada;

b) sinon, le dernier recensement publié par Statistique Canada avant l'année d'imposition. (*relevant census*)

(2) Paragraph (a) of the description of E in subsection 122.8(4) of the Act is replaced by the following:

(a) 1.2, if there is a census metropolitan area, as determined in the relevant census, in the relevant province and the individual does not reside in a census metropolitan area at the beginning of the specified month, and

(2) L'alinéa a) de l'élément E de la formule figurant au paragraphe 122.8(4) de la même loi est remplacé par ce qui suit :

a) si la province visée compte une région métropolitaine de recensement, selon le recensement pertinent, et que le particulier ne réside pas dans une telle région au début du mois déterminé, 1,2,

(3) Subsections (1) and (2) apply to the 2023 and subsequent taxation years.

(3) Les paragraphes (1) et (2) s'appliquent aux années d'imposition 2023 et suivantes.

31 (1) The portion of section 123.3 of the Act before paragraph (a) is replaced by the following:

Refundable tax — CCPC or substantive CCPC

123.3 There shall be added to the tax otherwise payable under this Part for each taxation year by a corporation that is a Canadian-controlled private corporation throughout the year — or a substantive CCPC at any time in the year — an amount equal to 10 2/3% of the lesser of

31 (1) Le passage de l'article 123.3 de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Impôt remboursable — SPCC ou SPCC en substance

123.3 Est à ajouter à l'impôt payable par ailleurs en vertu de la présente partie pour chaque année d'imposition par une société qui est une société privée sous contrôle canadien tout au long de l'année — ou une SPCC en substance à un moment donné au cours de l'année — le montant représentant 10 2/3 % du moins élevé des montants suivants :

(2) Subsection (1) applies to taxation years that end on or after April 7, 2022.

(2) Le paragraphe (1) s'applique aux années d'imposition se terminant à compter du 7 avril 2022.

32 (1) The portion of paragraph (b) of the definition *full rate taxable income* in subsection 123.4(1) of the Act before subparagraph (i) is replaced by the following:

(b) if the corporation is a Canadian-controlled private corporation throughout the year or a substantive CCPC at any time in the year, the amount by which that portion of the corporation's taxable income for the year that is subject to tax under subsection 123(1) exceeds the total of

(2) Subsection (1) applies to taxation years that end on or after April 7, 2022.

33 (1) The description of A in subsection 125.2(2) of the Act is replaced by the following:

A is

(a) 0.075, if the taxation year begins after 2021 and before 2032,

(b) 0.05625, if the taxation year begins after 2031 and before 2033,

(c) 0.0375, if the taxation year begins after 2032 and before 2034,

(d) 0.01875, if the taxation year begins after 2033 and before 2035, and

(e) nil, in any other case;

(2) The description of C in subsection 125.2(2) of the Act is replaced by the following:

C is

(a) 0.045, if the taxation year begins after 2021 and before 2032,

(b) 0.03375, if the taxation year begins after 2031 and before 2033,

(c) 0.0225, if the taxation year begins after 2032 and before 2034,

(d) 0.01125, if the taxation year begins after 2033 and before 2035, and

(e) nil, in any other case; and

34 (1) Paragraph 127(8.1)(b) of the Act is replaced by the following:

(b) the taxpayer's at-risk amount in respect of the partnership, less the total of all amounts required by a *clean economy allocation provision* (as defined in subsection 127.47(1)) to be added in computing a *clean economy tax credit* (as defined in subsection

32 (1) Le passage de l'alinéa b) de la définition de *revenu imposable au taux complet*, précédant le sous-alinéa (i), au paragraphe 123.4(1) de la même loi est remplacé par ce qui suit :

b) si la société est une société privée sous contrôle canadien tout au long de l'année ou une SPCC en substance à un moment donné au cours de l'année, l'excédent de la partie de son revenu imposable pour l'année qui est assujettie à l'impôt prévu au paragraphe 123(1) sur le total des montants suivants :

(2) Le paragraphe (1) s'applique aux années d'imposition se terminant à compter du 7 avril 2022.

33 (1) L'élément A de la formule figurant au paragraphe 125.2(2) de la même loi est remplacé par ce qui suit :

A représente :

a) 0,075, si l'année d'imposition commence après 2021 et avant 2032,

b) 0,05625, si l'année d'imposition commence après 2031 et avant 2033,

c) 0,0375, si l'année d'imposition commence après 2032 et avant 2034,

d) 0,01875, si l'année d'imposition commence après 2033 et avant 2035,

e) zéro, dans les autres cas;

(2) L'élément C de la formule figurant au paragraphe 125.2(2) de la même loi est remplacé par ce qui suit :

C :

a) 0,045, si l'année d'imposition commence après 2021 et avant 2032,

b) 0,03375, si l'année d'imposition commence après 2031 et avant 2033,

c) 0,0225, si l'année d'imposition commence après 2032 et avant 2034,

d) 0,01125, si l'année d'imposition commence après 2033 et avant 2035,

e) zéro, dans les autres cas;

34 (1) L'alinéa 127(8.1)b) de la même loi est remplacé par ce qui suit :

b) la fraction à risques de l'intérêt du contribuable dans la société de personnes, moins le total des sommes à ajouter, en vertu d'une *disposition d'allocation pour l'économie propre* (au sens du paragraphe 127.47(1)), au calcul d'un *crédit d'impôt pour*

127.47(1)) of the taxpayer at the end of that fiscal period.

(2) The definition *government assistance* in subsection 127(9) of the Act is replaced by the following:

government assistance means assistance from a government, municipality or other public authority whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance, other than as a deduction under subsection (5) or (6) or a deemed payment on account of tax payable under subsection 127.44(2); (*aide gouvernementale*)

(3) The definition *government assistance* in subsection 127(9) of the Act, as amended by subsection (2), is replaced by the following:

government assistance means assistance from a government, municipality or other public authority whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance, other than as a deduction under subsection (5) or (6) or a deemed payment on account of tax payable under subsection 127.44(2) or 127.45(2); (*aide gouvernementale*)

(4) The definition *non-government assistance* in subsection 127(9) of the Act is replaced by the following:

non-government assistance means an amount (other than an amount received directly from a government, municipality or other public authority) that would be included in income under paragraph 12(1)(x) if that paragraph were read without reference to subparagraphs 12(1)(x)(v) to (vii); (*aide non gouvernementale*)

(5) Subsections (1) and (2) are deemed to have come into force on January 1, 2022.

(6) Subsection (3) is deemed to have come into force on March 28, 2023.

35 (1) The Act is amended by adding the following after section 127.43:

Definitions

127.44 (1) The following definitions apply in this section, Part XII.7 and in Schedule II to the *Income Tax Regulations*.

captured carbon means captured carbon dioxide that

l'économie propre (au sens du paragraphe 127.47(1)) du contribuable à la fin de l'exercice en cause.

(2) La définition de *aide gouvernementale*, au paragraphe 127(9) de la même loi, est remplacée par ce qui suit :

aide gouvernementale Aide reçue d'un gouvernement, d'une municipalité ou d'une autre administration sous forme de prime, subvention, prêt à remboursement conditionnel, déduction de l'impôt ou allocation de placement ou sous toute autre forme, à l'exclusion d'une déduction prévue aux paragraphes (5) ou (6) ou d'un paiement réputé au titre de l'impôt payable en vertu du paragraphe 127.44(2). (*government assistance*)

(3) La définition de *aide gouvernementale*, au paragraphe 127(9) de la même loi, modifiée par le paragraphe (2), est remplacée par ce qui suit :

aide gouvernementale Aide reçue d'un gouvernement, d'une municipalité ou d'une autre administration sous forme de prime, subvention, prêt à remboursement conditionnel, déduction de l'impôt ou allocation de placement ou sous toute autre forme, à l'exclusion d'une déduction prévue aux paragraphes (5) ou (6) ou d'un paiement réputé au titre de l'impôt payable en vertu des paragraphes 127.44(2) ou 127.45(2). (*government assistance*)

(4) La définition de *aide non gouvernementale*, au paragraphe 127(9) de la même loi, est remplacée par ce qui suit :

aide non gouvernementale Somme (autre qu'une somme reçue directement d'un gouvernement, d'une municipalité ou d'une autre autorité publique) qui serait incluse dans le revenu en application de l'alinéa 12(1)x) si cet alinéa s'appliquait compte non tenu de ses sous-alinéas (v) à (vii). (*non-government assistance*)

(5) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 1er janvier 2022.

(6) Le paragraphe (3) est réputé être entré en vigueur le 28 mars 2023.

35 (1) La même loi est modifiée par adjonction, après l'article 127.43, de ce qui suit :

Définitions

127.44 (1) Les définitions qui suivent s'appliquent au présent article, à la partie XII.7 et à l'annexe II du *Règlement de l'impôt sur le revenu*.

(a) would otherwise be released into the atmosphere; or

(b) is captured directly from the ambient air. (*carbone capté*)

CCUS process means the process of carbon capture, utilization and storage that includes the

(a) capture of carbon dioxide

(i) that would otherwise be released into the atmosphere, or

(ii) directly from the ambient air; and

(b) storage or use of the captured carbon. (*processus de CUSC*)

CCUS project means a project that is intended to support a CCUS process by

(a) capturing carbon dioxide

(i) that would otherwise be released into the atmosphere, or

(ii) directly from the ambient air;

(b) transporting captured carbon; or

(c) storing or using captured carbon. (*projet de CUSC*)

CCUS tax credit means an amount deemed under subsection (2) to have been paid by a taxpayer on account of its tax payable under this Part for the year. (*crédit d'impôt pour le CUSC*)

dedicated geological storage, in respect of a CCUS project, means a geological formation that is located in a jurisdiction that was a designated jurisdiction at the time that the first qualified CCUS expenditure was made in respect of the project and that is, at the time a relevant expenditure is incurred,

(a) capable of permanently storing captured carbon;

(b) authorized and regulated for the storage of captured carbon under the laws of the designated jurisdiction; and

(c) a formation in which no captured carbon is used for enhanced oil recovery. (*stockage géologique dédié*)

designated jurisdiction means

aide non gouvernementale S'entend au sens du paragraphe 127(9). (*non-government assistance*)

carbone capté Dioxyde de carbone capté qui, selon le cas :

a) serait par ailleurs relâché dans l'atmosphère;

b) est capté directement de l'air ambiant. (*captured carbon*)

contribuable admissible Société canadienne imposable. (*qualifying taxpayer*)

crédit d'impôt pour le CUSC Montant qui est réputé en vertu du paragraphe (2) avoir été payé par un contribuable au titre de son impôt payable en vertu de la présente partie pour l'année. (*CCUS tax credit*)

dépense admissible pour le captage du carbone Relativement à un contribuable pour une année d'imposition, s'entend d'une somme représentant la partie d'une dépense qu'il engage pour acquérir un bien dans l'année relativement à un projet de CUSC admissible du contribuable obtenue par la formule suivante :

A × (B + C + D + E) × F

où :

A relativement au bien acquis par le contribuable dans l'année (sauf un bien situé à l'étranger), représente, selon le cas :

a) le coût en capital du bien qui est décrit (et, dans le cas d'un bien acquis avant le premier jour des activités commerciales du projet, que le ministre des Ressources naturelles a confirmé comme étant décrit) :

(i) soit à l'alinéa a) de la catégorie 57 de l'annexe II du *Règlement de l'impôt sur le revenu*,

(ii) soit à l'un des alinéas d) à g) de la catégorie 57 de l'annexe II du *Règlement de l'impôt sur le revenu* relativement au matériel visé à l'alinéa a) de cette catégorie;

b) la fraction du coût en capital du matériel à double usage qui, selon le cas :

(i) si le matériel est visé au sous-alinéa a)(i) de la définition de *matériel à double usage* au présent paragraphe, ou est acquis en lien avec ce matériel, est représentée par le rapport entre la quantité d'énergie devant être produite à des fins d'utilisation dans le cadre d'un projet de CUSC admissible au cours de la période totale d'examen du projet de CUSC et la quantité totale d'énergie que le matériel devrait produire au cours de cette période (déterminée compte

(a) the provinces of British Columbia, Saskatchewan and Alberta; and

(b) any other jurisdiction within Canada (including the exclusive economic zone of Canada) or the United States for which a designation by the Minister of the Environment under subsection (13) is in effect. (*juridiction désignée*)

dual-use equipment means equipment that is part of a CCUS project of a taxpayer and that is described in any of the following paragraphs (and, in the case of property acquired before the first day of commercial operations of the CCUS project, is verified by the Minister of Natural Resources as being described in any of the following paragraphs):

(a) equipment that is not used for natural gas processing or acid gas injection, and that

(i) generates electrical energy, heat energy or a combination of electrical and heat energy, if more than 50% of either the electrical energy or heat energy that is expected to be produced over the total CCUS project review period, based on the most recent project plan, is expected (not including equipment that supports the qualified CCUS project indirectly by way of an electrical utility grid) to directly support

(A) a qualified CCUS project, unless the equipment uses fossil fuels and emits carbon dioxide that is not subject to capture by a qualified CCUS project, or

(B) hydrogen production from electrolysis or natural gas as long as emissions are abated by a qualified CCUS project, unless the equipment uses fossil fuels and emits carbon dioxide that is not subject to capture by a qualified CCUS project,

(ii) delivers, collects, recovers, treats or recirculates water, or a combination of any of those activities, in support of a qualified CCUS project,

(iii) is transmission equipment that directly transmits electrical energy from a system described in subparagraph (a)(i) to a qualified CCUS project and more than 50% of the electrical energy to be transmitted by the equipment over the total CCUS project review period, based on the most recent project plan, is expected to support the qualified CCUS project or hydrogen production from electrolysis or natural gas as long as emissions are abated by a qualified CCUS project, or

non tenu de l'énergie que le matériel produit et consomme dans le processus de production d'énergie), selon le dernier plan de projet pour le projet,

(ii) si le matériel est visé au sous-alinéa a)(ii) de la définition de *matériel à double usage* au présent paragraphe, ou est acquis en lien avec ce matériel, est représentée par le rapport entre la masse d'eau qui devrait être retournée d'un projet de CUSC admissible au cours de la période totale d'examen du projet de CUSC et la masse totale d'eau devant être retournée au matériel au cours de cette période, selon le dernier plan de projet pour le projet,

(iii) si le matériel est visé au sous-alinéa a)(iii) de la définition de *matériel à double usage* au présent paragraphe, ou est acquis en lien avec ce matériel, est représentée par le rapport entre la quantité d'énergie électrique que le matériel devrait transmettre à des fins d'utilisation dans le cadre d'un projet de CUSC admissible au cours de la période totale d'examen du projet de CUSC et la quantité totale d'énergie électrique que le matériel devrait transmettre au cours de cette période (déterminée compte non tenu de l'énergie électrique que le matériel consomme dans le processus de transmission), selon le dernier plan de projet pour le projet,

(iv) si le matériel est visé au sous-alinéa a)(iv) de la définition de *matériel à double usage* au présent paragraphe, ou est acquis en lien avec ce matériel, est représentée par le rapport entre la quantité d'énergie électrique ou thermique que le matériel devrait distribuer (ou s'il s'agit de matériel de distribution qui accroît la capacité du matériel existant, l'énergie électrique ou thermique que le matériel existant et le nouveau matériel devraient distribuer) à des fins d'utilisation dans le cadre d'un projet de CUSC admissible au cours de la période totale d'examen du projet de CUSC et la quantité totale d'énergie électrique ou thermique que le matériel (ou le matériel existant et le nouveau matériel) devrait distribuer au cours de cette période (déterminée compte non tenu de l'énergie que le matériel consomme dans le processus de distribution), selon le dernier plan de projet pour le projet;

B :

a) si le moment où la dépense est engagée est postérieur à la première période du projet, 0,

b) sinon, le pourcentage d'utilisation admissible prévu pour la première période du projet;

(iv) is distribution equipment that distributes electrical or heat energy;

(b) equipment that is physically and functionally integrated with the equipment described in paragraph (a) (for greater certainty, excluding construction equipment, furniture, office equipment and vehicles) and that is ancillary equipment used solely to support the functioning of equipment described in paragraph (a) within a CCUS process as part of

(i) an electrical system,

(ii) a fuel supply system,

(iii) a liquid delivery and distribution system,

(iv) a cooling system,

(v) a process material storage and handling and distribution system,

(vi) a process venting system,

(vii) a process waste management system, or

(viii) a utility air or nitrogen distribution system;

(c) equipment that is

(i) used as part of a control, monitoring or safety system solely to support the equipment described in paragraphs (a) or (b),

(ii) a building or other structure all or substantially all of which is used, or to be used, for the installation or operation of equipment described in paragraph (a), (b) or subparagraph (i), or

(iii) used solely to convert another property that would not otherwise be described in paragraph (a) or (b) or subparagraphs (i) and (ii) if the conversion causes the other property to satisfy the description in the paragraphs (a) or (b) or subparagraphs (i) or (ii); or

(d) equipment used solely to refurbish property described in paragraphs (a) or (b) or subparagraphs (c)(i) and (ii) that is part of the CCUS project of the taxpayer. (*matériel à double usage*)

eligible use means

(a) the storage of captured carbon in dedicated geological storage; or

C :

a) si le moment où la dépense est engagée est postérieur à la deuxième période du projet, 0,

b) sinon, le pourcentage d'utilisation admissible prévu pour la deuxième période du projet;

D :

a) si le moment où la dépense est engagée est postérieur à la troisième période du projet, 0,

b) sinon, le pourcentage d'utilisation admissible prévu pour la troisième période du projet;

E le pourcentage d'utilisation admissible prévu pour la quatrième période du projet;

F :

a) si le moment où la dépense est engagée est antérieur à la deuxième période du projet, 0,25,

b) si le moment où la dépense est engagée est au cours de la deuxième période du projet, 0,33,

c) si le moment où la dépense est engagée est au cours de la troisième période du projet, 0,5,

d) si le moment où la dépense est engagée est au cours de la quatrième période du projet, 1. (*qualified carbon capture expenditure*)

dépense admissible pour le stockage du carbone Relativement à un contribuable pour une année d'imposition, s'entend d'une somme représentant le coût en capital engagé par le contribuable afin d'acquérir dans l'année, relativement à un projet de CUSC admissible du contribuable, un bien (sauf un bien situé à l'étranger) qui, à la fois :

a) devrait, selon le dernier plan de projet du projet de CUSC admissible avant le moment où la dépense est engagée, prendre en charge le stockage du carbone capté, uniquement de la manière visée à l'alinéa a) de la définition de *utilisation admissible*,

b) est décrit (et, dans le cas d'un bien acquis avant le premier jour des activités commerciales du projet, que le ministre des Ressources naturelles a confirmé comme étant un bien qui est décrit) :

(i) soit à l'alinéa c) de la catégorie 57 de l'annexe II du *Règlement de l'impôt sur le revenu*,

(ii) soit à l'un des alinéas d) à g) de la catégorie 57 de l'annexe II du *Règlement de l'impôt sur le revenu* relativement au matériel visé à l'alinéa c) de cette catégorie. (*qualified carbon storage expenditure*)

(b) the use of captured carbon in producing concrete in Canada or the United States using a qualified concrete storage process. (*utilisation admissible*)

first day of commercial operations means the day that is 120 days after the day on which captured carbon dioxide is first delivered to a carbon transportation, carbon storage or carbon use system for the purpose of storage or use on an ongoing operational basis. (*premier jour des activités commerciales*)

ineligible use means

(a) the emission of captured carbon into the atmosphere, other than

(i) for the purposes of system integrity or safety, or

(ii) incidental emission made in the ordinary course of operations;

(b) the storage or use of captured carbon for enhanced oil recovery; and

(c) any other storage or use that is not an eligible use. (*utilisation non admissible*)

non-government assistance has the same meaning as in subsection 127(9). (*aide non gouvernementale*)

preliminary CCUS work activity means an activity that is preliminary to the acquisition, construction, fabrication or installation by or on behalf of a taxpayer of property described in Class 57 or 58 in Schedule II to the *Income Tax Regulations* in respect of the taxpayer's CCUS project including, but not limited to, a preliminary activity that is

(a) obtaining permits or regulatory approvals;

(b) performing front-end design or engineering work, including front-end engineering design studies (or equivalent studies as determined by the Minister of Natural Resources) but excluding detailed design or engineering work in relation to specific property included in Class 57 or Class 58;

(c) conducting feasibility studies or pre-feasibility studies (or equivalent studies as determined by the Minister of Natural Resources);

(d) conducting environmental assessments; or

(e) clearing or excavating land. (*travaux préliminaires de CUSC*)

dépense admissible pour le transport du carbone Relativement à un contribuable pour une année d'imposition, s'entend d'une somme représentant la partie d'une dépense qu'il engage pour acquérir un bien dans l'année relativement à un projet de CUSC admissible du contribuable, obtenue par la formule suivante :

A × (B + C + D + E) × F

où :

A relativement au bien acquis par le contribuable dans l'année (sauf un bien situé à l'étranger), représente le coût en capital du bien qui est décrit (et, dans le cas d'un bien acquis avant le premier jour des activités commerciales du projet, que le ministre des Ressources naturelles a confirmé comme étant un bien qui est décrit)

a) soit à l'alinéa b) de la catégorie 57 de l'annexe II du *Règlement de l'impôt sur le revenu*,

b) soit à l'un des alinéas d) à g) de la catégorie 57 de l'annexe II du *Règlement de l'impôt sur le revenu* relativement au matériel visé à l'alinéa b) de cette catégorie;

B :

a) si le moment où la dépense est engagée est postérieur à la première période du projet, 0,

b) sinon, le pourcentage d'utilisation admissible prévu pour la première période du projet;

C :

a) si le moment où la dépense est engagée est postérieur à la deuxième période du projet, 0,

b) sinon, le pourcentage d'utilisation admissible prévu pour la deuxième période du projet;

D :

a) si le moment où la dépense est engagée est postérieur à la troisième période du projet, 0,

b) sinon, le pourcentage d'utilisation admissible prévu pour la troisième période du projet;

E le pourcentage d'utilisation admissible prévu pour la quatrième période du projet;

F :

a) si le moment où la dépense est engagée est antérieur à la deuxième période du projet, 0,25,

b) si le moment où la dépense est engagée est au cours de la deuxième période du projet, 0,33,

c) si le moment où la dépense est engagée est au cours de la troisième période du projet, 0,5,

projected eligible use percentage, in respect of a CCUS project, for a period is the amount, expressed as a percentage, determined by the formula

A ÷ B

where

A is the quantity of captured carbon that the CCUS project is expected, based on the project's most recent project plan, to support for storage or use in eligible use during the period; and

B is the total quantity of captured carbon that the CCUS project is expected, based on the project's most recent project plan, to support for storage or use in both eligible use and ineligible use during the period. (*pourcentage d'utilisation admissible prévu*)

project plan means a plan for a CCUS project that

(a) reflects a front-end engineering design study (or an equivalent study as determined by the Minister of Natural Resources) for the CCUS project;

(b) describes the quantity of captured carbon that the CCUS project is expected to support for storage or use in each calendar year over its total CCUS project review period, in

(i) eligible use, and

(ii) ineligible use;

(c) contains information required in guidelines published by the Minister of Natural Resources; and

(d) is filed with the Minister of Natural Resources, in the form and manner determined by that Minister, before the project's first day of commercial operations. (*plan de projet*)

qualified carbon capture expenditure of a taxpayer for a taxation year means an amount that is the portion of an expenditure incurred by the taxpayer to acquire a property in the year, in respect of a qualified CCUS project of the taxpayer, determined by the formula

A × (B + C + D + E) × F

where

A is, in respect of property acquired by the taxpayer in the year (other than property situated outside of Canada),

(a) the capital cost of property described in (and, in the case of property acquired before the first day of commercial operations of the project,

d) si le moment où la dépense est engagée est au cours de la quatrième période du projet, 1. (*qualified carbon transportation expenditure*)

dépense admissible pour l'utilisation du carbone Relativement à un contribuable pour une année d'imposition, s'entend d'une somme représentant le coût en capital engagé par le contribuable afin d'acquérir dans l'année, relativement à un projet de CUSC admissible, un bien (sauf un bien situé à l'étranger) qui, à la fois :

a) est décrit (et, dans le cas d'un bien acquis avant le premier jour des activités commerciales du projet, que le ministre des Ressources naturelles a confirmé comme étant un bien qui est décrit) à l'un des alinéas a) à e) de la catégorie 58 de l'annexe II du *Règlement de l'impôt sur le revenu*;

b) devrait, selon le dernier plan de projet du projet de CUSC admissible avant le moment où la dépense est engagée, prendre en charge le stockage ou l'utilisation du carbone capté, uniquement de la manière visée à l'alinéa b) de la définition de *utilisation admissible*. (*qualified carbon use expenditure*)

dépense de CUSC admissible L'une ou l'autre des dépenses suivantes :

a) une dépense admissible pour le captage du carbone;

b) une dépense admissible pour le transport du carbone;

c) une dépense admissible pour le stockage du carbone;

d) une dépense admissible pour l'utilisation du carbone. (*qualified CCUS expenditure*)

juridiction désignée L'une ou l'autre des juridictions suivantes :

a) les provinces de la Colombie-Britannique, la Saskatchewan et l'Alberta;

b) toute autre juridiction à l'intérieur du Canada (notamment la zone économique exclusive du Canada) ou des États-Unis pour lesquels une désignation par le ministre de l'Environnement en vertu du paragraphe (13) est en vigueur. (*designated jurisdiction*)

matériel à double usage Matériel compris dans un projet de CUSC d'un contribuable et visé à l'un des alinéas ci-après (et, dans le cas d'un bien acquis avant le premier jour des activités commerciales du projet de

verified by the Minister of Natural Resources as being property described in)

(i) paragraph (a) of Class 57 in Schedule II to the *Income Tax Regulations*, or

(ii) any of paragraphs (d) to (g) of Class 57 in Schedule II to the *Income Tax Regulations* in relation to equipment described in paragraph (a) of that Class, or

(b) the proportion of the capital cost of dual-use equipment that,

(i) if the equipment is described in subparagraph (a)(i) of the definition *dual-use equipment* in this subsection, or is acquired in relation to such equipment, the amount of energy expected to be produced for use in a qualified CCUS project over the project's total CCUS project review period is of the total amount of energy expected to be produced by the equipment in that period (determined without regard to energy produced and consumed by the equipment in the process of producing energy), based on the project's most recent project plan,

(ii) if the equipment is described in subparagraph (a)(ii) of the definition *dual-use equipment* in this subsection, or is acquired in relation to such equipment, the mass of water expected to be returned from a qualified CCUS project over the project's total CCUS project review period is of the total mass of water expected to be returned to the equipment in that period, based on the project's most recent project plan,

(iii) if the equipment is described in subparagraph (a)(iii) of the definition *dual-use equipment* in this subsection, or is acquired in relation to such equipment, the amount of electrical energy expected to be transmitted by the equipment for use in a qualified CCUS project over the total CCUS project review period is of the total amount of electrical energy expected to be transmitted by the equipment in that period (determined without regard to electrical energy consumed by the equipment in the process of transmission), based on the project's most recent project plan, and

(iv) if the equipment is described in subparagraph (a)(iv) of the definition *dual-use equipment* in this subsection, or is acquired in relation to such equipment, the amount of electrical or heat energy expected to be distributed by the equipment (or if it is distribution equipment that expands the capacity of existing

CUSC, tel que confirmé par le ministre des Ressources naturelles comme étant visé à l'un des alinéas suivants) :

a) le matériel qui n'est pas destiné à la transformation du gaz naturel ou à l'injection de gaz acide et qui, selon le cas :

(i) produit de l'énergie électrique, de l'énergie thermique, ou une combinaison d'énergie électrique et thermique, si plus de 50 % de soit l'énergie électrique, soit de l'énergie thermique qui devrait être produite au cours de la période totale d'examen du projet de CUSC, selon le dernier plan de projet (à l'exclusion du matériel qui supporte indirectement le projet de CUSC admissible à titre de réseau électrique), devrait appuyer directement, selon le cas :

(A) un projet de CUSC admissible, sauf si le matériel utilise des combustibles fossiles et émet du dioxyde de carbone non soumis au captage au moyen d'un projet de CUSC admissible,

(B) la production d'hydrogène par électrolyse ou à partir de gaz naturel tant que les émissions sont réduites au moyen d'un projet de CUSC admissible, sauf si le matériel utilise des combustibles fossiles et émet du dioxyde de carbone non soumis au captage au moyen d'un processus de CUSC admissible,

(ii) distribue, recueille, récupère, traite ou recircule l'eau, ou une combinaison de ces activités, à l'appui d'un projet de CUSC admissible,

(iii) constitue du matériel de transmission qui transmet directement de l'énergie électrique à partir d'un système visé au sous-alinéa a)(i) à un projet de CUSC admissible et plus de 50 % de l'énergie électrique qui sera transmise par le matériel au cours de la période totale d'examen du projet de CUSC, selon le dernier plan de projet, devrait appuyer le projet de CUSC admissible ou la production d'hydrogène par électrolyse ou à partir de gaz naturel tant que les émissions sont réduites au moyen d'un projet de CUSC admissible,

(iv) constitue du matériel de distribution qui distribue de l'énergie électrique ou thermique;

b) le matériel qui est physiquement et fonctionnellement intégré au matériel visé à l'alinéa a) (à l'exclusion du matériel de construction, du mobilier, de l'équipement de bureau et des véhicules) et qui est du matériel auxiliaire qui ne sert qu'à soutenir le matériel visé à l'alinéa a) dans l'exécution de ses tâches fonctionnelles dans un processus de CUSC dans le cadre :

equipment, the electrical or heat energy expected to be distributed by the existing and new equipment) for use in a qualified CCUS project over the total CCUS project review period is of the total amount of electrical or heat energy expected to be distributed by the equipment (or the existing and new equipment) in that period (determined without regard to energy consumed by the equipment in the process of distribution), based on the project's most recent project plan;

B is

(a) if the time of the expenditure is after the first project period, nil, or

(b) in any other case, the projected eligible use percentage for the first project period;

C is

(a) if the time of the expenditure is after the second project period, nil, or

(b) in any other case, the projected eligible use percentage for the second project period;

D is

(a) if the time of the expenditure is after the third project period, nil, or

(b) in any other case, the projected eligible use percentage for the third project period;

E is the projected eligible use percentage for the fourth project period; and

F is

(a) if the time of the expenditure is before the second project period, 0.25,

(b) if the time of the expenditure is during the second project period, 0.33,

(c) if the time of the expenditure is during the third project period, 0.5, and

(d) if the time of the expenditure is during the fourth project period, 1. (*dépense admissible pour le captage du carbone*)

qualified carbon storage expenditure of a taxpayer for a taxation year means an amount that is the capital cost incurred by the taxpayer to acquire in the year, in respect of a qualified CCUS project of the taxpayer, a property (other than property situated outside of Canada) that is

(a) expected, based on the qualified CCUS project's most recent project plan before the time the expenditure is incurred, to support storage of captured carbon

(i) d'un système électrique,

(ii) d'un système d'alimentation en carburant,

(iii) d'un système de livraison et de distribution de liquide,

(iv) d'un système de refroidissement,

(v) d'un système de stockage, de manutention et de distribution des matériaux de processus,

(vi) d'un système de ventilation de procédés,

(vii) d'un système de gestion des déchets de procédés,

(viii) d'un réseau de distribution d'air utilitaire ou d'azote;

c) le matériel qui est, selon le cas :

(i) utilisé dans le cadre d'un système de contrôle, de surveillance ou de sécurité uniquement pour soutenir le matériel visé aux alinéas a) ou b),

(ii) un bâtiment ou une autre structure dont la totalité ou la presque totalité est utilisée, ou sera utilisée, pour l'installation ou l'exploitation de matériel visé aux alinéas a) ou b) ou au sous-alinéa (i),

(iii) utilisé uniquement pour convertir un autre bien qui ne serait pas autrement visé aux alinéas a) ou b) ou aux sous-alinéas (i) et (ii) si la conversion fait en sorte que l'autre bien satisfait à la description aux alinéas a) ou b) ou aux sous-alinéas (i) ou (ii);

d) le matériel qui servira uniquement à remettre en état un bien visé aux alinéas a) ou b) ou aux sous-alinéas c)(i) et (ii) qui est compris dans le projet de CUSC du contribuable. (*dual-use equipment*)

période totale d'examen du projet de CUSC Période qui commence le premier jour des activités commerciales d'un projet de CUSC et qui se termine le dernier jour de la quatrième période du projet. (*total CCUS project review period*)

plan de projet Plan qui vise un projet de CUSC et qui, à la fois :

a) s'appuie sur une étude initiale d'ingénierie et de conception (ou d'une étude équivalente déterminée par le ministre des Ressources naturelles) pour le projet de CUSC;

solely in a manner described in paragraph (a) of the definition of *eligible use*; and

(b) described in (and, in the case of property acquired before the first day of commercial operations of the project, verified by the Minister of Natural Resources as being property described in)

(i) paragraph (c) of Class 57 in Schedule II to the *Income Tax Regulations*, or

(ii) any of paragraphs (d) to (g) of Class 57 in Schedule II to the *Income Tax Regulations* in relation to equipment described in paragraph (c) of that Class. (*dépense admissible pour le stockage du carbone*)

qualified carbon transportation expenditure of a taxpayer for a taxation year means an amount that is the portion of an expenditure incurred by the taxpayer to acquire a property in the year in respect of a qualified CCUS project of the taxpayer, determined by the formula

A × (B + C + D + E) × F

where

A is, in respect of property acquired by the taxpayer in the year (other than property situated outside of Canada), the capital cost of property described in (and, in the case of property acquired before the first day of commercial operations of the project, verified by the Minister of Natural Resources as being property described in)

(a) paragraph (b) of Class 57 in Schedule II to the *Income Tax Regulations*, or

(b) any of paragraphs (d) to (g) of Class 57 in Schedule II to the *Income Tax Regulations* in relation to equipment described in paragraph (b) of that Class;

B is

(a) if the time of the expenditure is after the first project period, nil, or

(b) in any other case, the projected eligible use percentage for the first project period;

C is

(a) if the time of the expenditure is after the second project period, nil, or

(b) in any other case, the projected eligible use percentage for the second project period;

D is

(a) if the time of the expenditure is after the third project period, nil, or

b) décrit la quantité de carbone capté que le projet de CUSC devrait prendre en charge en vue de son stockage ou de son utilisation, pour chaque année civile sur la période totale d'examen du projet de CUSC, pour :

(i) une utilisation admissible,

(ii) une utilisation non admissible;

c) contient les renseignements requis par les lignes directrices publiées par le ministre des Ressources naturelles;

d) est déposé auprès du ministre des Ressources naturelles, selon les modalités prévues par ce ministre, avant le premier jour des activités commerciales du projet. (*project plan*)

pourcentage déterminé L'un ou l'autre des pourcentages ci-après relativement aux dépenses suivantes :

a) une dépense admissible pour le captage du carbone si celle-ci est engagée pour capter le carbone selon l'une des méthodes suivantes :

(i) directement de l'air ambiant :

(A) après 2021 et avant 2031, 60 %,

(B) après 2030 et avant 2041, 30 %,

(C) après 2040, 0 %,

(ii) autrement que directement de l'air ambiant :

(A) après 2021 et avant 2031, 50 %,

(B) après 2030 et avant 2041, 25 %,

(C) après 2040, 0 %;

b) une dépense admissible pour le transport du carbone, une dépense admissible pour le stockage du carbone ou une dépense admissible pour l'utilisation du carbone, si elle est engagée :

(i) après 2021 et avant 2031, 37 1/2 %,

(ii) après 2030 et avant 2041, 18 3/4 %,

(iii) après 2040, 0 %. (*specified percentage*)

pourcentage d'utilisation admissible prévu Montant, exprimé en pourcentage, obtenu par la formule ci-après relativement à un projet de CUSC pour une période :

A ÷ B

(b) in any other case, the projected eligible use percentage for the third project period;

E is the projected eligible use percentage for the fourth project period; and

F is

(a) if the time of the expenditure is before the second project period, 0.25,

(b) if the time of the expenditure is during the second project period, 0.33,

(c) if the time of the expenditure is during the third project period, 0.5, and

(d) if the time of the expenditure is during the fourth project period, 1. (*dépense admissible pour le transport du carbone*)

qualified carbon use expenditure of a taxpayer for a taxation year means an amount that is the capital cost incurred by the taxpayer to acquire in the year, in respect of a qualified CCUS project of the taxpayer, a property (other than property situated outside of Canada) that is

(a) described in (and, in the case of property acquired before the first day of commercial operations of the project, verified by the Minister of Natural Resources as being property described in) any of paragraphs (a) to (e) of Class 58 in Schedule II to the *Income Tax Regulations*; and

(b) expected, based on the qualified CCUS project's most recent project plan before the time the expenditure is incurred, to support storage or use of captured carbon solely in a manner described in paragraph (b) of the definition of *eligible use*. (*dépense admissible pour l'utilisation du carbone*)

qualified CCUS expenditure means a

(a) qualified carbon capture expenditure;

(b) qualified carbon transportation expenditure;

(c) qualified carbon storage expenditure; or

(d) qualified carbon use expenditure. (*dépense de CUSC admissible*)

qualified CCUS project means a CCUS project of a taxpayer that meets the following conditions:

(a) it is expected, based on the project's most recent project plan, to support the capture of carbon dioxide in Canada for a period that is at least equal to the total CCUS project review period for the project;

où :

A représente la quantité de carbone capté que le projet de CUSC devrait, selon le dernier plan de projet pour le projet, prendre en charge à des fins de stockage ou d'utilisation dans le cadre d'une utilisation admissible au cours de la période;

B la quantité totale de carbone capté que le projet de CUSC devrait, selon le dernier plan de projet pour le projet, prendre en charge à des fins de stockage ou d'utilisation dans le cadre à la fois d'une utilisation admissible et non admissible au cours de la période. (*projected eligible use percentage*)

premier jour des activités commerciales Jour qui suit de cent vingt jours le jour où le dioxyde de carbone capté est livré pour la première fois à un système de transport, de stockage ou d'utilisation du carbone aux fins de stockage ou d'utilisation sur une base opérationnelle continue. (*first day of commercial operations*)

processus de CUSC Processus de captage, d'utilisation et de stockage du carbone qui inclut, à la fois :

a) le captage du dioxyde de carbone qui, selon le cas :

(i) serait par ailleurs relâché dans l'atmosphère,

(ii) est capté directement de l'air ambiant;

b) le stockage ou l'utilisation du carbone capté. (*CCUS process*)

processus de stockage dans le béton admissible Processus qui est évalué en fonction de la norme ISO 14034:2016 *Management environnemental — Vérification des technologies environnementales* pour laquelle un énoncé de validation confirmant qu'au moins 60 % du carbone capté qui est injecté dans le béton devrait se minéraliser et être stocké dans le béton en permanence a été émis par un professionnel ou une organisation qui, à la fois :

a) est accrédité comme organisme de vérification selon la norme ISO 14034:2016 *Management environnemental — Vérification des technologies environnementales* et ISO/IEC 17020:2012 *Évaluation de la conformité — Exigences pour le fonctionnement de différents types d'organismes procédant à l'inspection* par le Conseil canadien des normes, l'ANSI National Accreditation Board (U.S.) ou tout autre organisme d'accréditation qui est membre de l'International Accreditation Forum;

b) satisfait aux exigences d'un organisme de contrôle tiers qui est décrit dans la norme ISO/IEC 17020:2012 *Évaluation de la conformité — Exigences pour le*

(b) an initial project evaluation has been issued by the Minister of Natural Resources, in the form and manner determined by the Minister of Natural Resources, in respect of the project;

(c) based on the most recent project plan for the project, its projected eligible use percentage equals or exceeds 10% in each of the following periods:

(i) if the first project period begins after September of a calendar year, the period beginning on the first day of commercial operations and ending on December 31 of the following calendar year, and

(ii) each calendar year of the project's total CCUS project review period, other than a period that includes a year referred to in subparagraph (i); and

(d) it is not a project that is

(i) operated to service a *unit* (as defined under the *Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations*) for which the *commissioning date* (as defined under the *Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations*) was on or before April 7, 2022, and

(ii) undertaken for the purpose of complying with emission standards that apply, or will apply, under the *Reduction of Carbon Dioxide Emissions from Coal-fired Generation of Electricity Regulations*. (*projet de CUSC admissible*)

qualified concrete storage process means a process evaluated against the ISO 14034:2016 standard *Environmental management — Environmental technology verification* for which a validation statement confirming that at least 60% of the captured carbon that is injected into concrete is expected to be mineralized and permanently stored in the concrete has been issued by a professional or organization that

(a) is accredited as a verification body, under ISO 14034:2016, *Environmental management – Environmental technology verification* and ISO/IEC 17020:2012, *Conformity assessment — Requirements for the operation of various types of bodies performing inspection*, by the Standards Council of Canada, the ANSI National Accreditation Board (U.S.) or any other accreditation organization that is a member of the International Accreditation Forum; and

(b) meets the requirements of a third-party inspection body described in ISO/IEC 17020:2012, *Conformity assessment — Requirements for the operation of fonctionnement de différents types d'organismes procédant à l'inspection*. (*qualified concrete storage process*)

projet de CUSC Projet qui a pour but d'appuyer un processus de CUSC de la façon suivante, selon le cas :

a) par le captage du dioxyde de carbone qui, selon le cas :

(i) serait par ailleurs relâché dans l'atmosphère,

(ii) est capté directement de l'air ambiant;

b) par le transport du carbone capté;

c) par le stockage ou l'utilisation du carbone capté. (*CCUS project*)

projet de CUSC admissible Projet de CUSC d'un contribuable qui remplit les conditions suivantes :

a) il devrait, selon le plus récent plan de projet pour le projet, prendre en charge le captage du dioxyde de carbone au Canada pendant une période au moins égale à la période totale d'examen du projet de CUSC pour le projet;

b) le ministre des Ressources naturelles a émis une évaluation initiale du projet, selon les modalités prévues par celui-ci, relativement au projet;

c) selon le dernier plan de projet pour le projet, son pourcentage d'utilisation admissible prévu est égal ou supérieur à 10 % au cours de chacune des périodes suivantes :

(i) si la première période du projet commence après le mois de septembre d'une année civile, la période commençant le premier jour des activités commerciales et se terminant le 31 décembre de l'année civile suivante,

(ii) chaque année civile de la période totale d'examen du projet de CUSC, à l'exception d'une période qui inclut une année visée au sous-alinéa (i);

d) il ne s'agit pas d'un projet qui est, à la fois :

(i) exploité pour desservir un groupe (au sens du *Règlement sur la réduction des émissions de dioxyde de carbone — secteur de l'électricité thermique au charbon*) dont la date de mise en service (au sens du *Règlement sur la réduction des émissions de dioxyde de carbone — secteur de l'électricité thermique au charbon*) était au plus tard le 7 avril 2022,

various types of bodies performing inspection. (*processus de stockage dans le béton admissible*)

qualifying taxpayer means a taxable Canadian corporation. (*contribuable admissible*)

specified percentage means, in respect of a

(a) qualified carbon capture expenditure if incurred to capture carbon

(i) directly from ambient air

(A) after 2021 and before 2031, 60%,

(B) after 2030 and before 2041, 30%, or

(C) after 2040, 0%, or

(ii) other than directly from ambient air

(A) after 2021 and before 2031, 50%,

(B) after 2030 and before 2041, 25%, or

(C) after 2040, 0%; and

(b) qualified carbon transportation expenditure, qualified carbon storage expenditure or qualified carbon use expenditure if incurred

(i) after 2021 and before 2031, 37 1/2%,

(ii) after 2030 and before 2041, 18 3/4%, or

(iii) after 2040, 0%. (*pourcentage déterminé*)

total CCUS project review period, in respect of a CCUS project, means the period beginning on the first day of commercial operations of the project and ending on the last day of the fourth project period. (*période totale d'examen du projet de CUSC*)

(ii) entrepris dans le but de se conformer aux normes d'émissions qui s'appliquent ou s'appliqueront en vertu du *Règlement sur la réduction des émissions de dioxyde de carbone — secteur de l'électricité thermique au charbon*. (*qualified CCUS project*)

stockage géologique dédié Relativement à un projet de CUSC, s'entend d'une formation géologique laquelle est située dans une juridiction qui était une juridiction désignée au moment où la première dépense de CUSC admissible était effectuée relativement au projet et laquelle est, au moment où une dépense pertinente est engagée, à la fois :

a) en mesure de stocker en permanence le carbone capté;

b) autorisée et réglementée pour le stockage du carbone capté en vertu des lois de la juridiction désignée;

c) une formation dans laquelle le carbone capté n'est pas utilisé pour la récupération assistée du pétrole. (*dedicated geological storage*)

travaux préliminaires de CUSC Activité préalable à l'acquisition, à la construction, à la fabrication ou à l'installation, par un contribuable ou pour son compte, de biens compris dans l'une des catégories 57 ou 58 de l'annexe II du *Règlement de l'impôt sur le revenu* relativement au projet de CUSC du contribuable qui comprend, notamment, une activité préalable qui est, selon le cas :

a) l'obtention des permis ou des autorisations réglementaires;

b) les travaux initiaux de conception ou d'ingénierie, notamment les études initiales d'ingénierie et de conception (ou des études équivalentes déterminées par le ministre des Ressources naturelles), à l'exclusion des travaux détaillés de conception ou d'ingénierie en lien avec un bien particulier compris dans les catégories 57 ou 58;

c) les études de faisabilité ou les études de préfaisabilité (ou des études équivalentes déterminées par le ministre des Ressources naturelles);

d) les évaluations environnementales;

e) le nettoyage ou l'excavation des terrains. (*preliminary CCUS work activity*)

utilisation admissible L'une ou l'autre des utilisations suivantes :

a) le stockage du carbone capté dans un stockage géologique dédié;

b) l'utilisation du carbone capté pour produire du béton au Canada ou aux États-Unis au moyen d'un processus de stockage dans le béton admissible. (*eligible use*)

utilisation non admissible Les utilisations suivantes :

a) l'émission de carbone capté dans l'atmosphère, selon le cas :

(i) sauf aux fins d'intégrité ou de sécurité du système,

(ii) autre qu'une émission accessoire réalisée dans le cours normal des activités;

b) le stockage ou l'utilisation du carbone capté pour la récupération assistée du pétrole;

c) tout autre stockage ou utilisation qui n'est pas une utilisation admissible. (*ineligible use*)

Tax credit

(2) Where a qualifying taxpayer files a prescribed form containing prescribed information on or before its filing-due date for a taxation year, the taxpayer is deemed to have paid on its balance-due day for the year an amount on account of its tax payable under this Part for the year equal to the total of

(a) the amount, if any, by which the taxpayer's cumulative CCUS development tax credit for the year exceeds its cumulative CCUS development tax credit for the immediately preceding taxation year, and

(b) the taxpayer's CCUS refurbishment tax credit for the year.

Crédit d'impôt

(2) Lorsqu'un contribuable admissible produit un formulaire prescrit contenant des renseignements prescrits au plus tard à sa date d'échéance de production pour une année d'imposition, il est réputé avoir payé, à la date d'exigibilité du solde qui lui est applicable pour l'année, une somme au titre de son impôt payable pour l'année en vertu de la présente partie égale au total des montants suivants :

a) l'excédent éventuel du crédit d'impôt cumulatif pour le développement du CUSC du contribuable pour l'année sur son crédit d'impôt cumulatif pour le développement du CUSC pour l'année d'imposition précédente;

b) le crédit d'impôt pour la remise en état du CUSC du contribuable pour l'année.

Deemed deduction

(3) For the purposes of this section, paragraph 12(1)(t), subsection 13(7.1), the description of I in the definition *undepreciated capital cost* in subsection 13(21), subsection 53(2), section 127.45 and Part XII.7, the amount deemed under subsection (2) to have been paid by a taxpayer for a taxation year is deemed to have been deducted from the taxpayer's tax otherwise payable under this Part for the year.

Déduction réputée

(3) Pour l'application du présent article, de l'alinéa 12(1)t), du paragraphe 13(7.1), de l'élément I de la définition de *fraction non amortie du coût en capital* au paragraphe 13(21), du paragraphe 53(2), de l'article 127.45 et de la partie XII.7, le montant réputé avoir été payé par un contribuable en application du paragraphe (2) pour une année d'imposition est réputé avoir été déduit de son impôt payable par ailleurs en vertu de la présente partie pour l'année.

Cumulative CCUS development tax credit

(4) For the purposes of this Act, a taxpayer's cumulative CCUS development tax credit for a taxation year is the total of all amounts, each of which is, in respect of an expenditure incurred for a qualified CCUS project of the taxpayer before the first day of commercial operations of the CCUS project

(a) a qualified CCUS expenditure incurred in the year or a previous taxation year by the taxpayer multiplied by the applicable specified percentage; or

(b) an amount required because of subsection (11) to be added in computing the taxpayer's cumulative CCUS development tax credit at the end of the year or a previous year.

Crédit d'impôt cumulatif pour le développement du CUSC

(4) Pour l'application de la présente loi, le crédit d'impôt cumulatif pour le développement du CUSC d'un contribuable pour une année d'imposition correspond au total des montants représentant chacun, relativement à une dépense qu'il engage à un moment donné pour un projet de CUSC admissible du contribuable en vue d'acquérir un bien avant le premier jour des activités commerciales du projet de CUSC :

a) soit le produit d'une dépense de CUSC admissible qu'il engage en vue d'acquérir un bien dans l'année ou dans une année d'imposition antérieure par le pourcentage déterminé applicable;

b) soit un montant à ajouter, par l'effet du paragraphe (11), au calcul du crédit d'impôt cumulatif pour le développement du CUSC du contribuable à la fin de l'année ou d'une année antérieure.

CCUS refurbishment tax credit

(5) For the purposes of this Act, a CCUS refurbishment tax credit of a taxpayer for a taxation year is the total of all amounts, each of which is, in respect of an expenditure incurred for a qualified CCUS project of the taxpayer in the year and during the total CCUS project review period

(a) a qualified CCUS expenditure incurred in the year by the taxpayer multiplied by the applicable specified percentage; or

(b) an amount required because of subsection (11) to be added in computing the taxpayer's CCUS refurbishment tax credit at the end of the year.

Crédit d'impôt pour la remise en état du CUSC

(5) Pour l'application de la présente loi, le crédit d'impôt pour la remise en état du CUSC d'un contribuable pour une année d'imposition correspond au total des montants représentant chacun, relativement à une dépense qu'il engage à un moment donné de l'année en vue d'acquérir un bien pour un projet de CUSC admissible du contribuable au cours de la période totale d'examen du projet de CUSC :

a) soit le produit d'une dépense de CUSC admissible qu'il engage dans l'année par le pourcentage déterminé applicable;

b) soit un montant à ajouter, par l'effet du paragraphe (11), au calcul du crédit d'impôt pour la remise en état du CUSC du contribuable à la fin de l'année.

Changes to project or eligible use

(6) A taxpayer with a qualified CCUS project shall file, within 90 days after the occurrence of either of the events described in paragraph (a) or (b), a revised project plan for the project with the Minister of Natural Resources, in the form and manner determined by the Minister of Natural Resources if, before the first day of commercial operations of the project,

(a) the Minister of Natural Resources determines that there has been a material change to the project and requests that the taxpayer file a revised project plan for the project; or

(b) there has been a reduction (as compared to the most recent project plan for the project) of more than five percentage points in the projected eligible use

Changements au projet ou à l'utilisation admissible

(6) Le contribuable menant un projet de CUSC admissible doit produire, dans les quatre-vingt-dix jours suivant la survenance de l'un des événements visés aux alinéas a) ou b), un plan de projet révisé pour le projet auprès du ministre des Ressources naturelles, selon les modalités établies par celui-ci, si avant le premier jour des activités commerciales du projet, selon le cas :

a) le ministre des Ressources naturelles détermine que le projet a subi un changement important et demande au contribuable de produire un plan de projet révisé pour le projet;

b) il y a eu une baisse de plus de cinq points de pourcentage (comparativement au dernier plan de projet

percentage in respect of the project during any project period.

Revised project evaluation

(7) If a taxpayer files a revised project plan in accordance with subsection (6), the Minister of Natural Resources shall issue a revised project evaluation with all due dispatch.

Qualified CCUS project determination

(8) For the purposes of this section and Part XII.7,

(a) the Minister may, in consultation with the Minister of Natural Resources, determine that one or more CCUS projects is one project or multiple projects

(i) at any time before an initial project evaluation of a CCUS project has been issued by the Minister of Natural Resources, or

(ii) if the Minister of Natural Resources has requested the filing of a revised project plan for the project, after the revised project plan has been submitted, but before a revised project evaluation has been issued by the Minister of Natural Resources in respect of the revised project plan,

(b) any determination under paragraph (a) is deemed to result in the CCUS project or CCUS projects, as the case may be, being one project or multiple projects, as the case may be;

(c) for each project determined under paragraph (a), a project plan shall be filed by a taxpayer with the Minister of Natural Resources (in the form and manner determined by the Minister of Natural Resources) on or before the day that is 180 days after the determination is made; and

(d) the Minister of Natural Resources may request from a taxpayer all reasonable documentation and information necessary for the Minister of Natural Resources to fulfill a responsibility under this section, including final detailed engineering designs, and may refuse to verify an expenditure or issue an initial project evaluation or a revised project evaluation under this section if such documentation or information is not provided by the taxpayer on or before the day that is 180 days after it was requested.

pour le projet) du pourcentage d'utilisation admissible prévu pour le projet au cours d'une période de projet.

Évaluation de projet révisée

(7) Si un contribuable produit un plan de projet révisé conformément au paragraphe (6), le ministre des Ressources naturelles doit émettre une évaluation de projet révisée de manière diligente.

Détermination d'un projet de CUSC admissible

(8) Pour l'application du présent article et de la partie XII.7 :

a) le ministre peut, en consultation avec le ministre des Ressources naturelles, déterminer qu'un ou plusieurs projets de CUSC constituent un ou plusieurs projets, selon le cas :

(i) à un moment donné, avant une évaluation initiale du projet d'un projet de CUSC émise par le ministre des Ressources naturelles,

(ii) si le ministre des Ressources naturelles a demandé la production d'un plan de projet révisé pour le projet, après que le plan de projet révisé ait été soumis, mais avant que celui-ci n'ait émis une évaluation du projet révisé relativement au plan de projet révisé,

b) toute détermination en vertu de l'alinéa a) est réputée faire en sorte que le projet ou les projets de CUSC, selon le cas, forment un seul projet ou plusieurs projets, selon le cas;

c) pour chaque projet déterminé en vertu de l'alinéa a), un plan de projet doit être produit par le contribuable auprès du ministre des Ressources naturelles (selon les modalités établies par ce dernier), au plus tard cent quatre-vingts jours après le jour de la détermination;

d) le ministre des Ressources naturelles peut demander au contribuable de fournir tous les documents raisonnables et les renseignements nécessaires afin que le ministre des Ressources naturelles s'acquitte d'une responsabilité en vertu du présent article, notamment en ce qui concerne les conceptions d'ingénierie détaillées finales, et peut refuser de vérifier une dépense ou d'émettre une évaluation initiale du projet en vertu du présent article si le contribuable ne fournit pas ces documents ou renseignements au plus tard cent-quatre-vingt jours après qu'ils aient été demandés.

Special rules — adjustments

(9) For the purposes of this section and Part XII.7,

(a) the capital cost to a taxpayer of a property of Class 57 or 58 in Schedule II to the *Income Tax Regulations* shall be

(i) determined without reference to subsections 13(7.1) and (7.4), and

(ii) reduced by the amount of any non-government assistance that, at the time of the filing of the taxpayer's return of income under this Part for the taxation year, the taxpayer has received, is entitled to receive or can reasonably be expected to receive in respect of the property;

(b) the amount of a qualified CCUS expenditure of a taxpayer in a taxation year in respect of a CCUS project shall not include

(i) any amount in respect of an expenditure incurred by the taxpayer before 2022 or after 2040,

(ii) any amount in respect of any expenditure incurred

(A) to acquire property that has been used for any purpose by any person or partnership before it was acquired by the taxpayer,

(B) for which a tax credit was previously deducted under this section, by any person in respect of the property to which the expenditure relates (other than an expenditure for repair or replacement of that property), or

(C) for which an investment tax credit is claimed under section 127 or a clean technology investment tax credit is claimed under section 127.45,

(iii) any amount in respect of an expenditure incurred for a preliminary CCUS work activity,

(iv) any amount that has, by virtue of section 21, been added to the cost of a property,

(v) an expenditure that is incurred by a taxpayer on or after the first day of commercial operations of the CCUS project to the extent that the total of all such amounts exceeds 10% of the total of all qualified CCUS expenditures incurred by the taxpayer before the first day of commercial operations of the CCUS project, or

(vi) except where subsection 211.92(11) applies, an expenditure incurred by a taxpayer to acquire a

Règles spéciales — ajustements

(9) Pour l'application du présent article et de la partie XII.7 :

a) le coût en capital d'un bien de la catégorie 57 ou 58 pour un contribuable est, à la fois :

(i) déterminé compte non tenu des paragraphes 13(7.1) et (7.4),

(ii) réduit du montant de toute aide non gouvernementale que le contribuable, au moment de produire sa déclaration de revenu en vertu de la présente partie pour l'année d'imposition, a reçu, a le droit de recevoir ou peut raisonnablement s'attendre à recevoir relativement au bien;

b) le montant d'une dépense de CUSC admissible d'un contribuable dans une année d'imposition relativement à un projet de CUSC ne doit pas inclure les sommes suivantes :

(i) toute somme relative à une dépense engagée par le contribuable avant 2022 ou après 2040,

(ii) toute somme relative à une dépense, selon le cas :

(A) qui est engagée pour acquérir un bien qui a été utilisé par une personne ou une société de personnes avant son acquisition par le contribuable,

(B) au titre de laquelle un crédit d'impôt a été déduit antérieurement en vertu du présent article par une personne relativement au bien auquel se rapporte la dépense (sauf les dépenses de réparation ou de remplacement de ce bien),

(C) au titre de laquelle un crédit d'impôt à l'investissement est réclamé en vertu de l'article 127 ou un crédit d'impôt à l'investissement dans les technologies propres est réclamé en vertu de l'article 127.45,

(iii) toute somme relative à une dépense engagée pour les travaux préliminaires de CUSC,

(iv) toute somme qui, en vertu de l'article 21, a été ajoutée au coût d'un bien,

(v) une dépense qui est engagée par un contribuable au plus tôt le premier jour des activités commerciales du projet de CUSC dans la mesure où le total de ces montants excède 10 % du total des dépenses de CUSC admissibles engagées par le

property that is disposed of, or exported from Canada, by the taxpayer in the same taxation year as it was acquired;

(c) except for the purposes of subparagraph (b)(i), and subject to subsection (12), if a taxpayer has acquired property outside Canada, the expenditure is deemed to have been incurred, and the property acquired, at the time it is imported into Canada;

(d) subsections 127(11.6) to (11.8) apply in this section in respect of an expenditure or cost to a taxpayer except that

(i) the reference in subsection 127(11.6) to subsection 127(11.5) shall be read as a reference to section 127.44,

(ii) the reference in subsection 127(11.6) to subsection 127(26) shall be read as a reference to subsection 127.44(12), and

(iii) the term "qualified expenditure" is to be read as "qualified CCUS expenditure";

(e) if an expenditure of a taxpayer would be a qualified CCUS expenditure, except that the expenditure is incurred in a different taxation year from the year in which the related property is acquired, the expenditure is deemed to be incurred, and the property is deemed to be acquired, in the later of the two years;

(f) for the purposes of determining whether a process is a CCUS process, whether a property is described in Class 57 or 58 of Schedule II to the *Income Tax Regulations* or whether a property is dual-use equipment, the technical guide published by the Department of Natural Resources shall apply conclusively with respect to engineering and scientific matters;

(g) if the taxpayer has failed to file a revised project plan required to be filed under subsection (6) by the deadline in that subsection,

(i) subject to subparagraph (ii), a taxpayer's projected eligible use percentage for a CCUS project is deemed to be nil for the total CCUS project review period until such time as the taxpayer has filed the revised project plan, and

(ii) once the taxpayer has filed the revised project plan, subparagraph (i) is deemed never to have applied.

contribuable avant le premier jour des activités commerciales du projet de CUSC,

(vi) sauf en cas d'application du paragraphe 211.92(11), une dépense engagée par un contribuable pour acquérir un bien dont il dispose ou qu'il exporte du Canada dans l'année d'imposition lors de laquelle il l'a acquis;

c) sauf pour l'application du sous-alinéa b)(i), et sous réserve du paragraphe (12), si un contribuable acquiert un bien à l'étranger, la dépense est réputée être engagée, et le bien être acquis, au moment de son importation au Canada;

d) les paragraphes 127(11.6) à (11.8) s'appliquent au présent article relativement à une dépense ou à un coût pour un contribuable, sauf que :

(i) la mention au paragraphe 127(11.6) du paragraphe 127(11.5) vaut mention de l'article 127.44,

(ii) la mention au paragraphe 127(11.6) du paragraphe 127(26) vaut mention du paragraphe 127.44(12),

(iii) le terme « dépense admissible » vaut mention de « dépense de CUSC admissible »;

e) si une dépense d'un contribuable était une dépense de CUSC admissible, sauf que la dépense est engagée au cours d'une année d'imposition différente de l'année où le bien connexe est acquis, la dépense est réputée être engagée, et le bien est réputé être acquis, dans la dernière des deux années;

f) le guide technique publié par le ministère des Ressources naturelles s'applique de manière concluante en matière d'ingénierie et de science lorsqu'il s'agit de déterminer si un processus est un processus de CUSC, si le bien est décrit aux catégories 57 ou 58 de l'annexe II du *Règlement de l'impôt sur le revenu* ou si le bien est du matériel à double usage;

g) si le contribuable n'a pas produit un plan de projet révisé, tel que requis en vertu du paragraphe (6), au plus tard à la date d'échéance indiquée dans ce paragraphe :

(i) sous réserve du sous-alinéa (ii), le pourcentage d'utilisation admissible prévu d'un contribuable pour un projet de CUSC est réputé être nul pour la période totale d'examen du projet de CUSC jusqu'à ce qu'il ait produit le plan de projet révisé,

(ii) une fois le plan de projet révisé produit, le sous-alinéa (i) est réputé ne s'être jamais appliqué.

Repayment of assistance

(10) If a taxpayer has, in a particular taxation year, repaid (or has not received and can no longer reasonably be expected to receive) an amount of non-government assistance that was applied to reduce the capital cost of a property under subparagraph (9)(a)(ii) for a preceding taxation year, the amount repaid (or no longer expected to be received) shall be added to the capital cost to the taxpayer of a property acquired for the purpose of determining the taxpayer's *qualified CCUS expenditure* (under the relevant paragraph of that definition) for the particular year.

Partnerships

(11) Subject to section 127.47, if, in a particular taxation year of a qualifying taxpayer who is a member of a partnership, an amount would be determined under subsection (2) in respect of the partnership, for its taxation year that ends in the particular year, if the partnership were a taxable Canadian corporation and its fiscal period were its taxation year, the portion of that amount that can reasonably be considered to be the taxpayer's share thereof shall be added in computing the tax credit of the taxpayer under subsection (2) at the end of the particular year.

Unpaid amounts

(12) For the purposes of this section, a taxpayer's expenditure that is unpaid on the day that is 180 days after the end of the taxation year in which the expenditure is otherwise incurred is deemed

(a) not to have been incurred in the year; and

(b) to be incurred at the time it is paid.

Designation of jurisdiction

(13) For the purposes of this section and Part XII.7, the following rules apply in relation to the definition *designated jurisdiction* in subsection (1):

(a) if the Minister of the Environment determines that a jurisdiction within Canada or the United States has sufficient environmental laws and enforcement governing the permanent storage of captured carbon

(i) the Minister of the Environment may designate the jurisdiction for the purposes of this section and Part XII.7,

(ii) the designation under subparagraph (i) shall specify the time at and after which it is in effect,

Remboursement d'un montant d'aide

(10) Lorsqu'au cours d'une année d'imposition donnée, un contribuable rembourse (ou n'a pas reçu ou ne peut raisonnablement plus s'attendre à recevoir) un montant d'aide non gouvernementale qui a été appliqué pour réduire le coût en capital d'un bien en vertu du sous-alinéa (9)a)(ii) pour une année d'imposition antérieure, le montant remboursé (ou que le contribuable ne peut raisonnablement plus s'attendre à recevoir) est ajouté au coût en capital, pour le contribuable, d'un bien acquis afin de déterminer ses *dépenses de CUSC admissibles* (selon l'alinéa pertinent de cette définition) pour l'année donnée.

Sociétés de personnes

(11) Sous réserve de l'article 127.47, dans le cas où, au cours d'une année d'imposition donnée d'un contribuable admissible qui est l'associé d'une société de personnes, un montant serait déterminé en vertu du paragraphe (2) relativement à la société de personnes, pour son année d'imposition qui se termine dans l'année donnée, si la société de personnes était une société canadienne imposable et son exercice constituait son année d'imposition, la partie de ce montant qu'il est raisonnable de considérer comme la part qui revient au contribuable est à ajouter dans le calcul de son crédit d'impôt en vertu du paragraphe (2) à la fin de l'année donnée.

Montants impayés

(12) Pour l'application du présent article, la dépense d'un contribuable qui est impayée le cent quatre-vingtième jour suivant la fin de l'année d'imposition au cours de laquelle elle est par ailleurs engagée est réputée, à la fois :

a) ne pas être engagée au cours de l'année;

b) être engagée au moment où elle est payée.

Désignation d'une juridiction

(13) Pour l'application du présent article et de la partie XII.7, les règles ci-après s'appliquent relativement à la définition de *juridiction désignée* au paragraphe (1) :

a) si le ministre de l'Environnement détermine qu'une juridiction au Canada ou aux États-Unis dispose de lois environnementales et d'organismes d'application de la loi régissant le stockage permanent du carbone capté qui sont suffisants, à la fois :

(i) le ministre de l'Environnement peut désigner la juridiction pour l'application du présent article et de la partie XII.7,

which time may, for greater certainty, precede the time at which the designation is made, and

(iii) the Minister of the Environment shall publish on a website maintained by the Government of Canada the designation referred to in subparagraph (i); and

(b) the provinces of British Columbia, Saskatchewan and Alberta are deemed to have been designated by the Minister of the Environment in accordance with this subsection.

(ii) la date de prise d'effet de la désignation visée au sous-alinéa (i) doit être précisée dans la désignation. Il est entendu que cette date peut être antérieure à celle de la désignation,

(iii) le ministre de l'Environnement publie sur un site Web, tenu à jour par le gouvernement du Canada, la désignation visée au sous-alinéa (i);

b) les provinces de la Colombie-Britannique, de la Saskatchewan et de l'Alberta sont réputées avoir été désignées par le ministre de l'Environnement conformément au présent paragraphe.

Revocation of designation

(14) If a jurisdiction makes significant changes to its environmental laws or enforcement governing the permanent storage of captured carbon, and the Minister of the Environment determines that as a result of those changes a jurisdiction designated pursuant to subsection (13) has ceased to have sufficient environmental laws or enforcement governing the permanent storage of captured carbon, the following rules apply:

(a) the Minister of the Environment may revoke the designation of the jurisdiction designated under subsection (13);

(b) the revocation under paragraph (a) shall specify the time at and after which it is in effect, which time shall not begin sooner than 30 days after the revocation is made; and

(c) the Minister of the Environment shall publish on a website maintained by the Government of Canada the revocation referred to in paragraph (a).

Révocation de la désignation

(14) Lorsqu'une juridiction fait des changements importants à ses lois environnementales ou organismes d'application de la loi régissant le stockage permanent du carbone capté, et le ministre de l'Environnement établit que, par suite de ces changements, une juridiction désignée en vertu du paragraphe (13) a cessé de disposer de lois environnementales ou d'organismes d'application régissant le stockage permanent du carbone capté suffisants, les règles suivantes s'appliquent :

a) le ministre de l'Environnement peut révoquer la désignation de la juridiction désignée en vertu du paragraphe (13);

b) la date de prise d'effet de la révocation visée à l'alinéa a) doit être précisée dans la révocation. Cette date ne peut être antérieure au trentième jour suivant la date de la révocation;

c) le ministre de l'Environnement publie sur un site Web, tenu à jour par le gouvernement du Canada, la révocation visée à l'alinéa a).

Purpose

(15) The purpose of this section and Part XII.7 is to encourage the investment of capital in the development and operation of carbon capture, transportation, utilization and storage capacity in Canada.

Objet

(15) Le présent article et la partie XII.7 visent à encourager l'investissement de capitaux dans le développement et l'exploitation de projets de captage, de transport, d'utilisation et de capacité de stockage du carbone au Canada.

Tax shelter investment

(16) Subsections (2) and (3) do not apply in respect of a CCUS project if a property used in the project — or an interest in a person or partnership that has, directly or indirectly, an interest in, or for civil law, a right in, a property used in the project — is a tax shelter investment for the purpose of section 143.2.

Abri fiscal déterminé

(16) Les paragraphes (2) et (3) ne s'appliquent pas relativement à un projet de CUSC si un bien utilisé dans le cadre du projet — ou une participation dans une personne ou une société de personnes qui a, directement ou indirectement, un intérêt ou, pour l'application du droit civil, un droit sur un bien utilisé dans le cadre du projet — est un abri fiscal déterminé pour l'application de l'article 143.2.

Late filing

(17) The Minister may accept the late filing by a qualifying taxpayer of the prescribed form referred to in subsection (2) until one year after the filing-due date referred to in subsection (2), but no payment by the taxpayer is deemed to arise under that subsection until the form has been filed with the Minister.

(2) Subsection (1) is deemed to have come into force on January 1, 2022, except that, before March 28, 2023, subsection 127.44(3) of the Act, as enacted by subsection (1), is to be read without reference to section 127.45 and clause 127.44(9)(b)(ii)(C) of the Act, as enacted by subsection (1), is to be read without the words "or a clean technology investment tax credit is claimed under section 127.45".

36 (1) The Act is amended by adding the following after section 127.44, as enacted by subsection 35(1):

Definitions

127.45 (1) The following definitions apply in this section.

clean technology investment tax credit of a qualifying taxpayer for a taxation year means

(a) the total of all amounts each of which is the specified percentage of the capital cost to the taxpayer of clean technology property acquired by the taxpayer in the year; and

(b) the total of amounts required by subsection (8) to be added in computing the taxpayer's clean technology investment tax credit at the end of the year. (*crédit d'impôt à l'investissement dans les technologies propres*)

clean technology property means property

(a) situated in Canada (including property described in subparagraph (d)(v) or (xiv) of Class 43.1 in Schedule II to the *Income Tax Regulations* that is installed in the exclusive economic zone of Canada) and intended for use exclusively in Canada;

(b) that has not been used, or acquired for use or lease, for any purpose whatever before it was acquired by the taxpayer;

(c) that, if it is to be leased by the taxpayer to another person or partnership, is

Présentation tardive

(17) Le ministre peut accepter la présentation tardive du formulaire prescrit visé au paragraphe (2) par un contribuable admissible jusqu'à une année suivant la date d'échéance de production visée au paragraphe (2), mais aucun paiement effectué par celui-ci n'est réputé découler de l'application de ce paragraphe tant que le formulaire n'est pas présenté au ministre.

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022. Toutefois, avant le 28 mars 2023, le paragraphe 127.44(3) de la même loi, édicté par le paragraphe (1), s'applique compte non tenu de l'article 127.45 et la division 127.44(9)b)(ii)(C) de la même loi, édictée par le paragraphe (1), s'applique compte tenu du passage « ou un crédit d'impôt à l'investissement dans les technologies propres est réclamé en vertu de l'article 127.45 ».

36 (1) La même loi est modifiée par adjonction, après l'article 127.44, édicté par le paragraphe 35(1), de ce qui suit :

Définitions

127.45 (1) Les définitions qui suivent s'appliquent au présent article.

aide gouvernementale S'entend au sens du paragraphe 127(9). (*government assistance*)

aide non gouvernementale S'entend au sens du paragraphe 127(9). (*non-government assistance*)

bien de technologie propre S'entend d'un bien qui remplit les conditions suivantes :

a) il est situé au Canada (y compris un bien visé aux sous-alinéas d)(v) ou (xiv) de la catégorie 43.1 de l'annexe II du *Règlement de l'impôt sur le revenu* qui est installé dans la zone économique exclusive du Canada) et destiné à être utilisé exclusivement au Canada;

b) il n'a été utilisé à aucune fin ni acquis pour être utilisé ou loué à quelque fin que ce soit avant son acquisition par le contribuable;

c) il, s'il est destiné à être loué à une autre personne ou une société de personnes par le contribuable, est loué, à la fois :

(i) à un contribuable admissible ou à une société de personnes dont tous les membres sont des sociétés canadiennes imposables,

(i) leased to a qualifying taxpayer or a partnership all the members of which are taxable Canadian corporations, and

(ii) leased in the ordinary course of carrying on a business in Canada by the taxpayer whose principal business is selling or servicing property of that type, or whose principal business is leasing property, lending money, purchasing conditional sales contracts, accounts receivable, bills of sale, chattel mortgages or hypothecary claims on movables, bills of exchange or other obligations representing all or part of the sale price of merchandise or services, or any combination thereof; and

(d) that is

(i) equipment used to generate electricity from solar, wind and water energy that is described in subparagraph (d)(ii), (iii.1), (v), (vi) or (xiv) of Class 43.1 in Schedule II to the *Income Tax Regulations*,

(ii) stationary electricity storage equipment that is described in subparagraph (d)(xviii) or (xix) of Class 43.1 in Schedule II to the *Income Tax Regulations*, but excluding equipment that uses any fossil fuel in operation,

(iii) active solar heating equipment, air-source heat pumps and ground-source heat pumps that are described in subparagraph (d)(i) of Class 43.1 in Schedule II to the *Income Tax Regulations*,

(iv) a non-road zero-emission vehicle described in Class 56 in Schedule II to the *Income Tax Regulations* and charging or refuelling equipment described in subparagraph (d)(xxi) of Class 43.1 in Schedule II to the *Income Tax Regulations* or subparagraph (b)(ii) of Class 43.2 in Schedule II to the *Income Tax Regulations* that in each case is used primarily for such vehicles,

(v) equipment used exclusively for the purpose of generating electrical energy or heat energy, or a combination of electrical energy and heat energy, solely from geothermal energy, that is described in subparagraph (d)(vii) of Class 43.1 in Schedule II to the *Income Tax Regulations*, but excluding any equipment that is part of a system that extracts fossil fuel for sale,

(vi) concentrated solar energy equipment, or

(vii) a small modular nuclear reactor. (*bien de technologie propre*)

(ii) dans le cours normal de l'exploitation d'une entreprise au Canada par le contribuable dont l'entreprise principale consiste à vendre ou entretenir des biens semblables, ou dont l'entreprise principale consiste à louer des biens, à prêter de l'argent, à acheter des contrats de vente conditionnelle, des comptes clients, des contrats de vente, des créances hypothécaires mobilières, des lettres de change, des sûretés mobilières ou d'autres créances qui représentent tout ou partie du prix de vente de marchandises ou de services, ou consiste en une combinaison de ces activités;

d) il consiste en, selon le cas :

(i) du matériel servant à produire de l'électricité à partir d'énergie solaire, éolienne et hydraulique décrit aux sous-alinéas d)(ii), (iii.1), (v), (vi) ou (xiv) de la catégorie 43.1 de l'annexe II du *Règlement de l'impôt sur le revenu*,

(ii) du matériel fixe de stockage d'électricité décrit aux sous-alinéas d)(xviii) ou (xix) de la catégorie 43.1 de l'annexe II du *Règlement de l'impôt sur le revenu*, mais qui n'est pas alimenté par des combustibles fossiles,

(iii) du matériel de chauffage solaire actif, des thermopompes à air et des thermopompes géothermiques qui sont décrits au sous-alinéa d)(i) de la catégorie 43.1 de l'annexe II du *Règlement de l'impôt sur le revenu*,

(iv) un véhicule zéro émission non routier décrit à la catégorie 56 de l'annexe II du *Règlement de l'impôt sur le revenu* et le matériel de recharge ou de ravitaillement décrit au sous-alinéa d)(xxi) de la catégorie 43.1 de l'annexe II du *Règlement de l'impôt sur le revenu* ou au sous-alinéa b)(ii) de la catégorie 43.2 de l'annexe II du *Règlement de l'impôt sur le revenu* qui est utilisé principalement pour ces véhicules,

(v) du matériel servant exclusivement à produire de l'énergie électrique, de l'énergie thermique, ou une combinaison d'énergie électrique et thermique, uniquement à partir d'énergie géothermique, décrit au sous-alinéa d)(vii) de la catégorie 43.1 de l'annexe II du *Règlement de l'impôt sur le revenu*, à l'exclusion du matériel faisant partie d'un système qui permet d'extraire des combustibles fossiles aux fins de vente,

(vi) du matériel d'énergie solaire concentrée,

(vii) un petit réacteur modulaire nucléaire. (*clean technology property*)

concentrated solar energy equipment means equipment, other than excluded equipment, used all or substantially all to generate heat or electricity, or a combination of heat and electricity, exclusively from concentrated sunlight, including

(a) reflectors and related solar tracking systems;

(b) thermal receivers;

(c) thermal energy storage equipment;

(d) electrical generating equipment;

(e) heat transfer fluid systems;

(f) electrical energy storage equipment;

(g) transmission equipment;

(h) equipment for the distribution of heat energy;

(i) structures whose sole function is to support or house concentrated solar energy equipment; and

(j) ancillary instrumentation and controls including weather monitoring systems. (*matériel d'énergie solaire concentrée*)

excluded equipment means

(a) auxiliary heating or electrical generating equipment that uses any fossil fuel;

(b) buildings or structures other than those structures described in paragraph (i) of the definition of *concentrated solar energy equipment*;

(c) distribution equipment;

(d) property included in Class 10 in Schedule II to the *Income Tax Regulations*; and

(e) property that would be included in Class 17 in Schedule II to the *Income Tax Regulations* if that Class were read without reference to its paragraph (a.1). (*matériel non admissible*)

government assistance has the meaning assigned by subsection 127(9). (*aide gouvernementale*)

non-clean technology use means a use of a particular property at a particular time that would, if the property were acquired at that time, result in the property ceasing to be a clean technology property, determined without reference to paragraph (b) of the definition *clean*

contribuable admissible S'entend d'une société canadienne imposable ou d'une fiducie de fonds commun de placement qui est une *fiducie de placement immobilier* (au sens du paragraphe 122.1(1)). (*qualifying taxpayer*)

crédit d'impôt à l'investissement dans les technologies propres Relativement à un contribuable admissible pour une année d'imposition, s'entend, à la fois :

a) du total des sommes représentant chacune le pourcentage déterminé du coût en capital, pour le contribuable, d'un bien de technologie propre qu'il a acquis au cours de l'année;

b) du total des sommes à ajouter, conformément au paragraphe (8), dans le calcul de son crédit d'impôt à l'investissement dans les technologies propres à la fin de l'année. (*clean technology investment tax credit*)

matériel d'énergie solaire concentrée S'entend du matériel, autre que le matériel non admissible, dont la totalité ou presque est utilisée pour produire de la chaleur, de l'électricité, ou une combinaison de chaleur et d'électricité, exclusivement à partir de lumière solaire concentrée, y compris :

a) des réflecteurs et systèmes de suivi du soleil connexes;

b) des thermorécepteurs;

c) du matériel de stockage d'énergie thermique;

d) du matériel générateur d'électricité;

e) des systèmes de fluides caloporteurs;

f) du matériel de stockage d'énergie électrique;

g) du matériel de transmission;

h) du matériel de distribution d'énergie thermique;

i) des structures ayant pour seule fonction de prendre en charge ou de contenir du matériel d'énergie solaire concentrée;

j) des instruments et contrôles auxiliaires, y compris les systèmes de surveillance météorologique. (*concentrated solar energy equipment*)

matériel non admissible S'entend, à la fois :

a) du matériel auxiliaire générateur de chaleur ou d'électricité qui utilise des combustibles fossiles;

technology property in this subsection. (*utilisation non concernée par la technologie propre*)

non-government assistance has the meaning assigned by subsection 127(9). (*aide non gouvernementale*)

qualifying taxpayer means a taxable Canadian corporation or a mutual fund trust that is a *real estate investment trust* (as defined in subsection 122.1(1)). (*contribuable admissible*)

small modular nuclear reactor means equipment that is used all or substantially all to generate electrical energy or heat energy, or a combination of electrical energy and heat energy, from nuclear fission — including reactors, reactor vessels, reactor control rods, moderators, cooling systems, control systems, nuclear fission fuel handling equipment, containment structures, electrical generating equipment and equipment for the distribution of heat energy — that

(a) is part of a system that has a gross rated generating capacity not exceeding 300 megawatts electric, or an energy balance equivalent gross rated generating capacity of electricity or heat equivalent of 1,000 megawatts thermal;

(b) is part of a system all or substantially all of which is comprised of modules that are factory-assembled and transported pre-built to the installation site; and

(c) is not

(i) nuclear fission fuel,

(ii) equipment for nuclear waste disposal and nuclear waste disposal sites,

(iii) transmission equipment,

(iv) distribution equipment,

(v) property included in Class 10 in Schedule II to the *Income Tax Regulations*, or

(vi) property that would be included in Class 17 in Schedule II to the *Income Tax Regulations* if that Class were read without reference to its paragraph (a.1). (*petit réacteur modulaire nucléaire*)

specified percentage means, in respect of a clean technology property of the taxpayer that is acquired

(a) before March 28, 2023, determined without reference to subsection (4), nil;

b) des immeubles ou structures autres que les structures visées à l'alinéa i) de la définition de *matériel d'énergie solaire concentrée*;

c) du matériel de distribution;

d) des biens qui font partie de la catégorie 10 de l'annexe II du *Règlement de l'impôt sur le revenu*;

e) des biens qui seraient inclus dans la catégorie 17 de l'annexe II du *Règlement de l'impôt sur le revenu* s'il n'était pas tenu compte de son alinéa a.1). (*excluded equipment*)

petit réacteur modulaire nucléaire S'entend du matériel dont la totalité ou presque est utilisée pour produire de l'énergie électrique, de l'énergie thermique, ou une combinaison d'énergie électrique et thermique, uniquement à partir de la fission nucléaire — y compris les réacteurs, cuves de réacteurs, barres de commande pour réacteurs, modérateurs, systèmes de refroidissement, systèmes de contrôle, matériel de manutention d'un combustible de fission nucléaire, enceintes de confinement, matériel de production d'électricité et matériel de distribution d'énergie thermique — qui, à la fois :

a) fait partie d'un système qui a une capacité brute de production n'excédant pas 300 mégawatts d'électricité, ou une capacité brute de production d'électricité ou de chaleur dont le bilan énergétique équivaut à 1 000 mégawatts thermiques;

b) fait partie d'un système dont la totalité ou presque est constituée de modules qui sont assemblés en usine et transportés dans un état préfabriqué au lieu d'installation;

c) n'est pas :

(i) un combustible de fission nucléaire,

(ii) du matériel pour le stockage des déchets nucléaires et des sites de stockage des déchets nucléaires,

(iii) du matériel de transmission,

(iv) du matériel de distribution,

(v) un bien inclus dans la catégorie 10 de l'annexe II du *Règlement de l'impôt sur le revenu*,

(vi) un bien qui serait inclus dans la catégorie 17 de l'annexe II du *Règlement de l'impôt sur le revenu*, s'il n'était pas tenu compte de son alinéa a.1). (*small modular nuclear reactor*)

(b) on or after March 28, 2023 and before January 1, 2034, 30%;

(c) after December 31, 2033 and before January 1, 2035, 15%; and

(d) after December 31, 2034, nil. (*pourcentage déterminé*)

pourcentage déterminé S'entend de l'un des pourcentages suivants, selon le cas, relativement à un bien de technologie propre que le contribuable acquiert :

a) avant le 28 mars 2023, déterminé compte non tenu du paragraphe (4), zéro;

b) le 28 mars 2023 ou après et avant le 1er janvier 2034, 30 %;

c) après le 31 décembre 2033 et avant le 1er janvier 2035, 15 %;

d) après le 31 décembre 2034, zéro. (*specified percentage*)

utilisation non concernée par la technologie propre S'entend de l'utilisation d'un bien déterminé à un moment déterminé qui ferait en sorte que, s'il était acquis à ce moment, il cesserait d'être un bien de technologie propre, déterminé compte non tenu de l'alinéa b) de la définition de *bien de technologie propre* au présent paragraphe. (*non-clean technology use*)

Clean technology investment tax credit

(2) If a qualifying taxpayer files with its return of income for a taxation year a prescribed form containing prescribed information, the taxpayer is deemed to have paid on its balance-due day for the year an amount on account of the taxpayer's tax payable under this Part for the year equal to the taxpayer's clean technology investment tax credit for the year.

Crédit d'impôt dans les technologies propres

(2) Si un contribuable admissible joint à sa déclaration de revenu pour une année d'imposition un formulaire prescrit contenant les renseignements prescrits, le contribuable est réputé avoir payé, à la date d'exigibilité du solde qui lui est applicable pour l'année, un montant au titre de son impôt payable en vertu de la présente partie égal à son crédit d'impôt à l'investissement dans les technologies propres pour l'année.

Time limit for application

(3) A payment on account of tax payable shall not be deemed to be paid under subsection (2) if the taxpayer does not file with the Minister a prescribed form containing prescribed information in respect of the amount on or before the day that is one year after the taxpayer's filing-due date for the year.

Délai d'application

(3) Un montant au titre de l'impôt à payer ne doit pas être réputé avoir été payé en vertu du paragraphe (2) si le contribuable ne produit pas auprès du ministre le formulaire prescrit contenant les renseignements prescrits relativement au montant en cause au plus tard le jour qui suit d'une année la date d'échéance de production qui est applicable au contribuable pour l'année.

Time of acquisition

(4) For the purpose of this section, clean technology property is 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).

Moment de l'acquisition

(4) Pour l'application du présent article, un bien de technologie propre est réputé ne pas avoir été acquis par un contribuable avant que le bien soit considéré comme devenu prêt à être mis en service par le contribuable, déterminé compte non tenu des alinéas 13(27)c) et (28)d).

Special rules — adjustments

(5) For the purpose of the definition *clean technology investment tax credit* in subsection (1), the capital cost of clean technology property shall

Règles spéciales — redressements

(5) Pour l'application de la définition de *crédit d'impôt à l'investissement dans les technologies propres* au paragraphe (1), le coût en capital d'un bien de technologie propre, à la fois :

(a) not include any amount in respect of a capital property

(i) for which an amount was previously deducted under this section by any person,

(ii) in respect of which a CCUS tax credit was deducted under section 127.44 by any person, or

(iii) that has, by virtue of section 21, been added to the cost of a property;

(b) be determined without reference to subsections 13(7.1) and (7.4), less the amount of any government assistance or non-government assistance that can reasonably be considered to be in respect of the property and that, at the time of the filing of the taxpayer's return of income under this Part for the taxation year in which the property was acquired by the taxpayer or partnership, the taxpayer or partnership has received, is entitled to receive or can reasonably be expected to receive; and

(c) be determined with reference to subsections 127(11.6) to (11.8) in respect of an expenditure or cost to a taxpayer except that

(i) the reference in subsection 127(11.6) to subsection 127(11.5) is to be read as a reference to section 127.45,

(ii) the reference in subsection 127(11.6) to subsection 127(26) is to be read as a reference to subsection 127.45(9), and

(iii) the term "qualified expenditure" is to be read as an expenditure eligible to be added to the capital cost of a clean technology property.

a) ne doit pas inclure de montant relativement à une immobilisation, selon le cas :

(i) pour laquelle une personne a déduit antérieurement un montant en vertu du présent article,

(ii) à l'égard de laquelle une personne a déduit un crédit d'impôt pour le CUSC en application de l'article 127.44,

(iii) qui a été ajouté au coût d'un bien en vertu de l'article 21;

b) doit être déterminé compte non tenu des paragraphes 13(7.1) et (7.4), moins le montant de quelque aide gouvernementale ou aide non gouvernementale qu'il est raisonnable de considérer comme se rapportant au bien et, au moment de la production de sa déclaration de revenu en vertu de la présente partie pour l'année d'imposition où le bien est acquis par le contribuable ou la société de personnes, que le contribuable ou la société de personnes a reçu, est en droit de recevoir ou peut vraisemblablement s'attendre à recevoir;

c) doit être déterminé compte tenu des paragraphes 127(11.6) à (11.8) relativement à une dépense ou un coût pour le contribuable. Toutefois :

(i) la mention au paragraphe 127(11.6) du paragraphe 127(11.5) vaut mention de l'article 127.45,

(ii) la mention au paragraphe 127(11.6) du paragraphe 127(26) vaut mention du paragraphe 127.45(9),

(iii) le terme « dépense admissible » vaut mention d'une dépense admissible à ajouter au coût en capital d'un bien de technologie propre.

Deemed deduction

(6) For the purposes of this section, paragraph 12(1)(t), subsection 13(7.1), the description of I in the definition *undepreciated capital cost* in subsection 13(21) and subsection 53(2), the amount deemed under subsection (2) to have been paid by a taxpayer for a taxation year is deemed to have been deducted from the taxpayer's tax otherwise payable under this Part for the year.

Déduction réputée

(6) Pour l'application du présent article, de l'alinéa 12(1)t), du paragraphe 13(7.1), de l'élément I de la définition de *fraction non amortie du coût en capital* au paragraphe 13(21) et du paragraphe 53(2), le montant réputé avoir été payé par un contribuable en application du paragraphe (2) pour une année d'imposition est réputé avoir été déduit de son impôt payable par ailleurs en vertu de la présente partie pour l'année.

Repayment of assistance

(7) Where a taxpayer has, in a particular taxation year, repaid (or has not received and can no longer reasonably be expected to receive) an amount of government assistance or non-government assistance that was applied to reduce the cost of a property under paragraph (5)(b) for a preceding taxation year, the amount repaid (or no longer

Remboursement d'un montant d'aide

(7) Le contribuable qui, au cours d'une année d'imposition donnée, rembourse (ou n'a pas reçu ou ne peut raisonnablement plus s'attendre à recevoir) un montant d'aide gouvernementale ou d'aide non gouvernementale qui a été appliqué pour réduire le coût d'un bien selon l'alinéa (5)b) pour une année d'imposition antérieure, le

expected to be received) is to be added to the cost to the taxpayer of a property acquired in the particular year for the purpose of determining the taxpayer's clean technology investment tax credit for the year.

montant remboursé (ou que le contribuable ne peut raisonnablement plus s'attendre à recevoir) est ajouté au coût, pour le contribuable, d'un bien qu'il a acquis au cours de l'année donnée pour le calcul du crédit d'impôt à l'investissement dans les technologies propres pour l'année.

Partnerships

(8) Subject to section 127.47, where, in a particular taxation year of a taxpayer who is a member of a partnership, an amount would be determined under subsection (2) in respect of the partnership, for its taxation year that ends in the particular year, if the partnership were a taxable Canadian corporation and its fiscal period were its taxation year, the portion of that amount that can reasonably be considered to be the taxpayer's share thereof shall be added in computing the clean technology investment tax credit of the taxpayer at the end of the particular year.

Société de personnes

(8) Sous réserve de l'article 127.47, dans le cas où, au cours d'une année d'imposition donnée d'un contribuable qui est un associé d'une société de personnes, un montant serait déterminé selon le paragraphe (2) relativement à la société de personnes, pour son année d'imposition qui se termine dans l'année donnée, si la société de personnes était une société canadienne imposable et son exercice constituait son année d'imposition, la partie de ce montant qu'il est raisonnable de considérer comme la part qui revient au contribuable est à ajouter dans le calcul de son crédit d'impôt à l'investissement dans les technologies propres à la fin de l'année donnée.

Unpaid amounts

(9) For the purposes of this section, where any part of the capital cost of a taxpayer's clean technology property is unpaid on the day that is 180 days after the end of the taxation year in which a deduction in respect of a clean technology investment tax credit would otherwise be available in respect of the property, such amount is to be

(a) excluded from the capital cost of such property in the year; and

(b) added to the capital cost of such property at the time it is paid.

Sommes impayées

(9) Pour l'application du présent article, dans le cas où une partie du coût en capital d'un bien de technologie propre d'un contribuable est impayée le cent-quatre-vingtième jour suivant la fin de l'année d'imposition au cours de laquelle une déduction relativement à un crédit d'impôt à l'investissement dans les technologies propres pourrait par ailleurs être demandée relativement au bien, ce montant est, à la fois :

a) exclus du coût en capital du bien dans l'année;

b) ajouté au coût en capital du bien au moment où il est payé.

Tax shelter investment

(10) Subsection (2) does not apply if a clean technology property — or an interest in a person or partnership that has, directly or indirectly, an interest in, or for civil law, a right in, such property — is a tax shelter investment for the purpose of section 143.2.

Abri fiscal déterminé

(10) Le paragraphe (2) ne s'applique pas si un bien de technologie propre — ou une participation dans une personne ou une société de personnes qui a, directement ou indirectement, un intérêt ou, pour l'application du droit civil, un droit sur le bien — est un abri fiscal déterminé pour l'application de l'article 143.2.

Recapture — conditions for application

(11) Subsection (12) applies in a taxation year if

(a) a taxpayer acquired a clean technology property in the year or any of the preceding 10 calendar years;

(b) the taxpayer became entitled to a clean technology investment tax credit in respect of the capital cost, or a portion of the capital cost, of the particular property; and

Récupération — conditions d'application

(11) Le paragraphe (12) s'applique dans une année d'imposition si les conditions suivantes sont remplies :

a) un contribuable a acquis un bien de technologie propre au cours de l'année ou au cours des dix années civiles précédentes;

b) le contribuable est en droit de recevoir un crédit d'impôt à l'investissement dans les technologies

(c) in the year, the particular property (or another property that incorporates the particular property) is converted to a non-clean technology use, is exported from Canada or is disposed of without having been previously exported or converted to a non-clean technology use.

c) au cours de l'année, le bien donné (ou un autre bien auquel il est incorporé) est affecté à une utilisation non concernée par la technologie propre, est exporté du Canada, ou fait l'objet d'une disposition sans avoir été précédemment exporté ou affecté à une utilisation non concernée par la technologie propre.

Recapture of credit

(12) If this subsection applies, there shall be added to the taxpayer's tax otherwise payable under this Part for the year the lesser of

(a) the amount of the taxpayer's clean technology investment tax credit in respect of the particular property, and

(b) the amount determined by the formula

A × (B ÷ C)

where

A is the amount of the taxpayer's clean technology investment tax credit in respect of the particular property,

B is

(i) in the case where the particular property is disposed of to a person who deals at arm's length with the taxpayer, the proceeds of disposition of the property, or

(ii) in the case where the particular property is disposed of to a person who does not deal at arm's length with the taxpayer, is converted to a non-clean technology use or is exported from Canada, the fair market value of the property, and

C is the capital cost of the particular property on which the clean technology investment tax credit was deducted.

Récupération du crédit

(12) Si le présent paragraphe s'applique, il est ajouté à l'impôt payable par ailleurs par le contribuable en vertu de la présente partie pour l'année le moindre des montants suivants :

a) le montant du crédit d'impôt à l'investissement dans les technologies propres relativement au bien donné,

b) le montant obtenu par la formule suivante :

A × (B ÷ C)

où :

A représente le montant du crédit d'impôt à l'investissement dans les technologies propres relativement au bien donné,

B selon le cas :

(i) dans le cas où le bien donné fait l'objet d'une disposition en faveur d'une personne n'ayant pas de lien de dépendance avec le contribuable, le produit de disposition du bien,

(ii) dans le cas où le bien donné fait l'objet d'une disposition en faveur d'une personne ayant un lien de dépendance avec le contribuable, est converti en une utilisation non concernée par la technologie propre ou est exporté du Canada, la juste valeur marchande du bien,

C le coût en capital du bien donné auquel la déduction du crédit d'impôt à l'investissement dans les technologies propres a été appliquée.

Certain non-arm's length transfers

(13) Subsections (11) and (12) do not apply to a taxpayer that is a taxable Canadian corporation (in this subsection referred to as the "transferor") that disposes of a property to another taxable Canadian corporation (in this subsection referred to as the "purchaser") related to the transferor if the purchaser acquired the property in circumstances where the property would be *clean technology*

Certains transferts entre parties ayant un lien de dépendance

(13) Les paragraphes (11) et (12) ne s'appliquent pas à un contribuable qui est une société canadienne imposable (appelé « cédant » au présent paragraphe) qui dispose d'un bien en faveur d'une autre société canadienne imposable (appelée « acheteur » au présent paragraphe) qui est liée au cédant si l'acheteur a acquis le bien dans des circonstances où le bien aurait été, pour lui, un *bien*

property to the purchaser but for paragraph (b) of that definition.

Certain non-arm's length transfers — recapture deferred

(14) If subsection (13) applies, subsection 127(34) applies with such modifications as the circumstances require, including that the reference to subsection 127(33) be read as a reference to subsection 127.45(13).

Recapture event reporting requirement

(15) If subsection (11) or (13) applies to a taxpayer for a particular year, the taxpayer shall notify the Minister in prescribed form and manner on or before the taxpayer's filing-due date for the year.

Recapture of credit for partnerships

(16) Subsection (17) applies in a fiscal period of a partnership if

(a) the partnership acquired a particular clean technology property in the fiscal period or in any of the 10 preceding calendar years;

(b) the cost, or a portion of the cost, of the particular property is included in an amount, a percentage of which can reasonably be considered to have been included in computing the amount determined under subsection (8) in respect of the partnership at the end of a fiscal period; and

(c) in the fiscal period, the particular property (or another property that incorporates the particular property) is converted to a non-clean technology use, is exported from Canada or is disposed of without having been previously exported or converted to a non-clean technology use.

Addition to tax

(17) If this subsection applies to a fiscal period of a partnership, where a taxpayer is a member of the partnership during the fiscal period, there shall be added to the taxpayer's tax otherwise payable under this Part for the taxpayer's taxation year in which the fiscal period ends the amount that can reasonably be considered to be the taxpayer's share of the amount, if any, equal to the lesser of

(a) the amount that can reasonably be considered to have been included in respect of the particular property in computing the amount determined under subsection (8) in respect of the partnership, and

de technologie propre n'eût été l'alinéa b) de cette définition.

Certains transferts entre parties ayant un lien de dépendance — récupération différée

(14) Si le paragraphe (13) s'applique, le paragraphe 127(34) s'applique avec les modifications nécessaires, notamment, la mention du paragraphe 127(33) vaut mention du paragraphe 127.45(13).

Événement de récupération — exigences en matière de déclaration

(15) Si les paragraphes (11) ou (13) s'appliquent à un contribuable pour une année donnée, le contribuable est tenu d'en aviser le ministre sur le formulaire prescrit et selon les modalités prescrites au plus tard à la date d'échéance de production qui lui est applicable pour l'année.

Récupération du crédit — sociétés de personnes

(16) Le paragraphe (17) s'applique au cours d'un exercice d'une société de personnes si les conditions suivantes sont remplies :

a) la société de personnes a acquis un bien de technologie propre donné au cours de l'exercice ou au cours des dix années civiles précédentes;

b) la totalité ou une partie du coût du bien donné est comprise dans un montant dont un pourcentage peut raisonnablement être considéré comme ayant été inclus dans le calcul du montant déterminé selon le paragraphe (8) à l'égard de la société de personnes à la fin d'un exercice;

c) au cours de l'exercice, le bien donné (ou un autre bien auquel il est incorporé) est affecté à une utilisation non concernée par la technologie propre, est exporté du Canada ou fait l'objet d'une disposition sans avoir été précédemment exporté ou affecté à une utilisation non concernée par la technologie propre.

Somme à ajouter à l'impôt

(17) Si le présent paragraphe s'applique à un exercice d'une société de personnes, lorsqu'un contribuable est un associé de la société de personnes au cours de l'exercice, est ajoutée à son impôt par ailleurs payable en vertu de la présente partie pour son année d'imposition dans laquelle l'exercice prend fin le montant qu'il est raisonnable de considérer comme sa part du montant égal au moindre des montants suivants :

a) le montant qu'il est raisonnable de considérer comme ayant été inclus relativement au bien donné

(b) the percentage described in paragraph (16)(b) of

(i) where the particular property (or the other property) is disposed of to a person who deals at arm's length with the partnership, the proceeds of disposition of the property, and

(ii) in any other case, the fair market value of the particular property (or the other property) at the time of the conversion, export or disposition.

dans le calcul du montant déterminé selon le paragraphe (8) à l'égard de la société de personnes;

b) le pourcentage visé à l'alinéa (16)b) multiplié par le montant applicable suivant :

(i) s'il est disposé du bien donné (ou de l'autre bien) en faveur d'une personne sans lien de dépendance avec la société de personnes, le produit de disposition du bien,

(ii) dans les autres cas, la juste valeur marchande du bien donné (ou de l'autre bien) au moment de son affectation, de son exportation ou de sa disposition.

Information return — partnerships

(18) If subsections (16) and (17) apply with respect to the property of a partnership for a particular fiscal period, the partnership shall notify the Minister in prescribed form and manner on or before the day when a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the period.

Déclaration de renseignements — société de personnes

(18) Si les paragraphes (16) et (17) s'appliquent à l'égard du bien d'une société de personnes pour un exercice donné, la société de personnes est tenue d'aviser le ministre sur le formulaire prescrit et selon les modalités prescrites au plus tard à la date où une déclaration doit être produite en vertu de l'article 229 du *Règlement de l'impôt sur le revenu* pour l'exercice.

Clean technology investment tax credit — purpose

(19) The purpose of this section is to encourage the investment of capital in the adoption and operation of clean technology property in Canada.

Crédit d'impôt à l'investissement dans les technologies propres — but

(19) Le présent article vise à encourager l'investissement de capitaux dans l'adoption et l'exploitation de biens de technologie propre au Canada.

Authority of the Minister of Natural Resources

(20) For the purpose of determining whether a property is a clean technology property, any technical guide, published by the Department of Natural Resources and as amended from time to time, is to apply conclusively with respect to engineering and scientific matters.

Pouvoir du ministre des Ressources naturelles

(20) Tout guide technique publié par le ministère des Ressources naturelles avec ses modifications successives s'applique de manière concluante en matière d'ingénierie et de science lorsqu'il s'agit de déterminer si un bien est un bien de technologie propre.

(2) Subsection (1) is deemed to have come into force on March 28, 2023.

(2) Le paragraphe (1) est réputé être entré en vigueur le 28 mars 2023.

37 (1) The Act is amended by adding the following after section 127.45, as enacted by subsection 36(1):

37 (1) La même loi est modifiée par adjonction, après l'article 127.45, édicté par le paragraphe 36(1), de ce qui suit :

Definitions

127.46 (1) The following definitions apply in this section.

apprenticeship requirements means the requirements set out in subsection (5). (*exigences à l'égard d'apprentis*)

Définitions

127.46 (1) Les définitions qui suivent s'appliquent au présent article.

année d'imposition de l'installation Relativement à un crédit d'impôt déterminé, s'entend d'une année d'imposition au cours de laquelle la préparation ou l'installation de biens déterminés se produit. (*installation taxation year*)

benefits means vacation, pension, health and welfare benefits required to be provided by employers to or for employees under an eligible collective agreement. (*avantages sociaux*)

covered worker means an individual (other than a trust)

(a) who is engaged in the preparation or installation of specified property at a designated work site as an employee of an incentive claimant or of another person or partnership;

(b) whose work or duties in respect of the designated work site are primarily manual or physical in nature; and

(c) who is not

(i) an administrative, clerical or executive employee, or

(ii) a *business visitor to Canada* as described in section 187 of the *Immigration and Refugee Protection Regulations*. (*travailleur visé*)

designated work site in a taxation year of an incentive claimant means a work site where specified property of an incentive claimant is located during the year and includes the site of a *CCUS project* (as defined in section 127.44) of the incentive claimant. (*chantier désigné*)

eligible collective agreement means

(a) in Quebec,

(i) a collective agreement negotiated in accordance with applicable provincial law, or

(ii) a prescribed agreement; and

(b) in any other case,

(i) the most recent multi-employer collective bargaining agreement negotiated with a trade union that is an affiliate of Canada's Building Trades Unions for a given trade in a region or province,

(ii) a project labour agreement established with a trade union in accordance with applicable provincial law that covers the work associated with the investments eligible for specified tax credits and that provides for wages and benefits for covered workers in a given trade that are at least equal to the regular wages (without taking into account overtime) and benefits provided for covered workers in an agreement described in subparagraph (i), or

avantages sociaux S'entend des congés payés, des prestations de pension, des avantages sociaux en matière de santé et de bien-être que les employeurs doivent offrir aux employés en vertu d'une convention collective admissible. (*benefits*)

bien déterminé S'entend d'un bien dont une partie ou la totalité du coût peut faire l'objet d'un crédit d'impôt déterminé. (*specified property*)

chantier désigné Au cours d'une année d'imposition d'un demandeur d'incitatif, s'entend d'un chantier où se situe le bien déterminé d'un demandeur d'incitatif pendant l'année et comprend le chantier d'un *projet de CUSC* (au sens de l'article 127.44) du demandeur d'incitatif. (*designated work site*)

convention collective admissible S'entend :

a) au Québec, selon le cas :

(i) d'une convention collective négociée conformément à la loi provinciale applicable,

(ii) d'une convention visée par règlement;

b) sinon, selon le cas :

(i) de la dernière convention collective interentreprises négociée par un syndicat rattaché aux Syndicats des métiers de la construction du Canada pour un métier donné, dans une région ou une province,

(ii) d'une convention collective pour un projet conclue par un syndicat conformément à la loi provinciale applicable qui vise le travail associé aux investissements donnant droit aux crédits d'impôt déterminés et qui prévoit les salaires et avantages sociaux pour les travailleurs visés d'un métier donné qui équivalent au moins aux salaires réguliers (compte non tenu des heures supplémentaires) et aux avantages sociaux fournis aux travailleurs visés dans une convention visée au sous-alinéa (i),

(iii) d'une convention visée par règlement. (*eligible collective agreement*)

crédit d'impôt déterminé S'entend du *crédit d'impôt pour le CUSC* en vertu de l'article 127.44 et du *crédit d'impôt à l'investissement dans les technologies propres* en vertu de l'article 127.45. (*specified tax credit*)

demandeur d'incitatif Personne ou société de personnes dont au moins un associé envisage de demander

(iii) a prescribed agreement. (*convention collective admissible*)

incentive claimant means a person that, or a partnership at least one member of which, plans to claim or has claimed a specified tax credit for a taxation year. (*demandeur d'incitatif*)

installation taxation year, in respect of a specified tax credit, means a taxation year during which preparation or installation of specified property occurs. (*année d'imposition de l'installation*)

prevailing wage requirements means the requirements set out in subsection (3). (*exigences relatives au salaire prévalant*)

Red Seal trade means, for a province using the Red Seal Program for a particular trade, the relevant Red Seal trade managed by the Canadian Council of Directors of Apprenticeship and, in any other case, an equivalent provincially registered trade. (*métier désigné Sceau rouge*)

Red Seal worker means a covered worker whose duties are, or are equivalent to, those duties normally performed by workers in a Red Seal trade. (*travailleur Sceau rouge*)

reduced tax credit rate means the regular tax credit rate minus 10 percentage points. (*taux du crédit d'impôt réduit*)

regular tax credit rate means the *specified percentage* (as defined in subsections 127.44(1) and 127.45(1), as the case may be). (*taux du crédit d'impôt régulier*)

specified property means property all or a portion of the cost of which qualifies for a specified tax credit. (*bien déterminé*)

specified tax credit means the *CCUS tax credit* under section 127.44 and the *clean technology investment tax credit* under section 127.45. (*crédit d'impôt déterminé*)

Reduced or regular rate

(2) Despite sections 127.44 and 127.45, the applicable rate for each specified tax credit of an incentive claimant is the reduced tax credit rate unless the incentive claimant elects in prescribed form and manner to meet

ou a demandé un crédit d'impôt déterminé pour une année d'imposition. (*incentive claimant*)

exigences à l'égard d'apprentis S'entend des exigences énoncées au paragraphe (5). (*apprenticeship requirements*)

exigences relatives au salaire prévalant S'entend des exigences énoncées au paragraphe (3). (*prevailing wage requirements*)

métier désigné Sceau rouge S'entend, pour une province qui utilise le Programme du Sceau rouge pour un métier donné, du métier désigné Sceau rouge pertinent géré par le Conseil canadien des directeurs de l'apprentissage ou, dans les autres cas, d'un métier équivalent agréé par une province. (*Red Seal trade*)

taux du crédit d'impôt réduit S'entend du taux du crédit d'impôt régulier moins dix points de pourcentage. (*reduced tax credit rate*)

taux du crédit d'impôt régulier S'entend du *pourcentage déterminé* (au sens des paragraphes 127.44(1) et 127.45(1), selon le cas). (*regular tax credit rate*)

travailleur Sceau rouge S'entend d'un travailleur visé dont les fonctions sont, ou équivalent à, celles normalement exercées par des travailleurs dans un métier désigné Sceau rouge. (*Red Seal worker*)

travailleur visé S'entend d'un particulier (sauf une fiducie), à la fois :

a) qui participe à la préparation ou à l'installation de biens déterminés sur un chantier désigné à titre d'employé d'un demandeur d'incitatif ou d'une autre personne ou société de personnes;

b) dont le travail ou les fonctions relatifs au chantier désigné sont principalement manuels ou physiques;

c) qui n'est, selon le cas :

(i) ni un salarié administratif, un employé de bureau ou un cadre,

(ii) ni un *visiteur commercial au Canada* visé à l'article 187 du *Règlement sur l'immigration et la protection des réfugiés*. (*covered worker*)

Taux réduit ou régulier

(2) Malgré les articles 127.44 et 127.45, le taux applicable pour chaque crédit d'impôt déterminé d'un demandeur d'incitatif correspond au taux du crédit d'impôt réduit, sauf si le demandeur d'incitatif choisit sur le formulaire

the prevailing wage requirements under subsection (3) and the apprenticeship requirements under subsection (5) for each installation taxation year in respect of the specified tax credit.

Prevailing wage requirements

(3) For the purposes of this section, the prevailing wage requirements for an incentive claimant for an installation taxation year are

(a) if prescribed circumstances exist, prescribed conditions; and

(b) in any other case, the following conditions:

(i) each covered worker at a designated work site of an incentive claimant must be compensated for their work on the preparation or installation of specified property

(A) in accordance with the terms of an eligible collective agreement that applies to the worker, or

(B) in an amount that is at least equal to the amount of the regular wages (without taking into account overtime) and benefits as specified in the eligible collective agreement that most closely aligns with the covered worker's experience level, tasks and location, calculated on a per-hour or similar basis;

(ii) the incentive claimant attests, in prescribed form and manner, that it has met the prevailing wage requirement in subparagraph (i) for its own employees who are covered workers, if any, and that it has taken reasonable steps to ensure that any covered workers employed by any other person or partnership at the designated work site are compensated in accordance with subparagraph (i); and

(iii) it has communicated, either in a poster or notice, in a manner readily visible to and accessible by covered workers at the designated work site or by electronic means, a notice confirming that the work site is a work site subject to prevailing wage requirements in relation to covered workers, including a plain language explanation of what that means for workers and information regarding how to report failures to pay prevailing wages to the Minister.

prescrit et selon les modalités prescrites de satisfaire aux exigences relatives au salaire prévalant en vertu du paragraphe (3) et aux exigences à l'égard d'apprentis en vertu du paragraphe (5) pour chaque année d'imposition de l'installation relativement au crédit d'impôt déterminé.

Exigences relatives au salaire prévalant

(3) Pour l'application du présent article, les exigences relatives au salaire prévalant pour un demandeur d'incitatif pour une année d'imposition de l'installation sont les suivantes :

a) si les circonstances prévues par règlement s'avèrent, les conditions visées par règlement;

b) dans les autres cas, les conditions suivantes :

(i) chaque travailleur visé sur un chantier désigné d'un demandeur d'incitatif doit être rémunéré pour son travail dans le cadre de la préparation ou de l'installation de biens déterminés :

(A) soit conformément aux conditions d'une convention collective admissible qui s'applique au travailleur,

(B) soit d'un montant qui équivaut au moins au montant de salaires réguliers (compte non tenu des heures supplémentaires) et d'avantages sociaux précisés dans la convention collective admissible qui correspond le plus étroitement au niveau d'expérience du travailleur visé, à ses tâches et à son lieu de travail, calculé selon un taux horaire ou sur une base similaire,

(ii) le demandeur d'incitatif atteste, sur le formulaire prescrit et selon les modalités prescrites, qu'il a satisfait à l'exigence relative au salaire prévalant énoncée au sous-alinéa (i) en ce qui concerne ses propres employés qui sont des travailleurs visés, le cas échéant, et qu'il a pris les mesures raisonnables pour veiller à ce que tout travailleur visé qui est employé par toute autre personne ou société de personnes sur le chantier désigné soit rémunéré conformément au sous-alinéa (i),

(iii) il a communiqué, soit sur une affiche, soit dans un avis, d'une manière facilement visible pour les travailleurs visés, et accessible par ceux-ci, sur le chantier désigné ou par voie électronique, un avis confirmant qu'il s'agit d'un chantier soumis aux exigences relatives au salaire prévalant relativement aux travailleurs visés, y compris une explication dans un langage clair de ce que cela représente pour les travailleurs et des renseignements sur la

façon de signaler les omissions de verser les salaires prévalant au ministre.

Indexation of prevailing wages

(4) Where an eligible collective agreement that is used to calculate the prevailing wage requirement under subparagraph (3)(b)(i) is expired, then the amounts of wages and benefits stipulated in the agreement shall be adjusted by the average Consumer Price Index in the manner set out in section 117.1 for each calendar year that begins after the expiration of the eligible collective agreement.

Indexation des salaires prévalant

(4) Lorsqu'une convention collective admissible servant à calculer l'exigence relative au salaire prévalant en vertu du sous-alinéa (3)b)(i) est expirée, les montants de salaires et d'avantages sociaux stipulés dans la convention sont ajustés en fonction de l'indice moyen des prix à la consommation selon les modalités visées à l'article 117.1 pour chaque année civile commençant après l'expiration de la convention collective admissible.

Apprenticeship requirements

(5) For the purposes of this section, the apprenticeship requirements for an incentive claimant for an installation taxation year are that

(a) subject to paragraph (b), the incentive claimant makes reasonable efforts to ensure that apprentices registered in a Red Seal trade work at least 10% of the total hours that are worked during the year by Red Seal workers at a designated work site of the incentive claimant on the preparation or installation of specified property;

(b) if an applicable law or collective agreement that specifies a maximum ratio of apprentices to journeypersons, or otherwise restricts the number of apprentices employed at a designated work site, prevents the condition in paragraph (a) from being met, the incentive claimant makes reasonable efforts to ensure that the highest possible percentage of the total labour hours, performed during the year by Red Seal workers on the preparation or installation of specified property, is performed by apprentices registered in a Red Seal trade while respecting the applicable labour law or collective agreement; and

(c) the incentive claimant attests in prescribed form and manner that it has met the apprenticeship requirements in paragraph (a) or (b) in respect of covered workers at the designated work site.

Exigences à l'égard d'apprentis

(5) Pour l'application du présent article, les exigences à l'égard d'apprentis pour un demandeur d'incitatif au titre d'une année d'imposition de l'installation sont les suivantes :

a) sous réserve de l'alinéa b), le demandeur d'incitatif fait des efforts sérieux pour s'assurer que les apprentis inscrits à un métier désigné Sceau rouge travaillent au moins 10 % du total des heures de travail effectuées par des travailleurs Sceau rouge au cours de l'année sur un chantier désigné du demandeur d'incitatif dans le cadre de la préparation ou de l'installation de biens déterminés;

b) si une loi ou une convention collective applicable qui précise un rapport maximum entre les apprentis et les compagnons, ou qui limite autrement le nombre d'apprentis employés sur un chantier désigné, empêche la condition mentionnée à l'alinéa a) d'être respectée, le demandeur d'incitatif fait des efforts sérieux pour s'assurer que le pourcentage le plus élevé possible du total des heures de travail effectuées par des travailleurs Sceau rouge au cours de l'année dans le cadre de la préparation ou de l'installation de biens déterminés soit effectué par des apprentis inscrits à un métier désigné Sceau rouge en respectant la loi sur le travail ou la convention collective applicable;

c) le demandeur d'incitatif atteste, sur le formulaire prescrit et selon les modalités prescrites, qu'il satisfait aux exigences à l'égard d'apprentis énoncées aux alinéas a) ou b) relativement aux travailleurs visés sur le chantier désigné.

Addition to tax — wage requirement

(6) Unless subsection (9) applies, if an incentive claimant claims a specified tax credit at a regular tax credit rate in a taxation year but does not meet the prevailing wage requirements in respect of a covered worker for one or more days in an installation taxation year in respect of

Somme à ajouter à l'impôt — exigence relative au salaire

(6) Sauf si le paragraphe (9) s'applique, si un demandeur d'incitatif demande un crédit d'impôt déterminé à un taux du crédit d'impôt régulier au cours d'une année d'imposition, mais ne satisfait pas aux exigences relatives au salaire prévalant relativement à un travailleur visé

that specified tax credit, there shall be added to the tax payable under this Part for the installation taxation year by the incentive claimant an amount equal to $20 for each day in the installation taxation year on which the covered worker was not paid the prevailing wage.

Addition to tax — apprenticeship requirement

(7) Unless subsection (9) applies, if an incentive claimant claims a specified tax credit at a regular tax credit rate in a taxation year in respect of a designated work site, but less than 10% of the total hours that are worked during an installation taxation year in respect of that specified tax credit at the designated work site on the preparation or installation of specified property are worked by apprentices registered in a Red Seal trade, there shall be added to the tax payable under this Part for the installation taxation year by the incentive claimant the amount determined by the formula

$50 × (A – B)

where

A is the total number of hours of labour required to be performed by apprentices registered in a Red Seal trade for the installation taxation year at the designated work site of the incentive claimant as described in paragraph (5)(a) or (b), as applicable, in each case read without reference to the words "the incentive claimant makes reasonable efforts to ensure that"; and

B is the total number of actual hours of labour performed by apprentices registered in a Red Seal trade for the installation taxation year at the designated work site of the incentive claimant on the preparation or installation of specified property plus any other hours of labour for which the incentive claimant has met the apprenticeship requirements in paragraph (5)(a) or (b), as applicable.

Indexation

(8) The dollar amounts in subsections (6) and (7) shall be adjusted for inflation in each calendar year commencing after 2023 in the manner set out in section 117.1.

Gross negligence

(9) If an incentive claimant has claimed a specified tax credit at the regular tax credit rate in a taxation year (referred to in this subsection as the "claim year") but has

pendant un ou plusieurs jours d'une année d'imposition de l'installation pour ce crédit d'impôt déterminé, il doit être ajouté à l'impôt à payer en vertu de la présente partie pour l'année d'imposition de l'installation par le demandeur d'incitatif, une somme égale à 20 $ pour chaque jour de cette année d'imposition de l'installation où le salaire prévalant n'a pas été versé au travailleur visé.

Somme à ajouter à l'impôt — exigence à l'égard d'apprentis

(7) Sauf si le paragraphe (9) s'applique, si un demandeur d'incitatif demande un crédit d'impôt déterminé à un taux du crédit d'impôt régulier au cours d'une année d'imposition relativement à un chantier désigné, mais que moins de 10 % du total des heures effectuées au cours d'une année d'imposition de l'installation pour ce crédit d'impôt déterminé sur le chantier désigné dans le cadre de la préparation ou de l'installation de biens déterminés sont effectuées par des apprentis inscrits à un métier désigné Sceau rouge, il doit être ajouté à l'impôt à payer en vertu de la présente partie pour l'année d'imposition de l'installation par le demandeur d'incitatif, la somme obtenue par la formule suivante :

50 $ × (A – B)

où :

A représente le nombre total d'heures de travail devant être effectuées par des apprentis inscrits à un métier désigné Sceau rouge pour l'année d'imposition de l'installation sur le chantier désigné du demandeur d'incitatif visé aux alinéas (5)a) ou b), selon le cas, dans chaque cas compte non tenu du passage « le demandeur d'incitatif fait des efforts sérieux pour s'assurer que »;

B le nombre total d'heures de travail réellement effectuées par des apprentis inscrits à un métier désigné Sceau rouge pour l'année d'imposition de l'installation sur le chantier désigné du demandeur d'incitatif dans le cadre de la préparation ou de l'installation de biens déterminés plus toutes les autres heures de travail pour lesquelles celui-ci a respecté les exigences à l'égard d'apprentis énoncées aux alinéas (5)a) ou b), le cas échéant.

Indexation

(8) Les montants en dollars aux paragraphes (6) et (7) doivent être ajustés en fonction de l'inflation pour chaque année civile commençant après 2023 selon les modalités visées à l'article 117.1.

Faute lourde

(9) Si un demandeur d'incitatif a demandé un crédit d'impôt déterminé au taux du crédit d'impôt régulier au cours d'une année d'imposition (appelée « année de la

failed to meet the prevailing wage requirements or the apprenticeship requirements for an installation taxation year in respect of that specified tax credit and the Minister determines that the incentive claimant knowingly or in circumstances amounting to gross negligence failed to meet those requirements, then

(a) the incentive claimant is not entitled to the regular tax credit rate, and is entitled to not more than the reduced tax credit rate, for the specified tax credit; and

(b) the incentive claimant is liable to a penalty for the claim year equal to the amount determined by the formula

50% × (A – B)

where

A is the amount of the specified tax credit claimed by the incentive claimant at the regular tax credit rate for the claim year, and

B is the amount that the incentive claimant would have been entitled to claim as a specified tax credit at the reduced tax credit rate for the claim year.

CCUS refurbishment credit

(10) Subsection (9) does not apply in respect of a CCUS refurbishment tax credit.

Corrective measures — prevailing wage requirement

(11) Unless subsection (9) applies, if an incentive claimant receives a notification from the Minister specifying that the incentive claimant did not meet the prevailing wage requirements for a designated work site for a taxation year, the incentive claimant may within one year after receipt of the notification, or such longer period as is acceptable to the Minister, cause each covered worker to be paid the top-up amount determined under subsection (12).

Top-up amount

(12) For each covered worker in respect of an incentive claimant, the top-up amount referred to in subsection (11) for a taxation year shall equal or exceed the amount determined by the formula

A – B + C

where

A is the amount that the covered worker would have received or benefited from, in respect of the worker's

demande » au présent paragraphe), mais n'a pas respecté les exigences relatives au salaire prévalant ou les exigences à l'égard d'apprentis pour une année d'imposition de l'installation relativement à ce crédit d'impôt déterminé, et le ministre établit qu'il a sciemment ou dans des circonstances équivalant à faute lourde omis de satisfaire à ces exigences, à la fois :

a) pour le crédit d'impôt déterminé, le demandeur d'incitatif n'a ni droit au taux du crédit d'impôt régulier, ni à un taux supérieur au taux du crédit d'impôt réduit;

b) le demandeur d'incitatif est passible d'une pénalité pour l'année de la demande égale à la somme obtenue par la formule suivante :

50 % × (A – B)

où :

A représente le montant du crédit d'impôt déterminé demandé par le demandeur d'incitatif au taux du crédit d'impôt régulier pour l'année de la demande;

B la somme que le demandeur d'incitatif aurait eu le droit de demander à titre de crédit d'impôt déterminé au taux du crédit d'impôt réduit pour l'année de la demande.

Crédit pour la remise en état du CUSC

(10) Le paragraphe (9) ne s'applique pas relativement à un crédit d'impôt pour la remise en état du CUSC.

Mesures correctives — exigence relative au salaire prévalant

(11) Sauf si le paragraphe (9) s'applique, si un demandeur d'incitatif reçoit un avis du ministre précisant qu'il n'a pas satisfait aux exigences relatives au salaire prévalant concernant un chantier désigné pour une année d'imposition, il peut, dans un délai d'un an suivant la réception de l'avis, ou au cours d'une période plus longue que le ministre estime acceptable, faire verser à chaque travailleur visé le montant complémentaire déterminé en vertu du paragraphe (12).

Montant complémentaire

(12) En ce qui concerne chaque travailleur visé relativement à un demandeur d'incitatif, le montant complémentaire visé au paragraphe (11) pour une année d'imposition est égal ou supérieur à la somme obtenue par la formule suivante :

A – B + C

où :

employment at the designated work site during the taxation year, had the covered worker been paid in accordance with the prevailing wage requirements in paragraph (3)(a) or subparagraph (3)(b)(i), as applicable;

B is the amount that the worker actually received or benefited from, in respect of the worker's employment at the designated work site during the taxation year; and

C is interest on the difference between the description of A and the description of B, calculated from the beginning of the taxation year to the time of payment at the prescribed rate specified in paragraph 4301(a) of the *Income Tax Regulations*.

A représente la somme que le travailleur visé aurait reçue ou dont il aurait bénéficié, relativement à son emploi sur le chantier désigné au cours de l'année d'imposition, s'il avait été rémunéré conformément aux exigences relatives au salaire prévalant énoncées à l'alinéa (3)a) ou au sous-alinéa (3)b)(i), le cas échéant;

B la somme que le travailleur a réellement reçue ou dont il a bénéficié, relativement à son emploi sur le chantier désigné au cours de l'année d'imposition;

C les intérêts sur la différence entre l'élément A et l'élément B, calculés du début de l'année d'imposition jusqu'au moment du paiement au taux prescrit déterminé à l'alinéa 4301a) du *Règlement de l'impôt sur le revenu*.

Top-up payment not made

(13) For any covered worker in respect of whom a top-up amount is not paid under subsection (11), the incentive claimant shall pay to the Receiver General, as a penalty under this Act, 120% of the amount determined by the formula in subsection (12).

Non-versement du paiement complémentaire

(13) Pour tout travailleur visé à l'égard de qui un montant complémentaire n'est pas versé en vertu du paragraphe (11), le demandeur d'incitatif doit verser au receveur général, à titre de pénalité en vertu de la présente loi, 120 % de la somme obtenue par la formule figurant au paragraphe (12).

Tax treatment of top-up amount

(14) A top-up amount that is paid to a covered worker

(a) is deemed to be

(i) salary and wages of the worker for the year in which it is received, and

(ii) deductible in computing income by the payor for the year in which it is paid; and

(b) does not qualify for any specified tax credit.

Traitement fiscal du montant complémentaire

(14) Un montant complémentaire qui est versé à un travailleur visé, à la fois :

a) est réputé être, à la fois :

(i) les traitement et salaire du travailleur pour l'année dans laquelle le montant est reçu,

(ii) déductible dans le calcul du revenu par le payeur pour l'année dans laquelle il est payé;

b) n'est pas admissible à un crédit d'impôt déterminé.

Exception

(15) This section does not apply to a specified tax credit claimed for the acquisition of off-road zero emission vehicles or to the acquisition and installation of low carbon heat equipment.

Exception

(15) Le présent article ne s'applique pas à un crédit d'impôt déterminé demandé en vue de l'acquisition de véhicules zéro émission hors route ou à l'acquisition et à l'installation de matériel de chauffage à faibles émissions de carbone.

Deemed reasonable efforts

(16) For the purposes of this section, an incentive claimant is deemed to have satisfied the requirement in paragraph (5)(a) or (b), as the case may be, in respect of hours of labour at a designated work site for an installation taxation year if the following conditions are met:

(a) at least every four months, the incentive claimant

Efforts sérieux réputés

(16) Pour l'application du présent article, un demandeur d'incitatif est réputé avoir respecté l'exigence énoncée aux alinéas (5)a) ou b), selon le cas, relativement aux heures de travail effectuées sur un chantier désigné au titre d'une année d'imposition de l'installation si les conditions suivantes sont réunies :

(i) posts a *bona fide* job advertisement, seeking sufficient apprentices to perform those hours of labour in respect of the designated work site, that

(A) includes a commitment to facilitate participation of apprentices in a Red Seal trade program and a statement that the job opportunity is open to both existing employees and new hires, and

(B) is open and readily accessible on the Job Bank website of the Government of Canada and at least two other websites either

(I) on a continuous basis throughout the year, or

(II) for at least 30 days from the time of posting,

(ii) communicates with a trade union (which, if the designated work site is in Quebec, is a trade union recognized under applicable provincial law and, if the designated work site is outside of Quebec, is an affiliate of Canada's Building Trades Unions) and at least one secondary school or post-secondary educational institution for the purpose of facilitating the hiring of the apprentice positions described in the job advertisement, and

(iii) receives from the trade union confirmation in writing that the trade union has provided as many apprentices as reasonably possible for work at the designated work site during the installation year, unless the trade union fails to respond within five business days of a request;

(b) the incentive claimant reviews and duly considers all applications received in response to the advertisement for apprenticeship opportunities that are offered directly by the incentive claimant and takes reasonable steps to ensure that other applications are reviewed and duly considered; and

(c) the incentive claimant attests in prescribed form and manner that it has complied with paragraphs (a) and (b).

a) au moins une fois tous les quatre mois, le demandeur d'incitatif, à la fois :

(i) publie une offre d'emploi véritable, recherchant ainsi un nombre suffisant d'apprentis pour effectuer ces heures de travail relativement au chantier désigné qui, à la fois :

(A) comprend un engagement à faciliter la participation des apprentis à un programme du métier désigné Sceau rouge et un énoncé selon lequel l'offre d'emploi est ouverte tant aux employés en fonction qu'aux nouveaux,

(B) est ouverte et facilement accessible sur le site Web du Guichet-Emplois du gouvernement du Canada et sur au moins deux autres sites Web :

(I) soit de façon continue tout au long de l'année,

(II) soit pendant au moins trente jours à compter du moment de sa publication,

(ii) communique avec au moins une école secondaire ou un établissement d'enseignement post-secondaire et avec un syndicat (qui, si le chantier désigné se situe au Québec, est un syndicat reconnu en vertu des lois applicables de la province ou qui, si le chantier désigné se situe à l'extérieur du Québec, est un syndicat rattaché aux Syndicats des métiers de la construction du Canada) afin de faciliter l'embauche des apprentis pour les postes décrits dans l'offre d'emploi,

(iii) reçoit du syndicat une confirmation écrite qu'il a fourni autant d'apprentis que raisonnablement possible pour les travaux sur le chantier désigné au cours de l'année d'imposition de l'installation, à moins que le syndicat ne réponde pas dans les cinq jours ouvrables suivant une demande;

b) le demandeur d'incitatif examine et prend dûment en compte toutes les demandes reçues en réponse à l'offre d'emploi concernant les possibilités d'apprentissage qui sont offertes directement par lui et prend des mesures raisonnables afin de s'assurer que les autres demandes soient examinées et dûment prises en compte;

c) le demandeur d'incitatif atteste, sur le formulaire prescrit et selon les modalités prescrites, qu'il satisfait aux exigences énoncées aux alinéas a) et b).

Partnerships

(17) If subsection (6), (7), (9) or (13) applies to an incentive claimant that is a partnership

(a) any member of the partnership may elect to pay the amount of the relevant tax or penalty liability on behalf of the partnership;

(b) if no election has been made under paragraph (a), the portion of the relevant tax or penalty liability that can reasonably be considered to be each member's share thereof is payable by each member; and

(c) each member of the partnership is jointly and severally, or for civil law, solidarily, liable for any portion of the amount of the relevant tax or penalty liability that is not paid in accordance with paragraph (a) or allocated to and payable by a member under paragraph (b).

(2) Subsection (1) applies in respect of specified property prepared or installed on or after November 28, 2023.

38 (1) The Act is amended by adding the following after section 127.46, as enacted by subsection 37(1):

Definitions

127.47 (1) The following definitions apply in this section.

at-risk amount has the meaning assigned by subsection 96(2.2). (*fraction à risques*)

clean economy allocation provision means

(a) subsection 127.44(11); or

(b) subsection 127.45(8). (*disposition d'allocation pour l'économie propre*)

clean economy expenditure means

(a) a qualified CCUS expenditure as determined under section 127.44; or

(b) the capital cost of clean technology property as determined under section 127.45. (*dépense pour l'économie propre*)

clean economy provision means

(a) this section;

(b) section 127.44 and Part XII.7;

Sociétés de personnes

(17) Si les paragraphes (6), (7), (9) ou (13) s'appliquent à un demandeur d'incitatif qui est une société de personnes, à la fois :

a) un associé de la société de personnes peut faire le choix de payer le montant de la pénalité ou de l'impôt à payer pertinent pour le compte de celle-ci;

b) si aucun choix n'a été fait en vertu de l'alinéa a), la partie du montant de la pénalité ou de l'impôt à payer pertinent qu'il est raisonnable de considérer comme la part qui revient à chaque associé est payable par chaque associé;

c) chaque associé de la société de personnes est solidairement responsable d'une partie du montant de la pénalité ou de l'impôt à payer pertinent qui n'est ni payée conformément à l'alinéa a) ni attribuée à un associé et payable par celui-ci en vertu de l'alinéa b).

(2) Le paragraphe (1) s'applique aux biens déterminés préparés ou installés à compter du 28 novembre 2023.

38 (1) La même loi est modifiée par adjonction, après l'article 127.46, édicté par le paragraphe 37(1), de ce qui suit :

Définitions

127.47 (1) Les définitions qui suivent s'appliquent au présent article.

commanditaire S'entend au sens du paragraphe 96(2.4) compte non tenu du passage « si sa participation dans celle-ci n'est pas, à ce moment, une participation exonérée au sens du paragraphe (2.5) et ». (*limited partner*)

crédit d'impôt pour l'économie propre L'un des crédits d'impôt suivants :

a) le *crédit d'impôt pour le CUSC* (au sens du paragraphe 127.44(1));

b) le *crédit d'impôt à l'investissement dans les technologies propres* (au sens du paragraphe 127.45(1)). (*clean economy tax credit*)

dépense pour l'économie propre L'un des montants suivants :

a) une dépense admissible pour le CUSC déterminée selon l'article 127.44;

(c) section 127.45; or

(d) section 127.46. (*disposition pour l'économie propre*)

clean economy tax credit means

(a) a *CCUS tax credit* (as defined in subsection 127.44(1)); or

(b) a *clean technology investment tax credit* (as defined in subsection 127.45(1)). (*crédit d'impôt pour l'économie propre*)

limited partner has the meaning assigned by subsection 96(2.4) if that subsection were read without reference to "if the member's partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and". (*commanditaire*)

b) le coût en capital d'un bien de technologie propre déterminé selon l'article 127.45. (*clean economy expenditure*)

disposition d'allocation pour l'économie propre L'une des dispositions suivantes :

a) le paragraphe 127.44(11);

b) le paragraphe 127.45(8). (*clean economy allocation provision*)

disposition pour l'économie propre L'une des dispositions suivantes :

a) le présent article;

b) l'article 127.44 et la partie XII.7;

c) l'article 127.45;

d) l'article 127.46. (*clean economy provision*)

fraction à risques S'entend au sens du paragraphe 96(2.2). (*at-risk amount*)

Credits in unreasonable proportions

(2) If the members of a partnership agree to share the amount of a clean economy tax credit of the partnership and the share of any member of that amount is not reasonable in the circumstances having regard to the capital invested in or work performed for the partnership by the members of the partnership or such other factors as may be relevant, that share shall, notwithstanding any agreement, be deemed to be the amount that is reasonable in the circumstances.

Crédits en proportions déraisonnables

(2) Si les associés d'une société de personnes conviennent de partager le montant d'un crédit d'impôt pour l'économie propre de la société de personnes et que la part de ce montant revenant à l'un de ces associés n'est pas raisonnable dans les circonstances, compte tenu du capital qu'il a investi dans la société de personnes, du travail qu'il a accompli pour elle ou de tout autre facteur pertinent, cette part est réputée, indépendamment de toute convention, être le montant qui est raisonnable dans les circonstances.

Limited partners

(3) Notwithstanding subsection (2), if a taxpayer is a limited partner of a partnership at the end of a fiscal period of the partnership, the total of all clean economy tax credits allocated to the taxpayer by the partnership in respect of that fiscal period shall not exceed the taxpayer's at-risk amount in respect of the partnership at the end of that fiscal period.

Commanditaires

(3) Malgré le paragraphe (2), si un contribuable est commanditaire d'une société de personnes à la fin d'un exercice de celle-ci, le total des crédits d'impôt pour l'économie propre qui lui est attribué par la société de personnes relativement à cet exercice ne peut dépasser la fraction à risques de l'intérêt du contribuable dans la société de personnes à la fin de l'exercice en cause.

Apportionment rule

(4) The amount required by any clean economy allocation provision to be added in computing a particular clean economy tax credit of a taxpayer in respect of a partnership for the taxation year in which the partnership's fiscal period ends is deemed to be the portion of the amount otherwise determined under this section in

Règle relative à la répartition

(4) La somme à ajouter, en vertu d'une disposition d'allocation pour l'économie propre, dans le calcul d'un crédit d'impôt pour l'économie propre donné d'un contribuable relativement à une société de personnes pour l'année d'imposition au cours de laquelle son exercice se termine est réputée correspondre à la partie de la somme déterminée par ailleurs en application du présent article

respect of the taxpayer that is reasonably attributable to each particular clean economy tax credit.

Assistance received by member of partnership

(5) For the purposes of computing a clean economy tax credit, if, at a particular time, a taxpayer that is a member of a partnership has received, is entitled to receive or can reasonably be expected to receive *government assistance* or *non-government assistance* (as defined in subsection 127(9)), the amount of that assistance that may reasonably be considered to be in respect of a clean economy expenditure of the partnership shall be deemed to have been received at that time by the partnership as government assistance or non-government assistance, as the case may be, in respect of the expenditure.

Credit received by member of partnership

(6) For the purposes of subsection 13(7.1), if, pursuant to an allocation from a partnership under a clean economy allocation provision, an amount is added in computing a clean economy tax credit of a taxpayer at the end of the taxpayer's taxation year, the amount shall be deemed to have been received by the partnership at the end of its fiscal period in respect of which the allocation was made as assistance from a government for the acquisition of depreciable property.

Tiered partnerships

(7) For the purposes of each clean economy provision, a person or partnership that is (or is deemed by this subsection to be) a member of a particular partnership that is a member of another partnership is deemed to be a member of the other partnership.

(2) Subsection (1) is deemed to have come into force on January 1, 2022, except that

(a) before March 28, 2023, the definitions *clean economy allocation provision*, *clean economy expenditure*, *clean economy provision* and *clean economy tax credit* in subsection 127.47(1) of the Act, as enacted by subsection (1), are to be read as follows:

clean economy allocation provision means subsection 127.44(11). (*disposition d'allocation pour l'économie propre*)

relativement au contribuable qu'il est raisonnable d'attribuer à chaque crédit d'impôt pour l'économie propre donné.

Réception d'un montant d'aide — associé d'une société de personnes

(5) Pour le calcul d'un crédit d'impôt pour l'économie propre, si, à un moment donné, un contribuable qui est un associé d'une société de personnes a reçu, est en droit de recevoir ou peut raisonnablement s'attendre à recevoir une *aide gouvernementale* ou une *aide non gouvernementale* (au sens du paragraphe 127(9)), le montant de cette aide qu'il est raisonnable de considérer comme relatif à une dépense pour l'économie propre de la société de personnes est réputé être reçu à ce moment par la société de personnes à titre d'aide gouvernementale ou d'aide non gouvernementale, selon le cas, à l'égard de la dépense.

Réception de crédit — associé d'une société de personnes

(6) Pour l'application du paragraphe 13(7.1), si un montant, conformément à une allocation par une société de personnes en vertu d'une disposition d'allocation pour l'économie propre, est ajouté au calcul d'un crédit d'impôt pour l'économie propre d'un contribuable à la fin de son année d'imposition, le montant est réputé être reçu par la société de personnes à la fin de l'exercice à l'égard duquel l'allocation a été faite, à titre d'aide d'un gouvernement relativement à l'acquisition de biens amortissables.

Paliers de sociétés de personnes

(7) Pour l'application de chaque disposition pour l'économie propre, une personne ou une société de personnes qui est ou est réputée, en vertu du présent paragraphe, être l'associé d'une société de personnes donnée qui est elle-même l'associé d'une autre société de personnes est réputée être l'associé de cette dernière.

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022. Toutefois :

a) avant le 28 mars 2023, les définitions de *crédit d'impôt pour l'économie propre*, *dépense pour l'économie propre*, *disposition d'allocation pour l'économie propre* et *disposition pour l'économie propre* au paragraphe 127.47(1) de la même loi, édictées par le paragraphe (1), sont réputées avoir le libellé suivant :

crédit d'impôt pour l'économie propre Le *crédit d'impôt pour le CUSC* (au sens du paragraphe 127.44(1)). (*clean economy tax credit*)

clean economy expenditure means a qualified CCUS expenditure as determined under section 127.44. (*dépense pour l'économie propre*)

clean economy provision means

(a) this section; or

(b) section 127.44 and Part XII.7. (*disposition pour l'économie propre*)

clean economy tax credit means a *CCUS tax credit* (as defined in subsection 127.44(1)). (*crédit d'impôt pour l'économie propre*)

(b) for the period that begins on March 28, 2023 and ends on November 27, 2023, the definition *clean economy provision* in subsection 127.47(1) of the Act, as enacted by subsection (1), is to be read as follows:

clean economy provision means

(a) this section;

(b) section 127.44 and Part XII.7; or

(c) section 127.45. (*disposition pour l'économie propre*)

39 (1) Subsection 128(2) of the Act is amended by adding the following after paragraph (d.2):

(d.3) where, by reason of paragraph (d), a taxation year of the individual is not a calendar year,

(i) for the purposes of the application of subsection 146.6(1) and the definition *excess FHSA amount* in subsection 207.01(1) to each taxation year ending in the calendar year, references to "taxation year" are to be read as references to "calendar year", and

(ii) for the purposes of the application of subsection 146.6(5) to each taxation year ending in the calendar year, the description of A in paragraph 146.6(5)(a) is to be read as follows:

"A is the total of all amounts each of which is the taxpayer's annual FHSA limit for the calendar year that includes the taxation year and each preceding calendar year, and"

dépense pour l'économie propre Dépense admissible pour le CUSC déterminée selon l'article 127.44. (*clean economy expenditure*)

disposition d'allocation pour l'économie propre Le paragraphe 127.44(11). (*clean economy allocation provision*)

disposition pour l'économie propre L'une des dispositions suivantes :

a) le présent article;

b) l'article 127.44 et la partie XII.7. (*clean economy provision*)

b) pour la période commençant le 28 mars 2023 et se terminant le 27 novembre 2023, la définition de *disposition pour l'économie propre* au paragraphe 127.47(1), édictée par le paragraphe (1), est réputée avoir le libellé suivant :

disposition pour l'économie propre L'une des dispositions suivantes :

a) le présent article;

b) l'article 127.44 et la partie XII.7;

c) l'article 127.45. (*clean economy provision*)

39 (1) Le paragraphe 128(2) de la même loi est modifié par adjonction, après l'alinéa d.2), de ce qui suit :

d.3) dans le cas où, par l'effet de l'alinéa d), l'année d'imposition du particulier n'est pas une année civile, les règles ci-après s'appliquent :

(i) pour l'application du paragraphe 146.6(1) et de la définition de *excédent de CELIAPP* au paragraphe 207.01(1) à chaque année d'imposition se terminant au cours de l'année civile, toute mention de « année d'imposition » vaut mention de « année civile »,

(ii) pour l'application du paragraphe 146.6(5) à chaque année d'imposition se terminant au cours de l'année civile, l'élément A de la formule figurant à l'alinéa 146.6(5)a) est réputé avoir le libellé suivant :

« A représente le total des sommes représentant chacune le plafond annuel au titre du CELIAPP du contribuable pour l'année civile au cours de laquelle l'année d'imposition se termine et chaque année civile précédente, »

(2) Subsection (1) is deemed to have come into force on April 1, 2023.

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.

40 (1) Paragraph 129(1)(b) of the Act is replaced by the following:

40 (1) L'alinéa 129(1)b) de la même loi est remplacé par ce qui suit :

(b) shall, with all due dispatch, make the dividend refund after sending the notice of assessment if an application for it has been made in writing by the corporation within the period within which the Minister would be allowed

b) doit effectuer le remboursement au titre de dividendes avec diligence après avoir envoyé l'avis de cotisation, si la société en fait la demande par écrit au cours de la période pendant laquelle le ministre pourrait établir, selon le cas :

(i) under subsection 152(4) to assess tax payable under this Part by the corporation for the year if that subsection were read without reference to paragraph 152(4)(a), or

(i) aux termes du paragraphe 152(4), une cotisation concernant l'impôt payable en vertu de la présente partie par la société pour l'année si ce paragraphe s'appliquait compte non tenu de son alinéa a),

(ii) under subsection 152(4.31) to assess tax payable under Part IV by the corporation for the year if the Minister has assessed the corporation's tax payable under that Part for the year under subsection 152(4.31).

(ii) aux termes du paragraphe 152(4.31), une cotisation concernant l'impôt payable en vertu de la partie IV par la société pour l'année si le ministre a établi une cotisation concernant l'impôt payable par la société en vertu de cette partie pour l'année en vertu du paragraphe 152(4.31).

(2) The definition *eligible portion* in subsection 129(4) of the Act is replaced by the following:

(2) La définition de *fraction admissible*, au paragraphe 129(4) de la même loi, est remplacée par ce qui suit :

eligible portion of a corporation's taxable capital gains or allowable capital losses for a taxation year is the total of all amounts each of which is the portion of a taxable capital gain or an allowable capital loss, as the case may be, of the corporation for the year from a disposition of a property that, except where the property was a designated property (within the meaning assigned by subsection 89(1)), cannot reasonably be regarded as having accrued while the property, or a property for which it was substituted, was property of a corporation other than a Canadian-controlled private corporation, a substantive CCPC, an investment corporation, a mortgage investment corporation or a mutual fund corporation. (*fraction admissible*)

fraction admissible Le total des montants représentant chacun la fraction d'un gain en capital imposable ou d'une perte en capital déductible, selon le cas, d'une société pour une année d'imposition résultant de la disposition d'un bien, qu'il n'est pas raisonnable de considérer (sauf si le bien est un bien désigné, au sens du paragraphe 89(1)) comme s'étant accumulée pendant que le bien, ou un bien de remplacement, appartenait à une société qui n'est pas une société privée sous contrôle canadien, une SPCC en substance, une société de placement, une société de placement hypothécaire ou une société de placement à capital variable. (*eligible portion*)

(3) The portion of paragraph (a) of the definition *non-eligible refundable dividend tax on hand* in subsection 129(4) of the Act before subparagraph (i) is replaced by the following:

(3) Le passage de l'alinéa a) de la définition de *impôt en main remboursable au titre de dividendes non déterminés* précédant le sous-alinéa (i), au paragraphe 129(4) de la même loi, est remplacé par ce qui suit :

(a) if the corporation was a Canadian-controlled private corporation throughout the year or a substantive CCPC at any time in the year, the least of

a) si la société était une société privée sous contrôle canadien tout au long de l'année ou une SPCC en substance à un moment donné au cours de l'année, la moins élevée des sommes suivantes :

(4) Subsections (1) to (3) apply to taxation years that end on or after April 7, 2022.

41 (1) Paragraph 135.2(4)(f) and the portion of paragraph 135.2(4)(g) of the Act before subparagraph (ii) are replaced by the following:

(f) any *security* (in this paragraph and paragraph (g), as defined in subsection 122.1(1)) of the trust that is held by a trust governed by a deferred profit sharing plan, FHSA, RDSP, RESP, RRIF, RRSP or TFSA (referred to in this paragraph and paragraph (g) as the "registered plan trust") is deemed not to be a qualified investment for the registered plan trust;

(g) if a registered plan trust governed by a TFSA or FHSA acquires at any time a security of the trust, Part XI.01 applies in respect of the security as though the acquisition is an advantage

(i) in relation to the TFSA or the FHSA, as the case may be, that is extended at that time to the controlling individual of the registered plan trust, and

(2) Subsection (1) is deemed to have come into force on August 4, 2023.

42 (1) Paragraph (a) of the definition *credit union* in subsection 137(6) of the Act is replaced by the following:

(a) it is

(i) a federal credit union, or

(ii) a provider of financial services that is organized on cooperative principles and incorporated by or under an Act of the legislature of a province,

(2) Subparagraph (b)(i) of the definition *credit union* in subsection 137(6) of the Act is replaced by the following:

(i) incorporated as credit unions or cooperative credit societies, each of which is described in paragraph (a), or all or substantially all of the members of which were credit unions, cooperatives or a combination of those entities,

(3) Paragraph (b) of the definition *member* in subsection 137(6) of the Act is replaced by the following:

(4) Les paragraphes (1) à (3) s'appliquent aux années d'imposition se terminant à compter du 7 avril 2022.

41 (1) L'alinéa 135.2(4)f) et le passage de l'alinéa 135.2(4)g) de la même loi avant le sous-alinéa (ii) sont remplacés par ce qui suit :

f) tout *titre* (s'entendant, au présent alinéa et à l'alinéa g), au sens du paragraphe 122.1(1)) de la fiducie qui est détenu par une fiducie régie par un régime de participation différée aux bénéfices, un CELI, un CELIAPP, un FERR, un REEI, un REER ou un REEE (appelée « fiducie régie par un régime enregistré » au présent alinéa et à l'alinéa g)) est réputé ne pas être un placement admissible pour la fiducie régie par un régime enregistré;

g) si une fiducie régie par un régime enregistré dans le cadre d'un CELI ou d'un CELIAPP acquiert, à un moment donné, un titre de la fiducie, la partie XI.01 s'applique relativement au titre comme si l'acquisition représentait un avantage qui :

(i) d'une part, est relatif au CELI ou au CELIAPP, selon le cas, accordé à ce moment au particulier contrôlant de la fiducie régie par un régime enregistré,

(2) Le paragraphe (1) est réputé être entré en vigueur le 4 août 2023.

42 (1) L'alinéa a) de la définition de *caisse de crédit*, au paragraphe 137(6) de la même loi, est remplacé par ce qui suit :

a) il s'agit, selon le cas :

(i) d'une coopérative de crédit fédérale,

(ii) d'un fournisseur de services financiers fondé sur le principe coopératif et constitué par une loi provinciale ou sous son régime,

(2) Le sous-alinéa b)(i) de la définition de *caisse de crédit*, au paragraphe 137(6) de la même loi, est remplacé par ce qui suit :

(i) constituées en caisses de crédit ou associations coopératives de crédit, dont chacune est visée à l'alinéa a) ou dont la totalité, ou presque, des membres est composée de caisses de crédit, de coopératives ou des deux,

(3) L'alinéa b) de la définition de *membre*, au paragraphe 137(6) de la même loi, est remplacé par ce qui suit :

(b) a registered retirement savings plan, a registered retirement income fund, a TFSA, a FHSA or a registered education savings plan, the annuitant, holder or subscriber under which is a person described in paragraph (a). (*membre*)

(4) Subsections (1) and (2) are deemed to have come into force on January 1, 2016.

(5) Subsection (3) is deemed to have come into force on April 1, 2023.

43 (1) Paragraph (b) of the definition *excluded premium* in subsection 146.01(1) of the Act is replaced by the following:

(b) was an amount transferred directly from a FHSA, registered retirement savings plan, registered pension plan, registered retirement income fund or deferred profit sharing plan,

(2) Subsection (1) is deemed to have come into force on November 28, 2023.

44 (1) Paragraph (c) of the definition *excluded premium* in subsection 146.02(1) of the Act is replaced by the following:

(c) was an amount transferred directly from a FHSA, registered retirement savings plan, registered pension plan, registered retirement income fund or deferred profit sharing plan; or

(2) Subsection (1) is deemed to have come into force on November 28, 2023.

45 (1) The portion of paragraph (c) of the definition *qualifying person* in subsection 146.4(1) of the Act before subparagraph (ii) is replaced by the following:

(c) an individual who is a qualifying family member in relation to the beneficiary if

(i) at or before that time, the beneficiary has attained the age of majority and, other than for the purposes of paragraph (4)(b.1), is not a beneficiary under a disability savings plan,

(2) The portion of subsection 146.4(1.5) of the Act before paragraph (a) is replaced by the following:

b) tout régime enregistré d'épargne-retraite, fonds enregistré de revenu de retraite, compte d'épargne libre d'impôt, compte d'épargne libre d'impôt pour l'achat d'une première propriété ou régime enregistré d'épargne-études dont le rentier, le titulaire ou le souscripteur, selon le cas, est une personne visée à l'alinéa a). (*member*)

(4) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 1er janvier 2016.

(5) Le paragraphe (3) est réputé être entré en vigueur le 1er avril 2023.

43 (1) L'alinéa b) de la définition de *prime exclue*, au paragraphe 146.01(1) de la même loi, est remplacé par ce qui suit :

b) il s'agit d'un montant transféré directement d'un CELIAPP, d'un régime enregistré d'épargne-retraite, d'un régime de pension agréé, d'un fonds enregistré de revenu de retraite ou d'un régime de participation différée aux bénéfices;

(2) Le paragraphe (1) est réputé être entré en vigueur le 28 novembre 2023.

44 (1) L'alinéa c) de la définition de *prime exclue*, au paragraphe 146.02(1) de la même loi, est remplacé par ce qui suit :

c) est un montant transféré directement d'un CELIAPP, d'un régime enregistré d'épargne-retraite, d'un régime de pension agréé, d'un fonds enregistré de revenu de retraite ou d'un régime de participation différée aux bénéfices;

(2) Le paragraphe (1) est réputé être entré en vigueur le 28 novembre 2023.

45 (1) Le passage de l'alinéa c) de la définition de *responsable* précédant le sous-alinéa (ii), au paragraphe 146.4(1) de la même loi, est remplacé par ce qui suit :

c) tout particulier qui est un membre de la famille admissible relativement au bénéficiaire dans des circonstances où les faits ci-après s'avèrent :

(i) à ce moment ou antérieurement, le bénéficiaire a atteint l'âge de la majorité et, sauf pour l'application de l'alinéa (4)b.1), n'est pas bénéficiaire d'un régime d'épargne-invalidité,

(2) Le passage du paragraphe 146.4(1.5) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Beneficiary replacing holder

(1.5) Any holder of a disability savings plan who was a qualifying person in relation to the beneficiary under the plan at the time the plan (or another registered disability savings plan of the beneficiary) was entered into solely because of paragraph (c) of the definition *qualifying person* in subsection (1), or who was a successor holder because of paragraph (4)(b.1), ceases to be a holder of the plan and the beneficiary becomes the holder of the plan if

(3) The portion of subsection 146.4(1.6) of the Act before paragraph (a) is replaced by the following:

Entity replacing holder

(1.6) If an entity described in subparagraph (a)(ii) or (iii) of the definition *qualifying person* in subsection (1) is appointed in respect of a beneficiary of a disability savings plan and a holder of the plan was a qualifying person in relation to the beneficiary at the time the plan (or another registered disability savings plan of the beneficiary) was entered into solely because of paragraph (c) of that definition, or was a successor holder because of paragraph (4)(b.1),

(4) Subsection 146.4(1.7) of the Act is replaced by the following:

Rules applicable in case of dispute

(1.7) If a dispute arises as a result of an issuer's acceptance of a qualifying family member who was a qualifying person in relation to the beneficiary at the time the plan (or another registered disability savings plan of the beneficiary) was entered into solely because of paragraph (c) of the definition *qualifying person* in subsection (1), or who was a successor holder because of paragraph (4)(b.1), as a holder of a disability savings plan, from the time the dispute arises until the time that the dispute is resolved or an entity becomes the holder of the plan under subsection (1.5) or (1.6), the holder of the plan shall use their best efforts to avoid any reduction in the fair market value of the property held by the plan trust, having regard to the reasonable needs of the beneficiary under the plan.

(5) Subparagraph 146.4(4)(b)(iv) of the Act is replaced by the following:

(iv) a qualifying person (other than a person described in paragraph (c) of the definition *qualifying person* in subsection (1)) in relation to the beneficiary at the time the rights are acquired, or

Remplacement du titulaire par le bénéficiaire

(1.5) Le titulaire d'un régime d'épargne-invalidité qui était le responsable du bénéficiaire du régime au moment de sa conclusion (ou de la conclusion d'un autre régime enregistré d'épargne-invalidité du bénéficiaire) par le seul effet de l'alinéa c) de la définition de *responsable* au paragraphe (1), ou qui était le titulaire remplaçant par l'effet de l'alinéa (4)b.1), cesse d'être titulaire du régime, et le bénéficiaire le devient, si les conditions ci-après sont réunies :

(3) Le passage du paragraphe 146.4(1.6) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Remplacement du titulaire par une entité

(1.6) Si une entité visée aux sous-alinéas a)(ii) ou (iii) de la définition de *responsable* au paragraphe (1) est désignée relativement au bénéficiaire d'un régime d'épargne-invalidité et que l'un des titulaires du régime était le responsable du bénéficiaire au moment de la conclusion du régime (ou d'un autre régime enregistré d'épargne-invalidité du bénéficiaire) par le seul effet de l'alinéa c) de cette définition, ou était le titulaire remplaçant par l'effet de l'alinéa (4)b.1), les règles ci-après s'appliquent :

(4) Le paragraphe 146.4(1.7) de la même loi est remplacé par ce qui suit :

Règles applicables en cas de différend

(1.7) En cas de différend au sujet de l'acceptation par l'émetteur d'un régime d'épargne-invalidité, à titre de titulaire du régime, d'un membre de la famille admissible qui était le responsable du bénéficiaire du régime au moment de sa conclusion (ou de la conclusion d'un autre régime enregistré d'épargne-invalidité du bénéficiaire) par le seul effet de l'alinéa c) de la définition de *responsable* au paragraphe (1), ou qui était le titulaire remplaçant par l'effet de l'alinéa (4)b.1), depuis le moment où le différend prend naissance jusqu'au moment où, selon le cas, le différend est réglé ou une entité devient titulaire du régime en raison de l'application des paragraphes (1.5) ou (1.6), le titulaire du régime doit faire de son mieux pour éviter toute baisse de la juste valeur marchande des biens détenus par la fiducie de régime, compte tenu des besoins raisonnables du bénéficiaire.

(5) Le sous-alinéa 146.4(4)b)(iv) de la même loi est remplacé par ce qui suit :

(iv) le responsable (autre qu'une personne visée à l'alinéa c) de la définition de *responsable* au paragraphe (1)) du bénéficiaire au moment où les droits sont acquis,

(6) Subsection 146.4(4) of the Act is amended by adding the following after paragraph (b):

(b.1) before 2027, as a consequence of the death of a qualifying family member who was the remaining holder of the plan immediately before death, the plan may allow one qualifying family member — in respect of which the conditions set out in paragraph (c) of the definition *qualifying person* in subsection (1) are met — to acquire rights as a successor of the holder of the plan;

(7) The portion of paragraph 146.4(13)(e) of the Act before subparagraph (i) is replaced by the following:

(e) if the issuer enters into the plan with a qualifying family member who was a qualifying person in relation to the beneficiary at the time the plan (or another registered disability savings plan of the beneficiary) was entered into solely because of paragraph (c) of the definition *qualifying person* in subsection (1), or who was a successor holder because of paragraph (4)(b.1),

(8) Subsection 146.4(14) of the Act is replaced by the following:

Issuer's liability

(14) If, after reasonable inquiry, an issuer of a disability savings plan is of the opinion that an individual's contractual competence to enter into a disability savings plan is in doubt, no action lies against the issuer for

(a) entering into a plan, under which the individual is the beneficiary, with a qualifying family member who was a qualifying person in relation to the beneficiary at the time the plan (or another registered disability savings plan of the beneficiary) was entered into solely because of paragraph (c) of the definition *qualifying person* in subsection (1); or

(b) allowing a qualifying family member to acquire rights as a successor of the holder of the plan under paragraph (4)(b.1).

46 (1) The definition *survivor* in subsection 146.6(1) of the Act is replaced by the following:

survivor of a holder means another individual who is, immediately before the holder's death, a spouse or common-law partner of the holder. (*survivant*)

(6) Le paragraphe 146.4(4) de la même loi est modifié par adjonction, après l'alinéa b), de ce qui suit :

b.1) avant 2027, par suite du décès d'un membre de la famille admissible qui était le dernier titulaire du régime immédiatement avant son décès, le régime peut permettre à un membre de la famille admissible, à l'égard duquel les conditions énoncées à l'alinéa c) de la définition de *responsable* au paragraphe (1) sont remplies, d'acquérir les droits à titre de successeur du titulaire du régime;

(7) Le passage de l'alinéa 146.4(13)e) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :

e) ayant conclu le régime avec un membre de la famille admissible, lequel était le responsable du bénéficiaire du régime au moment de sa conclusion (ou de la conclusion d'un autre régime enregistré d'épargne-invalidité du bénéficiaire) par le seul effet de l'alinéa c) de la définition de *responsable* au paragraphe (1), ou lequel était un titulaire remplaçant par l'effet de l'alinéa (4)b.1) :

(8) Le paragraphe 146.4(14) de la même loi est remplacé par ce qui suit :

Responsabilité de l'émetteur

(14) Si, après enquête raisonnable, l'émetteur d'un régime d'épargne-invalidité est d'avis qu'il y a doute quant à la capacité d'un particulier de contracter un régime d'épargne-invalidité, nulle action ne peut être intentée contre lui pour, selon le cas :

a) avoir conclu le régime, dont le particulier est bénéficiaire, avec un membre de la famille admissible qui était le responsable du bénéficiaire au moment de la conclusion du régime (ou d'un autre régime enregistré d'épargne-invalidité du bénéficiaire) par le seul effet de l'alinéa c) de la définition de *responsable* au paragraphe (1);

b) avoir permis à un membre de famille admissible d'acquérir des droits à titre de successeur du titulaire du régime en application de l'alinéa (4)b.1).

46 (1) La définition de *survivant*, au paragraphe 146.6(1) de la même loi, est remplacée par ce qui suit :

survivant Le particulier qui, immédiatement avant le décès du titulaire, était son époux ou conjoint de fait. (*survivor*)

(2) The definition *bénéficiaire* in subsection 146.6(1) of the French version of the Act is replaced by the following:

bénéficiaire Relativement à un CELIAPP, s'entend d'un particulier (y compris une succession) ou d'un donataire reconnu qui a droit à une distribution du CELIAPP après le décès du titulaire du CELIAPP. (*beneficiary*)

(3) Paragraph (b) of the definition *annual FHSA limit* in subsection 146.6(1) of the Act is replaced by the following:

(b) the amount determined by the formula

$8,000 + D – (E – F)

where

D is the amount of the FHSA carryforward for the taxation year,

E is the taxpayer's net RRSP-to-FHSA transfer amount at the end of the taxation year, and

F is the total of all amounts, each of which is an amount determined in respect of each preceding taxation year that is

(i) if the taxpayer had not started their maximum participation period in the year, nil, or

(ii) in any other case, the lesser of

(A) the amount determined by the formula

G – H

where

G is the amount determined for E in the year, and

H is the amount determined for F in the year, and

(B) $8,000 plus the amount of the FHSA carryforward for the year, and

(4) The description of B in paragraph (b) of the definition *FHSA carryforward* in subsection 146.6(1) of the Act is replaced by the following:

B is the amount determined in paragraph (a) of the definition *annual FHSA limit* for the preceding taxation year plus the total of all contributions made to a FHSA in the preceding taxation year by the taxpayer after the taxpayer's first qualifying withdrawal from a FHSA, and

(2) La définition de *bénéficiaire*, au paragraphe 146.6(1) de la version française de la même loi, est remplacée par ce qui suit :

bénéficiaire Relativement à un CELIAPP, s'entend d'un particulier (y compris une succession) ou d'un donataire reconnu qui a droit à une distribution du CELIAPP après le décès du titulaire du CELIAPP. (*beneficiary*)

(3) L'alinéa b) de la définition de *plafond annuel au titre du CELIAPP*, au paragraphe 146.6(1) de la même loi, est remplacé par ce qui suit :

b) le montant obtenu par la formule suivante :

8 000 $ + D – (E – F)

où :

D représente le montant des cotisations reporté pour l'année d'imposition;

E le montant net de transfert de REER à CELIAPP du contribuable à la fin de l'année d'imposition;

F le total des sommes dont chacune représente une somme calculée relativement à chacune des années d'imposition précédente qui est :

(i) zéro, si la période de participation maximale du contribuable n'a pas commencé dans l'année d'imposition précédente,

(ii) dans les autres cas, la moins élevée des sommes suivantes :

(A) la somme obtenue par la formule suivante :

G – H

où :

G représente la somme obtenue pour l'élément E dans l'année d'imposition,

H la somme obtenue pour l'élément F dans l'année d'imposition,

(B) 8 000 $ plus le montant des cotisations reporté pour l'année d'imposition;

(4) L'élément B de la formule figurant à l'alinéa b) de la définition *montant des cotisations reporté*, au paragraphe 146.6(1) de la même loi, est remplacé par ce qui suit :

B la somme obtenue pour l'alinéa a) de la définition de *plafond annuel au titre du CELIAPP* pour l'année d'imposition précédente plus la somme des cotisations que le contribuable a versées dans un CELIAPP au cours de l'année d'imposition précédente après le premier retrait admissible d'un CELIAPP par le contribuable;

(5) Subsection 146.6(1) of the Act is amended by adding the following in alphabetical order:

net RRSP-to-FHSA transfer amount of a holder at a particular time means the amount by which

(a) the total of all amounts transferred under paragraph 146(16)(a.2), at or before that time, to a FHSA of the holder

exceeds

(b) the total of all amounts designated by the holder under paragraph (a) of the definition *designated amount* in subsection 207.01(1) at or before that time. (*montant net de transfert de REER à CELIAPP*)

(6) Section 146.6 of the Act is amended by adding the following after subsection (3):

Amount credited to a deposit

(3.1) An amount that is credited or added to a deposit that is a FHSA as interest or other income in respect of the FHSA is deemed not to be received by the holder of the FHSA or any other person solely because of that crediting or adding.

(7) Subparagraph 146.6(5)(b)(ii) of the Act is replaced by the following:

(ii) the taxpayer's net RRSP-to-FHSA transfer amount as at the end of the year.

(8) The descriptions of A and B in paragraph 146.6(7)(c) of the Act are replaced by the following:

A is the amount that is the total fair market value, immediately before the particular time, of all property held by a FHSA under which the last holder of the transferor FHSA is the last holder, and

B is the *excess FHSA amount* (as defined in subsection 207.01(1)) of the last holder of the transferor FHSA immediately before the particular time.

(9) Paragraphs 146.6(13)(a) and (b) of the Act are replaced by the following:

(a) the survivor is a qualifying individual at that time and

(i) no contributions or transfers are made to the FHSA by the survivor after that time,

(5) Le paragraphe 146.6(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

montant net de transfert de REER à CELIAPP Relativement à un titulaire, à un moment donné, l'excédent éventuel du total visé à l'alinéa a) sur le total visé à l'alinéa b) :

a) le total des sommes transférées en vertu de l'alinéa 146(16)a.2), au plus tard au moment donné, à un CELIAPP du titulaire;

b) le total des montants désignés par le titulaire visés à l'alinéa a) de la définition de *montant désigné* au paragraphe 207.01(1) au plus tard au moment donné. (*net RRSP-to-FHSA transfer amount*)

(6) L'article 146.6 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :

Somme portée au crédit d'un dépôt

(3.1) Toute somme qui est ajoutée à un dépôt qui est un CELIAPP, ou qui est portée au crédit d'un tel dépôt, à titre d'intérêts ou d'autres revenus relatifs au compte est réputée ne pas être reçue par le titulaire du compte ou toute autre personne en raison seulement de cet ajout ou de ce crédit.

(7) Le sous-alinéa 146.6(5)b)(ii) de la même loi est remplacé par ce qui suit :

(ii) le montant net de transfert de REER à CELIAPP du contribuable à la fin de l'année.

(8) Les éléments A et B de la formule figurant à l'alinéa 146.6(7)c) de la même loi sont remplacés par ce qui suit :

A représente la juste valeur marchande totale, immédiatement avant le moment donné, de tous les biens détenus par un CELIAPP dans le cadre duquel le dernier titulaire du CELIAPP donné est le dernier titulaire;

B l'*excédent de CELIAPP* (au sens du paragraphe 207.01(1)) du dernier titulaire du CELIAPP donné immédiatement avant le moment donné.

(9) Les alinéas 146.6(13)a) et b) de la même loi sont remplacés par ce qui suit :

a) le survivant est un particulier déterminé à ce moment et, à la fois :

(i) aucune cotisation ni aucun transfert n'est fait au CELIAPP par le survivant après ce moment,

(ii) no qualifying withdrawals are made from the FHSA after that time, and

(iii) the balance of the FHSA is transferred to a RRSP or RRIF of the survivor or distributed to the survivor in accordance with subsection (14), by the end of the year following the year of death; or

(b) the survivor is not a qualifying individual at that time, in which case the balance of the FHSA is to be transferred to a FHSA, RRSP or RRIF of the survivor, or distributed to the survivor in accordance with subsection (14), by the end of the year following the year of death.

(10) Paragraph 146.6(15)(a) of the Act is replaced by the following:

(a) if a payment is made from the estate to a FHSA, RRSP or RRIF of the survivor, the payment is deemed to be a transfer from the FHSA to the extent that it is so designated jointly by the legal representative and the survivor in prescribed form filed with the Minister;

(11) Paragraphs 146.6(17)(a) to (c) of the Act are replaced by the following:

(a) subsections (3) and (3.1) do not apply in respect of that arrangement after the particular time;

(b) if the taxpayer who was the last holder under the arrangement is not deceased at the particular time, an amount equal to the fair market value of all the property of the arrangement, determined at that time, is deemed for the purposes of subsection 146.6(6) to be received at that time by the taxpayer out of or under the FHSA;

(c) if the last holder is deceased at the particular time, the proportion of the fair market value of all the property of the arrangement that a beneficiary is entitled to, determined at that time, is deemed for the purposes of subsection 146.6(14) to be distributed at that time from the FHSA to the beneficiary;

(d) if the arrangement governs a trust,

(i) the trust is deemed to have disposed, immediately before the particular time, of each property held by the trust for proceeds equal to the property's fair market value immediately before the particular time,

(ii) the trust is deemed to have acquired, at the particular time, each such property at a cost equal to that fair market value,

(ii) aucun retrait admissible n'est fait au CELIAPP après ce moment,

(iii) le solde du CELIAPP est transféré au REER ou au FERR du survivant ou lui est distribué conformément au paragraphe (14), avant la fin de l'année qui suit l'année du décès;

b) le survivant n'est pas un particulier déterminé à ce moment, auquel cas, le solde du CELIAPP doit être transféré au CELIAPP, au REER ou au FERR du survivant ou lui être distribué conformément au paragraphe (14), avant la fin de l'année qui suit l'année du décès.

(10) L'alinéa 146.6(15)a) de la même loi est remplacé par ce qui suit :

a) si un paiement est effectué par la succession à un CELIAPP, un REER ou un FERR du survivant, le paiement est réputé être un transfert du CELIAPP dans la mesure où il est ainsi désigné conjointement par le représentant légal et le survivant dans le formulaire prescrit déposé auprès du ministre;

(11) Les alinéas 146.6(17)a) à c) de la même loi sont remplacés par ce qui suit :

a) les paragraphes (3) et (3.1) ne s'appliquent pas à l'égard de cet arrangement après le moment donné;

b) si le contribuable qui était le dernier titulaire de l'arrangement immédiatement avant qu'il cesse d'être un CELIAPP n'est pas décédé au moment donné, un montant égal à la juste valeur marchande de tous les biens de l'arrangement, déterminé à ce moment, est réputé, pour l'application du paragraphe 146.6(6), être reçu à ce moment par le contribuable dans le cadre du CELIAPP;

c) si le dernier titulaire est décédé au moment donné, la proportion de la juste valeur marchande de tous les biens de l'arrangement auquel un bénéficiaire a droit, déterminée à ce moment, est réputée, pour l'application du paragraphe 146.6(14), être distribuée à ce moment du CELIAPP au bénéficiaire;

d) si l'arrangement régit une fiducie, à la fois :

(i) la fiducie est réputée avoir disposé, immédiatement avant le moment donné, de chaque bien qu'elle détient pour un produit égal à la juste valeur marchande du bien immédiatement avant le moment donné,

(iii) the trust's last taxation year that began before the particular time is deemed to have ended immediately before the particular time, and

(iv) a taxation year of the trust is deemed to begin at the particular time; and

(e) if the arrangement is a deposit or contract,

(i) the arrangement is deemed to have been disposed of immediately before the particular time for proceeds equal to its fair market value immediately before the particular time,

(ii) if the arrangement is an annuity contract, the contract is deemed to be a separate annuity contract issued and effected at the particular time otherwise than pursuant to or as a FHSA, and

(iii) each person who has an interest or, for civil law, a right in the separate annuity contract or deposit, as the case may be, at the particular time is deemed to acquire the interest at the particular time at a cost equal to its fair market value at the particular time.

(ii) la fiducie est réputée avoir acquis, au moment donné, chacun de ces biens à un coût égal à cette juste valeur marchande,

(iii) la dernière année d'imposition de la fiducie qui a commencé avant le moment donné est réputée avoir pris fin immédiatement avant le moment donné,

(iv) une année d'imposition de la fiducie est réputée commencer au moment donné;

e) si l'arrangement est un dépôt ou un contrat, à la fois :

(i) l'arrangement est réputé avoir fait l'objet d'une disposition immédiatement avant le moment donné pour un produit égal à sa juste valeur marchande immédiatement avant le moment donné,

(ii) si l'arrangement est un contrat de rente, il est réputé être un contrat de rente distinct établi et souscrit au moment donné autrement que dans le cadre d'un CELIAPP,

(iii) chaque personne qui a un intérêt ou, pour l'application du droit civil, un droit sur le contrat de rente distinct ou le dépôt, selon le cas, au moment donné est réputée acquérir le droit à ce moment à un coût égal à sa juste valeur marchande à ce même moment.

(12) Subsections (1) to (11) are deemed to have come into force on April 1, 2023.

(12) Les paragraphes (1) à (11) sont réputés être entrés en vigueur le 1er avril 2023.

47 (1) Paragraph 152(1)(b) of the Act is replaced by the following:

(b) the amount of tax, if any, deemed by any of subsections 120(2) or (2.2), 122.5(3) to (3.003), 122.51(2), 122.7(2) or (3), 122.72(1), 122.8(4), 122.9(2), 122.91(1), 125.4(3), 125.5(3), 125.6(2) or (2.1), 127.1(1), 127.41(3), 127.44(2) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year.

47 (1) L'alinéa 152(1)b) de la même loi est remplacé par ce qui suit :

b) le montant d'impôt qui est réputé, en application des paragraphes 120(2) ou (2.2), 122.5(3) à (3.003), 122.51(2), 122.7(2) ou (3), 122.72(1), 122.8(4), 122.9(2), 122.91(1), 125.4(3), 125.5(3), 125.6(2) ou (2.1), 127.1(1), 127.41(3), 127.44(2) ou 210.2(3) ou (4), avoir été payé au titre de l'impôt payable par le contribuable en vertu de la présente partie pour l'année.

(2) Paragraph 152(1)(b) of the Act, as enacted by subsection (1), is replaced by the following:

(b) the amount of tax, if any, deemed by any of subsections 120(2) or (2.2), 122.5(3) to (3.003), 122.51(2), 122.7(2) or (3), 122.72(1), 122.8(4), 122.9(2), 122.91(1), 125.4(3), 125.5(3), 125.6(2) or (2.1), 127.1(1), 127.41(3), 127.44(2), 127.45(2) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year.

(2) L'alinéa 152(1)b) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :

b) le montant d'impôt qui est réputé, en application des paragraphes 120(2) ou (2.2), 122.5(3) à (3.003), 122.51(2), 122.7(2) ou (3), 122.72(1), 122.8(4), 122.9(2), 122.91(1), 125.4(3), 125.5(3), 125.6(2) ou (2.1), 127.1(1), 127.41(3), 127.44(2), 127.45(2) ou 210.2(3) ou (4), avoir été payé au titre de l'impôt payable par le contribuable en vertu de la présente partie pour l'année.

(3) The portion of subsection 152(3.1) of the Act before paragraph (a) is replaced by the following:

Definition of *normal reassessment period*

(3.1) For the purposes of subsections (4), (4.01), (4.2), (4.3), (4.31), (5) and (9), the normal reassessment period for a taxpayer in respect of a taxation year is

(3) Le passage du paragraphe 152(3.1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Période normale de nouvelle cotisation

(3.1) Pour l'application des paragraphes (4), (4.01), (4.2), (4.3), (4.31), (5) et (9), la période normale de nouvelle cotisation applicable à un contribuable pour une année d'imposition s'étend sur les périodes suivantes :

(4) Paragraph 152(4)(b) of the Act is amended by striking out "or" at the end of subparagraph (vi), by adding "or" at the end of subparagraph (vii) and by adding the following after subparagraph (vii):

(viii) is made to give effect to the application of section 245 in respect of a transaction, unless the transaction was disclosed by the taxpayer to the Minister in accordance with section 237.3 or 237.4;

(4) L'alinéa 152(4)b) de la même loi est modifié par adjonction, après le sous-alinéa (vii), de ce qui suit :

(viii) est établie en vue de l'application de l'article 245 relativement à une opération, sauf si le contribuable a divulgué l'opération au ministre conformément aux articles 237.3 ou 237.4;

(5) Subsection 152(4) of the Act is amended by adding the following after paragraph (b.7):

(b.8) a prescribed form that is required to be filed under subsection 18.2(18) is not filed as and when required, and the assessment, reassessment or additional assessment is

(i) made before the day that is

(A) in the case of a taxpayer described in paragraph (3.1)(a), four years after the day on which the prescribed form containing the prescribed information is filed, and

(B) in any other case, three years after the day on which the prescribed form containing the prescribed information is filed, and

(ii) in respect of the application of paragraph 12(1)(l.2), subsection 18.2(2), clause 95(2)(f.11)(ii)(D) or (E) or paragraph 111(1)(a.1);

(5) Le paragraphe 152(4) de la même loi est modifié par adjonction, après l'alinéa b.7), de ce qui suit :

b.8) un formulaire prescrit qui doit être produit en vertu du paragraphe 18.2(18) n'est pas produit selon les modalités et dans les délais prévus, et la cotisation, la nouvelle cotisation ou la cotisation supplémentaire est :

(i) établie avant la date qui suit, selon le cas :

(A) dans le cas du contribuable visé à l'alinéa (3.1)a), de quatre ans le jour où le formulaire prescrit contenant les renseignements prescrits est produit,

(B) dans les autres cas, de trois ans le jour où le formulaire prescrit contenant les renseignements prescrits est produit,

(ii) relativement à l'application de l'alinéa 12(1)(l.2), du paragraphe 18.2(2), des divisions 95(2)f.11)(ii)(D) ou (E) ou de l'alinéa 111(1)a.1);

(6) Subsection 152(4) of the Act is amended by adding the following after paragraph (b.8), as enacted by subsection (5):

(b.9) the assessment, reassessment or additional assessment

(i) is made before the day that is three years after the end of the normal reassessment period for the taxpayer in respect of the year and made in respect of a disposition, in the year, of shares of the capital

(6) Le paragraphe 152(4) de la même loi est modifié par adjonction, après l'alinéa b.8), édicté par le paragraphe (5), de ce qui suit :

b.9) la cotisation, la nouvelle cotisation ou la cotisation supplémentaire :

(i) est établie avant la date qui suit de trois ans la fin de la période normale de nouvelle cotisation applicable au contribuable pour l'année et vise une disposition dans l'année d'actions du

stock of a corporation resident in Canada in respect of which the taxpayer filed an election under paragraph 84.1(2.31)(h), or

(ii) is made before the day that is 10 years after the end of the normal reassessment period for the taxpayer in respect of the year and made in respect of a disposition, in the year, of shares of the capital stock of a corporation resident in Canada in respect of which the taxpayer filed an election under paragraph 84.1(2.32)(i);

(7) Subsection 152(4) of the Act is amended by adding the following after paragraph (b.9), as enacted by subsection (6):

(b.10) a prescribed form that is required to be filed by the taxpayer, or a partnership of which the taxpayer is a member, under subsection 127.45(15) or (18) is not filed as and when required, and the assessment, reassessment or additional assessment is made in relation to transactions or events described in subsections 127.45(11) to (14) or (16) and (17) before the day that is

(i) in the case of a taxpayer described in paragraph (3.1)(a), four years after the day on which the form is filed, and

(ii) in any other case, three years after the day on which the form is filed;

(8) Paragraph 152(4.01)(b) of the Act is amended by striking out "or" at the end of subparagraph (ix) and by adding the following after subparagraph (x):

(xi) the transaction referred to in subparagraph (4)(b)(viii), or

(xii) the transactions or events referred to in paragraph (4)(b.10);

(9) Section 152 of the Act is amended by adding the following after subsection (4.3):

Consequential assessment of Part IV tax

(4.31) Notwithstanding subsections (4), (4.1) and (5), if a taxpayer in a taxation year receives a taxable dividend from a corporation that, as a result of having paid the dividend, is entitled to a dividend refund, the Minister may, within one year after the expiration of the normal reassessment period for the taxpayer in respect of the year, assess or reassess the tax, interest or penalties

capital-actions d'une société résidant au Canada à l'égard de laquelle le contribuable a produit un choix en vertu de l'alinéa 84.1(2.31)h),

(ii) est établie avant la date qui suit de dix ans la fin de la période normale de nouvelle cotisation applicable au contribuable pour l'année et vise une disposition dans l'année d'actions du capital-actions d'une société résidant au Canada à l'égard de laquelle le contribuable a produit un choix en vertu de l'alinéa 84.1(2.32)i);

(7) Le paragraphe 152(4) de la même loi est modifié par adjonction, après l'alinéa b.9), édicté par le paragraphe (6) de ce qui suit :

b.10) un formulaire prescrit qui doit être produit en vertu des paragraphes 127.45(15) ou (18) par le contribuable, ou une société de personnes dont il est associé, n'est pas produit selon les modalités et dans les délais prévus, et la cotisation, la nouvelle cotisation ou la cotisation supplémentaire est établie relativement aux opérations ou aux événements visés aux paragraphes 127.45(11) à (14) ou (16) et (17) avant la date qui suit, selon le cas :

(i) dans le cas du contribuable visé à l'alinéa (3.1)a), de quatre ans le jour où le formulaire est produit,

(ii) dans les autres cas, de trois ans le jour où le formulaire est produit;

(8) L'alinéa 152(4.01)b) de la même loi est modifié par adjonction, après le sous-alinéa (x), de ce qui suit :

(xi) l'opération visée au sous-alinéa (4)b)(viii),

(xii) les opérations ou événements visés à l'alinéa (4)b.10);

(9) L'article 152 de la même loi est modifié par adjonction, après le paragraphe (4.3), de ce qui suit :

Cotisation corrélative de l'impôt de la partie IV

(4.31) Malgré les paragraphes (4), (4.1) et (5), lorsqu'un contribuable reçoit, dans une année d'imposition, un dividende imposable d'une société qui, par l'effet du paiement du dividende, a droit à un remboursement au titre de dividendes, le ministre peut, dans un délai d'un an suivant l'expiration de la période normale de nouvelle cotisation du contribuable pour l'année, établir une cotisation ou une nouvelle cotisation à l'égard de l'impôt, des

payable under Part IV by the taxpayer in respect of the taxable dividend.

(10) Subsection (1) is deemed to have come into force on January 1, 2022.

(11) Subsection (2) is deemed to have come into force on March 28, 2023.

(12) Subsections (3) and (9) apply to assessments or reassessments of taxpayers for taxation years that end on or after April 7, 2022.

(13) Subsection (4) applies to transactions that occur on or after January 1, 2024.

(14) Subsection (5) applies in respect of taxation years that begin on or after October 1, 2023.

(15) Subsection (6) comes into force or is deemed to have come into force on January 1, 2024.

(16) Subparagraph 152(4.01)(b)(xi) of the Act, as enacted by subsection (8), applies to transactions that occur on or after January 1, 2024.

48 (1) Paragraph 153(1)(v) of the Act is replaced by the following:

(v) a payment out of or under a FHSA, if the amount is required by section 146.6 to be included in computing a taxpayer's income

(2) Subsection (1) is deemed to have come into force on April 1, 2023.

49 (1) Paragraph 157(3)(e) of the Act is replaced by the following:

(e) 1/12 of the total of the amounts each of which is deemed by subsection 125.4(3), 125.5(3), 125.6(2) or (2.1), 127.1(1), 127.41(3) or 127.44(2) to have been paid on account of the corporation's tax payable under this Part for the year.

(2) Paragraph 157(3)(e) of the Act, as enacted by subsection (1), is replaced by the following:

(e) 1/12 of the total of the amounts each of which is deemed by subsection 125.4(3), 125.5(3), 125.6(2) or (2.1), 127.1(1), 127.41(3), 127.44(2) or 127.45(2) to have been paid on account of the corporation's tax payable under this Part for the year.

intérêts ou des pénalités payables par le contribuable en vertu de la partie IV à l'égard du dividende imposable.

(10) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.

(11) Le paragraphe (2) est réputé être entré en vigueur le 28 mars 2023.

(12) Les paragraphes (3) et (9) s'appliquent aux cotisations ou aux nouvelles cotisations de contribuables pour les années d'imposition se terminant à compter du 7 avril 2022.

(13) Le paragraphe (4) s'applique aux opérations se produisant à compter du 1er janvier 2024.

(14) Le paragraphe (5) s'applique relativement aux années d'imposition commençant après septembre 2023.

(15) Le paragraphe (6) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.

(16) Le sous-alinéa 152(4.01)b)(xi) de la même loi, modifié par le paragraphe (8), s'applique aux opérations se produisant à compter du 1er janvier 2024.

48 (1) L'alinéa 153(1)v) de la même loi est remplacé par ce qui suit :

v) un paiement provenant soit d'un CELIAPP, si le montant est à inclure dans le calcul du revenu d'un contribuable pour l'application de l'article 146.6;

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.

49 (1) L'alinéa 157(3)e) de la même loi est remplacé par ce qui suit :

e) le douzième du total des montants dont chacun est réputé, par les paragraphes 125.4(3), 125.5(3), 125.6(2) ou (2.1), 127.1(1), 127.41(3) ou 127.44(2), avoir été payé au titre de l'impôt payable par la société pour l'année en vertu de la présente partie.

(2) L'alinéa 157(3)e) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :

e) le douzième du total des montants dont chacun est réputé, par les paragraphes 125.4(3), 125.5(3), 125.6(2) ou (2.1), 127.1(1), 127.41(3), 127.44(2) ou 127.45(2), avoir été payé au titre de l'impôt payable par la société pour l'année en vertu de la présente partie.

(3) Paragraph 157(3.1)(c) of the Act is replaced by the following:

(c) 1/4 of the total of the amounts each of which is deemed by subsection 125.4(3), 125.5(3), 125.6(2) or (2.1), 127.1(1), 127.41(3) or 127.44(2) to have been paid on account of the corporation's tax payable under this Part for the taxation year.

(4) Paragraph 157(3.1)(c) of the Act, as enacted by subsection (3), is replaced by the following:

(c) 1/4 of the total of the amounts each of which is deemed by subsection 125.4(3), 125.5(3), 125.6(2) or (2.1), 127.1(1), 127.41(3), 127.44(2) or 127.45(2) to have been paid on account of the corporation's tax payable under this Part for the taxation year.

(5) Subsections (1) and (3) are deemed to have come into force on January 1, 2022.

(6) Subsections (2) and (4) are deemed to have come into force on March 28, 2023.

50 (1) Section 160 of the Act is amended by adding the following after subsection (1.4):

Joint liability — intergenerational business transfer

(1.5) If a taxpayer and one or more other taxpayers have jointly elected under

(a) paragraph 84.1(2.31)(h) in respect of a disposition of shares of the capital stock of a corporation resident in Canada, they are jointly and severally, or solidarily, liable for the tax payable by the taxpayer under this Part to the extent that the tax payable by the taxpayer is greater than it would have been if the disposition had satisfied the conditions of subsection 84.1(2.31); or

(b) paragraph 84.1(2.32)(i) in respect of a disposition of shares of the capital stock of a corporation resident in Canada, they are jointly and severally, or solidarily, liable for the tax payable by the taxpayer under this Part to the extent that the tax payable by the taxpayer is greater than it would have been if the disposition had satisfied the conditions of subsection 84.1(2.32).

(2) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.

51 (1) Subsection 160.2(2.3) of the Act is repealed.

(3) L'alinéa 157(3.1)c) de la même loi est remplacé par ce qui suit :

c) le quart du total des sommes dont chacune est réputée en vertu des paragraphes 125.4(3), 125.5(3), 125.6(2) ou (2.1), 127.1(1), 127.41(3) ou 127.44(2) avoir été payée au titre de l'impôt payable par la société pour l'année en vertu de la présente partie.

(4) L'alinéa 157(3.1)c) de la même loi, édicté par le paragraphe (3), est remplacé par ce qui suit :

c) le quart du total des sommes dont chacune est réputée en vertu des paragraphes 125.4(3), 125.5(3), 125.6(2) ou (2.1), 127.1(1), 127.41(3), 127.44(2) ou 127.45(2) avoir été payée au titre de l'impôt payable par la société pour l'année en vertu de la présente partie.

(5) Les paragraphes (1) et (3) sont réputés être entrés en vigueur le 1er janvier 2022.

(6) Les paragraphes (2) et (4) sont réputés être entrés en vigueur le 28 mars 2023.

50 (1) L'article 160 de la même loi est modifié par adjonction, après le paragraphe (1.4), de ce qui suit :

Responsabilité solidaire — transferts intergénérationnels d'entreprises

(1.5) Si un contribuable et un ou plusieurs autres contribuables ont fait un choix conjoint relativement à une disposition d'actions du capital-actions d'une société résidant au Canada en vertu de :

a) l'alinéa 84.1(2.31)h), ils sont solidairement responsables du paiement de l'impôt payable par le contribuable en vertu de la présente partie, dans la mesure où cet impôt est supérieur à ce qu'il aurait été si la disposition avait rempli les conditions énoncées au paragraphe 84.1(2.31);

b) l'alinéa 84.1(2.32)i), ils sont solidairement responsables du paiement de l'impôt payable par le contribuable en vertu de la présente partie, dans la mesure où cet impôt est supérieur à ce qu'il aurait été si la disposition avait rempli les conditions énoncées au paragraphe 84.1(2.32).

(2) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.

51 (1) Le paragraphe 160.2(2.3) de la même loi est abrogé.

(2) Subsection (1) is deemed to have come into force on April 1, 2023.

52 (1) Subsection 163(2) of the Act is amended by adding the following after paragraph (d):

(d.1) the amount, if any, by which

(i) the amount that would be deemed by subsection 127.44(2) to be paid for the year by the person if that amount were calculated by reference to the information provided in the return or form filed for the year under that subsection

exceeds

(ii) the amount that is deemed by subsection 127.44(2) to be paid for the year by the person,

(2) Paragraph 163(2)(d.1) of the Act, as enacted by subsection (1), is replaced by the following:

(d.1) the amount, if any, by which

(i) the amount that would be deemed by subsection 127.44(2) or 127.45(2), as the case may be, to be paid for the year by the person if that amount were calculated by reference to the information provided in the return or form filed for the year under that subsection

exceeds

(ii) the amount that is deemed by subsection 127.44(2) or 127.45(2), as the case may be, to be paid for the year by the person,

(3) Subsection (1) is deemed to have come into force on January 1, 2022.

(4) Subsection (2) is deemed to have come into force on March 28, 2023.

53 (1) The Act is amended by adding the following after section 183.2:

PART II.2

Tax on Repurchases of Equity

Definitions

183.3 (1) The following definitions apply in this Part.

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.

52 (1) Le paragraphe 163(2) de la même loi est modifié par adjonction, après l'alinéa d), de ce qui suit :

d.1) l'excédent éventuel du montant visé au sous-alinéa (i) sur le montant visé au sous-alinéa (ii) :

(i) le montant qui, s'il était calculé d'après les renseignements indiqués dans la déclaration produite ou le formulaire présenté conformément au paragraphe 127.44(2), serait réputé par ce paragraphe payé pour l'année par cette personne,

(ii) le montant réputé par ce paragraphe payé pour l'année par cette personne;

(2) L'alinéa 163(2)d.1) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :

d.1) l'excédent éventuel du montant visé au sous-alinéa (i) sur le montant visé au sous-alinéa (ii) :

(i) le montant qui, s'il était calculé d'après les renseignements indiqués dans la déclaration produite ou le formulaire présenté conformément aux paragraphes 127.44(2) ou 127.45(2), selon le cas, serait réputé par ce paragraphe payé pour l'année par cette personne,

(ii) le montant réputé par les paragraphes 127.44(2) ou 127.45(2), selon le cas, payé pour l'année par cette personne;

(3) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.

(4) Le paragraphe (2) est réputé être entré en vigueur le 28 mars 2023.

53 (1) La même loi est modifiée par adjonction, après l'article 183.2, de ce qui suit :

PARTIE II.2

Impôt sur les rachats de capitaux propres

Définitions

183.3 (1) Les définitions qui suivent s'appliquent à la présente partie.

covered entity for a taxation year, means an entity that is a corporation, trust or partnership if at any time in the taxation year

(a) equity of the entity is listed on a designated stock exchange; and

(b) the entity is

(i) a corporation resident in Canada (other than a mutual fund corporation),

(ii) a trust that

(A) is a *real estate investment trust* (as defined in subsection 122.1(1)),

(B) is a SIFT trust, or

(C) would be a SIFT trust (other than a mutual fund trust that has one or more classes of units in continuous distribution) if

(I) each reference in paragraph (a) of the definition *non-portfolio property* in subsection 122.1(1) to "subject entity" were read as "corporation, partnership or trust" and paragraph (c) of that definition were read without reference to the words "in Canada",

(II) paragraph (a) of the definition *Canadian real, immovable or resource property* in subsection 248(1) were read without reference to the words "situated in Canada", and

(III) the definitions *timber resource property* in subsection 13(21) and *Canadian resource property* in subsection 66(15) were read without references to the words "in Canada", or

(iii) a partnership that

(A) is a SIFT partnership, or

(B) would be a SIFT partnership if

(I) each reference in paragraph (a) of the definition *non-portfolio property* in subsection 122.1(1) to "subject entity" were read as "corporation, partnership or trust" and paragraph (c) of that definition were read without reference to the words "in Canada",

(II) paragraph (a) of the definition *Canadian real, immovable or resource property* in

capitaux propres Relativement à une entité, s'entend des biens suivants :

a) si elle est une société, une action de son capital-actions;

b) si elle est une fiducie, une participation au revenu ou au capital de la fiducie;

c) si elle est une société de personnes, une participation à titre d'associé de la société de personnes. (*equity*)

dette substantielle Relativement à une entité visée, s'entend de capitaux propres qui, conformément à leurs modalités, à la fois :

a) ne sont pas convertibles ou échangeables, sauf contre, selon le cas :

(i) des capitaux propres qui, s'ils étaient émis, constitueraient une dette substantielle de la même entité visée,

(ii) une obligation ou un billet de l'entité visée, dont la juste valeur marchande n'excède pas le total des montants visés aux sous-alinéas d)(i) à (iv),

(iii) des capitaux propres qui seraient émis seulement à la suite d'un événement déclencheur au titre d'une disposition relative aux fonds propres d'urgence en cas de non-viabilité comprise dans les modalités des capitaux propres afin de respecter les exigences réglementaires en matière de capital applicables à l'entité visée;

b) ne confèrent pas de droit de vote d'élire les membres du conseil d'administration, les fiduciaires ou le commandité (le cas échéant) de l'entité visée, sauf en cas d'inexécution des conditions des capitaux propres;

c) exige que la somme de tout dividende ou autre distribution payable soit calculée :

(i) soit en tant que montant fixe,

(ii) soit en fonction du pourcentage d'une somme égale à la juste valeur marchande de la contrepartie de l'émission des capitaux propres si le pourcentage est :

(A) soit fixe,

(B) soit déterminé en fonction du taux d'intérêt du marché (y compris les bons du Trésor du

subsection 248(1) were read without reference to the words "situated in Canada", and

(III) the definitions *timber resource property* in subsection 13(21) and *Canadian resource property* in subsection 66(15) were read without references to the words "in Canada". (*entité visée*)

equity of an entity, means, if the entity is

(a) a corporation, a share of the capital stock of the corporation;

(b) a trust, an income or capital interest in the trust; and

(c) a partnership, an interest as a member of the partnership. (*capitaux propres*)

qualifying issuance means any portion of an issuance that is made

(a) in exchange for

(i) cash,

(ii) a bond, debenture, note or other security (other than equity) of the covered entity that was issued solely for cash consideration, the terms of which confer on the holder the right to make the exchange, or

(iii) any combination of properties described in subparagraph (i) or (ii);

(b) to an employee of the covered entity (or an entity related to the covered entity) in the course of the employee's employment; or

(c) to a person or partnership, with which the covered entity deals at arm's length and is not affiliated, in exchange for property used in the covered entity's active business. (*émission admissible*)

reorganization transaction means a redemption, acquisition or cancellation of equity by a covered entity that is made

(a) on an exchange of equity by a holder for consideration that includes equity (other than substantive debt) of

(i) the covered entity,

gouvernement du Canada), plus un montant fixe, le cas échéant;

d) donnent droit au détenteur des capitaux propres de recevoir au rachat, à l'acquisition ou à l'annulation des capitaux propres par l'entité visée ou par une personne ou une société de personnes avec laquelle l'entité visée a un lien de dépendance ou à laquelle l'entité visée est affiliée, un montant qui ne dépasse pas le total des montants suivants :

(i) la juste valeur marchande de la contrepartie pour laquelle les capitaux propres ont été émis,

(ii) le montant des distributions ou des dividendes impayés sur les capitaux propres qui sont payables au détenteur,

(iii) la prime payable au détenteur uniquement en raison du rachat anticipé, de l'annulation ou de l'acquisition anticipée des capitaux propres,

(iv) tout autre montant relativement à une somme visée aux sous-alinéas (i) à (iii) attribuable à une augmentation de la valeur d'une monnaie (sauf la monnaie canadienne) par rapport à la monnaie canadienne. (*substantive debt*)

émission admissible Toute partie d'une émission qui est effectuée, selon le cas :

a) en échange, selon le cas :

(i) d'une somme d'argent,

(ii) d'une obligation, d'une débenture, d'un billet ou autre titre (autre que des capitaux propres) de l'entité visée émis uniquement en contrepartie d'une somme d'argent, dont les conditions confèrent à son détenteur un tel droit d'échange;

(iii) de toute combinaison d'un ou plusieurs des biens visés aux sous-alinéas (i) ou (ii);

(b) à un employé de l'entité visée (ou d'une entité qui lui est liée) dans le cadre de son emploi;

(c) à une personne ou société de personnes, avec laquelle l'entité visée n'a aucun lien de dépendance et n'est pas affiliée, en échange de biens utilisés dans l'entreprise exploitée activement de l'entité visée. (*qualifying issuance*)

entité affiliée déterminée Relativement à une entité visée à un moment donné, s'entend d'une société, fiducie ou société de personnes (appelée « entité affiliée » à la présente définition) si, à ce moment, selon le cas :

(ii) another entity that is related to the covered entity immediately before the exchange and is a covered entity immediately after the exchange, or

(iii) another covered entity that controls the covered entity (or an amalgamated successor entity of the covered entity) immediately after the exchange;

(b) on an amalgamation of the covered entity with one or more other predecessor corporations to which subsection 87(1) applies if a holder of that equity, immediately before the amalgamation, receives consideration that includes equity (other than substantive debt) of the new corporation (within the meaning of subsection 87(1)) for the disposition of their equity on the amalgamation;

(c) on a winding-up of the covered entity during which all or substantially all of the property owned by the covered entity is distributed to the equity holders of the covered entity;

(d) in the course of a reorganization to which paragraph 55(3)(a) or (b) applies;

(e) on a *qualifying disposition* (as defined in subsection 107.4(1));

(f) on a *qualifying exchange* (as defined in subsection 132.2(1));

(g) at the demand of a holder in accordance with the conditions referred to in paragraph 108(2)(a), included in the issued units of the trust, for an amount that does not exceed the fair market value of the equity at the time of the redemption, acquisition or cancellation; or

(h) pursuant to the exercise of a statutory right of dissent by a holder of the equity. (*opération de réorganisation*)

specified affiliate at any time, of a covered entity, means a corporation, trust or partnership (in this definition referred to as an "affiliate") where, at that time,

(a) if the affiliate is a corporation, the covered entity

(i) controls the corporation, or

(ii) has a direct or indirect interest in the equity of the corporation having a fair market value equal to more than 50% of the fair market value of the total equity of the corporation;

(b) if the affiliate is a trust, the covered entity

a) si l'entité affiliée est une société, l'entité visée, selon le cas :

(i) contrôle la société,

(ii) a une participation directe ou indirecte dans les capitaux propres de la société dont la juste valeur marchande est égale à plus de 50 % de la juste valeur marchande du total des capitaux propres de la société;

b) si l'entité affiliée est une fiducie, l'entité visée, selon le cas :

(i) est un *bénéficiaire détenant une participation majoritaire* (au sens du paragraphe 251.1(3)) de la fiducie,

(ii) a une participation directe ou indirecte dans les capitaux propres de la fiducie dont la juste valeur marchande est égale à plus de 50 % de la juste valeur marchande du total des capitaux propres de la fiducie;

c) si l'entité affiliée est une société de personnes, l'entité visée, selon le cas :

(i) est un associé détenant une participation majoritaire de la société de personnes,

(ii) a une participation directe ou indirecte dans les capitaux propres de la société de personnes dont la juste valeur marchande est égale à plus de 50 % de la juste valeur marchande du total des capitaux propres de la société de personnes. (*specified affiliate*)

entité visée Est une entité visée pour une année d'imposition l'entité qui est une société, une fiducie ou une société de personnes si, à un moment donné de l'année :

a) les capitaux propres de l'entité sont inscrits à la cote d'une bourse de valeurs désignée;

b) l'entité est :

(i) une société résidant au Canada (sauf une société de placement à capital variable),

(ii) une fiducie qui, selon le cas :

(A) est une *fiducie de placement immobilier* (au sens du paragraphe 122.1(1)),

(B) est une fiducie intermédiaire de placement déterminée,

(i) is a *majority-interest beneficiary* (as defined in subsection 251.1(3)) of the trust, or

(ii) has a direct or indirect interest in the equity of the trust having a fair market value equal to more than 50% of the fair market value of the total equity of the trust; and

(c) if the affiliate is a partnership, the covered entity

(i) is a majority-interest partner of the partnership, or

(ii) has a direct or indirect interest in the equity of the partnership having a fair market value equal to more than 50% of the fair market value of the total equity of the partnership. (*entité affiliée déterminée*)

substantive debt of a covered entity means equity that, in accordance with its terms

(a) is not convertible or exchangeable other than for

(i) equity that if issued would be substantive debt of the same covered entity,

(ii) a bond, debenture or note of the covered entity, the fair market value of which does not exceed the total of the amounts referred to in subparagraphs (d)(i) to (iv), or

(iii) equity that would be issued only after the occurrence of a trigger event pursuant to a non-viability contingent capital provision included in the terms of the equity to satisfy regulatory capital requirements applicable to the covered entity;

(b) is non-voting in respect of the election of the board of directors, the trustees or the general partner (as applicable) of the covered entity, except in the event of a failure or default under the terms or conditions of the equity;

(c) requires the amount of any dividend or other distribution payable to be calculated

(i) as a fixed amount, or

(ii) by reference to a percentage of an amount equal to the fair market value of the consideration for which the equity was issued if the percentage is

(A) fixed, or

(C) serait une fiducie intermédiaire de placement déterminée (sauf une fiducie de fonds commun de placement ayant une ou plusieurs catégories d'unités en distribution continue) si :

(I) la mention « entité déterminée » à l'alinéa a) de la définition de *bien hors portefeuille* au paragraphe 122.1(1) était remplacée par « société de personnes, fiducie ou société » et qu'il n'était pas tenu compte du passage « au Canada » à l'alinéa c) de cette définition,

(II) il n'était pas tenu compte du passage « situé au Canada » à l'alinéa a) de la définition de *bien canadien immeuble, réel ou minier* au paragraphe 248(1),

(III) il n'était pas tenu compte du passage « du Canada » dans la définition de *avoir forestier* au paragraphe 13(21) et des passages « au Canada » et « situé au Canada » dans la définition de *avoir minier canadien* au paragraphe 66(15),

(iii) une société de personnes qui, selon le cas :

(A) est une société de personnes intermédiaire de placement déterminée,

(B) serait une société de personnes intermédiaire de placement déterminée si :

(I) la mention « entité déterminée » à l'alinéa a) de la définition de *bien hors portefeuille* au paragraphe 122.1(1) était remplacée par « société de personnes, fiducie ou société » et qu'il n'était pas tenu compte du passage « au Canada » à l'alinéa c) de cette définition,

(II) il n'était pas tenu compte du passage « situé au Canada » à l'alinéa a) de la définition de *bien canadien immeuble, réel ou minier* au paragraphe 248(1),

(III) il n'était pas tenu compte du passage « du Canada » dans la définition de *avoir forestier* au paragraphe 13(21) et des passages « au Canada » et « situé au Canada » dans la définition de *avoir minier canadien* au paragraphe 66(15). (*covered entity*)

opération de réorganisation S'entend d'un rachat, d'une acquisition ou d'une annulation de capitaux propres par l'entité visée qui est effectué soit :

a) lors d'un échange de capitaux propres par un détenteur pour une contrepartie qui comprend des

(B) determined by reference to a market interest rate (including a Government of Canada Treasury Bill) plus a fixed amount, if any; and

(d) entitles any holder of the equity to receive, on the redemption, cancellation or acquisition of the equity by the covered entity or by a person or partnership with whom the covered entity does not deal at arm's length or is affiliated, an amount that does not exceed the total of the following amounts:

(i) the fair market value of the consideration for which the equity was issued,

(ii) any unpaid distributions or dividends on the equity that are payable to the holder,

(iii) any premium that is payable to the holder solely due to the early redemption, cancellation or acquisition of the equity, and

(iv) any other amount in respect of an amount described in subparagraphs (i) to (iii) that is attributable to an increase in the value of a currency other than Canadian currency relative to Canadian currency. (*dette substantielle*)

capitaux propres (sauf une dette substantielle), selon le cas :

(i) de l'entité visée,

(ii) d'une autre entité qui était liée à l'entité visée immédiatement avant l'échange et qui est une entité visée immédiatement après l'échange,

(iii) d'une autre entité visée qui contrôle l'entité visée (ou une entité fusionnée remplaçante de l'entité visée) immédiatement après l'échange;

b) lors d'une fusion de l'entité visée avec une ou plusieurs autres sociétés remplacées à laquelle s'applique le paragraphe 87(1) si un détenteur des capitaux propres immédiatement avant la fusion reçoit une contrepartie comprenant des capitaux propres (sauf une dette substantielle) de la nouvelle société (au sens du paragraphe 87(1)) pour la disposition de ses capitaux propres lors de la fusion;

c) lors d'une liquidation de l'entité visée au cours de laquelle, la totalité, ou presque, de ses biens sont distribués à ses détenteurs de capitaux propres;

d) dans le cadre d'une réorganisation à laquelle s'appliquent les alinéas 55(3)a) ou b);

e) lors d'une *disposition admissible* (au sens du paragraphe 107.4(1));

f) lors d'un *échange admissible* (au sens du paragraphe 132.2(1));

g) à la demande d'un détenteur conformément aux conditions visées à l'alinéa 108(2)a), comprises dans les unités émises de la fiducie, en contrepartie d'une somme n'excédant pas la juste valeur marchande des capitaux propres au moment du rachat, de l'acquisition ou de l'annulation;

h) par suite de l'exercice d'un droit de dissidence prévu par une loi par le détenteur des capitaux propres. (*reorganization transaction*)

Tax payable

(2) Each person or partnership that is a covered entity for a taxation year shall pay a tax for the taxation year equal to the amount determined by the formula

0.02 × (A + B – C)

where

A is the total fair market value of equity (other than substantive debt) of the covered entity that is

Impôt payable

(2) Chaque personne ou société de personnes qui est une entité visée pour une année d'imposition doit pour l'année d'imposition payer un impôt équivalent au montant obtenu par la formule suivante :

0,02 × (A + B – C)

où :

A représente la juste valeur marchande totale des capitaux propres (sauf une dette substantielle) de l'entité

redeemed, acquired or cancelled in the taxation year by the covered entity, other than equity that is

(a) redeemed, acquired or cancelled in a reorganization transaction, or

(b) acquired from a specified affiliate, if that equity was previously deemed by subsection (5) to have been acquired by the covered entity and was previously included in the description of A;

B is

(a) if equity of a covered entity (other than substantive debt) is redeemed, acquired or cancelled in the taxation year pursuant to a *reorganization transaction* described in paragraph (a) or (b) of that definition and any portion of the consideration received by a holder for the equity is not equity consideration described in paragraph (a) or (b) of the definition *reorganization transaction*, the amount determined by the formula

D – E

where

D is the total fair market value of the equity of the covered entity (other than substantive debt) that is redeemed, acquired or cancelled in a reorganization transaction described in this paragraph; and

E is the total fair market value of any equity consideration described in paragraph (a) or (b) of the definition *reorganization transaction* that is received by a holder as consideration for the equity that is redeemed, acquired or cancelled in a reorganization transaction described in this paragraph; and

(b) in any other case, nil; and

C is the total fair market value of equity (other than substantive debt) of the covered entity that is

(a) issued in a qualifying issuance in the taxation year, or

(b) disposed of in the taxation year by a specified affiliate of the covered entity (except a disposition to the covered entity or another specified affiliate of the covered entity), if that equity was previously deemed by subsection (5) to have been acquired by the covered entity and was previously included in the description of A.

visée qui sont rachetés, acquis ou annulés au cours de l'année d'imposition par l'entité visée, à l'exception des capitaux propres qui sont :

a) soit rachetés, acquis ou annulés dans le cadre d'une opération de réorganisation,

b) soit acquis auprès d'une entité affiliée déterminée, si ces capitaux propres étaient antérieurement réputés, en vertu du paragraphe (5), avoir été acquis par l'entité visée et antérieurement inclus dans la valeur de l'élément A;

B :

a) si les capitaux propres d'une entité visée (sauf une dette substantielle) sont rachetés, acquis ou annulés au cours de l'année d'imposition conformément à une *opération de réorganisation* visée aux alinéas a) ou b) de cette définition et toute partie de la contrepartie qu'un détenteur reçoit pour les capitaux propres n'est pas une contrepartie comprenant des capitaux propres visée aux alinéas a) ou b) de la définition de *opération de réorganisation*, la somme obtenue par la formule suivante :

D – E

où :

D représente le total de la juste valeur marchande des capitaux propres de l'entité visée (sauf une dette substantielle) qui sont rachetés, acquis ou annulés dans le cadre d'une opération de réorganisation visée au présent alinéa;

E la juste valeur marchande totale de toute contrepartie comprenant des capitaux propres visée aux alinéas a) ou b) de la définition de *opération de réorganisation* qu'un détenteur reçoit à titre de contrepartie pour les capitaux propres qui sont rachetés, acquis ou annulés dans le cadre d'une opération de réorganisation visée au présent alinéa;

b) dans les autres cas, zéro;

C la juste valeur marchande totale des capitaux propres (sauf une dette substantielle) de l'entité visée qui sont :

a) soit émis dans le cadre d'une émission admissible au cours de l'année d'imposition,

b) soit disposés au cours de l'année d'imposition par une entité affiliée déterminée de l'entité visée (à l'exception d'une disposition effectuée en faveur de l'entité visée ou d'une autre entité affiliée déterminée de l'entité visée) si ces capitaux propres étaient antérieurement réputés, en vertu

du paragraphe (5), avoir été acquis par l'entité visée et antérieurement inclus dans la valeur de l'élément A.

Tax payable — anti-avoidance

(3) Equity that is redeemed, acquired or cancelled, or that is issued by a covered entity, as part of a *transaction* (as defined in subsection 245(1)) or series of transactions shall be included in the description of A or B or excluded from the description of C in subsection (2) (as the case may be) if it is reasonable to consider that the primary purpose of the transaction or series is to cause a decrease in the amount referred to in the description of A or B in that subsection or an increase in the amount referred to in the description of C in that subsection.

Impôt payable — anti-évitement

(3) Les capitaux propres rachetés, acquis ou annulés, ou émis par une entité visée, dans le cadre d'une *opération* (au sens du paragraphe 245(1)) ou d'une série d'opérations sont inclus dans la valeur de l'élément A ou B ou exclus de la valeur de l'élément C du paragraphe (2), selon le cas, s'il est raisonnable de considérer que l'objet principal de l'opération ou de la série est la réduction de la somme visée à l'élément A ou B ou l'augmentation de la somme visée à l'élément C de ce paragraphe.

***De minimis* rule**

(4) Despite subsection (2), if the total of the amounts determined for A and B in subsection (2) for a taxation year is less than $1,000,000 (prorated based upon the number of days in the taxation year if the taxation year is less than 365 days), no tax is payable under this Part for the taxation year.

Seuil minimum

(4) Malgré le paragraphe (2), lorsque le total des sommes déterminées pour les éléments A et B de la formule figurant au paragraphe (2) pour une année d'imposition est inférieure à 1 000 000 $ (calculée au prorata en fonction du nombre de jours de l'année d'imposition si elle est inférieure à trois cent soixante-cinq jours), aucun impôt n'est payable en vertu de la présente partie pour l'année d'imposition.

Similar transactions

(5) For the purposes of subsection (2), if a specified affiliate of a covered entity acquires equity of the covered entity, the equity is deemed to be acquired by the covered entity unless the specified affiliate is

(a) a registered securities dealer that

(i) acquires the equity in the capacity of an agent in the ordinary course of business, and

(ii) disposes of the equity, other than to the covered entity or another specified affiliate of the covered entity, within a reasonable period of time that is consistent with the holding of equity in the ordinary course of business;

(b) a trust established for the benefit of employees and former employees of the covered entity (or of a specified affiliate of the covered entity) that satisfies the following conditions

(i) the trust is an employee benefit plan, and

(ii) the terms of the trust provide that any equity of the covered entity acquired or held by the trust cannot be transferred to, or otherwise be available for the benefit of, the covered entity or any specified affiliate of the covered entity;

Opérations semblables

(5) Pour l'application du paragraphe (2), lorsqu'une entité affiliée déterminée d'une entité visée acquiert des capitaux propres de l'entité visée, les capitaux propres sont réputés être acquis par l'entité visée, sauf si l'entité affiliée déterminée, selon le cas :

a) est un courtier en valeurs mobilières inscrit qui, à la fois :

(i) acquiert les capitaux propres comme mandataire dans le cours normal des activités d'une entreprise,

(ii) dispose des capitaux propres, sauf en faveur de l'entité visée ou d'une autre entité affiliée déterminée de l'entité visée, dans un délai raisonnable conforme à la détention de capitaux propres dans le cours normal des activités d'une entreprise;

b) est une fiducie établie au profit des employés et des anciens employés de l'entité visée (ou d'une entité affiliée déterminée de l'entité visée) qui remplit les conditions suivantes :

(i) elle est un régime de prestations aux employés,

(ii) l'acte de fiducie prévoit que les capitaux propres de l'entité visée acquis ou détenus par la fiducie ne

(c) a trust governed by an employees profit sharing plan; or

(d) a trust governed by a deferred profit sharing plan.

c) est une fiducie régie par un régime de participation des employés aux bénéfices;

d) est une fiducie régie par un régime de participation différée aux bénéfices.

Similar transactions — anti-avoidance

(6) If it is reasonable to consider that one of the main purposes of a *transaction* (as defined in subsection 245(1)) or series of transactions is to cause a person or partnership to acquire equity of a covered entity to avoid the tax otherwise payable under this Part, the person or partnership shall be deemed to be a specified affiliate of the covered entity from the time that the transaction or series commenced until immediately after the time the transaction or series ends.

Opérations semblables — anti-évitement

(6) S'il est raisonnable de considérer que l'un des objets principaux d'une *opération* (au sens du paragraphe 245(1)) ou d'une série d'opérations est l'acquisition par une personne ou une société de personnes de capitaux propres d'une entité visée afin d'éviter l'impôt autrement payable en vertu de la présente partie, la personne ou la société de personnes est réputée être une entité affiliée déterminée de l'entité visée à compter du début de l'opération ou de la série jusqu'au moment immédiatement après sa fin.

Return

183.4 (1) If a covered entity redeems, acquires or cancels equity of the entity in a taxation year,

(a) if the entity is a corporation, on or before the day it is required to file its return of income under Part I for the year, the corporation shall file with the Minister a return for the year under this Part in prescribed form;

(b) if the entity is a trust, within 90 days after the end of the taxation year, the trustee of the trust shall file with the Minister a return for the year under this Part in prescribed form; and

(c) if the entity is a partnership, a member of the partnership that has authority to act for the partnership shall file with the Minister a return for the year under this Part in prescribed form on or before the earlier of

(i) the day that is five months after the end of the taxation year, and

(ii) March 31 in the calendar year immediately following the calendar year in which the taxation year ended.

Déclaration

183.4 (1) Si une entité visée rachète, acquiert ou annule ses capitaux propres au cours d'une année d'imposition, elle doit remplir les conditions suivantes :

a) lorsqu'elle est une société, elle produit, au plus tard le jour où elle est tenue de produire sa déclaration de revenu en vertu de la partie I pour l'année, auprès du ministre une déclaration pour l'année en vertu de la présente partie selon le formulaire prescrit;

b) lorsqu'elle est une fiducie, dans les quatre-vingt-dix jours qui suivent la fin de l'année d'imposition, le fiduciaire produit auprès du ministre une déclaration pour l'année en vertu de la présente partie selon le formulaire prescrit;

c) lorsqu'elle est une société de personnes, un associé de la société de personnes qui a le pouvoir d'agir au nom de celle-ci produit auprès du ministre une déclaration pour l'année en vertu de la présente partie selon le formulaire prescrit au plus tard au premier en date des jours suivants :

(i) le jour qui tombe cinq mois après la fin de l'année d'imposition,

(ii) le 31 mars de l'année civile qui suit celle où se termine l'année d'imposition.

Payment

(2) Every covered entity that is liable to pay tax under this Part for a taxation year, shall

Paiement

(2) Toute entité tenue de payer de l'impôt en vertu de la présente partie pour une année d'imposition doit :

(a) if the entity is a corporation or trust, pay its tax payable under this Part for the year to the Receiver General on or before its balance-due day for the year; and

(b) if the entity is a partnership, pay its tax payable under this Part for the year to the Receiver General on or before the day which the partnership is required to file a return for the year under paragraph (1)(c).

a) si elle est une société ou une fiducie, payer ses impôts en vertu de la présente partie pour l'année au receveur général au plus tard à la date d'exigibilité du solde qui lui est applicable pour l'année;

b) si elle est une société de personnes, payer ses impôts en vertu de la présente partie pour l'année au receveur général au plus tard le jour où la société de personnes est tenue de produire une déclaration pour l'année en application de l'alinéa (1)c).

Provisions applicable to Part

(3) Subsections 150(2) and (3), sections 152, 158 and 159, subsections 160.1(1) and 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

Dispositions applicables

(3) Les paragraphes 150(2) et (3), les articles 152, 158 et 159, les paragraphes 160.1(1) et 161(1) et (11), les articles 162 à 167 et la section J de la partie I s'appliquent à la présente partie, avec les adaptations nécessaires.

(2) Subsection (1) applies to transactions that occur after 2023.

(2) Le paragraphe (1) s'applique aux opérations se produisant après 2023.

54 (1) Subparagraph (a)(iii) of the description of I in subsection 204.2(1.2) of the Act is replaced by the following:

(iii) an amount transferred to the plan on behalf of the individual in accordance with any of subsections 146(16), 146.6(7), 147(19), 147.3(1) and (4) to (7) and 147.5(21) or in circumstances to which subsection 146(21) applies,

54 (1) Le sous-alinéa a)(iii) de l'élément I de la formule figurant au paragraphe 204.2(1.2) de la même loi est remplacé par ce qui suit :

(iii) d'une somme transférée au régime pour le compte du particulier conformément à l'un des paragraphes 146(16), 146.6(7), 147(19), 147.3(1) et (4) à (7) et 147.5(21) ou dans les circonstances visées au paragraphe 146(21),

(2) Subsection (1) is deemed to have come into force on April 1, 2023.

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.

55 (1) The definition *excess FHSA amount* in subsection 207.01(1) of the Act is replaced by the following:

excess FHSA amount of an individual at a particular time in a taxation year means

(a) the amount determined by the formula

A + B + C – D – E – F

where

A is

(i) nil, if the individual had not started their maximum participation period in the preceding taxation year, and

(ii) the individual's excess FHSA amount determined at the end of the immediately preceding taxation year, in any other case;

B is the total of all amounts each of which is a contribution made to a FHSA by the individual in the taxation year at or before the particular time;

55 (1) La définition de *excédent de CELIAPP*, au paragraphe 207.01(1) de la même loi, est remplacée par ce qui suit :

excédent de CELIAPP Relativement à un particulier à un moment donné d'une année d'imposition, s'entend :

a) de la somme obtenue par la formule suivante :

A + B + C – D – E – F

où :

A représente :

(i) zéro, si la période de participation maximale du particulier n'a pas commencé dans l'année d'imposition précédente,

(ii) dans les autres cas, l'excédent de CELIAPP du particulier déterminé à la fin de l'année d'imposition précédente;

B le total des sommes représentant chacune une cotisation versée par le particulier à un CELIAPP dans l'année d'imposition au plus tard au moment donné;

C is the total of all amounts transferred in the taxation year under paragraph 146(16)(a.2), at or before the particular time, to a FHSA under which the individual is the holder;

D is the lesser of

(i) $8,000 plus an amount that would have been the individual's FHSA carryforward for the taxation year if each amount that was included in that individual's income under subsection 146.6(6) and could have been, immediately prior to the time it was received, a designated amount, had been designated by the individual as a designated amount, and

(ii) the amount determined by the formula

$40,000 – G

where

G is the total of all amounts that were deducted, could have been deducted or would have been deductible by the individual under subsection 146.6(5) in respect of all preceding taxation years if

(A) no amounts were transferred under paragraph 146(16)(a.2) to a FHSA of the individual, and

(B) notwithstanding clause (A), an amount had been contributed by the individual to a FHSA in each preceding taxation year that is the amount by which the individual's net RRSP-to-FHSA transfer amount at the end of that year exceeds the individual's net RRSP-to-FHSA transfer amount at the start of that year;

E is the total of all amounts each of which is a designated amount in respect of a transfer or withdrawal made by the individual in the taxation year before the particular time or an amount required to be included in computing the income of the individual under subsection 146.6(6) in the taxation year before the particular time; and

F is the total of all amounts, each of which is the portion of an amount required to be included in computing the income of the individual under subsection 146.6(6) in any preceding taxation year, to the extent that it did not reduce what otherwise would have been the individual's excess FHSA amount in any preceding taxation year; or

(b) where the Minister determines that the formula in paragraph (a) does not yield an appropriate result having regard to the circumstances of the individual, a

C le total des sommes transférées en vertu de l'alinéa 146(16)a.2) dans l'année d'imposition, au plus tard au moment donné, à un CELIAPP dont le particulier est le titulaire;

D la moins élevée des sommes suivantes :

(i) 8 000 $ plus un montant qui aurait été le montant des cotisations reporté du particulier pour l'année d'imposition si chaque somme qui était incluse dans son revenu en vertu du paragraphe 146.6(6) et qui aurait pu être, immédiatement avant le moment où elle est reçue, un montant désigné, a été désigné comme un montant désigné par le particulier,

(ii) la somme obtenue par la formule suivante :

40 000 $ – G

où :

G représente le total des sommes qui sont déduites, auraient pu être déduites ou auraient été déductibles en vertu du paragraphe 146.6(5) relativement aux années d'imposition précédentes si, à la fois :

(A) aucun montant n'avait été transféré à un CELIAPP du particulier en vertu de l'alinéa 146(16)a.2),

(B) malgré la division (A), un montant qui représente l'excédent du montant net de transferts de REER à CELIAPP du particulier à la fin de l'année sur le montant net de transferts de REER à CELIAPP du particulier au début de l'année avait été versé par le contribuable à un CELIAPP dans chaque année d'imposition précédente;

E le total des montants désignés dont chacun représente un montant relativement à un transfert ou à un retrait effectué par le particulier dans l'année d'imposition avant le moment donné ou une somme à inclure dans le calcul du revenu du particulier en vertu du paragraphe 146.6(6) pour l'année d'imposition avant le moment donné;

F le total des montants dont chacun représente la fraction d'un montant à inclure dans le calcul du revenu du particulier en vertu du paragraphe 146.6(6) dans une année d'imposition précédente dans la mesure où ce montant n'a pas réduit ce qui autrement aurait été l'excédent de CELIAPP du particulier dans une année d'imposition précédente;

b) si le ministre détermine que la somme obtenue par la formule figurant à l'alinéa a) devrait être moins élevée compte tenu des circonstances du particulier, de la

lower amount that, in the Minister's opinion, is appropriate in the circumstances. (*excédent de CELIAPP*)

(2) Paragraph (a) of the definition *designated amount* in subsection 207.01(1) of the Act is replaced by the following:

(a) a transfer in accordance with subparagraph 146.6(7)(b)(ii), to the extent that it does not exceed the total of all amounts transferred under paragraph 146(16)(a.2) to a FHSA under which the individual is the holder on or before the date of the designation less the total of all amounts previously designated under this paragraph; or

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

(iv) an amount transferred in accordance with paragraph 146(16)(a.2) or to which subsection 146.6(7) applies;

(4) Subparagraph (d)(i) of the definition *swap transaction* in subsection 207.01(1) of the Act is replaced by the following:

(i) both registered plans are RRIFs or RRSPs,

(5) 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 (iii), by adding "or" at the end of subparagraph (iv) and by adding the following after subparagraph (iv):

(v) both registered plans are FHSAs;

(6) Subsections (1) to (3) are deemed to have come into force on April 1, 2023.

(7) Subsections (4) and (5) are deemed to have come into force on August 4, 2023.

56 (1) Paragraph (a) of the definition *refundable tax* in subsection 207.5(1) of the Act is replaced by the following:

(a) 50% of all contributions (other than an excluded contribution made on or after March 28, 2023) made under the arrangement while it was a retirement compensation arrangement and before the end of the year, and

somme qui, de l'avis du ministre, convient dans les circonstances. (*excess FHSA amount*)

(2) L'alinéa a) de la définition de *montant désigné*, au paragraphe 207.01(1) de la même loi, est remplacé par ce qui suit :

a) soit d'un transfert conformément au sous-alinéa 146.6(7)b)(ii), dans la mesure où il ne dépasse pas le total des sommes transférées en vertu de l'alinéa 146(16)a.2) à un CELIAPP dont le particulier est le titulaire au plus tard au moment de la désignation, moins le total des sommes désignées antérieurement en application du présent alinéa;

(3) L'alinéa b) de la définition de *opération de swap*, au paragraphe 207.01(1) de la même loi, est modifié par adjonction, après le sous-alinéa (iii), de ce qui suit :

(iv) une somme transférée dans l'avis conformément à l'alinéa 146(16)a.2) ou à laquelle le paragraphe 146.6(7) s'applique;

(4) Le sous-alinéa d)(i) de la définition de *opération de swap*, au paragraphe 207.01(1) de la même loi, est remplacé par ce qui suit :

(i) des FEER ou des REER,

(5) L'alinéa d) de la définition de *opération de swap*, au paragraphe 207.01(1) de la même loi, est modifié par adjonction, après le sous-alinéa (iv), de ce qui suit :

(v) des CELIAPP;

(6) Les paragraphes (1) à (3) sont réputés être entrés en vigueur le 1er avril 2023.

(7) Les paragraphes (4) et (5) sont réputés être entrés en vigueur le 4 août 2023.

56 (1) L'alinéa a) de la définition de *impôt remboursable*, au paragraphe 207.5(1) de la même loi, est remplacé par ce qui suit :

a) la moitié des cotisations versées (sauf une cotisation exclue versée après le 27 mars 2023) dans le cadre de la convention avant la fin de l'année alors qu'elle était une convention de retraite;

(2) Subsection 207.5(1) of the Act is amended by adding the following in alphabetical order:

excluded contribution means an amount paid or payable under a specified arrangement to obtain or renew a letter of credit or surety bond issued by a financial institution for the purposes of securing future retirement benefit payments out of or under the arrangement; (*cotisation exclue*)

specified arrangement means a retirement compensation arrangement of which the primary purpose is to provide annual or more frequent periodic retirement benefit payments that are paid

(a) as supplemental benefits provided out of or under

(i) a registered pension plan,

(ii) a registered retirement savings plan,

(iii) a deferred profit sharing plan,

(iv) a pooled registered pension plan, or

(v) any combination of plans described in subparagraphs (i) to (iv), or

(b) under an arrangement that would, in the absence of subsection 147.1(8) and section 8504 of the *Income Tax Regulations*, substantially comply with the prescribed conditions for registration for a registered pension plan under section 8501 of those Regulations; (*convention déterminée*)

(2) Le paragraphe 207.5(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

convention déterminée Une convention de retraite dont l'objet principal est de prévoir des paiements de prestation de retraite à effectuer périodiquement à intervalles ne dépassant pas un an qui sont versés, selon le cas :

a) comme prestations complémentaires prévues dans le cadre :

(i) d'un régime de pension agréé,

(ii) d'un régime enregistré d'épargne-retraite,

(iii) d'un régime de participation différée,

(iv) d'un régime de pension agréé collectif,

(v) de toute combinaison des régimes visés aux sous-alinéas (i) à (iv);

b) aux termes d'une convention qui, en l'absence du paragraphe 147.1(8) et de l'article 8504 du *Règlement de l'impôt sur le revenu*, se conforment pour l'essentiel aux conditions d'agrément réglementaires pour un régime de pension agréé en vertu de l'article 8501 du même règlement. (*specified arrangement*)

cotisation exclue Une somme payée ou payable dans le cadre d'une convention déterminée pour obtenir ou renouveler une lettre de crédit ou un cautionnement émis par une institution financière pour garantir les futurs paiements de prestation de retraite aux termes de la convention. (*excluded contribution*)

(3) Subsections (1) and (2) are deemed to have come into force on March 28, 2023.

(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 28 mars 2023.

57 (1) The Act is amended by adding the following after section 207.7:

Definitions

207.71 (1) The following definitions apply in this section.

eligible employer means an employer that paid an amount, or that has a *predecessor employer* (as defined in subsection 8500(1) of the *Income Tax Regulations*) that paid an amount, before March 28, 2023, under a specified arrangement that is an excluded contribution. (*employeur admissible*)

57 (1) La même loi est modifiée par adjonction, après l'article 207.7, de ce qui suit :

Définitions

207.71 (1) Les définitions qui suivent s'appliquent au présent article.

employeur admissible Est un employeur qui a payé une somme, ou qui a un *employeur remplacé* (au sens du paragraphe 8500(1) du *Règlement de l'impôt sur le revenu*) qui a payé une somme, avant le 28 mars 2023, dans le cadre d'une convention déterminée qui est une cotisation exclue. (*eligible employer*)

specified refundable tax of a specified arrangement at the end of a taxation year means the amount, if any, determined by the formula

A – B

where

A is the amount elected under paragraph (2)(c); and

B is the total of all amounts, if any, each of which is a refund as determined under subsection (3), in respect of a preceding taxation year. (*impôt remboursable déterminé*)

impôt remboursable déterminé Relativement à une convention déterminée à la fin d'une année d'imposition, s'entend de la somme obtenue par la formule suivante :

A – B

où :

A représente le montant choisi en vertu de l'alinéa (2)c);

B le total des montants éventuels dont chacun est un remboursement déterminé en vertu du paragraphe (3) relativement à une année d'imposition antérieure. (*specified refundable tax*)

Election

(2) Subsection (3) applies to a specified arrangement if

(a) an eligible employer, or the custodian of the arrangement, paid a refundable tax under this Part with respect to an excluded contribution made under the arrangement before March 28, 2023;

(b) the eligible employer files an election with the Minister in prescribed form and manner; and

(c) the election includes an elected amount that does not exceed the total amount of refundable tax paid with respect to excluded contributions made under the arrangement before March 28, 2023.

Choix

(2) Le paragraphe (3) s'applique à une convention déterminée si les conditions ci-après sont réunies :

a) un employeur admissible, ou le dépositaire de la convention, a payé un impôt remboursable prévu à la présente partie à l'égard d'une cotisation exclue versée aux termes de la convention avant le 28 mars 2023;

b) l'employeur admissible présente un choix au ministre, selon le formulaire prescrit et les modalités prescrites;

c) le choix comprend une somme choisie n'excédant pas le total de l'impôt remboursable versé à l'égard des cotisations exclues versées dans le cadre de la convention avant le 28 mars 2023.

Amount of refund

(3) If this subsection applies to a specified arrangement, the Minister may refund to the eligible employer, or to the custodian of the arrangement, an amount claimed on the return for a taxation year described in subsection 207.7(3), not exceeding the lesser of

(a) 50% of all retirement benefits paid in the taxation year directly by the eligible employer for the benefit of beneficiaries whose retirement benefits were secured under the specified arrangement with a letter of credit or surety bond issued by a financial institution, and

(b) the specified refundable tax of the specified arrangement at the end of the taxation year.

Montant du remboursement

(3) Si le présent paragraphe s'applique à une convention déterminée, le ministre peut rembourser à un employeur admissible, ou au dépositaire de la convention, un montant demandé dans la déclaration pour une année d'imposition visée au paragraphe 207.7(3), n'excédant pas le moindre des montants suivants :

a) la moitié des prestations de retraite versées dans l'année d'imposition directement par l'employeur admissible au profit des bénéficiaires dont les prestations de retraite ont été garanties dans le cadre de la convention déterminée par une lettre de crédit ou un cautionnement émis par une institution financière;

b) l'impôt remboursable déterminé de la convention déterminée à la fin de l'année d'imposition.

Refundable tax definition

(4) If an eligible employer claims a refund under subsection (3) for a taxation year, paragraph (c) of the definition *refundable tax* in subsection 207.5(1) is to be read as follows:

Définition de impôt remboursable

(4) Si un employeur admissible demande un remboursement en vertu du paragraphe (3) pour une année d'imposition, l'alinéa c) de la définition de *impôt remboursable* au paragraphe 207.5(1) est réputé avoir le libellé suivant :

(c) the total of

(i) 50% of all amounts paid as distributions to one or more persons (including amounts that are required by paragraph 12(1)(n.3) to be included in computing the recipient's income) under the arrangement while it was a retirement compensation arrangement and before the end of the year, other than a distribution paid where it is established, by subsequent events or otherwise, that the distribution was paid as part of a series of payments and refunds of contributions under the arrangement, and

(ii) all amounts determined under subsection 207.71(3) in respect of the specified arrangement for the year and a preceding year;

c) le total des montants suivants :

(i) la moitié des montants payés attribués à une personne ou répartis entre plusieurs — y compris les montants qui doivent être inclus dans le calcul du revenu du bénéficiaire en vertu de l'alinéa 12(1)n.3) — provenant de la convention avant la fin de l'année alors qu'elle était une convention de retraite, sauf s'il est établi, par des événements ultérieurs ou autrement, que les montants ainsi payés font partie d'une série de cotisations et de remboursements de cotisations dans le cadre de la convention,

(ii) le total des montants déterminés en vertu du paragraphe 207.71(3) relativement à la convention déterminée pour l'année et une année précédente;

(2) Subsection (1) applies to the 2024 and subsequent taxation years.

(2) Le paragraphe (1) s'applique aux années d'imposition 2024 et suivantes.

58 (1) The Act is amended by adding the following after section 211.91:

58 (1) La même loi est modifiée par adjonction, après l'article 211.91, de ce qui suit :

PART XII.7

Carbon Capture, Utilization and Storage

PARTIE XII.7

Captage, utilisation et stockage du carbone

Definitions

211.92 (1) The following definitions apply in this Part and in section 127.44.

actual eligible use percentage, in respect of a CCUS project, for a period means the amount, expressed as a percentage, determined by the formula

A ÷ B

where

A is the quantity of captured carbon that the CCUS project supported for storage or use in eligible use during the period, and

B is the total quantity of captured carbon that the CCUS project supported for storage or use in both eligible use and ineligible use during the period. (*pourcentage réel d'utilisation admissible*)

exempt corporation at any time, means a corporation that does not have an ownership interest, whether directly or indirectly, in a qualified CCUS project in respect of which $20 million or more of qualified CCUS expenditures are expected to be incurred (based on the most recent project evaluation issued by the Minister of Natural Resources for the project). (*société exonérée*)

Définitions

211.92 (1) Les définitions qui suivent s'appliquent à la présente partie et à l'article 127.44.

année d'imposition de la déclaration S'entend, à la fois :

a) de la première année d'imposition d'un contribuable au cours de laquelle un crédit d'impôt pour le CUSC est déduit relativement à un projet de CUSC du contribuable;

b) de chaque année d'imposition qui :

(i) commence après une année d'imposition visée à l'alinéa a),

(ii) se termine avant la vingt-et-unième année civile suivant la fin de l'année d'imposition qui comprend le premier jour des activités commerciales du projet de CUSC. (*reporting taxation year*)

année d'imposition de recouvrement Relativement à un projet de CUSC, s'entend de la première année d'imposition de recouvrement, de la deuxième année d'imposition de recouvrement, de la troisième année

first project period, in respect of a CCUS project, means the period that begins on the first day of commercial operations — or, if the project has not yet commenced operations, the day on which, according to the most recent project plan, operations are expected to begin — and ends

(a) if that day is before October of a calendar year, on December 31 of the calendar year that includes the fourth anniversary of that day; or

(b) if that day is after September of a calendar year, on December 31 of the calendar year that includes the fifth anniversary of that day. (*première période du projet*)

first recovery taxation year, in respect of a project period of a CCUS project, means the taxation year that includes the last day of the first project period. (*première année d'imposition de recouvrement*)

fourth project period, in respect of a CCUS project, means the five calendar years following the end of the third project period. (*quatrième période du projet*)

fourth recovery taxation year, in respect of a project period of a CCUS project, means the taxation year that includes the last day of the fourth project period. (*quatrième année d'imposition de recouvrement*)

knowledge sharing CCUS project means a qualified CCUS project that

(a) is expected to incur qualified CCUS expenditures of $250 million or more based on the most recent project evaluation issued by the Minister of Natural Resources for the project; or

(b) has incurred $250 million or more of qualified CCUS expenditures before the first day of commercial operations of the project. (*projet de CUSC requérant l'échange de connaissances*)

knowledge sharing report, in respect of a CCUS project, means

(a) an annual operations knowledge sharing report containing the information described by the Minister of Natural Resources in the *CCUS-ITC Technical Guidance Document* as published by the Minister of Natural Resources and amended from time to time, in the form annexed to the *CCUS-ITC Technical Guidance Document*; and

(b) the construction and completion knowledge sharing report containing the information described in the

d'imposition de recouvrement et de la quatrième année d'imposition de recouvrement. (*recovery taxation year*)

contribuable échangeant des connaissances S'entend d'un contribuable qui a réclamé un crédit d'impôt pour le CUSC pour une année d'imposition se terminant avant le jour du début du projet d'un projet de CUSC requérant l'échange de connaissances. (*knowledge sharing taxpayer*)

date d'échéance du rapport S'entend, à la fois :

a) relativement au rapport annuel sur la divulgation des risques climatiques, du jour qui suit de neuf mois le jour où l'année d'imposition visée par le rapport se termine;

b) relativement au rapport annuel sur l'échange de connaissances d'exploitation, selon le cas :

(i) s'il s'agit du premier rapport et que, selon le cas :

(A) le jour du début du projet est antérieur au 1er octobre d'une année civile, du 30 juin de l'année civile qui suit,

(B) le jour du début du projet est postérieur au 30 septembre d'une année civile, du 30 juin de la deuxième année civile qui suit l'année civile qui comprend le jour du début du projet,

(ii) s'il ne s'agit pas du premier rapport, du 30 juin des quatre premières années civiles qui suivent l'année civile qui comprend le 30 juin visé au sous-alinéa (i);

c) relativement au rapport sur l'échange de connaissances de la construction et la réalisation, du dernier jour du sixième mois commençant après le jour du début du projet. (*reporting-due day*)

deuxième année d'imposition de recouvrement Relativement à une période de projet de CUSC, s'entend de l'année d'imposition qui inclut le dernier jour de la deuxième période du projet. (*second recovery taxation year*)

deuxième période du projet Relativement à un projet de CUSC, s'entend des cinq années civiles suivant la fin de la première période du projet. (*second project period*)

jour du début du projet Le cent-vingtième jour précédant le premier jour des activités commerciales. (*project start-up date*)

CCUS-ITC Technical Guidance Document referred to in paragraph (a). (*rapport sur l'échange de connaissances*)

knowledge sharing taxpayer means a taxpayer that claimed a CCUS tax credit for a taxation year ending before the project start-up date of a knowledge sharing CCUS project. (*contribuable échangeant des connaissances*)

project period, in respect of a CCUS project, means any of the first project period, the second project period, the third project period and the fourth project period. (*période de projet*)

project start-up date means the day that is 120 days before the first day of commercial operations. (*jour du début du projet*)

recovery taxation year, in respect of a CCUS project, means any of the first recovery taxation year, the second recovery taxation year, the third recovery taxation year and the fourth recovery taxation year. (*année d'imposition de recouvrement*)

relevant project period means

(a) in respect of the first recovery taxation year, the first project period;

(b) in respect of the second recovery taxation year, the second project period;

(c) in respect of the third recovery taxation year, the third project period; and

(d) in respect of the fourth recovery taxation year, the fourth project period. (*période de projet pertinente*)

reporting-due day means

(a) in respect of an annual climate risk disclosure report, the day that is nine months after the day on which the reporting taxation year for the report ends;

(b) in respect of an annual operations knowledge sharing report,

(i) if the report is the first such report,

(A) where the project start-up date is before October 1 in a calendar year, June 30 of the following calendar year, and

(B) where the project start-up date is after September 30 in a calendar year, June 30 of the

période de déclaration S'entend, à la fois :

a) relativement au rapport sur l'échange de connaissances de la construction et la réalisation, de la période commençant le premier jour où une dépense pour un projet de CUSC est engagée et se terminant le jour du début du projet pour le projet de CUSC requérant l'échange de connaissances;

b) relativement à un rapport annuel sur l'échange de connaissances d'exploitation, de chaque période commençant le jour du début du projet et se terminant le dernier jour de l'année civile se terminant immédiatement avant la date d'échéance du rapport annuel sur l'échange de connaissances d'exploitation. (*reporting period*)

période de projet Relativement à un projet de CUSC, s'entend de la première période du projet, de la deuxième période du projet, de la troisième période du projet et de la quatrième période du projet. (*project period*)

période de projet pertinente S'entend :

a) relativement à la première année d'imposition de recouvrement, de la première période du projet;

b) relativement à la deuxième année d'imposition de recouvrement, de la deuxième période du projet;

c) relativement à la troisième année d'imposition de recouvrement, de la troisième période du projet;

d) relativement à la quatrième année d'imposition de recouvrement, de la quatrième période du projet. (*relevant project period*)

pourcentage réel d'utilisation admissible Relativement à un projet de CUSC pour une période, s'entend du montant, exprimé en pourcentage, obtenu par la formule suivante :

A ÷ B

où :

A représente la quantité de carbone capté que le projet de CUSC a pris en charge à des fins de stockage ou d'utilisation dans le cadre d'une utilisation admissible au cours de la période;

B la quantité totale de carbone capté que le projet de CUSC a pris en charge à des fins de stockage ou d'utilisation dans le cadre à la fois d'une utilisation admissible et non admissible au cours de la période. (*actual eligible use percentage*)

première année d'imposition de recouvrement Relativement à une période de projet d'un projet de CUSC,

second calendar year after the calendar year which includes the the project start-up date, and

(ii) if the report is not the first report, each June 30 of the first four calendar years immediately following the calendar year which includes the June 30 referred to in subparagraph (i); and

(c) in respect of the construction and completion knowledge sharing report, the last day of the sixth month beginning after the project start-up date. (*date d'échéance du rapport*)

reporting period means

(a) in respect of the construction and completion knowledge sharing report, the period that begins on the first day an expenditure for a CCUS project is incurred and ends on the project start-up date of the knowledge sharing CCUS project; and

(b) in respect of an annual operations knowledge sharing report, each period that begins on the project start-up date and ends on the last day of the calendar year ending immediately before the reporting-due day for the annual operations knowledge sharing report. (*période de déclaration*)

reporting taxation year means

(a) the first taxation year of a taxpayer in which a CCUS tax credit was deducted, in respect of a CCUS project of the taxpayer; and

(b) each taxation year that

(i) begins after a taxation year referred to in paragraph (a), and

(ii) ends before the twenty-first calendar year after the end of the taxation year which includes the first day of commercial operations of the CCUS project. (*année d'imposition de la déclaration*)

second project period, in respect of a CCUS project, means the five calendar years following the end of the first project period. (*deuxième période du projet*)

second recovery taxation year, in respect of a project period of a CCUS project, means the taxation year that includes the last day of the second project period. (*deuxième année d'imposition de recouvrement*)

third project period, in respect of a CCUS project, means the five calendar years following the end of the second project period. (*troisième période du projet*)

s'entend de l'année d'imposition qui inclut le dernier jour de la première période du projet. (*first recovery taxation year*)

première période du projet Relativement à un projet de CUSC, s'entend de la période qui commence le premier jour des activités commerciales – ou, si les activités n'ont pas encore commencé, le jour où les activités devraient commencer selon le dernier plan de projet – et se termine, selon le cas :

a) si ce jour est antérieur au mois d'octobre d'une année civile, le 31 décembre de l'année civile qui inclut le quatrième anniversaire de ce jour;

b) si ce jour est postérieur au mois de septembre d'une année civile, le 31 décembre de l'année civile qui inclut le cinquième anniversaire de ce jour. (*first project period*)

projet de CUSC requérant l'échange de connaissances S'entend d'un projet de CUSC admissible qui, selon le cas :

a) devrait occasionner des dépenses de CUSC admissibles d'au moins 250 millions de dollars selon l'évaluation la plus récente du projet émise par le ministre des Ressources naturelles pour le projet;

b) a occasionné des dépenses de CUSC admissibles d'au moins 250 millions de dollars avant le premier jour des activités commerciales du projet. (*knowledge sharing CCUS project*)

quatrième année d'imposition de recouvrement Relativement à une période de projet d'un projet de CUSC, s'entend de l'année d'imposition qui inclut le dernier jour de la quatrième période du projet. (*fourth recovery taxation year*)

quatrième période du projet Relativement à un projet de CUSC, s'entend des cinq années civiles suivant la fin de la troisième période du projet. (*fourth project period*)

rapport sur l'échange de connaissances S'entend, relativement à un projet de CUSC :

a) du rapport annuel sur l'échange de connaissances d'exploitation contenant les renseignements visés par le ministre des Ressources naturelles dans le *CUSC-CII Document technique* et publié par ce ministre, avec ses modifications successives, selon le modèle annexé au document *CUSC-CII Document technique*;

third recovery taxation year, in respect of a project period of a CCUS project, means the taxation year that includes the last day of the third project period. (*troisième année d'imposition de recouvrement*)

b) du rapport sur l'échange de connaissances de la construction et la réalisation contenant les renseignements visés dans le document *CUSC-CII Document technique* visé à l'alinéa a). (*knowledge sharing report*)

société exonérée S'entend d'une société qui, à un moment donné, ne détient pas de participation, directement ou indirectement, dans un projet de CUSC admissible relativement auquel des dépenses de CUSC admissibles d'au moins 20 millions de dollars devraient être engagées (selon la plus récente évaluation de projet émise par le ministre des Ressources naturelles pour le projet). (*exempt corporation*)

troisième année d'imposition de recouvrement Relativement à une période de projet de CUSC, s'entend de l'année d'imposition qui inclut le dernier jour de la troisième période du projet. (*third recovery taxation year*)

troisième période du projet Relativement à un projet de CUSC, s'entend des cinq années civiles suivant la fin de la deuxième période du projet. (*third project period*)

Recovery of development tax credit

(2) A taxpayer shall pay a tax under this Part, for a particular taxation year that includes the first day of commercial operations of a CCUS project, or for any preceding year, equal to the amount, if any, by which the taxpayer's cumulative CCUS development tax credit for the immediately preceding taxation year exceeds its cumulative CCUS development tax credit for the particular taxation year.

Recouvrement du crédit d'impôt pour le développement

(2) Tout contribuable doit payer, pour une année d'imposition donnée qui comprend le premier jour des activités commerciales du projet de CUSC, ou pour toute année antérieure, un impôt en vertu de la présente partie égal à l'excédent éventuel du crédit d'impôt cumulatif pour le développement du CUSC pour l'année d'imposition précédente sur son crédit d'impôt cumulatif pour le développement du CUSC pour l'année d'imposition donnée.

Acceleration of recovery tax

(3) If the actual eligible use percentage for a CCUS project for any period described in subparagraph (c)(i) or (ii) of the definition *qualified CCUS project* in subsection 127.44(1) is less than 10%, then for the purposes of applying subsections (4) and (5)

(a) the actual eligible use percentage of the project for the relevant project period to which the period relates, and for each subsequent project period, is deemed to be nil;

(b) the relevant project period for the particular recovery taxation year is deemed to include each subsequent project period; and

(c) those subsections do not apply to a subsequent recovery taxation year in respect of the project.

Accélération du recouvrement de l'impôt

(3) Si le pourcentage réel d'utilisation admissible pour un projet de CUSC pour toute période visée à l'un des sous-alinéas c)(i) ou (ii) de la définition de *projet de CUSC admissible* au paragraphe 127.44(1) est inférieur à 10 %, pour l'application des paragraphes (4) et (5) :

a) le pourcentage réel d'utilisation admissible du projet pour la période de projet pertinente à laquelle se rapporte la période, et pour chaque période de projet ultérieure, est réputé nul;

b) la période de projet pertinente pour l'année d'imposition de recouvrement donnée est réputée comprendre chaque période de projet ultérieure;

c) ces paragraphes ne s'appliquent pas à l'année d'imposition de recouvrement ultérieure relativement au projet.

Development credits recovery amount

(4) If the projected eligible use percentage of a CCUS project for the relevant project period in respect of a particular recovery taxation year exceeds the actual eligible use percentage of the CCUS project for that period by more than five percentage points, there shall be added to the tax otherwise payable under this Part for the particular recovery taxation year by a taxpayer that deducted a CCUS tax credit in respect of the CCUS project an amount equal to the amount determined by the formula

A – B – C

where

A is the amount of the taxpayer's cumulative CCUS development tax credit for the taxation year that includes the first day of commercial operations;

B is the amount that would be determined for A if the projected eligible use percentage for the relevant project period were equal to its actual eligible use percentage; and

C is the total of all amounts, each of which is an amount previously paid by the taxpayer as a tax under this Part in respect of the disposition or export of a property in relation to the project because of subsection (9), to the extent that the amount did not reduce the tax payable by the taxpayer under this subsection in a preceding taxation year.

Refurbishment credits recovery amount

(5) If the projected eligible use percentage of a CCUS project for the relevant project period in respect of a particular recovery taxation year exceeds the actual eligible use percentage of the CCUS project for that period by more than five percentage points, there shall be added to the tax otherwise payable under this Part for the particular recovery taxation year by a taxpayer that deducted a CCUS tax credit in respect of the CCUS project, an amount equal to the amount determined by the formula

A – B – C

where

A is the total of all amounts, each of which is the amount that is the taxpayer's CCUS refurbishment tax credit under subsection 127.44(5) for the year or a previous taxation year;

B is the amount that would be determined for A if the projected eligible use percentage for the relevant

Montant du recouvrement des crédits pour le développement

(4) Si le pourcentage d'utilisation admissible prévu d'un projet de CUSC pour la période de projet pertinente relativement à une année d'imposition de recouvrement donnée excède le pourcentage réel d'utilisation admissible du projet de CUSC de plus de cinq points de pourcentage pour cette période, il est ajouté à l'impôt par ailleurs payable en vertu de la présente partie pour l'année d'imposition de recouvrement donnée par le contribuable qui a déduit un crédit d'impôt pour le CUSC relativement au projet de CUSC une somme égale à la somme obtenue par la formule suivante :

A – B – C

où :

A représente le montant du crédit d'impôt cumulatif pour développement du CUSC du contribuable pour l'année d'imposition qui comprend le premier jour des activités commerciales;

B le montant qui serait déterminé pour l'élément A si le pourcentage d'utilisation admissible prévu pour la période de projet pertinente était égal à son pourcentage réel d'utilisation admissible;

C le total des montants représentant chacun un montant d'impôt payé précédemment en vertu de la présente partie par le contribuable relativement à la disposition ou l'exportation d'un bien relatif au projet en vertu du paragraphe (9), dans la mesure où le montant n'a pas réduit l'impôt payable par le contribuable en vertu du présent paragraphe dans une année d'imposition antérieure.

Montant du recouvrement des crédits pour la remise en état

(5) Si le pourcentage d'utilisation admissible prévu d'un projet de CUSC pour la période de projet pertinente relativement à une année d'imposition de recouvrement donnée excède le pourcentage réel d'utilisation admissible du projet de CUSC de plus de cinq points de pourcentage pour cette période, il est ajouté à l'impôt par ailleurs payable en vertu de la présente partie pour l'année d'imposition de recouvrement donnée par le contribuable qui a déduit un crédit d'impôt pour le CUSC relativement au projet de CUSC une somme égale à la somme obtenue par la formule suivante :

A – B – C

où :

A représente le total des montants représentant chacun le montant du crédit d'impôt pour la remise en état du CUSC du contribuable pour l'année ou pour une année d'imposition antérieure en vertu du paragraphe 127.44(5);

project period were equal to its actual eligible use percentage; and

C is the total of all amounts, each of which is an amount previously paid by the taxpayer as a tax under this Part in respect of the disposition or export of a property in relation to the project because of subsection (10), to the extent that the amount did not reduce the tax payable by the taxpayer under this subsection in a preceding taxation year.

B le montant qui serait déterminé pour l'élément A si le pourcentage d'utilisation admissible prévu pour la période de projet pertinente était égal à son pourcentage réel d'utilisation admissible;

C le total des montants représentant chacun un montant d'impôt payé précédemment en vertu de la présente partie par le contribuable relativement à la disposition ou l'exportation d'un bien relatif au projet en vertu du paragraphe (10), dans la mesure où le montant n'a pas réduit l'impôt payable par le contribuable en vertu du présent paragraphe dans une année d'imposition antérieure.

Extraordinary eligible use reduction

(6) For the purposes of determining a taxpayer's liability for tax under this Part for a taxation year, subsection (7) applies if

(a) the actual eligible use percentage for a qualified CCUS project during a project period is significantly reduced due to extraordinary circumstances, for *bona fide* reasons outside the control of the taxpayer and each person or partnership that does not deal at arm's length with the taxpayer;

(b) the taxpayer requests in writing, on or before the taxpayer's filing-due date for the year, that the Minister consider the potential application of this subsection and subsection (7); and

(c) the Minister is satisfied that the taxpayer has taken all reasonable steps to attempt to rectify the extraordinary circumstances, and that it is appropriate, having regard to all the circumstances, to apply this subsection and subsection (7).

Effect of extraordinary circumstances

(7) If the conditions set out in subsection (6) are met for a taxation year,

(a) if the qualified CCUS project's operations are affected by extraordinary circumstances for all or substantially all of the project period, then no amount is payable by the taxpayer for the year under subsections (3) to (5) in respect of the project; and

(b) in any other case, the portion of the project period during which the project's operations are affected by the extraordinary circumstances shall be disregarded for the purpose of calculating the actual eligible use percentage for the project period.

Réduction d'utilisation admissible extraordinaire

(6) Pour déterminer l'impôt à payer d'un contribuable en vertu de la présente partie pour une année d'imposition, le paragraphe (7) s'applique si les énoncés ci-après se vérifient :

a) le pourcentage réel d'utilisation admissible pour un projet de CUSC admissible pendant une période de projet est réduit considérablement en raison de circonstances extraordinaires, pour des objets véritables hors du contrôle du contribuable et de chaque personne ou société de personnes avec laquelle il a un lien de dépendance;

b) le contribuable demande par écrit au ministre d'envisager l'application éventuelle du présent paragraphe et du paragraphe (7), au plus tard à la date d'échéance de production qui lui est applicable pour l'année;

c) le ministre est convaincu que le contribuable a pris toutes les mesures raisonnables pour tenter de rectifier les circonstances extraordinaires, et qu'il est approprié, compte tenu de toutes les circonstances, d'appliquer le présent paragraphe et le paragraphe (7).

Effet des circonstances extraordinaires

(7) Lorsque les conditions énoncées au paragraphe (6) sont satisfaites pour une année d'imposition :

a) si des circonstances extraordinaires ont un effet sur les activités du projet de CUSC admissible pour la totalité ou la presque totalité de la période de projet, aucun montant n'est payable par le contribuable pour l'année en vertu des paragraphes (3) à (5) relativement au projet;

b) sinon, il n'est pas tenu compte de la partie de la période de projet au cours de laquelle les circonstances extraordinaires ont un effet sur les activités du projet dans le calcul du pourcentage réel d'utilisation admissible pour la période de projet.

Shutdown

(8) For the purposes of determining a taxpayer's liability for tax under this Part for a recovery taxation year, if a qualified CCUS project is inoperative for all or a portion of a relevant project period,

(a) if the project is inoperative for all or substantially all of the period, then no amount is payable by the taxpayer for the year under subsections (3) to (5) in respect of the project; and

(b) in any other case, the portion of the project period during which the project is inoperative shall be disregarded for the purpose of calculating the actual eligible use percentage for the project period.

Development property disposition

(9) Except where subsection (11) applies, if at any time in a particular taxation year a taxpayer disposes of or exports from Canada a property for which the taxpayer's qualified CCUS expenditure resulted in the determination of a cumulative CCUS development tax credit for a previous taxation year, or would so result for the particular year but for this subsection, the following rules apply:

(a) if the time is before the total CCUS project review period of the CCUS project to which the expenditure relates, the expenditure is deemed not to be a qualified CCUS expenditure in respect of the CCUS project for the purpose of determining the taxpayer's cumulative CCUS development tax credit for the particular year and any subsequent taxation years; and

(b) if the time is during the total CCUS project review period of the CCUS project to which the expenditure relates, there shall be added to the tax otherwise payable by the taxpayer under this Part for the year the amount determined by the formula

A × B × C ÷ D – E

where

A is the qualified CCUS expenditure in respect of the property as determined for the taxation year that includes the first day of commercial operations,

B is the appropriate specified percentage,

C is the amount, not exceeding the amount determined for D, equal to

(i) if the property is disposed of to a person who deals at arm's length with the taxpayer, the proceeds of disposition of the property, or

(ii) if the property is disposed of to a person who does not deal at arm's length with the taxpayer, or is exported from Canada but not

Arrêt

(8) Pour déterminer l'impôt à payer d'un contribuable en vertu de la présente partie pour une année d'imposition de recouvrement, lorsqu'un projet de CUSC admissible est non opérationnel pour la totalité ou une partie d'une période de projet pertinente :

a) si le projet est non opérationnel pour la totalité ou la presque totalité de la période, aucun montant n'est payable par le contribuable pour l'année en vertu des paragraphes (3) à (5) relativement au projet;

b) sinon, il n'est pas tenu compte de la partie de la période du projet au cours de laquelle le projet est non opérationnel dans le calcul du pourcentage réel d'utilisation admissible pour la période de projet.

Disposition des biens pour le développement

(9) Sauf en cas d'application du paragraphe (11), si, à un moment donné d'une année d'imposition donnée, un contribuable dispose ou exporte du Canada un bien pour lequel la dépense de CUSC admissible a donné lieu à la détermination d'un crédit d'impôt cumulatif pour le développement du CUSC pour une année d'imposition antérieure ou y donnerait lieu pour l'année donnée, n'eût été le présent paragraphe, les règles ci-après s'appliquent :

a) si le moment est antérieur à la période totale d'examen du projet de CUSC du projet de CUSC auquel la dépense se rapporte, la dépense est réputée ne pas être une dépense de CUSC admissible relativement au projet de CUSC lorsqu'il s'agit de déterminer le crédit d'impôt cumulatif pour le développement du CUSC du contribuable pour l'année donnée et les années d'imposition suivantes;

b) si le moment est au cours de la période totale d'examen du projet de CUSC du projet de CUSC auquel la dépense se rapporte, il doit être ajouté à l'impôt par ailleurs payable par le contribuable en vertu de la présente partie pour l'année la somme obtenue par la formule suivante :

A × B × C ÷ D – E

où :

A représente la dépense de CUSC admissible relative au bien telle qu'elle est calculée pour l'année d'imposition qui comprend le premier jour des activités commerciales,

B le pourcentage déterminé approprié,

C le montant, ne dépassant pas la valeur pour l'élément D, selon le cas :

disposed of, the fair market value of the property at that time,

D is the taxpayer's capital cost of the property, and

E is the total of all amounts, each of which can reasonably be considered to be the portion of any amount previously paid by the taxpayer because of subsection (4) in respect of the property, to the extent that the amount did not reduce the tax payable by the taxpayer under this subsection in a preceding taxation year.

(i) si le contribuable dispose du bien en faveur d'une personne avec laquelle il n'a pas de lien de dépendance, le produit de disposition du bien,

(ii) si le contribuable dispose du bien en faveur d'une personne avec laquelle il a un lien de dépendance, ou l'exporte du Canada sans en avoir disposé, la juste valeur marchande du bien à ce moment,

D le coût en capital du bien pour le contribuable,

E le total des montants représentant chacun un montant pouvant raisonnablement être considéré comme étant la partie d'un montant payé précédemment par le contribuable en vertu du paragraphe (4) relativement au bien, dans la mesure où le montant n'a pas réduit l'impôt payable par le contribuable en vertu du présent paragraphe dans une année d'imposition antérieure.

Refurbishment property disposition

(10) Except where subsection (11) applies, if at any time in a particular taxation year during the total project review period of a CCUS project a taxpayer disposes of or removes from Canada a property for which the taxpayer's qualified CCUS expenditure resulted in the determination of a CCUS refurbishment tax credit for the year or a previous taxation year, then there shall be added to the tax otherwise payable by the taxpayer under this Part for the year the amount determined by the formula

A × B × C ÷ D – E

where

A is the qualified CCUS expenditure in respect of the property;

B is the appropriate specified percentage;

C is the amount, not exceeding the amount determined for D, equal to

(a) if the property is disposed of to a person who deals at arm's length with the taxpayer, the proceeds of disposition of the property, or

(b) if the property is disposed of to a person who does not deal at arm's length with the taxpayer, or is exported from Canada, the fair market value of the property;

D is the taxpayer's capital cost of the property; and

E is the total of all amounts, each of which can reasonably be considered to be the portion of any amount previously paid by the taxpayer because of subsection (5) in respect of the property, to the extent that the amount did not reduce the tax payable by the

Disposition de biens de remise en état

(10) Sauf en cas d'application du paragraphe (11), si à un moment donné d'une année d'imposition donnée au cours de la période totale d'examen du projet de CUSC, un contribuable dispose ou exporte du Canada un bien pour lequel la dépense de CUSC admissible a donné lieu à la détermination d'un crédit d'impôt pour la remise en état du CUSC pour l'année ou une année d'imposition antérieure, il doit être ajouté à l'impôt payable par ailleurs en vertu de la présente partie pour l'année le montant déterminé par la formule suivante :

A × B × C ÷ D – E

où :

A représente la dépense de CUSC admissible relative au bien;

B le pourcentage déterminé approprié;

C le montant, ne dépassant pas la valeur pour l'élément D, selon le cas :

a) si le contribuable dispose du bien en faveur d'une personne avec laquelle il n'a pas de lien de dépendance, le produit de disposition du bien,

b) si le contribuable dispose du bien en faveur d'une personne avec laquelle il a un lien de dépendance, ou l'exporte du Canada, la juste valeur marchande du bien;

D le coût en capital du bien pour le contribuable;

E le total des montants représentant chacun un montant pouvant raisonnablement être considéré comme étant la partie d'un montant payé précédemment par le contribuable en vertu du paragraphe (5) relativement au bien, dans la mesure où le montant n'a pas

taxpayer under this subsection in a preceding taxation year.

réduit l'impôt payable par le contribuable en vertu du présent paragraphe dans une année d'imposition antérieure.

Election — CCUS project sale

(11) If at any time a qualifying taxpayer (referred to in this subsection as the "vendor") disposes of all or substantially all of its property that is part of a qualified CCUS project of the taxpayer to another taxable Canadian corporation (referred to in this subsection as the "purchaser") and the vendor and the purchaser jointly elect in prescribed form to have this subsection apply, the following rules apply:

(a) the purchaser is deemed to have made the qualifying expenditures of the vendor at the times incurred by the vendor;

(b) the provisions of this Act that applied to the vendor in respect of the property that are relevant to the application of the Act in respect of the property after that time are deemed to have applied to the purchaser and, for greater certainty, the purchaser is deemed to have claimed the tax credits determined under section 127.44 that could have been claimed by the vendor, before that time, in respect of the CCUS project;

(c) any project plans that were prepared or filed by the vendor in respect of the CCUS project before that time are deemed to have been filed by the purchaser;

(d) the purchaser is or will be liable for amounts in respect of the property for which the vendor would be liable under this Part in respect of actions, transactions or events that occur after that time as if the vendor had undertaken them or otherwise participated in them; and

(e) subsections (9) and (10) do not apply to the vendor in respect of the disposition of property to the purchaser.

Choix — vente du projet de CUSC

(11) Si, à un moment donné, un contribuable admissible (appelé « vendeur » au présent paragraphe) dispose de la totalité ou de la presque totalité de ses biens faisant partie d'un projet de CUSC admissible de ce dernier en faveur d'une autre société canadienne imposable (appelée « acheteur » au présent paragraphe), et que le vendeur et l'acheteur font un choix conjoint, sur le formulaire prescrit, afin que le présent paragraphe s'applique, les règles suivantes s'appliquent :

a) l'acheteur est réputé avoir effectué les dépenses admissibles du vendeur aux moments où celles-ci ont été engagées par ce dernier;

b) les dispositions de la Loi qui s'appliquent au vendeur relativement au bien et qui sont pertinentes pour l'application de la Loi relativement au bien après ce moment sont réputées avoir été appliquées à l'acheteur. Il est entendu que l'acheteur est réputé avoir réclamé les crédits d'impôt déterminés en vertu de l'article 127.44 que le vendeur aurait pu demander avant ce moment relativement au projet de CUSC;

c) tout plan de projet ayant été préparé ou présenté par le vendeur relativement au projet de CUSC avant ce moment est réputé avoir été présenté par l'acheteur;

d) l'acheteur est ou sera responsable des montants relatifs au bien dont le vendeur serait redevable en vertu de la présente partie relativement aux actions, transactions ou événements qui se produisent après ce moment comme si le vendeur les avait entrepris ou y avait autrement participé;

e) les paragraphes (9) et (10) ne s'appliquent pas au vendeur relativement à la disposition d'un bien à l'acheteur.

Partnerships

(12) Subject to section 127.47, if subsection 127.44(11) has at any time applied to add an amount in computing the CCUS tax credit of a member of the partnership, then for the purposes of this Part, subsections (2) to (11) shall apply to determine amounts in respect of the partnership as if the partnership were a taxable Canadian corporation, its fiscal period were its taxation year and it had deducted all of the CCUS tax credits that were previously added in computing the CCUS tax credit of any member of the partnership under subsection 127.44(2) because of

Sociétés de personnes

(12) Sous réserve de l'article 127.47, si le paragraphe 127.44(11) s'est appliqué pour ajouter un montant dans le calcul du crédit d'impôt pour le CUSC d'un associé de la société de personnes, pour l'application de la présente partie, les paragraphes (2) à (11) s'appliquent afin de déterminer les montants relatifs à la société de personnes comme si la société de personnes était une société canadienne imposable, son exercice constituait son année d'imposition et qu'elle avait déduit tous les crédits d'impôt pour le CUSC ayant été ajoutés précédemment au calcul du crédit d'impôt pour le CUSC d'un associé de la

the application of subsection 127.44(11) in respect of its partnership interest.

Member's share of tax

(13) Unless subsection (14) applies, if, in a taxation year, a taxpayer is a member of a partnership, the amount that can reasonably be considered to be the taxpayer's share of any amount of tax determined because of subsection (12) in respect of the partnership for its fiscal period ending in the taxation year shall be added to the taxpayer's tax otherwise payable under this Part for the taxation year.

Election by member to pay tax

(14) A taxable Canadian corporation that is a member of a partnership during a fiscal period of the partnership may elect, in prescribed form and manner, to add to its tax payable under this Part for its taxation year that includes the end of the fiscal period the total amount of tax determined for that fiscal period because of subsection (12) in respect of the partnership.

Joint, several and solidary liability

(15) Each member of a partnership is jointly and severally, or for civil law, solidarily, liable for any portion of the amount of tax — determined because of subsection (12) in respect of the partnership for a taxation year — that is not added to the tax payable

(a) of a member of the partnership under subsection (13); or

(b) of a taxable Canadian corporation because of subsection (14) and paid by the corporation by its filing-due date for the year.

Reporting requirements

211.93 (1) A taxpayer shall

(a) if the taxpayer is a knowledge sharing taxpayer, submit in respect of each reporting period a knowledge sharing report to the Minister of Natural Resources on or before the reporting-due day for the report; and

(b) if the taxpayer is a corporation that is not an exempt corporation, on or before the reporting-due day for each reporting taxation year, make available to the public, in prescribed manner, a climate risk disclosure report for the year that

société de personnes en vertu du paragraphe 127.44(2) par l'effet de l'application du paragraphe 127.44(11) relativement à sa participation dans la société de personnes.

Part d'impôt revenant à l'associé

(13) Sauf si le paragraphe (14) s'applique, dans le cas où, au cours d'une année d'imposition, un contribuable est un associé d'une société de personnes, le montant qu'il est raisonnable de considérer comme la part qui revient au contribuable d'un montant d'impôt déterminé en vertu du paragraphe (12) relativement à la société de personnes pour son exercice se terminant dans l'année d'imposition est à ajouter à l'impôt par ailleurs payable du contribuable en vertu de la présente partie pour l'année d'imposition.

Choix de l'associé de payer l'impôt

(14) Une société canadienne imposable qui est un associé d'une société de personnes au cours d'un exercice de la société de personnes peut faire un choix, sur le formulaire prescrit et selon les modalités prescrites, d'ajouter à son impôt payable en vertu de la présente partie pour son année d'imposition qui inclut la fin de l'exercice le montant total d'impôt déterminé pour cet exercice selon le paragraphe (12) relativement à la société de personnes.

Solidarité

(15) Chaque associé d'une société de personnes est solidairement responsable de toute partie d'un montant d'impôt — déterminé selon le paragraphe (12) relativement à la société de personnes pour l'année d'imposition — qui n'est pas ajouté à l'impôt payable, selon le cas :

a) par un associé de la société de personnes en vertu du paragraphe (13);

b) par une société canadienne imposable selon le paragraphe (14) et payé par la société au plus tard à sa date d'échéance de production pour l'année.

Exigences en matière de déclaration

211.93 (1) Un contribuable doit, à la fois :

a) s'il est un contribuable échangeant des connaissances, soumettre relativement à chaque période de déclaration, au plus tard à la date d'échéance du rapport applicable au rapport, un rapport sur l'échange de connaissances auprès du ministre des Ressources naturelles;

b) s'il est une société qui n'est pas une société exonérée, au plus tard à la date d'échéance du rapport pour chaque année d'imposition de la déclaration, mettre à la disposition du public, selon les modalités prescrites,

(i) describes the climate-related risks and opportunities for the corporation based on the following thematic areas:

(A) the corporation's governance in respect of climate-related risks and opportunities,

(B) the actual and potential impacts of climate-related risks and opportunities on the corporation's businesses, strategy and financial planning, if such information is material,

(C) the processes used by the corporation to identify, assess and manage climate related risks, and

(D) the metrics and targets used by the corporation to assess and manage relevant climate-related risks and opportunities, and

(ii) explains how the corporation's governance, strategies, policies and practices contribute to achieving Canada's

(A) commitments under the Paris Agreement made on December 12, 2015, and

(B) goal of net-zero emissions by 2050.

un rapport sur la divulgation des risques climatiques pour l'année qui, à la fois :

(i) décrit les possibilités et les risques liés au climat pour la société en fonction des thèmes suivants :

(A) la gouvernance de la société relativement aux risques et opportunités liés au climat,

(B) les impacts réels et potentiels des opportunités et des risques liés au climat sur les entreprises, la stratégie et la planification financière de la société, lorsque de tels renseignements sont importants,

(C) les processus adoptés par la société pour identifier, évaluer et gérer les risques liés au climat,

(D) les paramètres et les cibles utilisés par la société pour évaluer et gérer les opportunités et les risques liés au climat pertinents,

(ii) explique de quelle façon la gouvernance, les stratégies, les politiques et les pratiques de la société contribuent à la réalisation, à la fois :

(A) des engagements du Canada en vertu de l'Accord de Paris conclu le 12 décembre 2015,

(B) de l'objectif du Canada d'atteindre la carboneutralité d'ici 2050.

Publication

(2) For the purposes of subsection (1), a climate risk disclosure report is deemed to have been made public in a prescribed manner if the report includes the date it was published and is made publicly available by, or on behalf of, the corporation on the website of the corporation or a related person for a period of at least three years after the reporting-due day.

Publication

(2) Pour l'application du paragraphe (1), un rapport sur la divulgation des risques climatiques est réputé avoir été mis à la disposition du public selon les modalités prescrites, si le rapport inclut sa date de publication et est rendu public par la société, ou pour son compte, sur son site Web ou sur celui d'une personne liée pour une période d'au moins trois ans suivant la date d'échéance du rapport.

Shared filing

(3) If a person is required by subsection (1) to submit a knowledge sharing report in respect of a knowledge sharing CCUS project, the submission with full and accurate disclosure by any such person of the report is deemed to have been made by each person to whom subsection (1) applies in respect of the report.

Production partagée

(3) Si, en vertu du paragraphe (1), une personne est tenue de soumettre un rapport sur l'échange de connaissances relativement au projet de CUSC requérant l'échange de connaissances, la soumission du rapport par une telle personne, lorsqu'elle constitue une divulgation complète et exacte, est réputée avoir été faite par chaque personne à laquelle s'applique le paragraphe (1) relativement au rapport.

Penalty — non-compliance with reporting requirements

(4) Every knowledge sharing taxpayer that fails to provide the knowledge sharing report required under paragraph (1)(a) in respect of a reporting period is liable to a penalty in the amount of $2 million payable the day after the reporting-due day.

Failure to disclose

(5) Every taxpayer that fails to make available the climate risk disclosure report as required under paragraph (1)(b) in respect of a reporting taxation year is liable to a penalty in the amount that is the lesser of

(a) 4% of the total of all amounts, each of which is the amount of a CCUS tax credit of the corporation in respect of each taxation year that ended before the reporting-due day for the reporting taxation year, and

(b) $1 million.

Report disclosure

(6) The Department of Natural Resources shall publish on a website, maintained by the Government of Canada, each knowledge sharing report referred to in subsection (1) as soon as practicable after a taxpayer has submitted the report.

Eligible use reporting

(7) If a CCUS tax credit was deducted for a taxation year by a taxpayer in respect of a CCUS project that began commercial operations in the year or a prior taxation year, the actual eligible use percentage for a relevant project period in respect of the CCUS project is deemed to be nil until the taxpayer has filed in prescribed form, with each of its returns of income for taxation years that include any part of the relevant project period, a report stating

(a) the actual amount of carbon captured, during the calendar year ending in the taxation year, for storage or use in eligible use; and

(b) the total quantity of captured carbon during that calendar year that supported storage or use in both eligible use and ineligible use.

Pénalité — non-respect des exigences de déclaration

(4) Tout contribuable échangeant des connaissances qui omet de produire le rapport sur l'échange de connaissances qu'il est tenu de produire en application de l'alinéa (1)a) relativement à une période de déclaration est passible d'une pénalité d'un montant de 2 millions de dollars payable le jour suivant la date d'échéance du rapport.

Omission de divulguer

(5) Tout contribuable qui omet de rendre disponible le rapport sur la divulgation des risques climatiques qu'il est tenu de produire en application de l'alinéa (1)b) relativement à l'année d'imposition de la déclaration est passible d'une pénalité qui est égale au moindre des montants suivants :

a) 4 % du total des sommes représentant chacune un crédit d'impôt pour le CUSC de la société relativement à chaque année d'imposition s'étant terminée avant la date d'échéance du rapport pour l'année d'imposition de la déclaration;

b) 1 million de dollars.

Divulgation de rapport

(6) Le ministère des Ressources naturelles publie sur un site Web, tenu à jour par le gouvernement du Canada, chaque rapport sur l'échange de connaissances visé au paragraphe (1) dès que possible après qu'un contribuable a soumis le rapport.

Déclaration d'utilisation admissible

(7) Si un crédit d'impôt pour le CUSC a été déduit par un contribuable pour une année d'imposition relativement à un projet de CUSC qui a commencé ses activités commerciales dans l'année ou dans une année d'imposition antérieure, le pourcentage réel d'utilisation admissible pour une période de projet pertinente relativement au projet de CUSC est réputé nul jusqu'à ce que le contribuable ait présenté sur le formulaire prescrit, avec chacune de ses déclarations de revenus pour les années d'imposition qui comprennent une partie de la période de projet pertinente, un rapport indiquant les éléments suivants :

a) la quantité réelle de carbone capté à des fins de stockage ou d'utilisation dans le cadre d'une utilisation admissible au cours de l'année civile se terminant dans l'année d'imposition;

b) la quantité totale de carbone capté ayant pris en charge le stockage ou l'utilisation dans le cadre à la fois d'une utilisation admissible et non admissible au cours de cette année civile.

Administration

211.94 Subsection 150(2) and (3), sections 152, 158, 159 and 161 to 167 and Division J of Part I apply to this Part, with such modification as the circumstances require, except that, in the application of subsection 161(1) to an amount of tax payable under section 211.92, the balance-due day of a taxpayer in respect of a recovery taxation year is deemed to be the balance-due day of the taxation year for the related CCUS tax credit under subsection 127.44(2).

Records and books

211.95 Every person required by section 230 to keep records and books of account on behalf of a taxpayer shall retain all records and books of account referred to in that section as are necessary to verify information regarding CCUS tax credits of the taxpayer under section 127.44 or amounts payable by the taxpayer under this Part, in respect of a CCUS project, until the end of the later of

(a) the period referred to in paragraph 230(4)(b), and

(b) 26 years after the end of the taxpayer's last taxation year for which an amount was deemed to have been paid under subsection 127.44(2) by reason of its paragraph (a).

(2) Subsection (1) is deemed to have come into force on January 1, 2022.

59 (1) The portion of subsection 214(17) of the Act before paragraph (a) is replaced by the following:

Deemed interest payments

(17) For the purposes of subsections (16) and (18),

(2) Section 214 of the Act is amended by adding the following after subsection (17):

Hybrid mismatch arrangements — deemed dividend

(18) For the purposes of this Part, an amount paid or credited as interest by a corporation resident in Canada in a taxation year of the corporation to a non-resident person is deemed to have been paid by the corporation as a dividend, and not to have been paid or credited by the corporation as interest, to the extent that an amount in respect of the interest is not deductible in computing the income of the corporation for the year because of subsection 18.4(4).

Administration

211.94 Les paragraphes 150(2) et (3), les articles 152, 158, 159 et 161 à 167 et la section J de la partie I s'appliquent à la présente partie, avec les adaptations nécessaires, sauf que, pour l'application du paragraphe 161(1) à l'impôt payable en vertu de l'article 211.92, la date d'exigibilité du solde d'un contribuable relativement à une année d'imposition de recouvrement est réputée être la date d'exigibilité du solde pour l'année d'imposition relative au crédit d'impôt pour le CUSC en application du paragraphe 127.44(2).

Livres de comptes et registres

211.95 Quiconque est obligé, par l'article 230, de tenir des registres et livres de comptes pour le compte d'un contribuable doit conserver tous les registres et livres comptables visés à cet article nécessaires à la vérification des renseignements concernant les crédits d'impôt pour le CUSC du contribuable en vertu de l'article 127.44 ou les montants payables par le contribuable en vertu de la présente partie, relativement à un projet de CUSC, jusqu'à l'expiration de la dernière des périodes suivantes :

a) la période visée à l'alinéa 230(4)b);

b) vingt-six ans à compter de la fin de la dernière année d'imposition du contribuable à l'égard de laquelle une somme est réputée avoir été payée en vertu du paragraphe 127.44(2) en application de son alinéa a).

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.

59 (1) Le passage du paragraphe 214(17) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Paiements d'intérêts réputés

(17) Pour l'application des paragraphes (16) et (18) :

(2) L'article 214 de la même loi est modifié par adjonction, après le paragraphe (17), de ce qui suit :

Dispositifs hybrides — dividende réputé

(18) Pour l'application de la présente partie, toute somme qu'une société résidant au Canada paie à une personne non-résidente, ou porte à son crédit, à titre d'intérêts au cours d'une année d'imposition de la société est réputée avoir été payée par la société à titre de dividende, et ne pas avoir été payée ou créditée par la société à titre d'intérêts, dans la mesure où une somme relative aux intérêts n'est pas déductible dans le calcul du revenu de la société pour l'année par l'effet du paragraphe 18.4(4).

(3) Subsections (1) and (2) apply in respect of payments arising on or after July 1, 2022.

60 (1) Subsection 216(1) of the Act is amended by striking out "and" at the end of paragraph (c), by adding "and" at the end of paragraph (d) and by adding the following after paragraph (d):

(e) the definitions *eligible group entity*, *excluded entity* and *fixed interest commercial trust* in subsection 18.2(1) and section 18.21 do not apply in computing the non-resident person's income.

(2) Subsection (1) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023.

61 (1) Subsection 220(2.2) of the Act is replaced by the following:

Exception

(2.2) Subsection (2.1) does not apply in respect of a prescribed form, receipt or document, or prescribed information, that is filed with the Minister on or after the day specified, in respect of the form, receipt, document or information, in subsection 37(11), paragraph (m) of the definition *investment tax credit* in subsection 127(9) or subsection 127.44(17).

(2) Subsection 220(2.2) of the Act, as enacted by subsection (1), is replaced by the following:

Exception

(2.2) Subsection (2.1) does not apply in respect of a prescribed form, receipt or document, or prescribed information, that is filed with the Minister on or after the day specified, in respect of the form, receipt, document or information, in subsection 37(11), paragraph (m) of the definition *investment tax credit* in subsection 127(9), subsection 127.44(17) or 127.45(3).

(3) Subsection (1) is deemed to have come into force on January 1, 2022.

(4) Subsection (2) is deemed to have come into force on March 28, 2023.

62 Subsection 225.1(1.1) of the Act is amended by striking out "and" at the end of paragraph (b) and by adding the following after that paragraph:

(3) Les paragraphes (1) et (2) s'appliquent relativement aux paiements se produisant après le 30 juin 2022.

60 (1) Le paragraphe 216(1) de la même loi est modifié par adjonction, après l'alinéa d), de ce qui suit :

e) les définitions de *entité admissible du groupe*, *entité exclue* et *fiducie commerciale à participation fixe* au paragraphe 18.2(1) et l'article 18.21 ne s'appliquent pas au calcul du revenu de la personne non-résidente.

(2) Le paragraphe (1) s'applique relativement aux années d'imposition d'un contribuable commençant après septembre 2023.

61 (1) Le paragraphe 220(2.2) de la même loi est remplacé par ce qui suit :

Exception

(2.2) Le paragraphe (2.1) ne s'applique pas au formulaire prescrit, au reçu ou au document, ni aux renseignements prescrits, qui sont présentés au ministre à compter de l'expiration du délai fixé au paragraphe 37(11), à l'alinéa m) de la définition de *crédit d'impôt à l'investissement* au paragraphe 127(9) ou au paragraphe 127.44(17).

(2) Le paragraphe 220(2.2) de la même loi, édicté par le paragraphe (1), est remplacé par ce qui suit :

Exception

(2.2) Le paragraphe (2.1) ne s'applique pas au formulaire prescrit, au reçu ou au document, ni aux renseignements prescrits, qui sont présentés au ministre à compter de l'expiration du délai fixé au paragraphe 37(11), à l'alinéa m) de la définition de *crédit d'impôt à l'investissement* au paragraphe 127(9) ou aux paragraphes 127.44(17) ou 127.45(3).

(3) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.

(4) Le paragraphe (2) est réputé être entré en vigueur le 28 mars 2023.

62 Le paragraphe 225.1(1.1) de la même loi est modifié par adjonction, après l'alinéa b), de ce qui suit :

(b.1) in the case of an amount payable under any of subsections 211.92(2) to (5), in respect of the day on which the notice of assessment is sent,

(i) for one-fifth of the amount, one year after that day,

(ii) for two-fifths of the amount, two years after that day,

(iii) for three-fifths of the amount, three years after that day,

(iv) for four-fifths of the amount, four years after that day, and

(v) for the entire amount, five years after that day; and

b.1) dans le cas d'un montant payable en vertu de l'un des paragraphes 211.92(2) à (5), relativement à la date d'envoi de l'avis de cotisation :

(i) pour le cinquième du montant, une année après cette date,

(ii) pour les deux cinquièmes du montant, deux années après cette date,

(iii) pour les trois cinquièmes du montant, trois années après cette date,

(iv) pour les quatre cinquièmes du montant, quatre années après cette date,

(v) pour la totalité du montant, cinq années après cette date;

63 (1) Section 227 of the Act is amended by adding the following after subsection (6.2):

63 (1) L'article 227 de la même loi est modifié par adjonction, après le paragraphe (6.2), de ce qui suit :

Hybrid mismatch adjustment

(6.3) If, in respect of a *payment* (as defined in subsection 18.4(1)) arising under or in connection with a *hybrid mismatch arrangement* (as defined in that subsection), an amount was paid to the Receiver General under Part XIII on behalf of a person because an amount was deemed to have been paid by a corporation to the person as a dividend under subsection 214(18) and a deduction is allowed in respect of the payment or a portion of it, as the case may be, under paragraph 20(1)(yy),

(a) subject to paragraph (b), the Minister shall, on written application made no later than two years after the day on which the assessment is made in respect of the application of paragraph 20(1)(yy), pay to the person the amount determined by the formula

A – B

where

A is the lesser of

(i) the total of all amounts, if any, paid to the Receiver General on or prior to the day the written application was made on behalf of the person and in respect of the liability of the person to pay an amount under Part XIII in respect of the payment or the portion of it, as the case may be, and

(ii) the amount that would be payable to the Receiver General under Part XIII if an amount equal to the amount deductible under paragraph 20(1)(yy) were paid by the corporation to the person as a dividend described in

Ajustement des dispositifs hybrides

(6.3) Si, relativement à un *paiement* (au sens du paragraphe 18.4(1)) se produisant en vertu ou dans le cadre d'un *dispositif hybride* (au sens de ce paragraphe), un montant a été versé au receveur général en vertu de la partie XIII pour le compte d'une personne du fait qu'une somme est réputée lui avoir été payée par une société sous forme de dividende en vertu du paragraphe 214(18) et une déduction est permise au titre du paiement ou d'une partie de celui-ci, selon le cas, en application de l'alinéa 20(1)yy), les règles suivantes s'appliquent :

a) sous réserve de l'alinéa b), le ministre doit, sur demande écrite faite au plus tard deux ans après le jour où la cotisation est établie relativement à l'application de l'alinéa 20(1)yy), payer à cette personne la somme déterminée par la formule suivante :

A – B

où :

A représente la moins élevée des sommes suivantes :

(i) le total des sommes, le cas échéant, versées au receveur général, au plus tard le jour où la demande écrite a été faite, au nom de la personne et au titre d'une somme à payer par la personne relativement au paiement ou à une partie de celui-ci, selon le cas, en vertu de la partie XIII,

(ii) la somme qui serait payable au receveur général en vertu de la partie XIII si une somme égale au montant déductible en application de l'alinéa 20(1)yy) était payée par la société à la

paragraph 212(2)(a) at the end of the taxation year in which the amount is deductible under paragraph 20(1)(yy), and

B is the amount that would be payable to the Receiver General under Part XIII (if this Act were read without reference to subsection 214(18)) if an amount equal to the amount deductible under paragraph 20(1)(yy) had been paid or credited as interest by the corporation to the person at the end of the taxation year in which the amount is deductible under paragraph 20(1)(yy); and

(b) if the person is or is about to become liable to make a payment to His Majesty in right of Canada, the Minister may apply the amount otherwise payable under paragraph (a) to that liability and notify the person of that action.

(2) Subsection 227(7.1) of the Act is replaced by the following:

Application for determination

(7.1) Where, on application under subsection (6.1) or (6.3) by or on behalf of a person to the Minister in respect of an amount paid under Part XIII to the Receiver General, the Minister is not satisfied that the person is entitled to the amount claimed, the Minister shall, at the person's request, determine, with all due dispatch, the amount, if any, payable under subsection (6.1) or (6.3), as the case may be, to the person and shall send a notice of determination to the person, and sections 150 to 163, subsections 164(1) and 164(1.4) to 164(7), sections 164.1 to 167 and Division J of Part I apply with such modifications as the circumstances require.

(3) Subsections (1) and (2) apply in respect of payments arising on or after July 1, 2022.

64 (1) Section 237.3 of the Act is amended by adding the following after subsection (12):

Optional disclosure — GAAR

(12.1) If subsection (2) does not apply to a taxpayer in respect of a transaction or series of transactions of which the transaction is a part, the taxpayer may file an information return in prescribed form and containing prescribed information in respect of the transaction or series on or before the taxpayer's filing-due date for the taxation year in which the transaction occurs.

personne à titre de dividende à l'alinéa 212(2)a) à la fin de l'année d'imposition dans laquelle le montant est déductible en vertu de l'alinéa 20(1)yy),

B la somme qui serait payable au receveur général en vertu de la partie XIII en l'absence du paragraphe 214(18) si une somme égale au montant déductible en application de l'alinéa 20(1)yy) avait été payée à la personne, ou portée à son crédit, par la société à titre d'intérêts à la fin de l'année d'imposition dans laquelle le montant est déductible en vertu de l'alinéa 20(1)yy);

b) si la personne est tenue de faire un paiement à Sa Majesté du chef du Canada, ou est sur le point de l'être, le ministre peut appliquer le montant par ailleurs payable selon l'alinéa a) à ce paiement et aviser la personne en conséquence.

(2) Le paragraphe 227(7.1) de la même loi est remplacé par ce qui suit :

Demande de détermination

(7.1) Si, après étude d'une demande faite par une personne, ou en son nom, en application des paragraphes (6.1) ou (6.3) relativement à un montant versé au receveur général en vertu de la partie XIII, le ministre n'est pas convaincu que la personne a droit au montant demandé, il doit, à la demande de cette personne, déterminer, avec diligence, le montant éventuel qui lui est payable en vertu des paragraphes (6.1) ou (6.3), selon le cas, et aviser la personne de sa décision. Les articles 150 à 163, les paragraphes 164(1) et (1.4) à (7), les articles 164.1 à 167 et la section J de la partie I s'appliquent alors, avec les adaptations nécessaires.

(3) Les paragraphes (1) et (2) s'appliquent relativement aux paiements se produisant après le 30 juin 2022.

64 (1) L'article 237.3 de la même loi est modifié par adjonction, après le paragraphe (12), de ce qui suit :

Choix de divulguer — RGAE

(12.1) Si le paragraphe (2) ne s'applique pas à un contribuable relativement à une opération ou une série d'opérations dont l'opération fait partie, le contribuable peut produire une déclaration de renseignements sur le formulaire prescrit contenant les renseignements prescrits concernant l'opération ou la série au plus tard à la date d'échéance de production qui lui est applicable pour l'année d'imposition au cours de laquelle l'opération se produit.

Late filing — GAAR

(12.2) Despite subsection (12.1), a taxpayer may file the information return referred to in subsection (12.1) up to one year after the deadline referred to in that subsection, in which case

(a) for the purpose of applying subparagraphs 152(4)(b)(viii) and (4.01)(b)(xi) to the transaction referred to in subsection (12.1), the reference to "3 years" in paragraph 152(4)(b) is to be read as "1 year"; and

(b) for the purpose of applying subsection 245(5.1) to the transaction, the information return is deemed to have been filed within the time required by this section.

(2) Subsection (1) applies to transactions that occur on or after January 1, 2024.

65 (1) Subparagraph 241(4)(d)(vi.1) of the Act is replaced by the following:

(vi.1) to an official of the Department of Natural Resources solely for the purposes of determining whether

(A) property is *prescribed energy conservation property* (as defined in Part LXXXII of the *Income Tax Regulations*) or whether an outlay or expense is a *Canadian renewable and conservation expense* (as defined in section 66.1),

(B) a process is a *CCUS process* (as defined in section 127.44), whether property is *dual-use equipment* (as defined in section 127.44), whether a project is a *qualified CCUS project* (as defined in section 127.44) or whether a property is described in Class 57 or 58 of Schedule II to the *Income Tax Regulations*,

(C) a property is a *clean technology property* (as defined in section 127.45), and

(D) a cost is a *ZETM cost of capital* or a *ZETM cost of labour* (as defined in section 125.2) and activities are *qualified zero-emission technology manufacturing activities* (as defined in Part LII of the *Income Tax Regulations*),

(2) Clause 241(4)(d)(xx.1)(A) of the Act is replaced by the following:

Présentation tardive — RGAE

(12.2) Malgré le paragraphe (12.1), un contribuable peut produire la déclaration de renseignements visée au paragraphe (12.1) jusqu'à un an après le délai prévu à ce paragraphe, auquel cas :

a) pour l'application des sous-alinéas 152(4)(b)(viii) et (4.01)(b)(xi) à l'opération visée au paragraphe (12.1), la mention « trois ans » figurant à l'alinéa 152(4)b) vaut mention de « un an »;

b) pour l'application du paragraphe 245(5.1) à l'opération, la déclaration de renseignements est réputée avoir été produite dans le délai imparti en vertu du présent article.

(2) Le paragraphe (1) s'applique aux opérations se produisant à compter du 1er janvier 2024.

65 (1) Le sous-alinéa 241(4)d)(vi.1) de la même loi est remplacé par ce qui suit :

(vi.1) à un fonctionnaire du ministère des Ressources naturelles uniquement aux fins de déterminer si, à la fois :

(A) un bien constitue un *bien économisant l'énergie visé par règlement* (au sens de la partie LXXXII du *Règlement de l'impôt sur le revenu*) ou si une dépense engagée ou effectuée constitue des *frais liés aux énergies renouvelables et à l'économie d'énergie au Canada* (au sens de l'article 66.1),

(B) un processus est un *processus de CUSC* (au sens de l'article 127.44), si un bien constitue un *matériel à double usage* (au sens de l'article 127.44), si un projet est un *projet de CUSC admissible* (au sens de l'article 127.44) ou si le bien est décrit aux catégories 57 ou 58 de l'annexe II du *Règlement de l'impôt sur le revenu*,

(C) un bien constitue un *bien de technologie propre* (au sens de l'article 127.45),

(D) un coût constitue un coût en capital de FTZE ou un *coût en main-d'œuvre de FTZE* (au sens de l'article 125.2) et les activités sont des *activités admissibles de fabrication de technologies à zéro émission* (au sens de la partie LII du *Règlement de l'impôt sur le revenu*),

(2) La division 241(4)d)(xx.1)(A) de la même loi est remplacée par ce qui suit :

(A) the Department of Employment and Social Development, the Department of Health or the Department of Public Works and Government Services, solely for the purpose of the administration or enforcement of the Canadian Dental Care Plan established under the authority of the *Department of Health Act* in respect of dental service for individuals, or

(A) du ministère de l'Emploi et du Développement social, du ministère de la Santé ou du ministère des Travaux publics et des Services gouvernementaux, mais uniquement en vue de l'application ou de l'exécution du Régime canadien de soins dentaires établi sous le régime de la *Loi sur le ministère de la Santé* relativement aux services de soins dentaires pour les particuliers,

66 (1) Section 245 of the Act is amended by adding the following before subsection (1):

66 (1) L'article 245 de la même loi est modifié par adjonction, avant le paragraphe (1), de ce qui suit :

Preamble

245 (0.1) This section of the Act contains the general anti-avoidance rule, which

Préambule

245 (0.1) Le présent article de la présente loi contient la règle générale anti-évitement, laquelle :

(a) applies to deny the tax benefit of avoidance transactions that result directly or indirectly either in a misuse of provisions of the Act (or any of the enactments listed in subparagraphs (4)(a)(ii) to (v)) or an abuse having regard to those provisions read as a whole, while not preventing taxpayers from obtaining tax benefits contemplated by Parliament; and

a) s'applique pour refuser les avantages fiscaux des opérations d'évitement qui entraînent directement ou indirectement un abus des dispositions de la présente loi (ou de l'un des textes figurant aux sous-alinéas (4)a)(ii) à (v)) ou un abus eu égard à ces dispositions lues dans leur ensemble sans empêcher les contribuables d'obtenir les avantages fiscaux visés par le Parlement;

(b) strikes a balance between

b) établit un équilibre entre, à la fois :

(i) the Government of Canada's responsibility to protect the tax base and the fairness of the tax system, and

(i) la responsabilité du gouvernement du Canada en matière de protection de l'assiette fiscale et de l'équité du régime fiscal,

(ii) taxpayers' need for certainty in planning their affairs.

(ii) le besoin de certitude des contribuables dans la planification de leurs affaires.

(2) Subsection 245(3) of the Act is replaced by the following:

(2) Le paragraphe 245(3) de la même loi est remplacé par ce qui suit :

Avoidance transaction

(3) Unless it may reasonably be considered that obtaining the tax benefit is not one of the main purposes for undertaking or arranging a transaction, the transaction is an avoidance transaction if the transaction

Opération d'évitement

(3) Sauf s'il est raisonnable de considérer que l'obtention de l'avantage fiscal n'est pas l'un des principaux objets d'entreprendre ou d'organiser l'opération, l'opération est une opération d'évitement si, selon le cas :

(a) but for this section, would result, directly or indirectly, in a tax benefit; or

a) en l'absence du présent article, elle donnait lieu à un avantage fiscal, directement ou indirectement;

(b) is part of a series of transactions, which series, but for this section, would result, directly or indirectly, in a tax benefit.

b) elle fait partie d'une série d'opérations dont, en l'absence du présent article, découlerait, directement ou indirectement, un avantage fiscal.

(3) Section 245 of the Act is amended by adding the following after subsection (4):

(3) L'article 245 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :

Economic substance — effect

(4.1) If an avoidance transaction — or a series of transactions that includes the avoidance transaction — is significantly lacking in economic substance, this is an important consideration that tends to indicate that the transaction results in a misuse under paragraph (4)(a) or an abuse under paragraph (4)(b).

Economic substance — meaning

(4.2) Factors that establish that a transaction or series of transactions is significantly lacking in economic substance may include, but are not limited to, any of the following:

(a) all or substantially all of the opportunity for gain or profit and risk of loss of the taxpayer — taken together with those of all non-arm's length taxpayers (other than those non-arm's length taxpayers who can reasonably be considered, having regard to the circumstances viewed as a whole, to have economic interests that are largely adverse from those of the taxpayer) — remains unchanged, including because of

(i) a circular flow of funds,

(ii) offsetting financial positions,

(iii) the timing between steps in a series, or

(iv) the use of an accommodation party;

(b) it is reasonable to conclude that, at the time the transaction or series was entered into, the expected value of the tax benefit exceeded the expected non-tax economic return (which excludes both the tax benefit and any tax advantages connected to another jurisdiction); and

(c) it is reasonable to conclude that the entire, or almost entire, purpose for undertaking or arranging the transaction or series was to obtain the tax benefit.

Substance économique — effet

(4.1) Si une opération d'évitement — ou une série d'opérations comprenant l'opération d'évitement — manque considérablement de substance économique, il s'agit d'un facteur important qui tend à indiquer que l'opération constitue un abus en vertu des alinéas (4)a) ou b).

Substance économique — sens

(4.2) Les facteurs qui établissent qu'une opération ou une série d'opérations manque considérablement de substance économique peuvent comprendre, notamment, l'un des éléments suivants :

a) la totalité, ou la presque totalité des possibilités pour le contribuable de réaliser des gains ou des bénéfices et de subir des pertes, conjointement avec celles des contribuables ayant un lien de dépendance (sauf ceux qu'il est raisonnable de considérer, compte tenu des circonstances prises dans leur ensemble, comme ayant des intérêts économiques largement opposés à ceux du contribuable), reste inchangée, notamment en raison des éléments suivants :

(i) les flux circulaires de fonds,

(ii) la compensation des situations financières,

(iii) le délai entre les étapes d'une série,

(iv) le recours à une partie accommodante;

b) il est raisonnable de conclure que, au moment où l'opération ou la série était conclue, la valeur de l'avantage fiscal escomptée dépassait le rendement économique non fiscal escompté, lequel exclut aussi bien l'avantage fiscal que tout avantage fiscal se rattachant à une autre juridiction;

c) il est raisonnable de conclure que la totalité, ou la presque totalité, des objets d'entreprendre ou d'organiser l'opération ou la série était d'obtenir l'avantage fiscal.

(4) Section 245 of the Act is amended by adding the following after subsection (5):

Penalty

(5.1) If subsection (2) applies to determine the tax consequences to a person for a taxation year in respect of a transaction that was not disclosed by the person to the Minister in accordance with section 237.3 or 237.4, the person is liable to a penalty for the taxation year equal to the amount determined by the formula

(A + B) × 25% – C

(4) L'article 245 de la même loi est modifié par adjonction, après le paragraphe (5), de ce qui suit :

Pénalité

(5.1) Si le paragraphe (2) s'applique pour déterminer les attributs fiscaux d'une personne pour une année d'imposition relativement à une opération, laquelle n'a pas été divulguée par la personne au ministre en application des articles 237.3 ou 237.4, celle-ci est passible, pour l'année d'imposition, d'une pénalité égale à la somme déterminée par la formule suivante :

where

A is the amount by which the tax payable by the person under this Act for the year exceeds the amount that would have been payable by the person under this Act for the year if subsection (2) had not applied in respect of the transaction;

B is the amount by which the total of all amounts, each of which is an amount that would have been deemed to be paid on account of the person's tax payable under Part I for the year if subsection (2) had not applied in respect of the transaction, exceeds the total of all amounts that are deemed to be paid on account of the person's tax payable under Part I for the year; and

C is the amount of any penalty payable by the person under subsection 163(2), to the extent that the amount is in respect of the transaction or a series that includes the transaction and did not reduce the penalty payable by the person under this subsection in a preceding taxation year.

(A + B) × 25 % – C

où :

A représente l'excédent de l'impôt payable par la personne pour l'année en vertu de la présente loi sur la somme qui aurait été payable par la personne pour l'année en vertu de la présente loi si le paragraphe (2) ne s'était pas appliqué à l'opération;

B l'excédent du total des sommes représentant chacune une somme qui aurait été réputée payée au titre de l'impôt payable par la personne en vertu de la partie I pour l'année si le paragraphe (2) ne s'était pas appliqué à l'opération sur le total des sommes réputées payées au titre de l'impôt par la personne en vertu de la partie I pour l'année;

C la somme de toute pénalité payable par la personne en vertu du paragraphe 163(2), dans la mesure où la somme se rapporte à l'opération ou à une série qui comprend l'opération et n'a pas réduit la pénalité payable par la personne en vertu de ce paragraphe dans une année d'imposition antérieure.

Penalty — exception

(5.2) Subsection (5.1) does not apply to a person in respect of a transaction if the person demonstrates that, at the time that the transaction was entered into, it was reasonable for the person to have concluded that subsection (2) would not apply to the transaction in reliance on the transaction or a series that includes the transaction being identical or almost identical to a transaction or series that was the subject of

(a) published administrative guidance or statements made by the Minister or another relevant governmental authority; or

(b) one or more court decisions.

Pénalité — exception

(5.2) Le paragraphe (5.1) ne s'applique pas à une personne relativement à une opération lorsque la personne démontre que, au moment où l'opération était conclue, il lui était raisonnable de conclure que le paragraphe (2) ne s'appliquerait pas à l'opération, en s'appuyant sur le fait que l'opération ou qu'une série qui comprend l'opération est identique ou presque identique à une opération ou une série qui a fait l'objet :

a) de directives administratives ou déclarations publiées qui sont produites par le ministre ou une autre autorité gouvernementale compétente;

b) d'une ou de plusieurs décisions de tribunaux.

Provisions applicable

(5.3) Sections 152, 158, 159, 160.1, 164 to 167 and Division J of Part I apply to subsection (5.1) with such modifications as the circumstances require.

Dispositions applicables

(5.3) Les articles 152, 158, 159, 160.1, 164 à 167 et la section J de la partie I s'appliquent au paragraphe (5.1), avec les adaptations nécessaires.

(5) Subsections (2) and (3) apply to transactions that occur on or after January 1, 2024.

(5) Les paragraphes (2) et (3) s'appliquent aux opérations se produisant à compter du 1er janvier 2024.

(6) Subsection (4) applies to transactions that occur on or after the later of January 1, 2024 and the day on which this Act receives royal assent.

(6) Le paragraphe (4) s'applique aux opérations se produisant après décembre 2023 ou, si elle est postérieure, à compter de la date de sanction de la présente loi.

67 (1) Subparagraph (f)(vi) of the definition *disposition* in subsection 248(1) of the Act is replaced by the following:

67 (1) Le sous-alinéa f)(vi) de la définition de *disposition*, au paragraphe 248(1) de la même loi, est remplacé par ce qui suit :

(vi) if the transferor is an amateur athlete trust, a cemetery care trust, an employee trust, a trust deemed by subsection 143(1) to exist in respect of a congregation that is a constituent part of a religious organization, a related segregated fund trust (in this paragraph having the meaning assigned by section 138.1), a trust described in paragraph 149(1)(o.4) or a trust governed by an eligible funeral arrangement, an employees profit sharing plan, a FHSA, a registered disability savings plan, a registered education savings plan, a registered supplementary unemployment benefit plan or a TFSA, the transferee is the same type of trust, and

(vi) si le cédant est une fiducie au profit d'un athlète amateur, une fiducie pour l'entretien d'un cimetière, une fiducie d'employés, une fiducie réputée par le paragraphe 143(1) exister à l'égard d'une congrégation qui est une partie constituante d'un organisme religieux, une fiducie créée à l'égard du fonds réservé (au sens de l'article 138.1 au présent alinéa), une fiducie visée à l'alinéa 149(1)o.4) ou une fiducie régie par un arrangement de services funéraires, un régime de participation des employés aux bénéfices, un compte d'épargne libre d'impôt pour l'achat d'une première propriété, un régime enregistré d'épargne-invalidité, un régime enregistré d'épargne-études, un régime enregistré de prestations supplémentaires de chômage ou un compte d'épargne libre d'impôt, le cessionnaire est une fiducie du même type,

(2) The definition *employee benefit plan* in subsection 248(1) of the Act is amended by adding the following after paragraph (b):

(b.1) an employee ownership trust,

(2) La définition de *régime de prestations aux employés*, au paragraphe 248(1) de la même loi, est modifiée par adjonction, après l'alinéa b), de ce qui suit :

b.1) une fiducie collective des employés;

(3) The portion of the definition *employee trust* in subsection 248(1) of the Act before paragraph (a) is replaced by the following:

employee trust means an arrangement (other than an employee ownership trust, an employees profit sharing plan, a deferred profit sharing plan or a plan referred to in subsection 147(15) as a "revoked plan") established after 1979

(3) Le passage de la définition de *fiducie d'employés* précédant l'alinéa a), au paragraphe 248(1) de la même loi, est remplacé par ce qui suit :

fiducie d'employés Arrangement (autre qu'une fiducie collective des employés, un régime de participation des employés aux bénéfices, un régime de participation différée aux bénéfices ou un régime appelé « régime dont l'agrément est retiré » au paragraphe 147(15)) constitué après 1979 et remplissant les conditions suivantes :

(4) Subparagraph (d)(ii) of the definition *mineral resource* in subsection 248(1) of the Act is replaced by the following:

(ii) the principal mineral extracted is ammonite gemstone, calcium chloride, diamond, gypsum, halite, kaolin, lithium or sylvite, or

(4) Le sous-alinéa d)(ii) de la définition de *matières minérales*, au paragraphe 248(1) de la même loi, est remplacé par ce qui suit :

(ii) le principal minéral extrait est l'ammonite, le chlorure de calcium, le diamant, le gypse, l'halite, le kaolin, le lithium ou la sylvine,

(5) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

substantive CCPC means a private corporation (other than a Canadian-controlled private corporation) that

(a) is controlled, directly or indirectly in any manner whatever, by one or more individuals resident in Canada, or

(b) would, if each share of the capital stock of a corporation that is owned by a Canadian resident individual

(5) Le paragraphe 248(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

SPCC en substance Société privée (à l'exception d'une société privée sous contrôle canadien) qui :

a) soit est contrôlée, directement ou indirectement, de quelque manière que ce soit, par un ou plusieurs particuliers résidant au Canada;

b) soit, si chaque action du capital-actions d'une société appartenant à un particulier résidant au Canada

were owned by a particular individual, be controlled by the particular individual; (*SPCC en substance*)

(6) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

absorbed capacity has the same meaning as in subsection 18.2(1); (*capacité absorbée*)

cumulative unused excess capacity has the same meaning as in subsection 18.2(1); (*capacité excédentaire cumulative inutilisée*)

excess capacity has the same meaning as in subsection 18.2(1); (*capacité excédentaire*)

interest and financing expenses has the same meaning as in subsection 18.2(1), except for the purposes of the definition *economic profit* in subsection 126(7); (*dépenses d'intérêts et de financement*)

interest and financing revenues has the same meaning as in subsection 18.2(1); (*revenus d'intérêts et de financement*)

restricted interest and financing expense has the same meaning as in subsection 111(8); (*dépense d'intérêts et de financement restreinte*)

transferred capacity has the same meaning as in subsection 18.2(1); (*capacité transférée*)

(7) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

distribution equipment has the same meaning as in subsection 1104(13) of the *Income Tax Regulations*; (*matériel de distribution*)

fossil fuel has the same meaning as in subsection 1104(13) of the *Income Tax Regulations*; (*combustible fossile*)

transmission equipment has the same meaning as in subsection 1104(13) of the *Income Tax Regulations*; (*matériel de transmission*)

(8) Subsection 248(1) of the Act is amended by adding the following in alphabetical order:

employee ownership trust means an irrevocable trust that, at all relevant times, satisfies the following conditions:

appartenait à un particulier donné, serait contrôlée par ce dernier. (*substantive CCPC*)

(6) Le paragraphe 248(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

capacité absorbée S'entend au sens du paragraphe 18.2(1). (*absorbed capacity*)

capacité excédentaire S'entend au sens du paragraphe 18.2(1). (*excess capacity*)

capacité excédentaire cumulative inutilisée S'entend au sens du paragraphe 18.2(1). (*cumulative unused excess capacity*)

capacité transférée S'entend au sens du paragraphe 18.2(1). (*transferred capacity*)

dépenses d'intérêts et de financement S'entend au sens du paragraphe 18.2(1). (*interest and financing expenses*)

dépense d'intérêts et de financement restreinte S'entend au sens du paragraphe 111(8). (*restricted interest and financing expense*)

revenus d'intérêts et de financement S'entend au sens du paragraphe 18.2(1). (*interest and financing revenues*)

(7) Le paragraphe 248(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

combustible fossile S'entend au sens du paragraphe 1104(13) du *Règlement de l'impôt sur le revenu*. (*fossil fuel*)

matériel de distribution S'entend au sens du paragraphe 1104(13) du *Règlement de l'impôt sur le revenu*. (*distribution equipment*)

matériel de transmission S'entend au sens du paragraphe 1104(13) du *Règlement de l'impôt sur le revenu*. (*transmission equipment*)

(8) Le paragraphe 248(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

entreprise admissible S'entend, à un moment donné, d'une société contrôlée par une fiducie qui remplit les conditions suivantes :

(a) the trust is resident in Canada (determined without reference to subsection 94(3)),

(b) the trust is exclusively for the benefit of all individuals each of whom

(i) is either

(A) an employee of one or more qualifying businesses controlled by the trust (other than an employee who has not completed an applicable probationary period, which may not exceed 12 months), or

(B) if the trust permits, an individual (or the estate of an individual) who is a former employee (other than a former employee who did not complete an applicable probationary period, of up to 12 months, during their employment) of one or more qualifying businesses controlled by the trust and who was an employee of the qualifying business while the trust controlled the qualifying business,

(ii) does not own, directly or indirectly (other than through an interest in the trust), shares of a class of the capital stock of a qualifying business controlled by the trust, the value of which is equal to or greater than 10% of the fair market value of the class,

(iii) does not own, directly or indirectly, together with any person or partnership that is related to or affiliated with the individual, shares of a class of the capital stock of a qualifying business controlled by the trust, the value of which is equal to or greater than 50% of the fair market value of the class, and

(iv) immediately before the time of a qualifying business transfer to the trust, did not own, directly or indirectly, together with any person or partnership that is related to or affiliated with the individual, shares of the capital stock or indebtedness of the qualifying business, the value of which is equal to or greater than 50% of the fair market value of the shares of the capital stock and indebtedness of the qualifying business,

(c) the capital and income interests of each beneficiary described in clause (b)(i)(A) or (B) are determined in the same manner as the other beneficiaries described in those clauses, as applicable, based solely on any combination of the following criteria:

(i) the total hours of employment service provided by the beneficiary to the qualifying business in respect of a particular time period,

a) elle est une société privée sous contrôle canadien;

b) au plus 40 % de ses administrateurs sont composés de personnes qui, immédiatement avant le moment où la fiducie en a acquis le contrôle, détenaient, directement ou indirectement, seules ou avec une personne ou société de personnes liée ou affiliée, au moins 50 % de la juste valeur marchande des actions de son capital-actions ou de ses dettes;

c) elle n'a aucun lien de dépendance et n'est pas affiliée à une personne ou société de personnes qui, immédiatement avant le moment où la fiducie en a acquis le contrôle, détenait, directement ou indirectement, au moins 50 % de la juste valeur marchande des actions de son capital-actions ou de ses dettes. (*qualifying business*)

fiducie collective des employés S'entend d'une fiducie irrévocable qui, à tout moment considéré, remplit les conditions suivantes :

a) elle réside au Canada (la résidence étant déterminée compte non tenu du paragraphe 94(3));

b) elle est exclusivement au profit des personnes dont chacune, à la fois :

(i) est soit :

(A) un employé d'une ou de plusieurs entreprises admissibles contrôlées par la fiducie (sauf un employé qui n'a pas complété une période probatoire applicable, laquelle ne peut se prolonger au-delà de douze mois),

(B) si la fiducie le permet, une personne (ou la succession d'une personne) qui est un ancien employé (autre qu'un ancien employé qui n'a pas complété une période probatoire applicable pouvant atteindre douze mois pendant son emploi) d'une ou de plusieurs entreprises admissibles contrôlées par la fiducie et qui était un employé de l'entreprise admissible pendant que la fiducie contrôlait celle-ci,

(ii) ne détient pas, directement ou indirectement (autre que par l'entremise d'une participation dans la fiducie), des actions d'une catégorie du capital-actions d'une entreprise admissible contrôlée par la fiducie, dont la valeur est égale ou supérieure à 10 % de la juste valeur marchande de la catégorie,

(iii) ne détient pas, directement ou indirectement, seule ou avec une personne ou société de personnes liée ou affiliée, des actions d'une catégorie du capital-actions d'une entreprise admissible contrôlée

(ii) the total salary, wages and other remuneration paid or payable to the beneficiary by the qualifying business in respect of a particular time period, not exceeding, for any calendar year in the particular time period, twice the first dollar amount referred to in paragraph 117(2)(e), as adjusted by section 117.1, for the year (prorated based upon the number of days of the calendar year in the particular time period), and

(iii) the total period of employment service the beneficiary has provided to the qualifying business since a particular time,

(d) the trustees are prohibited from exercising their discretion to act in the interest of one beneficiary (or group of beneficiaries) to the prejudice of another beneficiary (or group of beneficiaries),

(e) each trustee of the trust is either a corporation resident in Canada that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee or an individual (other than a trust),

(f) each trustee has an equal vote in the conduct of the affairs of the trust,

(g) at least one-third of the trustees must be beneficiaries described in clause (b)(i)(A),

(h) if any trustee is appointed (other than by an election within the last five years by the beneficiaries described in clause (b)(i)(A)), at least 60% of all trustees must be persons that deal at arm's length with each person who has, directly or indirectly in any manner whatever, as part of a transaction or event or series of transactions or events, sold shares of a qualifying business to the trust (or to any person or partnership affiliated with the trust) prior to or in connection with the trust acquiring control of the qualifying business,

(i) more than 50% of the beneficiaries of the trust described in clause (b)(i)(A) must approve each of the following transactions or events prior to their occurrence:

(i) any transaction or event or series of transactions or events that causes at least 25% of the beneficiaries to lose their status as beneficiaries under clause (b)(i)(A) (unless the change in status is in respect of a termination of employment for cause), and

(ii) a winding-up, amalgamation or merger of a qualifying business (other than in the course of a transaction or event or a series of transactions or

par la fiducie, dont la valeur est égale ou supérieure à 50 % de la juste valeur marchande de la catégorie,

(iv) immédiatement avant le moment d'un transfert admissible d'entreprise à la fiducie, elle ne détenait pas, directement ou indirectement, seule ou avec une personne ou société de personnes liée ou affiliée, des actions du capital-actions ou des dettes de l'entreprise admissible, dont la valeur est égale ou supérieure à 50 % de la juste valeur marchande des actions du capital-actions et des dettes de l'entreprise admissible;

c) la participation au capital et au revenu de chaque bénéficiaire visé aux divisions b)(i)(A) ou (B) est déterminée de la même manière que pour les autres bénéficiaires visés à ces divisions, selon le cas, uniquement en fonction d'une combinaison des critères suivants :

(i) le total des heures travaillées par le bénéficiaire pour l'entreprise admissible pour une période donnée,

(ii) le total du traitement, du salaire ou de toute autre rémunération versé ou payable au bénéficiaire par l'entreprise admissible pour une période donnée, ne dépassant pas, pour une année civile de la période donnée, deux fois la première somme visée à l'alinéa 117(2)e), ajustée par l'article 117.1, pour l'année (calculée au prorata en fonction du nombre de jours de l'année civile de la période donnée),

(iii) la période de service d'emploi totale que le bénéficiaire a offert à l'entreprise admissible depuis un moment donné;

d) il est interdit aux fiduciaires d'exercer leur pouvoir discrétionnaire afin d'agir dans l'intérêt d'un bénéficiaire (ou d'un groupe de bénéficiaires) au détriment d'un autre bénéficiaire (ou d'un groupe de bénéficiaires);

e) chaque fiduciaire de la fiducie est soit une société résidant au Canada qui est autorisée, par permis ou autrement, en vertu des lois fédérales ou provinciales, à exploiter au Canada une entreprise d'offre au public de services de fiduciaire soit un particulier (sauf une fiducie);

f) chaque fiduciaire de la fiducie a le même droit de vote dans la conduite des affaires de la fiducie;

g) au moins le tiers des fiduciaires sont des bénéficiaires visés à la division b)(i)(A);

events that involves only persons or partnerships that are affiliated with the qualifying business), and

(j) all or substantially all the fair market value of the property of the trust is attributable to shares of the capital stock of one or more qualifying businesses that the trust controls; (*fiducie collective des employés*)

qualifying business, at a particular time, means a corporation controlled by a trust

(a) that is a Canadian-controlled private corporation,

(b) not more than 40% of the directors of which consist of individuals that, immediately before the time that the trust acquired control of the corporation, owned, directly or indirectly, together with any person or partnership that is related to or affiliated with the director, 50% or more of the fair market value of the shares of the capital stock or indebtedness of the corporation, and

(c) that deals at arm's length and is not affiliated with any person or partnership that owned, directly or indirectly, 50% or more of the fair market value of the shares of the capital stock or indebtedness of the corporation immediately before the time the trust acquired control of the corporation; (*entreprise admissible*)

qualifying business transfer means a disposition by a taxpayer of shares of the capital stock of a corporation (in this definition referred to as the "subject corporation") to a trust, or to a Canadian-controlled private corporation (in this definition referred to as the "purchaser corporation") that is controlled and wholly-owned by a trust, if

(a) immediately before the disposition, all or substantially all the fair market value of the assets of the subject corporation is attributable to assets (other than an interest in a partnership) that are used principally in an active business (referred to in this definition as the "business") carried on by the subject corporation or a corporation that is controlled and wholly-owned by the subject corporation,

(b) at the time of the disposition,

(i) the taxpayer deals at arm's length with the trust and any purchaser corporation,

(ii) the trust acquires control of the subject corporation, and

(iii) the trust is an employee ownership trust, the beneficiaries of which are employed in the business, and

h) si un fiduciaire est nommé (autrement que par élection au cours des cinq dernières années par les fiduciaires visés à la division b)(i)(A)), au moins 60 % de tous les fiduciaires sont des personnes qui n'ont pas de lien de dépendance les uns avec chacune des personnes qui aurait, directement ou indirectement et de quelque manière que ce soit, dans le cadre d'une opération, d'un événement ou d'une série d'opérations ou d'événements, vendu des actions d'une entreprise admissible à la fiducie (ou à toute personne ou société de personnes qui est affiliée à la fiducie) avant l'acquisition par la fiducie du contrôle de l'entreprise admissible ou lors de cette acquisition;

i) plus de la moitié des bénéficiaires de la fiducie visés à la division b)(i)(A) doivent approuver chacune des opérations ou chacun des événements suivants avant qu'ils ne surviennent :

(i) une opération ou un événement, ou une série d'opérations ou d'événements, par suite de laquelle au moins 25 % des bénéficiaires perdront leur statut de bénéficiaire en vertu de la division b)(i)(A) (sauf si le changement de statut est relativement à un licenciement motivé),

(ii) la liquidation, la fusion ou l'unification d'une entreprise admissible (sauf dans le cadre d'une opération, d'un événement ou d'une série d'opérations ou d'événements qui ne vise que des personnes ou sociétés de personnes qui sont affiliées à l'entreprise admissible);

j) la totalité, ou presque, de la juste valeur marchande des biens de la fiducie est attribuable à des actions du capital-actions d'une ou de plusieurs entreprises admissibles que la fiducie contrôle. (*employee ownership trust*)

transfert admissible d'entreprise S'entend d'une disposition d'actions du capital-actions d'une société (appelée « société en cause » à la présente définition) par un contribuable en faveur d'une fiducie, ou d'une société privée sous contrôle canadien (appelée « acheteur » à la présente définition) dont les actions appartiennent à cent pour cent à la fiducie et qui est contrôlée par celle-ci, si les conditions suivantes sont réunies :

a) immédiatement avant la disposition, la totalité ou presque de la juste valeur marchande des éléments d'actif de la société en cause est attribuable, à ce moment, à des éléments d'actif (sauf une participation dans une société de personnes) qui sont utilisés principalement dans une entreprise (appelée l'« entreprise » à la présente définition) que la société en cause, ou une société dont les actions appartiennent à

(c) at all times after the disposition,

(i) the taxpayer deals at arm's length with the subject corporation, the trust and any purchaser corporation, and

(ii) the taxpayer does not retain any right or influence that, if exercised, would allow the taxpayer (whether alone or together with any person or partnership that is related to or affiliated with the taxpayer) to control, directly or indirectly in any manner whatever, the subject corporation, the trust, or any purchaser corporation; (*transfert admissible d'entreprise*)

cent pour cent à la société en cause et qui est contrôlée par celle-ci, exploite activement;

b) au moment de la disposition, les conditions suivantes sont remplies :

(i) le contribuable n'a pas de lien de dépendance avec la fiducie (ou un acheteur),

(ii) la fiducie acquiert le contrôle de la société en cause,

(iii) la fiducie est une fiducie collective des employés dont les bénéficiaires sont employés dans l'entreprise;

c) à tout moment après la disposition, les conditions suivantes sont remplies :

(i) le contribuable n'a aucun lien de dépendance avec la société en cause, la fiducie ou un acheteur,

(ii) le contribuable ne conserve pas un droit ou une influence dont l'exercice lui permettrait (seul ou avec une personne ou une société de personnes qui lui est liée ou affiliée) de contrôler, directement ou indirectement, de quelque manière que ce soit, la société en cause, la fiducie ou un acheteur. (*qualifying business transfer*)

(9) Paragraph 248(3.2)(d) of the Act is replaced by the following:

(d) presented as an arrangement in respect of which the corporation is to take action for the arrangement to become a FHSA, a registered disability savings plan, a registered education savings plan, a registered retirement income fund, a registered retirement savings plan or a TFSA.

(9) L'alinéa 248(3.2)d) de la même loi est remplacé par ce qui suit :

d) il est présenté à titre d'arrangement à l'égard duquel la société doit faire en sorte qu'il devienne un compte d'épargne libre d'impôt pour l'achat d'une première propriété, un régime enregistré d'épargne-invalidité, un régime enregistré d'épargne-études, un fonds enregistré de revenu de retraite, un régime enregistré d'épargne-retraite ou un compte d'épargne libre d'impôt.

(10) Section 248 of the Act is amended by adding the following after subsection (42):

Substantive CCPC — anti-avoidance

(43) For the purposes of this Act, if it is reasonable to consider that one of the purposes of any *transaction* (as defined in subsection 245(1)), or series of transactions, is to cause a corporation that is resident in Canada (other than a Canadian-controlled private corporation or a corporation that is, in absence of this subsection, a substantive CCPC) to avoid tax otherwise payable under section 123.3 on the corporation's aggregate investment income, the corporation is deemed to be a substantive CCPC from

(10) L'article 248 de la même loi est modifié par adjonction, après le paragraphe (42), de ce qui suit :

SPCC en substance — anti-évitement

(43) Pour l'application de la présente loi, s'il est raisonnable de considérer que l'un des objets d'une *opération* (au sens du paragraphe 245(1)), ou d'une série d'opérations, est de faire en sorte qu'une société qui réside au Canada (autre qu'une société privée sous contrôle canadien ou qu'une société qui est, en l'absence du présent paragraphe, une SPCC en substance) évite l'impôt autrement payable en vertu de l'article 123.3 sur le revenu de placement total de la société, celle-ci est réputée être une

the time that the transaction or series of transactions commenced until the earliest time at which the corporation

(a) becomes a Canadian-controlled private corporation;

(b) is subject to a loss restriction event; or

(c) ceases to be resident in Canada.

(11) Subsections (1) and (9) are deemed to have come into force on April 1, 2023.

(12) Subsections (2), (3) and (8) come into force or are deemed to have come into force on January 1, 2024.

(13) Subsection (4) is deemed to have come into force on March 28, 2023 and, for greater certainty, subsection (4) does not apply in respect of expenses incurred before March 28, 2023.

(14) Subsections (5) and (10) apply to

(a) taxation years of a corporation that begin on or after April 7, 2022, if

(i) the corporation's first taxation year that ends on or after April 7, 2022 ends due to a loss restriction event caused by a sale of all or substantially all of the shares of a corporation to a purchaser before 2023,

(ii) the purchaser deals at arm's length (determined without reference to a right referred to in paragraph 251(5)(b) of the Act) with the corporation immediately prior to the loss restriction event, and

(iii) the sale occurs pursuant to a written purchase and sale agreement entered into before April 7, 2022; and

(b) taxation years that end on or after April 7, 2022, in any other case.

(15) Subsection (6) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsection (6) also applies in respect of a taxation year that begins before, and ends after October 1, 2023 if

SPCC en substance à compter du début de l'opération ou de la série d'opérations jusqu'au jour où la première des éventualités ci-après se produit :

a) la société devient une société privée sous contrôle canadien;

b) la société est assujettie à un fait lié à la restriction de pertes;

c) la société cesse de résider au Canada.

(11) Les paragraphes (1) et (9) sont réputés être entrés en vigueur le 1er avril 2023.

(12) Les paragraphes (2), (3) et (8) entrent en vigueur ou sont réputés être entrés en vigueur le 1er janvier 2024.

(13) Le paragraphe (4) est réputé être entré en vigueur le 28 mars 2023. Il est entendu qu'il ne s'applique pas relativement aux dépenses engagées avant cette date.

(14) Les paragraphes (5) et (10) s'appliquent :

a) aux années d'imposition d'une société commençant à compter du 7 avril 2022 si, à la fois :

(i) la première année d'imposition de la société se terminant à compter du 7 avril 2022 se termine en raison d'un fait lié à la restriction de pertes causé par la vente de la totalité, ou presque, des actions d'une société à un acquéreur avant 2023,

(ii) l'acquéreur n'a pas de lien de dépendance (déterminé compte non tenu d'un droit auquel il est fait référence à l'alinéa 251(5)b) de la même loi) avec la société immédiatement avant le fait lié à la restriction de pertes,

(iii) la vente survient en vertu d'une convention d'achat-vente écrite conclue avant le 7 avril 2022;

b) aux années d'imposition se terminant à compter du 7 avril 2022, dans les autres cas.

(15) Le paragraphe (6) s'applique relativement aux années d'imposition d'un contribuable commençant à compter du 1er octobre 2023. Toutefois, il s'applique aussi relativement à une année d'imposition commençant avant le 1er octobre 2023 et se terminant après cette date si, à la fois :

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.

(16) Subsection (7) is deemed to have come into force on March 28, 2023.

68 (1) Subsection 256(7) of the Act is amended by striking out "and" at the end of paragraph (h), by adding "and" at the end of paragraph (i), and by adding the following after paragraph (i):

(j) if an employee ownership trust controls a qualifying business, control of the qualifying business is deemed not to be acquired solely because of a change in the trustee having ownership or control of the trust's property if the trust remains an employee ownership trust immediately after the change of trustee.

(2) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.

69 (1) The definition *specified provision* in subsection 256.1(1) of the Act is replaced by the following:

specified provision means any of subsections 10(10) and 13(24), paragraph 37(1)(h), subsections 66(11.4) and (11.5), 66.7(10) and (11), 69(11) and 111(4), (5), (5.01), (5.1) and (5.3), paragraphs (j) and (k) of the definition *investment tax credit* in subsection 127(9), subsections 181.1(7) and 190.1(6) and any provision of similar effect. (*dispositions déterminées*)

(2) Subsection (1) applies in respect of taxation years of a taxpayer that begin on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year that begins before, and ends after, October 1, 2023 if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in

a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération ou d'un événement, ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;

b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.

(16) Le paragraphe (7) est réputé être entré en vigueur le 28 mars 2023.

68 (1) Le paragraphe 256(7) de la même loi est modifié par adjonction, après l'alinéa i), de ce qui suit :

j) si une fiducie collective des employés contrôle une entreprise admissible, le contrôle de l'entreprise admissible est réputé ne pas être acquis en raison seulement du remplacement du fiduciaire ayant la propriété ou le contrôle des biens de la fiducie si celle-ci demeure une fiducie collective des employés immédiatement après le remplacement du fiduciaire.

(2) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.

69 (1) La définition de *dispositions déterminées*, au paragraphe 256.1(1) de la même loi, est remplacée par ce qui suit :

dispositions déterminées Les paragraphes 10(10) et 13(24), l'alinéa 37(1)h), les paragraphes 66(11.4) et (11.5), 66.7(10) et (11), 69(11) et 111(4), (5), (5.01), (5.1) et (5.3), les alinéas j) et k) de la définition de *crédit d'impôt à l'investissement* au paragraphe 127(9), les paragraphes 181.1(7) et 190.1(6) et toute disposition ayant un effet similaire. (*specified provision*)

(2) Le paragraphe (1) s'applique relativement aux années d'imposition d'un contribuable commençant après septembre 2023. Toutefois, il s'applique aussi relativement à une année d'imposition commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :

a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération, d'un événement ou d'une série

the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.

70 (1) Section 260 of the Act is amended by adding the following after subsection (6.2):

Subsections 112(2.01) and (2.3) — ordering

(6.3) For the purposes of paragraphs (6.1)(b) and (6.2)(b), the amount of any dividends received by a corporation in respect of which no amount was deductible because of subsection 112(2.3) includes an amount that was not deductible under both subsections 112(2.01) and (2.3).

(2) Subsection (1) applies in respect of dividends received after 2023.

R.S., c. E-15

Excise Tax Act

71 Clause 295(5)(d)(xi.1)(A) of the *Excise Tax Act* is replaced by the following:

(A) the Department of Employment and Social Development, the Department of Health or the Department of Public Works and Government Services, solely for the purpose of the administration or enforcement of the Canadian Dental Care Plan established under the authority of the *Department of Health Act* in respect of dental service for individuals, or

2002, c. 22

Excise Act, 2001

72 Clause 211(6)(e)(xii.1)(A) of the *Excise Act, 2001* is replaced by the following:

(A) the Department of Employment and Social Development, the Department of Health or the Department of Public Works and Government Services, solely for the purpose of the administration or enforcement of the Canadian Dental Care Plan established under the authority of the

d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;

b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.

70 (1) L'article 260 de la même loi est modifié par adjonction, après le paragraphe (6.2), de ce qui suit :

Paragraphes 112(2.01) et (2.3) — ordre

(6.3) Pour l'application des alinéas (6.1)b) et (6.2)b), le montant de dividendes qu'une société reçoit à l'égard duquel aucun montant n'était déductible, par l'effet du paragraphe 112(2.3), inclut un montant qui n'était pas déductible en vertu à la fois des paragraphes 112(2.01) et (2.3).

(2) Le paragraphe (1) s'applique relativement aux dividendes reçus après 2023.

L.R., ch. E-15

Loi sur la taxe d'accise

71 La division 295(5)d)(xi.1)(A) de la *Loi sur la taxe d'accise* est remplacée par ce qui suit :

(A) du ministère de l'Emploi et du Développement social, du ministère de la Santé ou du ministère des Travaux publics et des Services gouvernementaux, mais uniquement en vue de l'application ou de l'exécution du Régime canadien de soins dentaires établi sous le régime de la *Loi sur le ministère de la Santé* relativement aux services de soins dentaires pour les particuliers,

2002, ch. 22

Loi de 2001 sur l'accise

72 La division 211(6)e)(xii.1)(A) de la *Loi de 2001 sur l'accise* est remplacée par ce qui suit :

(A) du ministère de l'Emploi et du Développement social, du ministère de la Santé ou du ministère des Travaux publics et des Services gouvernementaux, mais uniquement en vue de l'application ou de l'exécution du Régime canadien de soins dentaires établi sous le régime de la *Loi*

Department of Health Act in respect of dental service for individuals, or

sur le ministère de la Santé relativement aux services de soins dentaires pour les particuliers,

C.R.C., c. 945

Income Tax Regulations

73 (1) Paragraph 103(7)(a) of the *Income Tax Regulations* is amended by striking out "or" at the end of subparagraph (ii) and by adding the following after subparagraph (iii):

(iv) a contribution that is an *excluded contribution* (as defined in subsection 207.5(1) of the Act); or

(2) Subsection (1) is deemed to have come into force on March 28, 2023.

74 (1) Subsection 204(3) of the Regulations is amended by striking out "or" at the end of paragraph (f), by adding "or" at the end of paragraph (g) and by adding the following after paragraph (g):

(h) governed by a FHSA.

(2) Subsection (1) is deemed to have come into force on April 1, 2023.

75 (1) Subsection 205(3) of the Regulations is amended by deleting the following:

First Home Savings Account (FHSA) Annual Information Return

(2) Subsection 205(3) of the Regulations is amended by adding the following in alphabetical order:

First Home Savings Account Statement	T4FHSA

(3) Subsections (1) and (2) are deemed to have come into force on April 1, 2023.

76 (1) Subsection 205.1(1) of the Regulations is amended by deleting the following:

First Home Savings Account (FHSA) Annual Information Return

(2) Subsection 205.1(1) of the Regulations is amended by adding the following in alphabetical order:

First Home Savings Account Statement	T4FHSA

(3) Subsections (1) and (2) are deemed to have come into force on April 1, 2023.

C.R.C., ch. 945

Règlement de l'impôt sur le revenu

73 (1) L'alinéa 103(7)a) du *Règlement de l'impôt sur le revenu* est modifié par adjonction, après le sous-alinéa (iii), de ce qui suit :

(iv) la cotisation qui est une *cotisation exclue* (au sens du paragraphe 207.5(1) de la Loi);

(2) Le paragraphe (1) est réputé être entré en vigueur le 28 mars 2023.

74 (1) Le paragraphe 204(3) du même règlement est modifié par adjonction, après l'alinéa g), de ce qui suit :

h) régie par un CELIAPP.

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.

75 (1) Le paragraphe 205(3) du même règlement est modifié par suppression de ce qui suit :

Déclaration de renseignements annuelle sur un compte d'épargne libre d'impôt pour l'achat d'une première propriété (CELIAPP)

(2) Le paragraphe 205(3) du même règlement est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

État du compte d'épargne libre d'impôt pour l'achat d'une première propriété	T4FHSA

(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 1er avril 2023.

76 (1) Le paragraphe 205.1(1) du même règlement est modifié par suppression de ce qui suit :

Déclaration de renseignements annuelle sur un compte d'épargne libre d'impôt pour l'achat d'une première propriété (CELIAPP)

(2) Le paragraphe 205.1(1) du même règlement est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

État du compte d'épargne libre d'impôt pour l'achat d'une première propriété	T4FHSA

(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 1er avril 2023.

77 (1) The portion of subsection 209(5) of the Regulations before paragraph (a) is replaced by the following:

(5) A person may provide a Statement of Remuneration Paid (T4) information return, a Tuition and Enrolment Certificate, a First Home Savings Account Statement (T4FHSA) information return, a Statement of Pension, Retirement, Annuity, and Other Income (T4A) information return or a Statement of Investment Income (T5) 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

(2) Subsection (1) is deemed to have come into force on April 1, 2023.

78 (1) Paragraph 304(1)(a) of the Regulations is replaced by the following:

(a) an annuity contract that is, or is issued pursuant to, an arrangement described in any of paragraphs 148(1)(a) to (b.4) and (d) of the Act;

(2) Subsection (1) is deemed to have come into force on April 1, 2023.

79 (1) Paragraph 1100(1)(a) of the Regulations is amended by striking out "and" at the end of subparagraph (xli) and by adding the following after subparagraph (xlii):

(xliii) of Class 57, 8 per cent,

(xliv) of Class 58, 20 per cent,

(xlv) of Class 59, 100 per cent, and

(xlvi) of Class 60, 30 per cent,

(2) Paragraph (a) of the description of A in subsection 1100(2) of the Regulations is replaced by the following:

(a) if the property is not included in paragraph (1)(v) or in any of Classes 12, 13, 14, 15, 43.1, 43.2, 53, 54, 55, 56, 59 or in Class 43 in the circumstances described in paragraph (d),

(3) Subsections (1) and (2) apply to property acquired after 2021.

77 (1) Le passage du paragraphe 209(5) du même règlement précédant l'alinéa a) est remplacé par ce qui suit :

(5) La personne qui est tenue de transmettre à un contribuable deux copies de la déclaration de renseignements intitulée État de la rémunération payée (T4), du Certificat pour frais de scolarité et d'inscription, une déclaration de renseignements intitulée État du compte d'épargne libre d'impôt pour l'achat d'une première propriété (T4FHSA), une déclaration de renseignements intitulée État du revenu de pension, de retraite, de rente ou d'autres sources (T4A) ou une déclaration de renseignements intitulée État des revenus de placements (T5), comme le prévoit le paragraphe (1), peut plutôt lui en fournir une copie par voie électronique au plus tard à la date où elle doit produire la déclaration au ministre, sauf si, selon le cas :

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.

78 (1) L'alinéa 304(1)a) du même règlement est remplacé par ce qui suit :

a) le contrat de rente qui est un arrangement visé à l'un des alinéas 148(1)a) à b.4) et d) de la Loi ou qui est émis aux termes d'un tel arrangement;

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.

79 (1) L'alinéa 1100(1)a) du même règlement est modifié par adjonction, après le sous-alinéa (xlii), de ce qui suit :

(xliii) de la catégorie 57, 8 pour cent,

(xliv) de la catégorie 58, 20 pour cent,

(xlv) de la catégorie 59, 100 pour cent,

(xlvi) de la catégorie 60, 30 pour cent,

(2) L'alinéa a) de l'élément A de la première formule figurant au paragraphe 1100(2) du même règlement est remplacé par ce qui suit :

a) si le bien n'est pas compris à l'alinéa (1)v) ou dans l'une des catégories 12, 13, 14, 15, 43.1, 43.2, 53, 54, 55, 56 et 59 ou dans la catégorie 43 dans les circonstances prévues à l'alinéa d) :

(3) Les paragraphes (1) et (2) s'appliquent aux biens acquis après 2021.

80 (1) The definition *governing plan* in subsection 4901(2) of the Regulations is replaced by the following:

governing plan means a deferred profit sharing plan or a revoked plan, a FHSA, a registered disability savings plan, a registered education savings plan, a registered retirement income fund, a registered retirement savings plan or a TFSA; (*régime d'encadrement*)

(2) Subsection (1) is deemed to have come into force on April 1, 2023.

81 (1) Clause (a)(i)(I) of the definition *qualified zero-emission technology manufacturing activities* in section 5202 of the Regulations is replaced by the following:

(I) equipment that is a component of property included in clauses (A) to (H) or (L) to (O), if such equipment is purpose-built or designed exclusively to form an integral part of that property,

(2) Subparagraph (a)(i) of the definition *qualified zero-emission technology manufacturing activities* in section 5202 of the Regulations is amended by striking out "and" at the end of clause (J), by striking out "and" at the end of clause (K) and by adding the following after clause (K):

(L) nuclear energy equipment,

(M) heavy water used for nuclear energy generation,

(N) nuclear fuels used for nuclear energy generation, and

(O) nuclear fuel rods, and

(3) Subsections (1) and (2) apply to taxation years that begin after 2023.

82 (1) The portion of subsection 5903(5) of the Regulations before paragraph (a) is replaced by the following:

(5) For the purposes of this section, section 5903.1 and section 18.2 of the Act,

(2) Subsection (1) applies in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer beginning on or after October 1, 2023. However, subsection (1) also applies in respect of a taxation year of a foreign

80 (1) La définition de *régime d'encadrement*, au paragraphe 4901(2) du même règlement, est remplacée par ce qui suit :

régime d'encadrement Régime de participation différée aux bénéfices ou régime dont l'agrément est retiré, CELIAPP, régime enregistré d'épargne-invalidité, régime enregistré d'épargne-études, fonds enregistré de revenu de retraite, régime enregistré d'épargne-retraite ou compte d'épargne libre d'impôt. (*governing plan*)

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.

81 (1) La division a)(i)(I) de la définition de *activités admissibles de fabrication de technologies à zéro émission*, à l'article 5202 du même règlement, est remplacée par ce qui suit :

(I) de matériel constituant un composant de biens visés aux divisions (A) à (H) ou (L) à (O), si celui-ci est conçu à une fin particulière ou exclusivement pour faire partie intégrante de ce bien,

(2) Le sous-alinéa a)(i) de la définition de *activités admissibles de fabrication de technologies à zéro émission*, à l'article 5202 du même règlement, est modifié par adjonction, après la division (K), de ce qui suit :

(L) de matériel lié à l'énergie nucléaire,

(M) d'eau lourde servant à la production d'énergie nucléaire,

(N) de combustibles nucléaires servant à la production d'énergie nucléaire,

(O) de barres de combustible nucléaire,

(3) Les paragraphes (1) et (2) s'appliquent aux années d'imposition commençant après 2023.

82 (1) Le passage du paragraphe 5903(5) du même règlement précédant l'alinéa a) est remplacé par ce qui suit :

(5) Les règles ci-après s'appliquent au présent article, à l'article 5903.1 et à l'article 18.2 de la Loi :

(2) Le paragraphe (1) s'applique relativement à une année d'imposition d'une société étrangère affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant après septembre 2023. Toutefois, il

affiliate of a taxpayer that ends in a taxation year of the taxpayer that begins before, and ends after, October 1, 2023 if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.

s'applique aussi relativement à une année d'imposition d'une société affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :

a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération ou d'un événement, ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;

b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.

83 (1) Subparagraph (a)(iii) of the definition *earnings* in subsection 5907(1) of the Regulations is replaced by the following:

(iii) in any other case, the amount that would be the income from the active business for the year under Part I of the Act if the business were carried on in Canada, the affiliate were resident in Canada and the Act were read without reference to subsections 12.7(3), 18(4), 18.4(4), 80(3) to (12), (15) and (17) and 80.01(5) to (11) and sections 80.02 to 80.04,

83 (1) Le sous-alinéa a)(iii) de la définition de *gains*, au paragraphe 5907(1) du même règlement, est remplacé par ce qui suit :

(iii) dans les autres cas, le montant qui représenterait le revenu tiré de l'entreprise pour l'année en vertu de la partie I de la Loi si la société affiliée résidait au Canada, l'entreprise était exploitée au Canada et s'il n'était pas tenu compte des paragraphes 12.7(3), 18(4), 18.4(4), 80(3) à (12), (15) et (17) et 80.01(5) à (11) ni des articles 80.02 à 80.04 de la Loi;

(2) Subparagraph (a)(iii) of the definition *earnings* in subsection 5907(1) of the Regulations, as enacted by subsection (1), is replaced by the following:

(iii) in any other case, the amount that would be the income from the active business for the year under Part I of the Act if the business were carried on in Canada, the affiliate were resident in Canada and the Act were read without reference to subsections 12.7(3), 18(4), 18.2(2), 18.4(4), 80(3) to (12), (15) and (17) and 80.01(5) to (11) and sections 80.02 to 80.04,

(2) Le sous-alinéa a)(iii) de la définition de *gains*, au paragraphe 5907(1) du même règlement, édicté par le paragraphe (1), est remplacé par ce qui suit :

(iii) dans les autres cas, le montant qui représenterait le revenu tiré de l'entreprise pour l'année en vertu de la partie I de la Loi si la société affiliée résidait au Canada, l'entreprise était exploitée au Canada et s'il n'était pas tenu compte des paragraphes 12.7(3), 18(4), 18.2(2), 18.4(4), 80(3) à (12), (15) et (17) et 80.01(5) à (11) ni des articles 80.02 à 80.04 de la Loi;

(3) Subparagraph (iii) of the description of A in the definition *exempt surplus* in subsection 5907(1) of the Regulations is replaced by the following:

(iii) the portion of any dividend received in the period and before the particular time by the subject affiliate from another foreign affiliate of the

(3) Le sous-alinéa (iii) de l'élément A de la formule figurant à la définition de *surplus exonéré*, au paragraphe 5907(1) du même règlement, est remplacé par ce qui suit :

(iii) la fraction d'un dividende que la société affiliée déterminée a reçu, au cours de la période et avant le moment donné, d'une autre société étrangère

corporation (including, for greater certainty, any dividend deemed by subsection 5905(7) to have been received by the subject affiliate) that

(A) was prescribed by paragraph 5900(1)(a) to have been paid out of the payer affiliate's exempt surplus in respect of the corporation,

(B) does not give rise to the application of subsection 12.7(3) in computing the foreign accrual property income of a foreign affiliate of a taxpayer, and

(C) would not be deemed under subsection 113(5) of the Act not to be a dividend received by the subject affiliate on a share of the capital stock of the payer affiliate for the purposes of section 113 of the Act, if the subject affiliate were a corporation resident in Canada,

(4) Subparagraph (iv) of the description of A in the definition *hybrid surplus* in subsection 5907(1) of the Regulations is replaced by the following:

(iv) the portion of any dividend received in the period and before the particular time by the subject affiliate from another foreign affiliate of the corporation (including, for greater certainty, any dividend deemed under subsection 5905(7) to have been received by the subject affiliate) that

(A) was prescribed under paragraph 5900(1)(a.1) to have been paid out of the payer affiliate's hybrid surplus in respect of the corporation,

(B) does not give rise to the application of subsection 12.7(3) in computing the foreign accrual property income of a foreign affiliate of a taxpayer, and

(C) would not be deemed under subsection 113(5) of the Act not to be a dividend received by the subject affiliate on a share of the capital stock of the payer affiliate for the purposes of section 113 of the Act, if the subject affiliate were a corporation resident in Canada, or

(5) Paragraph (b) of the definition *net earnings* in subsection 5907(1) of the Regulations is replaced by the following:

(b) in respect of foreign accrual property income is the amount that would be its foreign accrual property income for the year, if the formula in the definition

affiliée de la société — y compris tout dividende qu'elle est réputée avoir reçu en vertu du paragraphe 5905(7) — qui, à la fois :

(A) est reputée, selon l'alinéa 5900(1)a), avoir été prélevée sur le surplus exonéré de l'autre société affiliée à l'égard de la société,

(B) ne donne pas lieu à l'application du paragraphe 12.7(3) dans le calcul du revenu étranger accumulé, tiré de biens d'une société étrangère affiliée d'un contribuable,

(C) ne serait pas réputée en vertu du paragraphe 113(5) de la Loi ne pas être un dividende que la société affilié déterminée a reçu sur une action du capital-actions de la société affiliée payeuse pour l'application de l'article 113 de la Loi, si la société affiliée déterminée était une société résidant au Canada,

(4) Le sous-alinéa (iv) de l'élément A de la formule figurant à l'alinéa c) de la définition de *surplus hybride,* au paragraphe 5907(1) du même règlement, est remplacé par ce qui suit :

(iv) la partie de tout dividende que la société affiliée déterminée a reçu, au cours de la période et avant le moment donné, d'une autre société étrangère affiliée de la société (y compris tout dividende qu'elle est réputée avoir reçu en vertu du paragraphe 5905(7)) qui, à la fois :

(A) selon l'alinéa 5900(1)a.1), est considérée comme ayant été versée sur le surplus hybride de l'autre société affiliée relativement à la société,

(B) ne donne pas lieu à l'application du paragraphe 12.7(3) dans le calcul du revenu étranger accumulé, tiré de biens d'une société étrangère affiliée d'un contribuable,

(C) ne serait pas réputée en vertu du paragraphe 113(5) de la Loi ne pas être un dividende que la société affiliée déterminée a reçu sur une action du capital-actions de la société affiliée payeuse pour l'application de l'article 113 de la Loi, si la société affiliée déterminée était une société résidant au Canada,

(5) L'alinéa b) de la définition de *gains nets*, au paragraphe 5907(1) du même règlement, est remplacé par ce qui suit :

b) s'agissant des gains nets relatifs au revenu étranger accumulé, tiré de biens, le montant qui représenterait le revenu étranger accumulé, tiré de biens de la société

foreign accrual property income in subsection 95(1) of the Act were read without reference to F and F.1 in that formula and the amount determined for E in that formula were the amount determined under paragraph (a) of the description of E in that formula and the Act were read without regard to its clause 95(2)(f.11)(ii)(D), minus the portion of any income or profits tax paid to the government of a country for the year by the affiliate that can reasonably be regarded as tax in respect of that income,

affiliée pour l'année s'il n'était pas tenu compte des éléments F et F.1 de la formule figurant à la définition de *revenu étranger accumulé, tiré de biens* au paragraphe 95(1) de la Loi et si la valeur de l'élément E de cette formule correspondait à la somme déterminée selon l'alinéa a) de l'élément E de cette formule, et si la Loi s'appliquait compte non tenu de sa division 95(2)f.11)(ii)(D), moins la fraction de l'impôt sur le revenu ou sur les bénéfices qu'elle a payé pour l'année au gouvernement d'un pays qu'il est raisonnable de considérer comme un impôt sur ce revenu;

(6) Subclause (b)(i)(A)(I) of the definition *net loss* in subsection 5907(1) of the Regulations is replaced by the following:

(I) the amount that would be determined for D in the formula in the definition *foreign accrual property income* in subsection 95(1) of the Act for the year, if the Act were read without regard to its clauses 95(2)(f.11)(ii)(D) and (E),

(6) La subdivision b)(i)(A)(I) de la définition de *perte nette*, au paragraphe 5907(1) du même règlement, est remplacée par ce qui suit :

(I) la valeur de l'élément D de la formule figurant à la définition de *revenu étranger accumulé, tiré de biens* au paragraphe 95(1) de la Loi pour l'année, si la Loi s'appliquait compte non tenu de ses divisions 95(2)f.11)(ii)(D) et (E),

(7) Subparagraph (iii) of the description of A in the definition *taxable surplus* in subsection 5907(1) of the Regulations is replaced by the following:

(iii) the portion of any dividend received in the period and before the particular time by the subject affiliate from another foreign affiliate of the corporation (including, for greater certainty, any dividend deemed by subsection 5905(7) to have been received by the subject affiliate) that

(A) was prescribed by paragraph 5900(1)(b) to have been paid out of the payer affiliate's taxable surplus in respect of the corporation,

(B) does not give rise to the application of subsection 12.7(3) in computing the foreign accrual property income of a foreign affiliate of a taxpayer, and

(C) would not be deemed under subsection 113(5) of the Act not to be a dividend received by the subject affiliate on a share of the capital stock of the payer affiliate for the purposes of section 113 of the Act, if the subject affiliate were a corporation resident in Canada,

(7) Le sous-alinéa (iii) de l'élément A de la formule figurant à la définition de *surplus imposable*, au paragraphe 5907(1) du même règlement, est remplacé par ce qui suit :

(iii) la fraction d'un dividende que la société affiliée déterminée a reçu, au cours de la période et avant le moment donné, d'une autre société étrangère affiliée de la société — y compris tout dividende qu'elle est réputée avoir reçu en vertu du paragraphe 5905(7) — qui, à la fois :

(A) est réputée, selon l'alinéa 5900(1)b), avoir été prélevée sur le surplus imposable de l'autre société affiliée à l'égard de la société,

(B) ne donne pas lieu à l'application du paragraphe 12.7(3) dans le calcul du revenu étranger accumulé, tiré de biens d'une société étrangère affiliée d'un contribuable,

(C) ne serait pas réputée en vertu du paragraphe 113(5) de la Loi ne pas être un dividende que la société affiliée déterminée a reçu sur une action du capital-actions de la société affiliée payeuse pour l'application de l'article 113 de la Loi, si la société affiliée déterminée était une société résidant au Canada,

(8) Subsection (1) applies in respect of payments arising on or after July 1, 2022.

(8) Le paragraphe (1) s'applique relativement aux paiements se produisant après le 30 juin 2022.

(9) Subsections (2), (5) and (6) apply in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer beginning on or after October 1, 2023. However, subsections (2), (5) and (6) also apply in respect of a taxation year of a foreign affiliate of a taxpayer that ends in a taxation year of the taxpayer that begins before, and ends after, October 1, 2023 if

(a) any of the taxpayer's three immediately preceding taxation years was, because of a transaction or event or a series of transactions or events, shorter than it would have been in the absence of that transaction, event or series; and

(b) it can reasonably be considered that one of the purposes of the transaction, event or series was to defer the application of paragraph 12(1)(l.2) of the Act, as enacted by subsection 2(1), or the application of section 18.2 or 18.21 of the Act, as enacted by subsection 7(1), to the taxpayer.

(9) Les paragraphes (2), (5) et (6) s'appliquent relativement à une année d'imposition d'une société étrangère affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant après septembre 2023. Toutefois, ils s'appliquent aussi relativement à une année d'imposition d'une société affiliée d'un contribuable qui se termine dans une année d'imposition du contribuable commençant avant, et se terminant après, le 1er octobre 2023 si, à la fois :

a) l'une des trois années d'imposition précédentes du contribuable était, en raison d'une opération ou d'un événement, ou d'une série d'opérations ou d'événements, plus courte qu'elle ne l'aurait été en l'absence de cette opération, de cet événement ou de cette série;

b) il est raisonnable de considérer que l'un des objets de l'opération, de l'événement ou de la série était de reporter l'application de l'alinéa 12(1)l.2) de la même loi, édicté par le paragraphe 2(1), ou l'application des articles 18.2 ou 18.21 de la même loi, édictés par le paragraphe 7(1), au contribuable.

(10) Subsections (3), (4) and (7) apply in respect of any dividend received on or after July 1, 2024.

(10) Les paragraphes (3), (4) et (7) s'appliquent relativement à tout dividende reçu après le 30 juin 2024.

84 (1) Section 9005 of the Regulations is amended by striking out "and" at the end of paragraph (n), by adding "and" at the end of paragraph (o) and by adding the following after paragraph (o):

(p) a FHSA.

(2) Subsection (1) is deemed to have come into force on April 1, 2023.

84 (1) L'article 9005 du même règlement est modifié par adjonction, après l'alinéa o), de ce qui suit :

p) un CELIAPP.

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.

85 (1) Section 9006 of the Regulations is amended by striking out "and" at the end of paragraph (j), by adding "and" at the end of paragraph (k) and by adding the following after paragraph (k):

(l) a FHSA.

(2) Subsection (1) is deemed to have come into force on April 1, 2023.

85 (1) L'article 9006 du même règlement est modifié par adjonction, après l'alinéa k), de ce qui suit :

l) un CELIAPP.

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er avril 2023.

86 (1) The portion of Class 8 in Schedule II to the Regulations after the heading "(20 per cent)" and before paragraph (a) is replaced by the following:

86 (1) Le passage de la catégorie 8 de l'annexe II du même règlement suivant l'intertitre « (20 pour cent) » et précédant l'alinéa a) est remplacé par ce qui suit :

Property not included in Class 1, 2, 7, 9, 11, 17, 30, 57 or 58 that is

(2) Subsection (1) is deemed to have come into force on January 1, 2022.

87 (1) The portion of Class 17 in Schedule II to the Regulations after the heading "(8 per cent)" and before paragraph (a) is replaced by the following:

Property that would otherwise be included in another class in this Schedule (other than property included in Class 57 or 58) that is

(2) Subsection (1) is deemed to have come into force on January 1, 2022.

88 (1) The portion of Class 41 in Schedule II to the Regulations after the heading "Class 41" and before paragraph (a) is replaced by the following:

Property (other than property included in Class 41.1, 41.2, 57 or 58)

(2) Subsection (1) is deemed to have come into force on January 1, 2022.

89 (1) The portion of Class 41.1 in Schedule II to the Regulations after the heading "Class 41.1" and before paragraph (a) is replaced by the following:

Oil sands property (other than specified oil sands property or property included in Class 57 or 58) that

(2) Subsection (1) is deemed to have come into force on January 1, 2022.

90 (1) The portion of Class 41.2 in Schedule II to the Regulations after the heading "Class 41.2" and before paragraph (a) is replaced by the following:

Property, other than specified oil sands property, eligible mine development property or property included in Class 57 or 58,

(2) Subsection (1) is deemed to have come into force on January 1, 2022.

91 (1) The portion of Class 43 in Schedule II to the Regulations after the heading "Class 43" and before paragraph (a) is replaced by the following:

Les biens non compris dans les catégories 1, 2, 7, 9, 11, 17, 30, 57 ou 58 qui sont constitués par :

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.

87 (1) Le passage de la catégorie 17 de l'annexe II du même règlement suivant l'intertitre « (8 pour cent) » et précédant l'alinéa a) est remplacé par ce qui suit :

Les biens qui autrement seraient compris dans une autre catégorie de la présente annexe (à l'exclusion des biens compris dans les catégories 57 ou 58) et qui sont constitués par :

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.

88 (1) Le passage de la catégorie 41 de l'annexe II du même règlement qui suivant l'intertitre « Catégorie 41 » et précédant l'alinéa a) est remplacé par ce qui suit :

Les biens (sauf ceux compris dans les catégories 41.1, 41.2, 57 ou 58) qui :

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.

89 (1) Le passage de la catégorie 41.1 de l'annexe II du même règlement qui suivant l'intertitre « Catégorie 41.1 » et précédant l'alinéa a) est remplacé par ce qui suit :

Les biens de sables bitumineux (sauf les biens de sables bitumineux déterminés et les biens compris dans les catégories 57 ou 58) qui, selon le cas :

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.

90 (1) Le passage de la catégorie 41.2 de l'annexe II du même règlement suivant l'intertitre « Catégorie 41.2 » et précédant l'alinéa a) est remplacé par ce qui suit :

Les biens (sauf les biens de sables bitumineux déterminés, les biens admissibles liés à l'aménagement d'une mine et les biens compris dans les catégories 57 ou 58) :

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.

91 (1) Le passage de la catégorie 43 de l'annexe II du même règlement suivant l'intertitre « Catégorie 43 » et précédant l'alinéa a) est remplacé par ce qui suit :

Property acquired after February 25, 1992 (other than property included in Class 57 or 58) that

(2) Subsection (1) is deemed to have come into force on January 1, 2022.

92 (1) The portion of clause (d)(xviii)(A) of Class 43.1 in Schedule II to the Regulations before subclause (I) is replaced by the following:

(A) is used by the taxpayer, or by a lessee of the taxpayer, primarily for the purpose of storing and discharging electrical energy

(2) Subclause (d)(xviii)(B)(I) of Class 43.1 in Schedule II to the Regulations is replaced by the following:

(I) the electrical energy to be stored and discharged is generated from other property that is described in paragraph (c) or in any other subparagraph of this paragraph, or

(3) The portion of subparagraph (d)(xix) of Class 43.1 in Schedule II to the Regulations before clause (A) is replaced by the following:

(xix) a pumped hydroelectric energy storage installation all or substantially all of the use of which by the taxpayer, or by a lessee of the taxpayer, is to store and discharge electrical energy including reversing turbines, transmission equipment, dams, reservoirs and related structures, and that meets the condition in either subclause (d)(xviii)(B)(I) or (II) in this Class, but not including

(4) Subparagraph (e)(i) of Class 43.1 in Schedule II to the Regulations is replaced by the following:

(i) is situated in Canada, including property described in subparagraph (d)(v) or (d)(xiv) that is installed in the exclusive economic zone of Canada,

93 (1) The portion of Class 49 in Schedule II to the Regulations after the heading "Class 49" and before paragraph (a) is replaced by the following:

Property (other than property included in Class 57 or 58) that is a pipeline, including control and monitoring devices, valves and other equipment ancillary to the pipeline, that

Les biens acquis après le 25 février 1992 (à l'exclusion des biens compris dans les catégories 57 ou 58) qui, selon le cas :

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.

92 (1) Le passage de la division d)(xviii)(A) de la catégorie 43.1 de l'annexe II du même règlement, précédant la subdivision (I), est remplacé par ce qui suit :

(A) ils sont utilisés par le contribuable, ou par son preneur, principalement aux fins de stockage et d'émission d'énergie électrique et :

(2) La subdivision d)(xviii)(B)(I) de la catégorie 43.1 de l'annexe II du même règlement est remplacée par ce qui suit :

(I) l'énergie électrique à être stockée et émise est produite à partir d'autres biens visés à l'alinéa c) ou à tout autre sous-alinéa du présent alinéa,

(3) Le passage du sous-alinéa d)(xix) de la catégorie 43.1 de l'annexe II du même règlement, précédant la division (A), est remplacé par ce qui suit :

(xix) une installation d'accumulation d'énergie hydroélectrique par pompage dont la totalité, ou presque, de l'utilisation par le contribuable, ou par son preneur, est destinée au stockage et à l'émission d'énergie électrique, y compris les turbines réversibles, l'équipement de transmission, les barrages, les réservoirs et les structures connexes, et qui remplit les conditions énoncées aux subdivisions d)(xviii)(B)(I) ou (II) dans la présente catégorie, à l'exclusion :

(4) Le sous-alinéa e)(i) de la catégorie 43.1 de l'annexe II du même règlement est remplacé par ce qui suit :

(i) ils sont situés au Canada, y compris un bien visé aux sous-alinéas d)(v) ou d)(xiv) qui est installé dans la zone économique exclusive du Canada,

93 (1) Le passage de la catégorie 49 de l'annexe II du même règlement suivant l'intertitre « Catégorie 49 » et précédant l'alinéa a) est remplacé par ce qui suit :

Les biens (à l'exclusion des biens compris dans les catégories 57 ou 58) qui constituent un pipeline, y compris les appareils de contrôle et de surveillance, les valves et les autres appareils auxiliaires du pipeline qui, selon le cas :

(2) Subsection (1) is deemed to have come into force on January 1, 2022.

94 (1) The portion of Class 53 in Schedule II to the Regulations after the heading "Class 53" and before paragraph (a) is replaced by the following:

Property acquired after 2015 and before 2026 (other than property included in Class 57 or 58) that is not included in Class 29, but that would otherwise be included in that class if

(2) Subsection (1) is deemed to have come into force on January 1, 2022.

95 (1) Schedule II to the Regulations is amended by adding the following after Class 56:

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.

94 (1) Le passage de la catégorie 53 de l'annexe II du même règlement suivant l'intertitre « Catégorie 53 » et précédant l'alinéa a) est remplacé par ce qui suit :

Les biens acquis après 2015 et avant 2026 (à l'exclusion des biens compris dans les catégories 57 ou 58) qui ne sont pas compris dans la catégorie 29, mais qui y seraient compris si, à la fois :

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.

95 (1) L'annexe II du même règlement est modifiée par adjonction, après la catégorie 56, de ce qui suit :

CLASS 57

Property that is part of a CCUS project of a taxpayer and that is

(a) equipment that is not expected to be used for hydrogen production, natural gas processing or acid gas injection and that

(i) is not oxygen production equipment and is to be used solely for capturing carbon dioxide

(A) that would otherwise be released into the atmosphere, or

(B) directly from the ambient air,

(ii) prepares or compresses captured carbon for transportation,

(iii) generates or distributes electrical energy, heat energy or a combination of electrical and heat energy, that directly and solely supports a qualified CCUS project, unless the equipment uses fossil fuels and emits carbon dioxide that is not subject to capture by a qualified CCUS project, and for greater certainty, not including equipment that supports the qualified CCUS project indirectly by way of an electrical utility grid or distribution equipment that expands the capacity of existing distribution equipment that supports the qualified CCUS project,

(iv) is transmission equipment that solely supports a qualified CCUS project by directly transmitting electrical energy from electrical generation equipment described in subparagraph (a)(iii) to the qualified CCUS project, or

(v) delivers, collects, recovers, treats or recirculates water, or a combination of any of those activities, that solely supports a qualified CCUS project;

(b) equipment that is to be used solely for transportation of captured carbon, including equipment used for the transportation system safety and integrity;

CATÉGORIE 57

Les biens compris dans un projet de CUSC d'un contribuable et qui constituent :

a) du matériel qui ne devrait pas servir à la production d'hydrogène, à la transformation du gaz naturel ou à l'injection de gaz acide et qui, selon le cas :

(i) n'est pas du matériel de production d'oxygène et doit servir uniquement au captage du dioxyde de carbone, selon le cas :

(A) qui serait relâché par ailleurs dans l'atmosphère,

(B) directement de l'air ambiant,

(ii) prépare ou comprime le carbone capté en vue du transport,

(iii) produit ou distribue de l'énergie électrique, de l'énergie thermique, ou une combinaison d'énergie électrique et thermique, directement et uniquement à l'appui d'un projet de CUSC admissible, sauf si le matériel utilise des combustibles fossiles et émet du dioxyde de carbone non soumis au captage au moyen d'un projet de CUSC admissible, étant entendu que le matériel qui appuie indirectement le projet de CUSC admissible, à titre de réseau électrique, ou le matériel de distribution qui accroît la capacité du matériel existant à l'appui du projet de CUSC admissible est exclu,

(iv) constitue du matériel de transmission qui est uniquement à l'appui d'un projet de CUSC admissible en transmettant directement de l'énergie électrique à partir de matériel générateur d'électricité visé au sous-alinéa a)(iii) au projet de CUSC admissible,

(v) distribue, recueille, récupère, traite ou recircule l'eau, ou une combinaison de ces activités, uniquement à l'appui d'un projet de CUSC admissible;

(c) equipment that is to be used solely for storage of captured carbon in a geological formation, including equipment used for the storage system safety and integrity, but not including equipment used for enhanced oil recovery;

(d) property that is physically and functionally integrated with the equipment described in any of paragraphs (a) to (c) (for greater certainty, excluding construction equipment, furniture, office equipment and vehicles) and that is ancillary equipment used solely to support the functioning of equipment described in any of paragraphs (a) to (c) within a CCUS process as part of

(i) an electrical system,

(ii) a fuel supply system,

(iii) a liquid delivery and distribution system,

(iv) a cooling system,

(v) a process material storage and handling and distribution system,

(vi) a process venting system,

(vii) a process waste management system, or

(viii) a utility air or nitrogen distribution system;

(e) equipment used for system safety and integrity or as part of a control or monitoring system solely to support the equipment described in any of paragraphs (a) to (d); or

(f) a building or other structure all or substantially all of which is used, or to be used, for the installation or operation of equipment described in any of paragraphs (a) to (e); or

(g) property that is used solely to

(i) convert another property that would not otherwise be described in any of paragraphs (a) to (f) if the conversion causes the other property to satisfy the description in any of paragraphs (a) to (f), or

(ii) refurbish property described in any of paragraphs (a) to (f) that is part of a CCUS project of the taxpayer.

b) du matériel qui ne servira qu'au transport du carbone capté, notamment du matériel utilisé pour la sécurité et l'intégrité du système de transport;

c) du matériel qui ne servira qu'au stockage du carbone capté dans une formation géologique, notamment du matériel utilisé pour la sécurité et l'intégrité du système de stockage, à l'exclusion du matériel servant à la récupération assistée du pétrole;

d) un bien physiquement et fonctionnellement intégré au matériel visé à l'un des alinéas a) à c) (à l'exclusion du matériel de construction, du mobilier, de l'équipement de bureau et des véhicules) et qui est du matériel auxiliaire qui ne sert qu'à soutenir le matériel visé à l'un des alinéas a) à c) dans l'exécution de ses tâches fonctionnelles dans un processus de CUSC dans le cadre :

(i) d'un système électrique,

(ii) d'un système d'alimentation en carburant,

(iii) d'un système de livraison et de distribution de liquide,

(iv) d'un système de refroidissement,

(v) d'un système de stockage, de manutention et de distribution des matériaux de processus,

(vi) d'un système de ventilation de procédés,

(vii) d'un système de gestion des déchets de procédés,

(viii) d'un réseau de distribution d'air utilitaire ou d'azote;

e) du matériel ne servant qu'à soutenir le matériel visé à l'un des alinéas a) à d) dans le cadre d'un système de contrôle, de surveillance ou de sécurité ou utilisé pour la sécurité et l'intégrité du système;

f) un bâtiment ou une autre structure dont la totalité, ou la presque totalité, sert ou servira à l'installation ou à l'opération du matériel visé à l'un des alinéas a) à e);

g) un bien qui servira uniquement à :

(i) convertir un autre bien qui ne serait pas par ailleurs visé à l'un des alinéas a) à f) si la conversion fait en sorte que l'autre bien corresponde à l'un des alinéas a) à f),

(ii) remettre en état un bien visé à l'un des alinéas a) à f) qui est compris dans un projet de CUSC du contribuable.

CLASS 58

Property that is part of a CCUS project of a taxpayer, and that is

(a) equipment to be used solely for using captured carbon in industrial production (including for enhanced oil recovery);

(b) property that is physically and functionally integrated with the equipment described in paragraph (a) (for greater certainty, excluding construction

CATÉGORIE 58

Un bien qui fait partie d'un projet de CUSC d'un contribuable et qui constitue, selon le cas :

a) du matériel qui ne servira qu'à l'utilisation du carbone capté dans la production industrielle (y compris pour la récupération assistée du pétrole);

b) un bien physiquement et fonctionnellement intégré au matériel visé à l'alinéa a) (à l'exclusion du matériel de construction, du mobilier, de l'équipement de

equipment, furniture, office equipment and vehicles) and that is ancillary equipment used solely to support the functioning of equipment described in paragraph (a) within a CCUS process as part of

(i) an electrical system,

(ii) a fuel supply system,

(iii) a liquid delivery and distribution system,

(iv) a cooling system,

(v) a process material storage and handling and distribution system,

(vi) a process venting system,

(vii) a process waste management system, or

(viii) a utility air or nitrogen distribution system;

(c) equipment used as part of a control, monitoring or safety system solely to support the equipment described in paragraph (a) or (b);

(d) a building or other structure all or substantially all of which is used, or to be used, for the installation or operation of equipment described in any of paragraphs (a) to (c); or

(e) property that is used solely to

(i) convert another property that would not otherwise be described in any of paragraphs (a) to (d) if the conversion causes the other property to satisfy the description in any of paragraphs (a) to (d), or

(ii) refurbish property described in any of paragraphs (a) to (d) that is part of a CCUS project of the taxpayer.

bureau et des véhicules) et qui est du matériel auxiliaire qui ne sert qu'à soutenir le matériel visé à l'alinéa a) dans l'exécution de ses tâches fonctionnelles dans un processus de CUSC dans le cadre :

(i) d'un système électrique,

(ii) d'un système d'alimentation en carburant,

(iii) d'un système de livraison et de distribution de liquide,

(iv) d'un système de refroidissement,

(v) d'un système de stockage, de manutention et de distribution des matériaux de processus,

(vi) d'un système de ventilation de procédés,

(vii) d'un système de gestion des déchets de procédés,

(viii) d'un réseau de distribution d'air utilitaire ou d'azote;

c) du matériel ne servant qu'à soutenir le matériel visé aux alinéas a) ou b) dans le cadre d'un système de contrôle, de surveillance ou de sécurité;

d) un bâtiment ou une autre structure dont la totalité, ou la presque totalité, sert ou servira à l'installation ou à l'opération du matériel visé à l'un des alinéas a) à c);

e) un bien qui servira uniquement à :

(i) convertir un autre bien qui ne serait pas par ailleurs visé à l'un des alinéas a) à d) si la conversion fait en sorte que l'autre bien corresponde à l'un des alinéas a) à d),

(ii) remettre en état un bien visé à l'un des alinéas a) à d) qui fait partie d'un projet de CUSC du contribuable.

CLASS 59

Intangible property (including property deemed to have been acquired under subsection 13(7.6) of the Act) that is not included in any other class and that is

(a) acquired for the purpose of determining the existence, location, extent or quality of a geological formation to permanently store captured carbon (other than for enhanced oil recovery) in Canada, including property acquired as a result of undertaking environmental studies or community consultations (including studies or consultations that are undertaken to obtain a right, licence or privilege for the purpose of determining the existence, location, extent or quality of a geological formation to permanently store captured carbon (other than for enhanced oil recovery)); and

(b) not acquired for the purpose of drilling or completing an oil or gas well or in building a temporary access road to, or preparing a site in respect of, any such well.

CATÉGORIE 59

Un bien intangible (y compris les biens réputés avoir été acquis en vertu du paragraphe 13(7.6) de la Loi) qui n'est pas compris dans toute autre catégorie, et qui, à la fois :

a) est acquis en vue de déterminer l'existence, l'emplacement, l'étendue ou la qualité d'une formation géologique afin de stocker en permanence le carbone capté (sauf pour la récupération assistée du pétrole) au Canada, y compris un bien acquis après avoir engagé des études environnementales ou des consultations auprès des collectivités (y compris les études ou les consultations qui sont engagées en vue d'obtenir un droit, une licence ou un privilège dans le but de déterminer l'existence, l'emplacement, l'étendue ou la qualité d'une formation géologique afin de stocker en permanence le carbone capté (sauf pour la récupération assistée du pétrole));

b) n'est ni acquis pour le forage ou l'achèvement d'un puits de pétrole ou de gaz, ou pour la construction d'une voie d'accès temporaire à, ou visant à préparer un chantier relativement à, un tel puits.

CLASS 60

Intangible property (including property deemed to have been acquired under subsection 13(7.6) of the Act) not included in any other class that is

(a) acquired for the purposes of

(i) drilling or converting a well in Canada for the permanent storage of captured carbon (other than for enhanced oil recovery),

(ii) drilling or completing a well for the permanent storage of captured carbon (other than for enhanced oil recovery) in Canada, building a temporary access road to the well or preparing a site in respect of the well, or

(iii) drilling or converting a well in Canada for the purposes of monitoring pressure changes or other phenomena in a geological formation in which captured carbon is permanently stored (other than for enhanced oil recovery); or

(b) a right, licence or privilege

(i) for the purposes of determining the existence, location, extent or quality of a geological formation to permanently store captured carbon (other than for enhanced oil recovery), or

(ii) to permanently store captured carbon in dedicated geological storage.

(2) Subsection (1) is deemed to have come into force on January 1, 2022.

CATÉGORIE 60

Un bien intangible (y compris les biens réputés avoir été acquis en vertu du paragraphe 13(7.6) de la Loi) non compris dans une autre catégorie qui est, selon le cas :

a) acquis à l'une des fins suivantes :

(i) de forage ou de conversion d'un puits au Canada en vue du stockage permanent du carbone capté (sauf pour la récupération assistée du pétrole),

(ii) de forage ou d'achèvement d'un puits visant le stockage permanent du carbone capté (sauf pour la récupération assistée du pétrole) au Canada, la construction d'une voie d'accès temporaire au puits ou la préparation d'un chantier relativement au puits,

(iii) de forage ou de conversion d'un puits au Canada dans le but de surveiller les changements de pression ou autre phénomène dans une formation géologique dans laquelle le carbone capté est stocké en permanence (sauf pour la récupération assistée du pétrole);

b) un droit, une licence ou un privilège, selon le cas :

(i) en vue de déterminer l'existence, l'emplacement, l'étendue ou la qualité d'une formation géologique afin de stocker en permanence le carbone capté (sauf pour la récupération assistée du pétrole),

(ii) afin de stocker en permanence le carbone capté dans un stockage géologique dédié.

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 2022.

PART 2

Digital Services Tax Act

Enactment of Act

Enactment

96 (1) The *Digital Services Tax Act* is enacted as follows:

An Act respecting a digital services tax

Short Title

Short title

1 This Act may be cited as the *Digital Services Tax Act*.

PARTIE 2

Loi sur la taxe sur les services numériques

Édiction de la loi

Édiction

96 (1) Est édictée la *Loi sur la taxe sur les services numériques*, dont le texte suit :

Loi mettant en œuvre la taxe sur les services numériques

Titre abrégé

Titre abrégé

1 *Loi sur la taxe sur les services numériques*.

PART 1

Interpretation and Application

Definitions

2 The following definitions apply in this Act.

acceptable accounting principles means

(a) International Financial Reporting Standards; and

(b) other country-specific generally accepted accounting principles relevant for corporations that are traded on a public securities exchange outside Canada and that require two or more entities to prepare consolidated financial statements in a manner similar to International Financial Reporting Standards. (*principes comptables acceptables*)

assessment means an assessment or a reassessment under this Act. (*cotisation*)

bankrupt has the same meaning as in section 2 of the *Bankruptcy and Insolvency Act*. (*failli*)

Canadian digital services revenue means a taxpayer's Canadian digital services revenue determined in accordance with Part 3. (*revenu canadien de services numériques*)

consolidated financial statements means financial statements in which the assets, liabilities, income, expenses and cash flows of the members of a group are presented as those of a single economic entity. (*états financiers consolidés*)

consolidated group means an ultimate parent entity and one or more other entities that are required to prepare consolidated financial statements for financial reporting purposes under acceptable accounting principles, or would be so required if equity interests in the ultimate parent entity were traded on a public securities exchange, the trading on which requires the use of acceptable accounting principles. (*groupe consolidé*)

constituent entity, of a consolidated group, means

(a) any entity of the group that

(i) is included in the consolidated financial statements of the group prepared in accordance with acceptable accounting principles, or

PARTIE 1

Définitions, interprétation et application

Définitions

2 Les définitions qui suivent s'appliquent à la présente loi.

bien Tout bien — réel ou personnel, meuble ou immeuble, tangible ou intangible, corporel ou incorporel — y compris un droit ou intérêt quelconque, une action ou une part et de l'argent. (*property*)

contenu numérique

a) Texte, vidéo, image ou enregistrement sonore codé numériquement;

b) logiciel;

c) toute autre chose qui est codée numériquement et transmissible par voie électronique.

La présente définition ne comprend pas un instrument financier. (*digital content*)

contribuable Entité, même celle non tenue de payer la taxe imposée en application de la présente loi, qui n'est pas une société, commission ou toute association dont la totalité des actions ou le capital est détenu, directement ou indirectement, par sa Majesté du chef du Canada ou d'une province ou par plusieurs de ces personnes. (*taxpayer*)

cotisation Cotisation ou nouvelle cotisation établie en vertu de la présente loi. (*assessment*)

données d'utilisateurs Toute forme de représentation d'informations ou de concepts générés par l'effet de l'interaction directe ou indirecte, de quelque manière que ce soit, d'un utilisateur avec une interface numérique ou recueillis par l'effet d'une telle interaction. (*user data*)

effet financier Les effets suivants :

a) un titre qui est :

(i) une action du capital-actions d'une société,

(ii) une participation au revenu ou au capital d'une fiducie,

(iii) un billet, une obligation, un effet ou une autre preuve de créance,

(ii) if the group is not required to prepare consolidated financial statements, or the statements are not prepared in accordance with acceptable accounting principles, would be required to be included in the consolidated financial statements of the group if equity interests in the ultimate parent entity of the group were traded on a public securities exchange, the trading on which requires the use of acceptable accounting principles; and

(b) any entity that is excluded from the group's consolidated financial statements solely because of size or materiality or on the grounds that it is held for sale. (*entité constitutive*)

digital content means

(a) a digitally encoded text, video, image or sound recording;

(b) computer software; or

(c) any other thing that is digitally encoded and electronically transmittable.

It does not include a financial instrument. (*contenu numérique*)

digital interface means a website, application or other electronic medium through which data or digital content is collected, viewed, consumed, delivered or interacted with. (*interface numérique*)

entity means a person other than an individual. (*entité*)

financial instrument means

(a) a security that is

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

(ii) an income or capital interest in a trust,

(iii) a note, bond, debenture or other evidence of indebtedness, or

(iv) an interest in a partnership;

(b) money and a money market instrument that is a cheque, bill, certificate of deposit or derivative;

(c) property that is a digital representation of value that functions as a medium of exchange and that only exists at a digital address of a publicly distributed ledger, other than property that

(i) confers a right, whether immediate or future and whether absolute or contingent, to exchange or

(iv) une participation dans une société de personnes;

b) de l'argent et tout instrument de marché monétaire qui est un chèque, un billet, un certificat de dépôt ou un produit dérivé;

c) un bien qui est une représentation numérique d'une valeur qui fonctionne comme moyen d'échange et qui existe seulement à une adresse numérique d'un registre distribué public, à l'exception d'un bien qui, selon le cas :

(i) confère un droit, immédiat ou futur et conditionnel ou non, à l'échange ou au rachat de ce bien contre des biens ou services spécifiques ou à la conversion de ce bien en biens ou services spécifiques,

(ii) est destiné à être utilisé principalement dans le cadre d'une plateforme de jeu, d'un programme d'affinité ou de récompenses ou d'une plateforme ou d'un programme semblable,

(iii) est un bien visé par règlement;

d) un contrat d'assurance;

e) un contrat de rente;

f) un métal précieux;

g) une marchandise;

h) un contrat d'échange de taux d'intérêt, de devises, de taux de référence, de marchandises ou de créances contre des actifs, un contrat de garantie de taux plafond ou de taux plancher, un contrat sur indice boursier ou un autre accord similaire;

i) une garantie, acceptation ou indemnité relativement à un effet visé aux alinéas a), f), g) ou h);

j) toute participation ou tout droit (y compris un contrat à terme ou contrat à terme de gré à gré ou une option) attaché à une fourniture future d'un effet visé à l'un des alinéas a) à i);

k) tout autre bien visé par règlement. (*financial instrument*)

entité Personne autre qu'un particulier. (*entity*)

entité constitutive Relativement à un groupe consolidé, les entités suivantes :

a) une entité du groupe qui, selon le cas :

redeem the property for specific property or services or to convert the property into specific property or services,

(ii) is primarily for use within, or as part of, a gaming platform, an affinity or rewards program or a similar platform or program, or

(iii) is property prescribed by regulation;

(d) an insurance contract;

(e) an annuity contract;

(f) a precious metal;

(g) a commodity;

(h) an interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap or other similar agreement;

(i) a guarantee, acceptance or indemnity in respect of anything described in paragraph (a), (f), (g) or (h);

(j) any interest or right (including a futures or forward contract or option) in a future supply of anything described in any of paragraphs (a) to (i); and

(k) any other property prescribed by regulation. (*effet financier*)

first year of application means the calendar year that includes the day on which this Act comes into force or a subsequent calendar year, if any, prescribed by regulation in respect of a taxpayer. (*première année d'application*)

fiscal year means

(a) in the case of a taxpayer, an accounting period with respect to which the taxpayer prepares its financial statements; and

(b) in the case of a consolidated group, an accounting period with respect to which the ultimate parent entity of the group prepares its financial statements. (*exercice*)

global revenue threshold means an amount prescribed by regulation. (*seuil de revenu global*)

in-scope revenue threshold means an amount prescribed by regulation. (*seuil de revenu dans le champ d'application*)

(i) fait partie des états financiers consolidés du groupe établis conformément à des principes comptables acceptables,

(ii) si le groupe n'est pas tenu d'établir des états financiers consolidés, ou que ceux-ci ne sont pas établis conformément à des principes comptables acceptables, serait tenu de faire partie des états financiers consolidés du groupe si des participations dans l'entité mère ultime du groupe étaient cotées en bourse de valeurs ouverte au public où les échanges exigent le recours à des principes comptables acceptables;

b) une entité qui ne fait pas partie des états financiers consolidés du groupe uniquement pour des raisons de taille ou d'importance relative ou parce qu'elle est destinée à être vendue. (*constituent entity*)

entité mère ultime Une entité à l'égard de laquelle les conditions ci-après sont remplies :

a) l'entité détient, directement ou indirectement, une participation suffisante dans une ou plusieurs autres entités de sorte qu'elle est tenue d'établir des états financiers consolidés selon des principes comptables acceptables ou qu'elle serait tenue de le faire si les participations dans l'entité étaient cotées en bourse de valeurs ouverte au public où les échanges exigent le recours à des principes comptables acceptables;

b) aucune autre entité ne détient, directement ou indirectement, une participation visée à l'alinéa a) dans l'entité. (*ultimate parent entity*)

états financiers consolidés États financiers dans lesquels les actifs, les passifs, le revenu, les dépenses et les flux de trésorerie des membres d'un groupe sont présentés comme s'il s'agissait d'une seule entité économique. (*consolidated financial statements*)

exercice

a) Dans le cas d'un contribuable, une période comptable pour laquelle le contribuable établit ses états financiers;

b) dans le cas d'un groupe consolidé, une période comptable pour laquelle l'entité mère ultime du groupe établit ses états financiers. (*fiscal year*)

failli S'entend au sens de l'article 2 de la *Loi sur la faillite de l'insolvabilité*. (*bankrupt*)

fourniture Livraison de biens ou prestation de services, notamment par vente, transfert, troc, échange, licence, louage, bail, donation ou aliénation. (*supply*)

Minister means the Minister of National Revenue. (*ministre*)

online marketplace means a digital interface that allows users to interact with other users and facilitates the supply of property or services, including digital content, between those users, but does not include a digital interface

(a) that has a single supplier of such property or services; or

(b) the main purpose of which is to

(i) provide payment services by facilitating the electronic transfer of funds,

(ii) make advances, grant credit or lend money, or

(iii) facilitate the supply of financial instruments. (*marché en ligne*)

online search engine means a digital interface that allows users to search the Web for digital content of multiple unrelated websites. (*moteur de recherche en ligne*)

online targeted advertisement means an advertisement — including, for greater certainty, any content that is prominently placed for the purpose of promotion — that

(a) consists of digital content;

(b) is placed on, or transmitted through, a digital interface; and

(c) is targeted at users based on any part of the user data associated with the users. (*publicité en ligne ciblée*)

person includes an individual, a trust, a partnership, a corporation and any other body of persons or organization of any kind. (*personne*)

prescribed means

(a) in the case of a form or the manner of filing a form, authorized by the Minister;

(b) in the case of the information to be given on or with a form, specified by the Minister;

(c) in the case of the manner of making or filing an election, authorized by the Minister; and

groupe consolidé Une entité mère ultime et une ou plusieurs autres entités qui sont tenues d'établir des états financiers consolidés à des fins d'information financière selon des principes comptables acceptables ou qui le seraient si des participations dans l'entité mère ultime étaient cotées en bourse de valeurs ouverte au public où les échanges exigent le recours à des principes comptables acceptables. (*consolidated group*)

interface numérique Site Web, application ou autre support électronique par l'entremise duquel des données ou du contenu numérique sont recueillis, visualisés, consommés ou livrés ou par l'entremise duquel une interaction est effectuée avec des données ou du contenu numérique. (*digital interface*)

marché en ligne Interface numérique qui permet aux utilisateurs d'interagir avec d'autres utilisateurs et facilite la fourniture de produits ou de services, y compris du contenu numérique, entre ces utilisateurs, mais ne comprend pas une interface numérique, selon le cas :

a) qui a un seul fournisseur de tels biens ou services;

b) dont l'objet principal consiste à, selon le cas :

(i) fournir des services de paiement en facilitant le transfert électronique de fonds,

(ii) fournir des avances, octroyer du crédit ou prêter de l'argent,

(iii) faciliter la fourniture d'effets financiers. (*online marketplace*)

ministre Le ministre du Revenu national. (*Minister*)

moteur de recherche en ligne Interface numérique qui permet aux utilisateurs de rechercher sur le Web du contenu numérique de plusieurs sites Web sans rapport entre eux. (*online search engine*)

personne Comprend un particulier, une fiducie, une société de personnes, une société et tout autre groupement de personnes ou organisation. (*person*)

plateforme de médias sociaux Interface numérique dont l'objet principal est de permettre aux utilisateurs de trouver et d'interagir avec d'autres utilisateurs ou avec du contenu numérique généré par d'autres utilisateurs. (*social media platform*)

première année d'application Année civile qui comprend la date d'entrée en vigueur de la présente loi ou une année civile ultérieure, s'il y a lieu, visée par

(d) in any other case, prescribed by regulation or determined in accordance with rules prescribed by regulation. (*Version anglaise seulement*)

property means any property, whether real or personal, movable or immovable, tangible or intangible or corporeal or incorporeal, and includes a right or interest of any kind, a share, a chose in action and, for greater certainty, money. (*bien*)

regulation means a regulation made under this Act. (*règlement*)

social media platform means a digital interface the main purpose of which is to allow users to find and interact with other users or with digital content generated by other users. (*plateforme de médias sociaux*)

supply means the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition. (*fourniture*)

taxable Canadian digital services revenue means a taxpayer's taxable Canadian digital services revenue determined in accordance with Part 4. (*revenu canadien de services numériques imposable*)

taxpayer means an entity, whether or not the entity is liable to pay tax under this Act, that is not a corporation, commission or association all of the shares, or the capital, of which is held, directly or indirectly, by one or more persons each of whom is His Majesty in right of Canada or a province. (*contribuable*)

total consolidated group revenue, of a consolidated group for a fiscal year, means the revenue reported in the group's consolidated financial statements for the year or, if the statements are not prepared in accordance with acceptable accounting principles or no statements are prepared, the revenue that would be reported if the statements were prepared in accordance with International Financial Reporting Standards. However, total consolidated group revenue does not include the revenue of any entity that is not a taxpayer. (*revenu consolidé total du groupe*)

ultimate parent entity means an entity in respect of which the following conditions are met:

(a) the entity holds directly or indirectly a sufficient interest in one or more other entities so that it is required to prepare consolidated financial statements under acceptable accounting principles or would be so required if the equity interests in the entity were traded on a public securities exchange, the trading on

règlement relativement à un contribuable. (*first year of application*)

principes comptables acceptables

a) Normes internationales d'information financière;

b) les principes comptables généralement reconnus propres à un pays qui sont pertinents aux sociétés cotées en bourse de valeurs ouverte au public à l'étranger et qui obligent que deux entités ou plus établissent des états financiers consolidés d'une manière similaire aux Normes internationales d'information financière. (*acceptable accounting principles*)

publicité en ligne ciblée Publicité — étant entendu que le contenu placé en évidence à des fins promotionnelles en fait partie — présentant toutes les caractéristiques suivantes :

a) elle est constituée de contenu numérique;

b) elle est affichée sur une interface numérique ou est transmise au moyen d'une telle interface;

c) elle cible les utilisateurs en fonction de toute partie des données d'utilisateurs qui sont associées à ces derniers. (*online targeted advertisement*)

règlement Règlement pris en vertu de la présente loi. (*regulation*)

revenu canadien de services numériques Revenu canadien de services numériques d'un contribuable calculé conformément à la partie 3. (*Canadian digital services revenue*)

revenu canadien de services numériques imposable Revenu canadien de services numériques imposable d'un contribuable calculé conformément à la partie 4. (*taxable Canadian digital services revenue*)

revenu consolidé total du groupe Relativement à un groupe consolidé pour un exercice, le revenu indiqué dans les états financiers consolidés du groupe pour l'exercice ou, si ces états financiers ne sont pas établis conformément à des principes comptables acceptables ou si des états financiers consolidés ne sont pas établis, le revenu qui serait indiqué dans des états financiers consolidés établis conformément aux Normes internationales d'information financière. Cependant, le revenu consolidé total du groupe ne comprend pas le revenu d'une entité qui n'est pas un contribuable. (*total consolidated group revenue*)

which requires the use of acceptable accounting principles; and

(b) no other entity holds, directly or indirectly, an interest, as described in paragraph (a), in the entity. (*entité mère ultime*)

user means any individual (other than an individual acting in the course of an entity's business) or entity (including an individual acting in the course of the entity's business) that interacts (directly or indirectly in any manner whatever) with a digital interface, but does not include

(a) the person that operates the digital interface;

(b) if an entity operates the digital interface and the entity is a constituent entity of a consolidated group, another constituent entity of the group; or

(c) an employee of an individual or entity described in paragraph (a) or (b) acting in the course of the individual's or entity's business. (*utilisateur*)

user data means representations, in any form, of information or concepts generated by, or collected from, a user's interaction (directly or indirectly in any manner whatever) with a digital interface. (*données d'utilisateurs*)

seuil de revenu dans le champ d'application Un montant visé par règlement. (*in-scope revenue threshold*)

seuil de revenu global Un montant visé par règlement. (*global revenue threshold*)

utilisateur Un particulier (autre qu'un particulier agissant dans le cadre des activités d'une entreprise d'une entité) ou une entité (y compris un particulier agissant dans le cadre des activités d'une entreprise de l'entité) qui interagit (directement ou indirectement, de quelque manière que ce soit) avec une interface numérique, à l'exclusion des personnes suivantes :

a) la personne qui opère l'interface numérique;

b) si une entité opère l'interface numérique et que l'entité est une entité constitutive d'un groupe consolidé, une autre entité constitutive du groupe;

c) un employé d'un particulier ou d'une entité visé aux alinéas a) ou b) agissant dans le cadre des activités d'une entreprise du particulier ou de l'entité. (*user*)

Negative or undefined results

3 An amount or number that is required under this Act to be determined in accordance with an algebraic formula is deemed to be nil if

(a) the amount or number so determined would, in the absence of this section, be a negative amount or number; or

(b) the result of the formula would be mathematically undefined.

Résultat négatif ou indéfini

3 Tout montant ou nombre dont la présente loi prévoit le calcul selon une formule algébrique est égal à zéro si, selon le cas :

a) le montant ou le nombre ainsi calculé serait, en l'absence du présent article, un montant ou nombre négatif;

b) le résultat de la formule serait mathématiquement indéfini.

Determination of revenue

4 (1) For the purposes of this Act, revenue of a taxpayer is to be determined in accordance with the acceptable accounting principles used in the preparation of the financial statements of the taxpayer or, if the statements are not prepared in accordance with acceptable accounting principles or no statements are prepared, in accordance with

(a) in the case of a taxpayer that is a constituent entity of a consolidated group,

(i) the acceptable accounting principles, if any, used in the preparation of the consolidated financial statements of the group, or

Détermination du revenu

4 (1) Pour l'application de la présente loi, le revenu d'un contribuable doit être déterminé conformément aux principes comptables acceptables utilisés pour établir ses états financiers ou, si ces états ne sont pas établis conformément aux principes comptables acceptables ou qu'ils ne sont pas établis, conformément aux principes suivants :

a) dans le cas d'un contribuable qui est une entité constitutive d'un groupe consolidé, les principes comptables acceptables, s'il y a lieu, utilisés pour établir les états financiers consolidés du groupe, ou les Normes internationales d'information financière;

(ii) International Financial Reporting Standards; and

(b) in any other case, International Financial Reporting Standards.

b) dans les autres cas, les Normes internationales d'information financière.

Currency of revenue — conversion

(2) For the purposes of Part 2, if total revenue or total consolidated group revenue is expressed in a particular currency other than the currency in which the global revenue threshold is denominated, the amount is to be converted from the particular currency to that other currency using a rate of exchange that is acceptable to the Minister.

Devise du revenu — conversion

(2) Pour l'application de la partie 2, si le revenu total ou le revenu consolidé total du groupe est exprimé dans une devise autre que la devise dans laquelle le seuil de revenu global est libellé, le montant doit être converti en cette autre devise en appliquant un taux de change que le ministre estime acceptable.

Currency of revenue — Canadian dollar conversion

(3) For the purposes of Part 3, if an amount of revenue is expressed in a currency other than Canadian dollars, the amount is to be converted from that currency to Canadian dollars using a rate of exchange that is acceptable to the Minister.

Devise du revenu — conversion en dollar canadien

(3) Pour l'application de la partie 3, si un montant du revenu est exprimé dans une devise autre que le dollar canadien, le montant doit être converti en dollar canadien en appliquant un taux de change que le ministre estime acceptable.

Short fiscal year — global revenue threshold

5 For the purposes of this Act, if a fiscal year is shorter than 12 months, a reference to the "global revenue threshold" in respect of the fiscal year is to be read as a reference to the amount determined by the formula

A × B ÷ 365

where

A is the global revenue threshold; and

B is the number of days in the fiscal year.

Exercice court — seuil de revenu global

5 Pour l'application de la présente loi, si un exercice compte moins de douze mois, la mention du « seuil de revenu global » relativement à l'exercice vaut mention du montant obtenu par la formule suivante :

A × B ÷ 365

où :

A représente le seuil de revenu global;

B le nombre de jours dans l'exercice.

Continuity of consolidated group

6 For the purposes of this Act, a consolidated group, at any time, is the same consolidated group at another time if at both times, and all times between those times, the ultimate parent entity of the group is the same.

Continuation d'un groupe consolidé

6 Pour l'application de la présente loi, un groupe consolidé, à un moment donné, est le même groupe consolidé à un autre moment si l'entité mère ultime du groupe est la même à ces deux moments et en tout temps entre ces deux moments.

Mergers

7 If, in a calendar year, there is a merger or combination of two or more corporations (referred to in this section as the "predecessor corporations") to form one corporate entity (referred to in this section as the "new corporation"),

(a) for the purposes of this Act, subject to paragraphs (b) and (c), the new corporation is deemed to be a separate person from each of the predecessor corporations;

Fusions

7 En cas de l'unification ou de la combinaison de plusieurs sociétés (appelées « sociétés remplacées » au présent article) au cours d'une année civile pour former une seule société (appelée « nouvelle société » au présent article) :

a) pour l'application de la présente loi, sous réserve des alinéas b) et c), la nouvelle société est réputée être une personne distincte de chacune des sociétés remplacées;

(b) for the purposes of Part 6, the new corporation is deemed to be the same corporation as and a continuation of each predecessor corporation; and

(c) for the purposes of section 6,

(i) if only one of the predecessor corporations is an ultimate parent entity of a consolidated group, the new corporation is deemed to be the same corporation as the ultimate parent entity, and

(ii) if two or more of the predecessor corporations are each an ultimate parent entity of a consolidated group, the new corporation is deemed to be the same corporation as the ultimate parent entity of the consolidated group that had the greatest amount of total consolidated group revenue for a fiscal year of the group that ended in the immediately preceding calendar year.

b) pour l'application de la partie 6, la nouvelle société est réputée être la même société que chaque société remplacée et en être la continuation;

c) pour l'application de l'article 6 :

(i) si une seule des sociétés remplacées est une entité mère ultime d'un groupe consolidé, la nouvelle société est réputée être la même société que l'entité mère ultime,

(ii) si plusieurs des sociétés remplacées constituent chacune une entité mère ultime d'un groupe consolidé, la nouvelle société est réputée être la même société que l'entité mère ultime du groupe consolidé qui avait le montant le plus élevé de revenu consolidé total du groupe pour un exercice du groupe qui s'est terminé au cours de l'année civile précédente.

Arm's length

8 (1) For the purposes of this Act,

(a) related persons are deemed not to deal with each other at arm's length; and

(b) it is a question of fact whether persons not related to each other are, at any time, dealing with each other at arm's length.

Related persons

(2) For the purposes of this Act, persons are related to each other if they are related persons within the meaning of subsection 6(2) of the *Excise Act, 2001*.

His Majesty

9 This Act is binding on His Majesty in right of Canada or a province.

Lien de dépendance

8 (1) Pour l'application de la présente loi :

a) des personnes liées sont réputées avoir entre elles un lien de dépendance;

b) la question de savoir si des personnes non liées entre elles n'ont aucun lien de dépendance à un moment donné est une question de fait.

Personnes liées

(2) Pour l'application de la présente loi, des personnes sont liées si elles sont des personnes liées au sens du paragraphe 6(2) de la *Loi de 2001 sur l'accise*.

Sa Majesté

9 La présente loi lie Sa Majesté du chef du Canada ou d'une province.

PART 2

Liability for Tax

Tax payable

10 (1) Every taxpayer must pay a tax in respect of a particular calendar year (other than the first year of application) equal to 3% of the taxpayer's taxable Canadian digital services revenue for the particular calendar year if

(a) the taxpayer

(i) had total revenue equal to or greater than the global revenue threshold during a fiscal year of the

PARTIE 2

Assujettissement à la taxe

Taxe payable

10 (1) Tout contribuable est tenu de payer une taxe pour une année civile donnée (sauf la première année d'application) égale à 3 % de son revenu canadien de services numériques imposable pour l'année civile donnée si les conditions ci-après sont remplies :

a) le contribuable remplit l'une des conditions suivantes :

taxpayer that ended in the immediately preceding calendar year,

(ii) was, at any time in the immediately preceding calendar year, a constituent entity of a consolidated group that had total consolidated group revenue equal to or greater than the global revenue threshold during a fiscal year of the group that ended in that immediately preceding calendar year, or

(iii) is, at any time in the particular calendar year, a constituent entity of a consolidated group that had total consolidated group revenue equal to or greater than the global revenue threshold during a fiscal year of the group that ended in the immediately preceding calendar year; and

(b) at least one of the following conditions is met:

(i) the Canadian digital services revenue of the taxpayer for the particular calendar year is greater than the in-scope revenue threshold, and

(ii) in respect of any consolidated group of which the taxpayer is a constituent entity at any time in the particular calendar year, the total of all amounts — each of which is the Canadian digital services revenue for the particular calendar year of an entity that is a constituent entity of the group at any time in the particular calendar year — is greater than the in-scope revenue threshold.

(i) il avait un revenu total égal ou supérieur au seuil de revenu global pour un exercice du contribuable qui s'est terminé au cours de l'année civile précédente,

(ii) il était, à un moment donné au cours de l'année civile précédente, une entité constitutive d'un groupe consolidé dont le revenu consolidé total du groupe était égal ou supérieur au seuil de revenu global pour un exercice de ce groupe qui s'est terminé au cours de cette année civile précédente,

(iii) il est, à un moment donné au cours de l'année civile donnée, une entité constitutive d'un groupe consolidé dont le revenu consolidé total du groupe était égal ou supérieur au seuil de revenu global pour un exercice de ce groupe qui s'est terminé au cours de l'année civile précédente;

b) au moins une des conditions ci-après est remplie :

(i) le revenu canadien de services numériques du contribuable pour l'année civile donnée est supérieur au seuil de revenu dans le champ d'application,

(ii) relativement à un groupe consolidé à l'égard duquel le contribuable est une entité constitutive à un moment donné au cours de l'année civile donnée, le total des sommes — représentant chacune le revenu canadien de services numériques pour l'année civile donnée d'une entité qui est une entité constitutive du groupe à un moment donné au cours de l'année civile donnée — est supérieur au seuil de revenu dans le champ d'application.

Tax payable for first year of application

(2) A taxpayer must pay, in respect of the first year of application, a tax equal to the amount determined by the formula

A + B

where

A is

(a) 3% of the taxpayer's taxable Canadian digital services revenue for the first year of application, if the taxpayer satisfies the conditions set out in paragraphs (1)(a) and (b) in respect of that year, and

(b) nil, in any other case; and

B is

(a) the amount determined by multiplying the rate prescribed by regulation in respect of the taxpayer by the total of all amounts each of which is

Taxe payable pour la première année d'application

(2) Un contribuable est tenu de payer, relativement à la première année d'application, une taxe correspondant à la somme obtenue par la formule suivante :

A + B

où :

A représente :

a) 3 % du revenu canadien de service numériques imposable du contribuable pour la première année d'application, si le contribuable remplit les conditions énoncées aux alinéas (1)a) et b) relativement à cette année,

b) zéro, dans les autres cas;

B :

a) le produit de la multiplication du taux visé par règlement relativement au contribuable par le total des montants représentant chacun le revenu

the taxpayer's taxable Canadian digital services revenue for a calendar year

(i) for which the taxpayer satisfies the conditions set out in paragraphs (1)(a) and (b), and

(ii) that is after 2021 and before the first year of application, and

(b) nil, if no calendar year meets the conditions set out in subparagraphs (a)(i) and (ii).

canadien de services numériques imposable du contribuable pour une année civile relativement à laquelle les conditions ci-après sont remplies :

(i) le contribuable remplit les conditions énoncées aux alinéas (1)a) et b) relativement à l'année,

(ii) l'année est postérieure à 2021 et antérieure à la première année d'application,

b) zéro, si aucune année civile ne remplie les conditions énoncées aux sous-alinéas a)(i) et (ii).

PART 3

Canadian Digital Services Revenue

PARTIE 3

Revenu canadien de services numériques

Definitions

11 The following definitions apply in this Part.

user located in Canada, at any time, means a user in respect of which it is reasonable to conclude — based on the taxpayer's user data associated with the user (including any of the billing, delivery or shipping address, or the phone number area code, most recently provided by the user, global navigation satellite systems data and Internet Protocol address data) — that the user is

(a) located in Canada at that time, in the case of

(i) online advertising services revenue that is in respect of an online targeted advertisement for which the targeting is based on the real-time location of users, and

(ii) user data revenue that is based on the real-time location of users; and

(b) normally located in Canada at that time, in any other case. (*utilisateur situé au Canada*)

user located outside Canada, at any time, means a user (other than a user located in Canada) in respect of which it is reasonable to conclude — based on the taxpayer's user data associated with the user (including any of the billing, delivery or shipping address, or the phone number area code, most recently provided by the user, global navigation satellite systems data and Internet Protocol address data) — that the user is

(a) located outside Canada at that time, in the case of

(i) online advertising services revenue that is in respect of an online targeted advertisement for which

Définitions

11 Les définitions qui suivent s'appliquent à la présente partie.

utilisateur dont l'emplacement est déterminable À un moment donné, un utilisateur qui est, à ce moment, un utilisateur situé au Canada ou un utilisateur situé à l'extérieur du Canada. (*user of determinable location*)

utilisateur situé à l'extérieur du Canada À un moment donné, un utilisateur (autre qu'un utilisateur situé au Canada) à l'égard duquel il est raisonnable de conclure, selon les données d'utilisateurs du contribuable associées à cet utilisateur (y compris l'une des données suivantes : l'adresse de facturation, de livraison ou d'expédition, ou l'indicatif régional du numéro de téléphone, le plus récemment fourni par l'utilisateur, les données de systèmes mondiaux de navigation par satellite et les données d'adresse de Protocole Internet), qu'il est :

a) situé à l'extérieur du Canada, à ce moment, dans le cas du :

(i) revenu provenant de services de publicité en ligne à l'égard d'une publicité en ligne ciblée pour laquelle le ciblage est fondé sur l'emplacement en temps réel des utilisateurs,

(ii) revenu provenant de données d'utilisateurs qui est fondé sur l'emplacement en temps réel des utilisateurs;

b) normalement situé à l'extérieur du Canada à ce moment, dans les autres cas. (*user located outside Canada*)

the targeting is based on the real-time location of users, and

(ii) user data revenue that is based on the real-time location of users; and

(b) normally located outside Canada at that time, in any other case. (*utilisateur situé à l'extérieur du Canada*)

user of determinable location, at any time, means a user that is, at that time, a user located in Canada or a user located outside Canada. (*utilisateur dont l'emplacement est déterminable*)

utilisateur situé au Canada À un moment donné, un utilisateur à l'égard duquel il est raisonnable de conclure, selon les données d'utilisateurs du contribuable associées à cet utilisateur (y compris l'une des données suivantes : l'adresse de facturation, de livraison ou d'expédition, ou l'indicatif régional du numéro de téléphone, le plus récemment fourni par l'utilisateur, les données de systèmes mondiaux de navigation par satellite et les données d'adresse de Protocole Internet), qu'il est :

a) situé au Canada, à ce moment, dans le cas du :

(i) revenu provenant de services de publicité en ligne à l'égard d'une publicité en ligne ciblée pour laquelle le ciblage est fondé sur l'emplacement en temps réel des utilisateurs,

(ii) revenu provenant de données d'utilisateurs qui est fondé sur l'emplacement en temps réel des utilisateurs;

b) normalement situé au Canada à ce moment, dans les autres cas. (*user located in Canada*)

Basic rule

12 (1) A taxpayer's Canadian digital services revenue for a calendar year is the amount determined by the formula

A + B + C + D

where

A is the taxpayer's Canadian online marketplace services revenue for the calendar year as determined in accordance with Division A of this Part;

B is the taxpayer's Canadian online advertising services revenue for the calendar year as determined in accordance with Division B of this Part;

C is the taxpayer's Canadian social media services revenue for the calendar year as determined in accordance with Division C of this Part; and

D is the taxpayer's Canadian user data revenue for the calendar year as determined in accordance with Division D of this Part.

Règle de base

12 (1) Le revenu canadien de services numériques d'un contribuable pour une année civile correspond à la somme obtenue par la formule suivante :

A + B + C + D

où :

A représente le revenu canadien provenant de services de marché en ligne du contribuable pour l'année civile déterminé conformément à la section A de la présente partie;

B le revenu canadien provenant de services de publicité en ligne du contribuable pour l'année civile déterminé conformément à la section B de la présente partie;

C le revenu canadien provenant de services de médias sociaux du contribuable pour l'année civile déterminé conformément à la section C de la présente partie;

D le revenu canadien provenant de données d'utilisateurs du contribuable pour l'année civile déterminé conformément à la section D de la présente partie.

Election

(2) Despite subsection (1), a taxpayer may elect in respect of a particular calendar year that is before the first year of application (by making an election on or before June 30 of the calendar year following the first year of application in the form and manner, and containing the information, prescribed by the Minister) that subsection (1) not to apply in respect of the particular calendar year, and that the taxpayer's Canadian digital services revenue

Choix

(2) Malgré le paragraphe (1), un contribuable peut choisir, relativement à une année civile donnée qui précède la première année d'application (au moyen d'un choix exercé au plus tard le 30 juin de l'année civile qui suit la première année d'application selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier), que le paragraphe (1) ne s'applique pas à l'égard de l'année civile donnée, et

for the particular calendar year to be determined by the formula

A ÷ B × C

where

A is the taxpayer's Canadian digital services revenue for the first year of application;

B is the taxpayer's total revenue for the first year of application; and

C is the taxpayer's total revenue for the particular calendar year.

Election — restriction

(3) A taxpayer is not permitted to elect under subsection (2) in respect of a particular calendar year after 2022 if the taxpayer did not make an election under subsection (2) for a calendar year after 2021 that precedes the particular calendar year and for which the conditions set out in paragraphs 10(1)(a) and (b) are met.

DIVISION A

Canadian Online Marketplace Services Revenue

Definition of *online marketplace services revenue*

13 (1) In this Part and Part 5 and subject to subsection (2) and Division E, ***online marketplace services revenue***, of a taxpayer, means revenue earned by the taxpayer in respect of an online marketplace of the taxpayer (or of another constituent entity of a consolidated group of which the taxpayer is, at the time the revenue is earned, a constituent entity) from

(a) the provision of access to, or the use of, the online marketplace;

(b) commissions and other fees for the facilitation of a supply between users of the online marketplace and for services ancillary to the supply;

(c) the provision of premium services, preferential listing services and other optional enhancements to the basic function, or changes to the standard commercial terms, of the services provided in respect of the online marketplace; and

(d) sources prescribed by regulation.

que son revenu canadien de services numériques pour l'année civile donnée corresponde au montant obtenu par la formule suivant :

A ÷ B × C

où :

A représente le revenu canadien de services numériques du contribuable pour la première année d'application;

B son revenu total pour la première année d'application;

C son revenu total pour l'année civile donnée.

Choix — restriction

(3) Un contribuable ne peut exercer un choix en vertu du paragraphe (2) relativement à une année civile donnée postérieure à 2022 s'il n'a pas effectué un choix en vertu du paragraphe (2) pour une année civile postérieure à 2021 qui précède l'année civile donnée et pour laquelle les conditions énoncées aux alinéas 10(1)a) et b) sont remplies.

SECTION A

Revenu canadien provenant de services de marché en ligne

Définition de *revenu provenant de services de marché en ligne*

13 (1) Dans la présente partie et la partie 5 et sous réserve du paragraphe (2) et de la section E, le ***revenu provenant de services de marché en ligne*** d'un contribuable s'entend du revenu gagné par le contribuable relativement à un marché en ligne du contribuable (ou d'une autre entité constitutive d'un groupe consolidé à l'égard duquel le contribuable est, au moment où le revenu est gagné, une entité constitutive) qui provient :

a) de l'octroi d'accès au marché en ligne ou de son utilisation;

b) des commissions et d'autres frais relatifs à la facilitation d'une fourniture entre des utilisateurs du marché en ligne et à des services accessoires à cette fourniture;

c) de la prestation de services supérieurs, de services de liste de préférences et de la fourniture d'autres améliorations optionnelles à la fonction de base, ou de changements aux modalités commerciales habituelles, des services offerts relativement au marché en ligne;

d) de sources visées par règlement.

Interpretation — revenue exclusion

(2) For the purpose of the definition *online marketplace services revenue* in subsection (1), revenue earned by a taxpayer in respect of an online marketplace does not include revenue

(a) from the provision of storage or shipping services, to the extent that the revenue reflects a reasonable rate of remuneration for the service;

(b) earned from a constituent entity of a consolidated group if, at the time the revenue is earned, the taxpayer is a constituent entity of the group; or

(c) from sources prescribed by regulation.

Canadian online marketplace services revenue

14 A taxpayer's Canadian online marketplace services revenue for a calendar year is the amount determined by the formula

A + B + C

where

A is the total of all amounts each of which is an amount of online marketplace services revenue of the taxpayer for the calendar year that is in respect of a supply, between users of an online marketplace, of a service

(a) physically performed and received in Canada,

(b) in respect of real property situated in Canada, or

(c) in respect of tangible personal property that is normally situated in Canada and that is situated in Canada at the time the service is performed;

B is the total of all amounts each of which is an amount, in respect of a supply between users of an online marketplace (other than a supply that would be a supply described in paragraph (a) of the description of A if the reference to "Canada" were read as a reference to "the same country", paragraph (b) of the description of A if the reference to "Canada" were read as a reference to "any country" or paragraph (c) of the description of A if the first reference to "Canada" were read as a reference to "any country" and the second reference to "Canada" were read as a reference to "that country"), determined by the formula

D × E ÷ 2

where

D is the taxpayer's online marketplace services revenue for the calendar year that is in respect of the supply, and

E is

Exclusion du revenu

(2) Pour l'application de la définition de *revenu provenant de services de marché en ligne* au paragraphe (1), le revenu gagné par un contribuable relativement à un marché en ligne ne comprend pas le revenu :

a) provenant de la prestation de services de stockage ou d'expédition, dans la mesure où le revenu reflète un taux raisonnable de rémunération pour le service;

b) gagné d'une entité constitutive d'un groupe consolidé si, au moment où le revenu est gagné, le contribuable est une entité constitutive de ce groupe;

c) provenant de sources visées par règlement.

Revenu canadien — marché en ligne

14 Le revenu canadien provenant de services de marché en ligne d'un contribuable pour une année civile correspond à la somme obtenue par la formule suivante :

A + B + C

où :

A représente le total des montants représentant chacun un montant de revenu provenant de services de marché en ligne du contribuable pour l'année civile relativement à la fourniture, entre les utilisateurs d'un marché en ligne, d'un service :

a) soit physiquement exécuté et reçu au Canada,

b) soit relativement à un bien immobilier situé au Canada,

c) soit relativement à un bien meuble corporel qui est normalement situé au Canada et qui est situé au Canada au moment de la prestation du service;

B le total des montants représentant chacun une somme, relativement à une fourniture entre les utilisateurs d'un marché en ligne (autre qu'une fourniture qui serait une fourniture visée à l'alinéa a) de l'élément A si la mention de « au Canada » vaut mention de « dans le même pays », à l'alinéa b) de l'élément A si la mention de « au Canada » vaut mention de « dans tout pays » et à l'alinéa c) de l'élément A si la première mention de « au Canada » vaut mention de « dans tout pays » et la deuxième mention de « au Canada » vaut mention de « dans ce pays »), obtenue par la formule suivante :

D × E ÷ 2

où :

D représente le revenu provenant de services de marché en ligne du contribuable pour l'année civile relativement à la fourniture,

E selon le cas :

(a) 2, if each of the supplier and the purchaser in respect of the supply is, at the time of the supply, a user located in Canada,

(b) 1, if only the supplier or only the purchaser in respect of the supply is, at the time of the supply, a user located in Canada, and

(c) nil, in any other case; and

C is the total of all amounts each of which is an amount, in respect of an online marketplace, determined by the formula

F × G ÷ H

where

F is the taxpayer's online marketplace services revenue (other than revenue that is in respect of a supply between users) for the calendar year that is in respect of the online marketplace,

G is the total number of relevant users in respect of supplies between users of the online marketplace during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer), where the number of relevant users in respect of any supply is

(a) 2, if each of the supplier and the purchaser in respect of the supply is, at the time of the supply, a user located in Canada,

(b) 1, if only the supplier or only the purchaser in respect of the supply is, at the time of the supply, a user located in Canada, and

(c) nil, in any other case, and

H is the total number of relevant users in respect of supplies between users of the online marketplace during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer), where the number of relevant users in respect of any supply is

(a) 2, if each of the supplier and the purchaser in respect of the supply is, at the time of the supply, a user of determinable location,

(b) 1, if only the supplier or only the purchaser in respect of the supply is, at the time of the supply, a user of determinable location, and

(c) nil, in any other case.

a) 2, si le fournisseur et l'acheteur à l'égard de la fourniture sont tous les deux, au moment de celle-ci, des utilisateurs situés au Canada,

b) 1, si seul le fournisseur ou seul l'acheteur à l'égard de la fourniture est, au moment de celle-ci, un utilisateur situé au Canada,

c) zéro, dans les autres cas;

C le total des montants représentant chacun une somme, relativement à un marché en ligne, obtenue par la formule suivante :

F × G ÷ H

où :

F représente le revenu provenant de services de marché en ligne (autre que le revenu relatif à une fourniture entre des utilisateurs) du contribuable pour l'année civile relativement au marché en ligne,

G le nombre total d'utilisateurs pertinents relativement aux fournitures entre les utilisateurs du marché en ligne au cours de l'année civile (ou, dans le cas d'un contribuable à qui l'article 21 s'applique, au cours de la période visée du contribuable), où le nombre d'utilisateurs pertinents relativement à une fourniture donnée est :

a) 2, si le fournisseur et l'acheteur à l'égard de la fourniture sont tous les deux, au moment de celle-ci, des utilisateurs situés au Canada,

b) 1, si seul le fournisseur ou seul l'acheteur à l'égard de la fourniture est, au moment de celle-ci, un utilisateur situé au Canada,

c) zéro, dans les autres cas,

H le nombre total d'utilisateurs pertinents relativement aux fournitures entre les utilisateurs du marché en ligne au cours de l'année civile (ou, dans le cas d'un contribuable à qui l'article 21 s'applique, au cours de la période visée du contribuable), où le nombre d'utilisateurs pertinents relativement à une fourniture donnée est :

a) 2, si le fournisseur et l'acheteur à l'égard de la fourniture sont tous les deux, au moment de celle-ci, des utilisateurs dont l'emplacement est déterminable,

b) 1, si seul le fournisseur ou seul l'acheteur à l'égard de la fourniture est, au moment de celle-ci, un utilisateur dont l'emplacement est déterminable,

c) zéro, dans les autres cas.

DIVISION B

Canadian Online Advertising Services Revenue

Definition of *online advertising services revenue*

15 (1) In this Part and Part 5 and subject to subsection (2) and Division E, ***online advertising services revenue***, of a taxpayer, means revenue earned by the taxpayer from

(a) the facilitation through a digital interface of the delivery of an online targeted advertisement;

(b) the supply of digital space for an online targeted advertisement; and

(c) sources prescribed by regulation in respect of online targeted advertisements.

Interpretation — revenue exclusion

(2) For the purpose of the definition *online advertising services revenue* in subsection (1), revenue earned by a taxpayer does not include revenue

(a) described in any of paragraphs 13(1)(a) to (d);

(b) in respect of an online targeted advertisement to the extent of any payment made by the taxpayer (or by another constituent entity of a consolidated group, if at the time the revenue is earned, the taxpayer is a constituent entity of the group) to another entity if the payment

(i) is in respect of the online targeted advertisement, and

(ii) would be online advertising services revenue of the other entity, if this section were read without reference to this paragraph or to section 21;

(c) earned from a constituent entity of a consolidated group if, at the time the revenue is earned, the taxpayer is a constituent entity of the group; or

(d) from sources prescribed by regulation.

SECTION B

Revenu canadien provenant de services de publicité en ligne

Définition de *revenu provenant de services de publicité en ligne*

15 (1) Dans la présente partie et la partie 5 et sous réserve du paragraphe (2) et de la section E, le ***revenu provenant de services de publicité en ligne*** d'un contribuable s'entend du revenu gagné par le contribuable qui provient de :

a) la facilitation par l'entremise d'une interface numérique de la parution d'une publicité en ligne ciblée;

b) la fourniture d'un espace numérique destiné à une publicité en ligne ciblée;

c) sources visées par règlement relativement à des publicités en ligne ciblées.

Exclusion du revenu

(2) Pour l'application de la définition de *revenu provenant de services de publicité en ligne* au paragraphe (1), le revenu gagné par un contribuable ne comprend pas le revenu :

a) visé à l'un des alinéas 13(1)a) à d);

b) qui se rapporte à une publicité en ligne ciblée jusqu'à concurrence de tout paiement effectué par le contribuable (ou par une entité constitutive d'un groupe consolidé, si au moment où le revenu est gagné, le contribuable est une entité constitutive de ce groupe) à une autre entité, si les faits ci-après s'avèrent :

(i) le paiement se rapporte à la publicité en ligne ciblée,

(ii) le paiement serait inclus dans le revenu provenant de services de publicité en ligne de l'autre entité, s'il n'était pas tenu compte du présent alinéa ou de l'article 21;

c) gagné d'une entité constitutive d'un groupe consolidé si, au moment où le revenu est gagné, le contribuable est une entité constitutive de ce groupe;

d) qui provient de sources visées par règlement.

Canadian online advertising services revenue

16 A taxpayer's Canadian online advertising services revenue for a calendar year is the amount determined by the formula

A + B

where

A is the total of all amounts each of which is an amount of online advertising services revenue of the taxpayer for the calendar year that is directly attributable to an instance of a display of an online targeted advertisement to a user, or an instance of a user's interaction with an online targeted advertisement, if the user is a user located in Canada at the time of the display or interaction; and

B is the total of all amounts each of which is an amount in respect of an online targeted advertisement (other than an advertisement for which revenue of the taxpayer is directly attributable to an instance of a display of the advertisement to a user or directly attributable to an instance of a user's interaction with the advertisement, if the user is a user of determinable location at the time of the display or interaction) determined by the formula

C × D ÷ E

where

C is the taxpayer's online advertising services revenue for the calendar year that is in respect of the online targeted advertisement,

D is the number of times during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer) that the online targeted advertisement is displayed to a user that is, at the time of display, a user located in Canada, and

E is the number of times during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer) that the online targeted advertisement is displayed to a user that is, at the time of display, a user of determinable location.

Revenu canadien — publicité en ligne

16 Le revenu canadien provenant de services de publicité en ligne d'un contribuable pour une année civile correspond à la somme obtenue par la formule suivante :

A + B

où :

A représente le total des montants représentant chacun un montant de revenu provenant de services de publicité en ligne du contribuable pour l'année civile qui est directement attribuable à une occurrence d'affichage d'une publicité en ligne ciblée auprès d'un utilisateur, ou à une occurrence d'interaction d'un utilisateur avec une publicité en ligne ciblée, lorsque l'utilisateur est un utilisateur situé au Canada au moment de l'affichage ou de l'interaction;

B le total des montants représentant chacun une somme, relativement à une publicité en ligne ciblée (autre qu'une publicité à l'égard de laquelle un revenu du contribuable est directement attribuable à une occurrence d'affichage de la publicité auprès d'un utilisateur ou directement attribuable à une occurrence d'interaction d'un utilisateur avec la publicité, lorsque l'utilisateur est un utilisateur dont l'emplacement est déterminable au moment de l'affichage ou de l'interaction), obtenue par la formule suivante :

C × D ÷ E

où :

C représente le revenu provenant de services de publicité en ligne du contribuable pour l'année civile, relativement à la publicité en ligne ciblée,

D le nombre de fois pendant l'année civile (ou, dans le cas d'un contribuable à qui l'article 21 s'applique, pendant la période visée du contribuable) où la publicité en ligne ciblée est affichée auprès d'un utilisateur qui est, au moment de l'affichage, un utilisateur situé au Canada,

E le nombre de fois pendant l'année civile (ou, dans le cas d'un contribuable à qui l'article 21 s'applique, pendant la période visée du contribuable) où la publicité en ligne ciblée est affichée auprès d'un utilisateur qui est, au moment de l'affichage, un utilisateur dont l'emplacement est déterminable.

DIVISION C

Canadian Social Media Services Revenue

Definition of *social media services revenue*

17 (1) In this Part and Part 5 and subject to subsection (2) and Division E, ***social media services revenue***, of a taxpayer, means revenue earned by the taxpayer in respect of a social media platform of the taxpayer (or of another constituent entity of a consolidated group of which the taxpayer is, at the time the revenue is earned, a constituent entity) from

(a) the provision of access to, or the use of, the social media platform;

(b) the provision of premium services and other optional enhancements to the basic function, or changes to the standard commercial terms, of the services provided in respect of the social media platform;

(c) the facilitation of an interaction between users, or between a user and digital content generated by other users, on the social media platform; and

(d) sources prescribed by regulation.

Interpretation — revenue exclusion

(2) For the purpose of the definition *social media services revenue* in subsection (1), revenue earned by a taxpayer in respect of a social media platform does not include revenue

(a) described in any of paragraphs 13(1)(a) to (d) and 15(1)(a) to (c);

(b) from the provision of private communication services comprised of any combination of video calling, voice calling, email or instant messaging, if the sole purpose of the platform is to provide those services;

(c) earned from a constituent entity of a consolidated group if, at the time the revenue is earned, the taxpayer is a constituent entity of the group; or

(d) from sources prescribed by regulation.

SECTION C

Revenu canadien provenant de services de médias sociaux

Définition de *revenu provenant de services de médias sociaux*

17 (1) Dans la présente partie et la partie 5 et sous réserve du paragraphe (2) et de la section E, le ***revenu provenant de services de médias sociaux*** d'un contribuable s'entend du revenu gagné par le contribuable relativement à une plateforme de médias sociaux du contribuable (ou d'une autre entité constitutive d'un groupe consolidé à l'égard duquel le contribuable est, au moment où le revenu est gagné, une entité constitutive) qui provient de :

a) l'octroi d'accès à la plateforme de médias sociaux ou de son utilisation;

b) la prestation de services supérieurs et d'autres améliorations optionnelles à la fonction de base, ou de changements aux modalités commerciales habituelles, des services offerts relativement à la plateforme de médias sociaux;

c) la facilitation d'une interaction entre des utilisateurs, ou entre un utilisateur et du contenu numérique généré par d'autres utilisateurs, sur la plateforme de médias sociaux;

d) sources visées par règlement.

Exclusion du revenu

(2) Pour l'application de la définition de *revenu provenant de services de médias sociaux* au paragraphe (1), le revenu gagné par un contribuable relativement à une plateforme de médias sociaux ne comprend pas le revenu :

a) visé à l'un des alinéas 13(1)a) à d) et 15(1)a) à c);

b) provenant de la prestation de services de communication privés comprenant toute combinaison des appels vidéo, des appels vocaux, des courriels et de la messagerie instantanée, si l'unique but de la plateforme est de fournir ces services;

c) gagné d'une entité constitutive d'un groupe consolidé si, au moment où le revenu est gagné, le contribuable est une entité constitutive de ce groupe;

d) qui provient de sources visées par règlement.

Canadian social media services revenue

18 A taxpayer's Canadian social media services revenue for a calendar year is the total of all amounts each of which is an amount, in respect of a social media platform, determined by the formula

A × B ÷ C

where

A is the taxpayer's social media services revenue for the calendar year that is in respect of the social media platform;

B is the total number of social media accounts on the social media platform that are accessed at any time during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer) by a user that is, at that time, a user located in Canada; and

C is the total number of social media accounts on the social media platform that are accessed at any time during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer) by a user that is, at that time, a user of determinable location.

Revenu canadien de médias sociaux

18 Le revenu canadien provenant de services de médias sociaux d'un contribuable pour une année civile correspond au total des montants représentant chacune une somme, relativement à une plateforme de médias sociaux, obtenue par la formule suivante :

A × B ÷ C

où :

A représente le revenu provenant de services de médias sociaux du contribuable pour l'année civile relativement à la plateforme de médias sociaux;

B le nombre total de comptes de médias sociaux sur la plateforme de médias sociaux auxquels accède, à un moment donné au cours de l'année civile (ou, dans le cas d'un contribuable à qui l'article 21 s'applique, pendant la période visée du contribuable), un utilisateur qui est, à ce moment, un utilisateur situé au Canada;

C le nombre total de comptes de médias sociaux sur la plateforme de médias sociaux auxquels accède, à un moment donné au cours de l'année civile (ou, dans le cas d'un contribuable à qui l'article 21 s'applique, pendant la période visée du contribuable), un utilisateur qui est, à ce moment, un utilisateur dont l'emplacement est déterminable.

DIVISION D

Canadian User Data Revenue

Definition of *user data revenue*

19 (1) In this Part and Part 5 and subject to subsection (2) and Division E, ***user data revenue***, of a taxpayer, means revenue earned by the taxpayer in respect of user data collected from a user by the taxpayer (or collected from a user by another constituent entity of a consolidated group of which the taxpayer is, at the time the taxpayer obtains access to the data, a constituent entity) from

(a) if the user data is collected from an online marketplace, a social media platform or an online search engine,

(i) the sale of the user data, or

(ii) the granting of access to the user data; and

(b) sources prescribed by regulation.

SECTION D

Revenu canadien provenant de données d'utilisateurs

Définition de *revenu provenant de données d'utilisateurs*

19 (1) Dans la présente partie et la partie 5 et sous réserve du paragraphe (2) et de la section E, le ***revenu provenant de données d'utilisateurs*** d'un contribuable s'entend du revenu gagné par le contribuable relativement aux données d'utilisateurs recueillies auprès d'un utilisateur par le contribuable (ou recueillies auprès d'un utilisateur par une autre entité constitutive d'un groupe consolidé à l'égard duquel le contribuable est, au moment où il obtient l'accès aux données, une entité constitutive) qui provient :

a) si les données d'utilisateurs sont recueillies auprès d'un marché en ligne, d'une plateforme de médias sociaux ou d'un moteur de recherche en ligne, selon le cas :

(i) de la vente des données d'utilisateurs,

(ii) de l'octroi de l'accès aux données d'utilisateurs;

Interpretation — revenue exclusion

(2) For the purpose of the definition *user data revenue* in subsection (1), revenue earned by a taxpayer in respect of user data does not include revenue

(a) described in any of paragraphs 13(1)(a) to (d), 15(1)(a) to (c) and 17(1)(a) to (d);

(b) earned from a constituent entity of a consolidated group if, at the time the revenue is earned, the taxpayer is a constituent entity of the group; or

(c) from sources prescribed by regulation.

Canadian user data revenue

20 A taxpayer's Canadian user data revenue for a calendar year is the amount determined by the formula

A + B

where

A is the total of all amounts each of which is an amount of the taxpayer's user data revenue for the calendar year that is in respect of the user data of a single user that is, at the time the user data is collected, a user located in Canada; and

B is the total of all amounts each of which is an amount, in respect of a set of user data of multiple users, determined by the formula

C × D ÷ E

where

C is the taxpayer's user data revenue (other than revenue that is in respect of the user data of a single user that is, at the time the user data is collected, a user of determinable location) for the calendar year that is in respect of the set of user data,

D is the number of users to which the set of user data relates that are, at the time the user data is collected, a user located in Canada, and

E is the number of users to which the set of user data relates that are, at the time the user data is collected, a user of determinable location.

b) de sources visées par règlement.

Exclusion du revenu

(2) Pour l'application de la définition de *revenu provenant de données d'utilisateurs* au paragraphe (1), le revenu gagné par un contribuable relativement à des données d'utilisateurs ne comprend pas le revenu :

a) visé à l'un des alinéas 13(1)a) à d), 15(1)a) à c) et 17(1)a) à d);

b) gagné d'une entité constitutive d'un groupe consolidé si, au moment où le revenu est gagné, le contribuable est une entité constitutive de ce groupe;

c) qui provient de sources visées par règlement.

Revenu canadien provenant de données d'utilisateurs

20 Le revenu canadien provenant de données d'utilisateurs d'un contribuable pour une année civile correspond à la somme obtenue par la formule suivante :

A + B

où :

A représente le total des montants représentant chacun un montant de revenu provenant de données d'utilisateurs du contribuable pour l'année civile relativement aux données d'utilisateurs d'un seul utilisateur qui est, au moment où ces données sont recueillies, un utilisateur situé au Canada;

B le total des montants représentant chacun une somme, relativement à un ensemble de données d'utilisateurs de plusieurs utilisateurs, obtenue par la formule suivante :

C × D ÷ E

où :

C représente le revenu provenant de données d'utilisateurs (sauf un revenu relativement aux données d'utilisateurs d'un seul utilisateur qui est, au moment où ces données sont recueillies, un utilisateur dont l'emplacement est déterminable) du contribuable pour l'année civile relativement à l'ensemble des données d'utilisateurs,

D le nombre d'utilisateurs auxquels se rapporte l'ensemble des données d'utilisateurs qui sont, au moment où ces données sont recueillies, des utilisateurs situés au Canada,

E le nombre d'utilisateurs auxquels se rapporte l'ensemble des données d'utilisateurs qui sont, au moment où ces données sont recueillies, des utilisateurs dont l'emplacement est déterminable.

DIVISION E

Rules Relating to Determination of Canadian Digital Services Revenue

Revenue of new constituent entities

21 (1) If a taxpayer meets the condition set out in subparagraph 10(1)(a)(iii) for a particular calendar year, and does not meet at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) for the particular calendar year, then online marketplace services revenue, online advertising services revenue, social media services revenue and user data revenue of the taxpayer for the particular calendar year do not include revenue earned by the taxpayer before the first moment in the particular calendar year when the taxpayer becomes a constituent entity of a consolidated group described in subparagraph 10(1)(a)(iii).

Definition of *in-scope period*

(2) If subsection (1) applies to a taxpayer for a particular calendar year, in this Part and in the definition *relevant time* in Part 4, the ***in-scope period***, of the taxpayer, means the period during the particular calendar year beginning at the first moment in the particular calendar year when the taxpayer becomes a constituent entity of a consolidated group described in subparagraph 10(1)(a)(iii) and ending on December 31.

Attribution of activity

22 Revenue of a particular constituent entity of a consolidated group is deemed to be Canadian digital services revenue of the particular entity if the revenue

(a) is in respect of the provision of a service, or the selling or granting of access to user data, by another constituent entity of the group; and

(b) would be Canadian digital services revenue of that other entity if the revenue were earned by the other entity.

PART 4

Taxable Canadian Digital Services Revenue

Definitions

23 The following definitions apply in this Part.

SECTION E

Règles relatives au calcul du revenu canadien de services numériques

Revenu de nouvelles entités constitutives

21 (1) Si un contribuable remplit la condition énoncée au sous-alinéa 10(1)a)(iii) pour une année civile donnée et qu'il ne remplit pas au moins une des conditions énoncées au sous-alinéa 10(1)a)(i) et (ii) pour l'année civile donnée, le revenu provenant de services de marché en ligne, le revenu provenant de services de publicité en ligne, le revenu provenant de services de médias sociaux et le revenu provenant de données d'utilisateurs du contribuable pour l'année civile donnée ne comprend pas le revenu du contribuable gagné avant le premier moment de l'année civile donnée où le contribuable devient une entité constitutive d'un groupe consolidé visé au sous-alinéa 10(1)a)(iii).

Définition de *période visée*

(2) Si le paragraphe (1) s'applique à un contribuable pour une année civile donnée, dans la présente partie et dans la définition de *moment pertinent* à la partie 4, la ***période visée*** du contribuable s'entend de la période durant l'année civile donnée commençant au premier moment de l'année civile donnée où le contribuable devient une entité constitutive d'un groupe consolidé visé au sous-alinéa 10(1)a)(iii) et se terminant le 31 décembre.

Attribution d'activités

22 Le revenu d'une entité constitutive donnée d'un groupe consolidé est réputé être un revenu canadien de services numériques de l'entité donnée si le revenu remplit les conditions suivantes :

a) il se rapporte à la prestation d'un service ou à la vente ou à l'octroi d'accès à des données d'utilisateurs par une autre entité constitutive du groupe;

b) il s'agirait d'un revenu canadien de services numériques de cette autre entité s'il était gagné par l'autre entité.

PARTIE 4

Revenu canadien de services numériques imposable

Définitions

23 Les définitions qui suivent s'appliquent à la présente partie.

deduction amount means an amount prescribed by regulation. (*montant de la déduction*)

relevant interval, of a taxpayer in a calendar year, means any period from one relevant time of the taxpayer in the year to the next relevant time of the taxpayer in the year. (*intervalle pertinent*)

relevant time, of a particular taxpayer in a calendar year, means

(a) the first moment of

(i) the in-scope period of the particular taxpayer if section 21 applies to the particular taxpayer for the calendar year, or

(ii) January 1 in any other case;

(b) the last moment of December 31;

(c) any time between the time referred to in paragraph (a) and the time referred to in paragraph (b) at which the particular taxpayer becomes, or ceases to be, a constituent entity of a consolidated group; and

(d) any time between the time referred to in paragraph (a) and the time referred to in paragraph (b) at which

(i) the particular taxpayer is a constituent entity of a consolidated group, and

(ii) any other taxpayer becomes, or ceases to be, a constituent entity of the group. (*moment pertinent*)

Determination

24 A particular taxpayer's taxable Canadian digital services revenue for a calendar year is the amount determined by the formula

A – B

where

A is the particular taxpayer's Canadian digital services revenue for the calendar year; and

B is

(a) if the particular taxpayer is not, at any time in the calendar year, a constituent entity of a consolidated group, the deduction amount, and

(b) in any other case, the total of all amounts each of which is an amount in respect of a relevant interval of the particular taxpayer in the calendar year determined by the formula

intervalle pertinent Relativement à un contribuable au cours d'une année civile, s'entend de toute période commençant à un moment pertinent du contribuable au cours de l'année civile et se terminant au prochain moment pertinent du contribuable au cours de l'année civile. (*relevant interval*)

moment pertinent Relativement à un contribuable donné au cours d'une année civile, s'entend :

a) du premier moment :

(i) de la période visée du contribuable donné si l'article 21 s'applique au contribuable donné pour l'année civile,

(ii) du 1er janvier dans les autres cas;

b) du dernier moment du 31 décembre;

c) de tout moment entre le moment visé à l'alinéa a) et le moment visé à l'alinéa b) où le contribuable donné devient une entité constitutive d'un groupe consolidé, ou cesse de l'être;

d) de tout moment entre le moment visé à l'alinéa a) et le moment visé à l'alinéa b) où, à la fois :

(i) le contribuable donné est une entité constitutive d'un groupe consolidé,

(ii) un autre contribuable devient une entité constitutive du groupe ou cesse de l'être. (*relevant time*)

montant de la déduction Un montant visé par règlement. (*deduction amount*)

Calcul

24 Le revenu canadien de services numériques imposable d'un contribuable donné pour une année civile correspond à la somme obtenue par la formule suivante :

A – B

où :

A représente le revenu canadien de services numériques du contribuable donné pour l'année civile;

B :

a) si le contribuable donné n'est, à aucun moment au cours de l'année civile, une entité constitutive d'un groupe consolidé, le montant de la déduction,

b) dans les autres cas, le total des montants dont chacun représente une somme relative à un intervalle pertinent du contribuable donné au cours de l'année civile déterminée par la formule suivante :

C × (D ÷ 365) × (E ÷ F)

where

C is the deduction amount,

D is the number of days in the relevant interval,

E is the particular taxpayer's Canadian digital services revenue for the calendar year, and

F is

(i) if the particular taxpayer is a constituent entity of a consolidated group during the relevant interval, the total of all amounts each of which is the Canadian digital services revenue for the calendar year of a taxpayer that is a constituent entity of the consolidated group during the relevant interval (or, if the particular taxpayer does not determine all those amounts, nil), and

(ii) in any other case, the amount determined for E.

C × (D ÷ 365) × (E ÷ F)

où :

C représente le montant de la déduction,

D le nombre de jours dans l'intervalle pertinent,

E le revenu canadien de services numériques du contribuable donné pour l'année civile,

F :

(i) si le contribuable donné est une entité constitutive d'un groupe consolidé au cours de l'intervalle pertinent, le total des montants dont chacun représente le revenu canadien de services numériques pour l'année civile d'un contribuable qui est une entité constitutive du groupe consolidé au cours de l'intervalle pertinent (ou, si le contribuable donné ne calcule pas un tel montant, zéro),

(ii) dans les autres cas, la valeur de l'élément E.

PART 5

Miscellaneous

DIVISION A

Trustees and Receivers

Definitions

25 The following definitions apply in this Division.

bankruptcy day, of a taxpayer, means a day on which a trustee becomes the trustee in bankruptcy of the taxpayer. (*jour de la faillite*)

bankruptcy period, of a taxpayer in respect of a bankruptcy day of the taxpayer, means the period during a calendar year (for which the taxpayer satisfies at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) and satisfies the condition set out in paragraph 10(1)(b)) beginning on the day after the bankruptcy day and ending on the earlier of the day on which the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act* and December 31. (*période de faillite*)

bankrupt year, of a taxpayer in respect of a bankruptcy day of the taxpayer, means any calendar year (for which the taxpayer satisfies at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) and satisfies the

PARTIE 5

Divers

SECTION A

Syndics et séquestres

Définitions

25 Les définitions qui suivent s'appliquent à la présente section.

actif pertinent Relativement à un séquestre, la partie des biens, des entreprises, des affaires et des éléments d'actifs d'une personne auxquels se rapporte le pouvoir du séquestre. (*relevant assets*)

année sous séquestre S'agissant d'un contribuable, relativement à un jour de mise sous séquestre du contribuable, toute année civile (pour laquelle le contribuable remplit au moins une des conditions énoncées aux sous-alinéas 10(1)a)(i) et (ii) et remplit la condition énoncée à l'alinéa 10(1)b)) entre l'année civile au cours de laquelle le jour de mise sous séquestre se produit et celle dans laquelle le séquestre cesse d'agir à ce titre pour le contribuable. (*year in receivership*)

année de faillite S'agissant d'un contribuable, relativement à un jour de la faillite du contribuable, toute année civile (pour laquelle le contribuable remplit au moins une

condition set out in paragraph 10(1)(b)) between the calendar year in which the bankruptcy day occurs and the calendar year in which the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act*. (*année de faillite*)

business includes a part of a business. (*entreprise*)

pre-bankruptcy period, of a taxpayer in respect of a bankruptcy day of the taxpayer, means the period during a calendar year (for which the taxpayer satisfies at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) and satisfies the condition set out in paragraph 10(1)(b)) beginning on January 1 and ending on the bankruptcy day. (*période de pré-faillite*)

pre-cease period, of a taxpayer in respect of a receivership day of the taxpayer, means the period during a particular calendar year (for which the taxpayer satisfies at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) and satisfies the condition set out in paragraph 10(1)(b)) after the year in which the receivership day occurs beginning on January 1 of the particular calendar year and ending on the day on which the receiver ceases to act as receiver of the taxpayer. (*période antérieure à la cessation*)

pre-discharge period, of a taxpayer in respect of a bankruptcy day of the taxpayer, means the period during a particular calendar year (for which the taxpayer satisfies at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) and satisfies the condition set out in paragraph 10(1)(b)) after the year in which the bankruptcy day occurs beginning on January 1 of the particular calendar year and ending on the day on which the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act*. (*période antérieure à la libération*)

pre-receivership period, of a taxpayer in respect of a receivership day of the taxpayer, means the period during a calendar year (for which the taxpayer satisfies at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) and satisfies the condition set out in paragraph 10(1)(b)) beginning on January 1 and ending on the receivership day. (*période antérieure à la mise sous séquestre*)

receiver means a person that

(a) under the authority of a debenture, bond or other debt security, of a court order or of an Act of Parliament or of the legislature of a province, is empowered to operate or manage a business or a property of another person;

des conditions énoncées aux sous-alinéas 10(1)a)(i) et (ii) et remplit la condition énoncée à l'alinéa 10(1)b)) entre l'année civile au cours de laquelle le jour de la faillite se produit et celle de la libération du syndic en vertu de la *Loi sur la faillite et l'insolvabilité*. (*bankrupt year*)

entreprise Est assimilée à une entreprise toute partie de celle-ci. (*business*)

jour de la faillite Relativement à un contribuable, jour où un syndic devient le syndic de faillite du contribuable. (*bankruptcy day*)

jour de mise sous séquestre Relativement à un contribuable, le premier jour où un séquestre, à la fois :

a) est investi du pouvoir de gérer, d'exploiter ou de liquider l'entreprise ou les biens du contribuable, ou de gérer ses affaires et ses éléments d'actifs;

b) est en possession, ou contrôle et gère, les affaires et les éléments d'actifs du contribuable. (*receivership day*)

période antérieure à la cessation S'agissant d'un contribuable, relativement à un jour de mise sous séquestre du contribuable, la période au cours d'une année civile donnée (pour laquelle le contribuable remplit au moins une des conditions énoncées aux sous-alinéas 10(1)a)(i) et (ii) et remplit la condition énoncée à l'alinéa 10(1)b)) suivant l'année dans laquelle le jour de mise sous séquestre se produit, commençant le 1er janvier de l'année civile donnée et se terminant le jour où le séquestre cesse d'agir à ce titre pour le contribuable. (*pre-cease period*)

période antérieure à la libération S'agissant d'un contribuable, relativement à un jour de la faillite du contribuable, la période au cours d'une année civile donnée (pour laquelle le contribuable remplit au moins une des conditions énoncées aux sous-alinéas 10(1)a)(i) et (ii) et remplit la condition énoncée à l'alinéa 10(1)b)) suivant l'année au cours de laquelle le jour de la faillite se produit, commençant le 1er janvier de l'année civile donnée et se terminant le jour de la libération du syndic en vertu de la *Loi sur la faillite et l'insolvabilité*. (*pre-discharge period*)

période antérieure à la mise sous séquestre S'agissant d'un contribuable, relativement à un jour de mise sous séquestre du contribuable, la période au cours d'une année civile (pour laquelle le contribuable remplit au moins une des conditions énoncées aux sous-alinéas 10(1)a)(i) et (ii) et remplit la condition énoncée à l'alinéa 10(1)b)), commençant le 1er janvier et se terminant le jour de mise sous séquestre. (*pre-receivership period*)

(b) is appointed by a trustee under a trust deed in respect of a debt security to exercise the authority of the trustee to manage or operate a business or a property of the debtor under the debt security;

(c) is appointed by a *bank* or an *authorized foreign bank*, as those terms are defined in section 2 of the *Bank Act*, to act as an agent or mandatary of the bank in the exercise of the authority of the bank under subsection 426(3) of that Act in respect of property of another person; or

(d) is appointed as a liquidator to liquidate the assets of a corporation or to wind up the affairs of a corporation.

It includes a person that is appointed to exercise the authority of a creditor under a debenture, bond or other debt security to operate or manage a business or a property of another person, but, if a person is appointed to exercise the authority of a creditor under a debenture, bond or other debt security to operate or manage a business or a property of another person, it does not include that creditor. (*séquestre*)

receivership day, of a taxpayer, means the earliest day on which a receiver

(a) is vested with authority to manage, operate, liquidate or wind up any business or property or to manage and care for the affairs and assets of the taxpayer; and

(b) is in possession of or controls and manages the affairs and assets of the taxpayer. (*jour de mise sous séquestre*)

receivership period, of a taxpayer in respect of a receivership day of the taxpayer, means the period during a calendar year (for which the taxpayer satisfies at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) and satisfies the condition set out in paragraph 10(1)(b)) beginning on the day after the receivership day and ending on the earlier of the day on which the receiver ceases to act as receiver of the taxpayer and December 31. (*période de mise sous séquestre*)

relevant assets of a receiver means the part of the properties, businesses, affairs or assets of a person to which the receiver's authority relates. (*actif pertinent*)

year in receivership, of a taxpayer in respect of a receivership day of the taxpayer, means any calendar year (for which the taxpayer satisfies at least one of the conditions set out in subparagraphs 10(1)(a)(i) and (ii) and satisfies the condition set out in paragraph 10(1)(b)) between the calendar year in which the receivership day occurs and the calendar year in which the receiver ceases

période de faillite S'agissant d'un contribuable, relativement à un jour de la faillite du contribuable, la période au cours d'une année civile (pour laquelle le contribuable remplit au moins une des conditions énoncées aux sous-alinéas 10(1)a)(i) et (ii) et remplit la condition énoncée à l'alinéa 10(1)b)) commençant le lendemain du jour de la faillite et se terminant la première en date des dates suivantes : le jour de la libération du syndic en vertu de la *Loi sur la faillite et l'insolvabilité* et le 31 décembre. (*bankruptcy period*)

période de mise sous séquestre S'agissant d'un contribuable, relativement à un jour de mise sous séquestre du contribuable, la période au cours d'une année civile (pour laquelle le contribuable remplit au moins une des conditions énoncées aux sous-alinéas 10(1)a)(i) et (ii) et remplit la condition énoncée à l'alinéa 10(1)b)) commençant le lendemain du jour de mise sous séquestre et se terminant la première en date des dates suivantes : le jour où le séquestre cesse d'agir à ce titre pour le contribuable et le 31 décembre. (*receivership period*)

période de pré-faillite S'agissant d'un contribuable, relativement à un jour de la faillite du contribuable, la période au cours d'une année civile (pour laquelle le contribuable remplit au moins une des conditions énoncées aux sous-alinéas 10(1)a)(i) et (ii) et remplit la condition énoncée à l'alinéa 10(1)b)), commençant le 1er janvier de l'année et se terminant le jour de la faillite. (*pre-bankruptcy period*)

séquestre Personne qui, selon le cas :

a) par application d'une obligation ou d'un autre titre de créance, de l'ordonnance d'un tribunal ou d'une loi fédérale ou provinciale, a le pouvoir de gérer ou d'exploiter les entreprises ou les biens d'une autre personne;

b) est nommée par un fiduciaire aux termes d'un acte de fiducie relativement à un titre de créance, pour exercer le pouvoir du fiduciaire de gérer ou d'exploiter les entreprises ou les biens du débiteur du titre;

c) est nommée par une *banque* ou par une *banque étrangère autorisée*, au sens de l'article 2 de la *Loi sur les banques*, à titre de mandataire de la banque lors de l'exercice du pouvoir de celle-ci visé au paragraphe 426(3) de cette loi relativement aux biens d'une autre personne;

d) est nommée à titre de liquidateur pour liquider les biens ou les affaires d'une personne morale.

Est assimilée au séquestre la personne nommée pour exercer le pouvoir d'un créancier, aux termes d'une

to act as receiver of the taxpayer. (*année sous séquestre*)

obligation ou d'un autre titre de créance, de gérer ou d'exploiter les entreprises ou les biens d'une autre personne, à l'exclusion du créancier. (*receiver*)

Trustee as agent or mandatary

26 If a taxpayer has become a bankrupt and a trustee becomes the trustee in bankruptcy of the taxpayer, the trustee is deemed to be the agent or mandatary of the bankrupt for all purposes of this Act and any revenue of the trustee from carrying on the business of the bankrupt is deemed to be revenue of the bankrupt and not of the trustee.

Syndic agissant à titre de mandataire

26 Lorsqu'un contribuable est en faillite, et qu'un syndic devient son syndic de faillite, pour l'application générale de la présente loi, le syndic de faillite est réputé être le mandataire du failli et tout revenu de celui-ci tiré de l'exploitation de l'entreprise du failli est réputé être le revenu du failli et non du syndic.

Tax payable for bankruptcy

27 (1) If during a particular calendar year there is a bankruptcy day of a taxpayer,

(a) section 10 does not apply in respect of the particular calendar year, any bankrupt year or a calendar year during which the pre-discharge period, if any, occurs;

(b) the taxpayer must pay a tax in respect of the pre-bankruptcy period equal to 3% of the taxpayer's taxable Canadian digital services revenue for the pre-bankruptcy period determined in accordance with section 31;

(c) subject to subsection (2), the trustee, and not the taxpayer, must pay a tax in respect of each of the bankruptcy period and, if any, the pre-discharge period equal to 3% of the taxpayer's taxable Canadian digital services revenue for the period determined in accordance with section 31; and

(d) subject to subsection (2), the trustee, and not the taxpayer, must pay a tax in respect of any bankrupt year equal to 3% of the taxpayer's taxable Canadian digital services revenue for the year.

Taxe à payer pour la faillite

27 (1) Si une année civile donnée comprend un jour de la faillite d'un contribuable, à la fois :

a) l'article 10 ne s'applique pas relativement à l'année civile donnée, à toute année de faillite ou à une année civile comprenant la période antérieure à la libération, s'il y a lieu;

b) le contribuable est tenu de payer une taxe pour la période de pré-faillite égale à 3 % de son revenu canadien de services numériques imposable pour la période de pré-faillite calculé conformément à l'article 31;

c) sous réserve du paragraphe (2), le syndic, et non le contribuable, est tenu de payer une taxe pour la période de faillite et, le cas échéant, pour la période antérieure à la libération égale à 3 % du revenu canadien de services numériques imposable du contribuable pour ces périodes, calculé conformément à l'article 31;

d) sous réserve du paragraphe (2), le syndic, et non le contribuable, est tenu de payer une taxe pour toute année de faillite égale à 3 % du revenu canadien de services numériques imposable du contribuable pour l'année.

Trustee — exception

(2) A trustee is not liable for the payment of any amount for which a receiver is liable under section 29.

Syndic — exception

(2) Le syndic n'est pas responsable du paiement des sommes pour lesquelles un séquestre est responsable en vertu de l'article 29.

Filing and payment

28 (1) If section 27 applies in respect of a bankruptcy day of a taxpayer during a particular calendar year,

(a) sections 45 and 49 do not apply to the taxpayer in respect of the particular calendar year, any bankrupt year or a calendar year during which the pre-discharge period, if any, occurs;

Production et paiement

28 (1) Si l'article 27 s'applique relativement à un jour de la faillite d'un contribuable au cours d'une année civile donnée :

a) les articles 45 et 49 ne s'appliquent pas au contribuable relativement à l'année civile donnée, à toute année de faillite ou à une année civile comprenant la période antérieure à la libération, s'il y a lieu;

(b) subject to subsection (2), the trustee must file all returns — in the form and manner, and containing the information, prescribed by the Minister — in respect of any year or period referred to in paragraph 27(1)(c) or (d) for which the trustee is liable to pay tax greater than nil, and pay the tax payable under this Act in respect of the year or period, on or before the day that is 90 days after the last day of the year or period; and

(c) subject to subsection (2), the trustee must, unless the Minister waives the requirement in writing, file any return that is required to be filed by the taxpayer in respect of the calendar year immediately preceding the particular calendar year or in respect of the pre-bankruptcy period — in the form and manner, and containing the information, prescribed by the Minister — on or before the day that is 90 days after the bankruptcy day.

b) sous réserve du paragraphe (2), le syndic est tenu de produire toute déclaration — selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier — relativement à toute année ou à toute période visée aux alinéas 27(1)c) ou d) pour laquelle le syndic est tenu de payer un montant positif de taxe, et de payer toute taxe en vertu de la présente loi relativement à cette année ou période, au plus tard le quatre-vingt-dixième jour suivant le dernier jour de l'année ou de la période;

c) sous réserve du paragraphe (2), le syndic est tenu de présenter au ministre — selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier — toute déclaration que le contribuable est tenu de produire relativement à l'année civile précédant l'année civile donnée ou relativement à la période de pré-faillite, au plus tard le quatre-vingt-dixième jour suivant le jour de la faillite, sauf si le ministre renonce par écrit à exiger ces déclarations du syndic.

Trustee — exception

(2) If there is a receiver with authority in respect of any business, property, affairs or assets of a taxpayer referred to in subsection (1), the trustee is not required to include in any return any information that the receiver is required under section 30 to include in a return.

Syndic — exception

(2) Lorsqu'un séquestre est investi de pouvoirs relativement à une entreprise, à un bien, aux affaires ou à des éléments d'actifs du contribuable visés au paragraphe (1), le syndic n'est pas tenu d'inclure dans une déclaration les renseignements que le séquestre est tenu d'inclure dans une déclaration conformément à l'article 30.

Tax payable for receivership

29 If during a particular calendar year there is a receivership day of a taxpayer,

(a) if the receiver is a receiver-manager,

(i) section 10 does not apply in respect of the particular calendar year, any year in receivership or a calendar year during which the pre-cease period, if any, occurs,

(ii) the taxpayer must pay a tax in respect of the pre-receivership period equal to 3% of the taxpayer's taxable Canadian digital services revenue for the pre-receivership period determined in accordance with section 31,

(iii) the receiver-manager, and not the taxpayer, must pay a tax in respect of each of the receivership period and, if any, the pre-cease period equal to 3% of the taxpayer's taxable Canadian digital services revenue for the period determined in accordance with section 31, and

Taxe à payer pour la mise sous séquestre

29 Si une année civile donnée comprend un jour de mise sous séquestre d'un contribuable :

a) si le séquestre est un séquestre-gérant, à la fois :

(i) l'article 10 ne s'applique pas relativement à l'année civile donnée, à toute année sous séquestre ou à une année civile comprenant la période antérieure à la cessation, s'il y a lieu,

(ii) le contribuable est tenu de payer une taxe pour la période antérieure à la mise sous séquestre égale à 3 % de son revenu canadien de services numériques imposable pour la période calculé conformément à l'article 31,

(iii) le séquestre-gérant, et non le contribuable, est tenu de payer une taxe pour la période de mise sous séquestre et, le cas échéant, pour la période antérieure à la cessation égale à 3 % du revenu canadien de services numériques imposable du contribuable pour ces périodes, calculé conformément à l'article 31,

(iv) the receiver-manager, and not the taxpayer, must pay a tax in respect of any year in receivership equal to 3% of the taxpayer's taxable Canadian digital services revenue for the year; and

(b) in any other case,

(i) the receiver must pay

(A) a tax in respect of each of the receivership period and, if any, the pre-cease period equal to 3% of the portion of the taxpayer's Canadian digital services revenue for the period (determined in accordance with section 31) that is online marketplace services revenue, online advertising services revenue, social media services revenue and user data revenue earned by the taxpayer for the period that can reasonably be considered to relate to the relevant assets of the receiver, and

(B) a tax in respect of any year in receivership, equal to 3% of the portion of the taxpayer's Canadian digital services revenue for the year that is online marketplace services revenue, online advertising services revenue, social media services revenue and user data revenue earned by the taxpayer for the year that can reasonably be considered to relate to the relevant assets of the receiver, and

(ii) for the purpose of section 10, the taxpayer's taxable Canadian digital services revenue in respect of the particular calendar year, any years in receivership and a calendar year during which the pre-cease period, if any, occurs is determined as if online marketplace services revenue, online advertising services revenue, social media services revenue and user data revenue of the taxpayer for the year did not include revenue that is included in the portion of Canadian digital services revenue described in clause (b)(i)(A) or (B).

(iv) le séquestre-gérant, et non le contribuable, est tenu de payer une taxe pour toute année sous séquestre égale à 3 % du revenu canadien de services numériques imposable du contribuable pour l'année;

b) dans les autres cas :

(i) le séquestre est tenu de payer une taxe, à la fois :

(A) pour la période de mise sous séquestre et, le cas échéant, pour la période antérieure à la cessation égale à 3 % de la partie du revenu canadien de services numériques du contribuable pour ces périodes (calculé conformément à l'article 31) qui représente du revenu provenant de services d'un marché en ligne, du revenu provenant de services de publicité en ligne, du revenu provenant de services de médias sociaux et du revenu provenant de données d'utilisateurs gagnés par ce dernier pour ces périodes qu'il est raisonnable de considérer comme se rapportant à l'actif pertinent du séquestre,

(B) pour toute année sous séquestre, égale à 3 % de la partie du revenu canadien de services numériques du contribuable pour l'année qui représente du revenu provenant de services d'un marché en ligne, du revenu provenant de services de publicité en ligne, du revenu provenant de services de médias sociaux et du revenu provenant de données d'utilisateurs gagnés par ce dernier pour l'année qu'il est raisonnable de considérer comme se rapportant à l'actif pertinent du séquestre,

(ii) pour l'application de l'article 10, le revenu canadien de services numériques du contribuable relativement à l'année civile donnée, aux années sous séquestre et à une année civile comprenant la période antérieure à la cessation, le cas échéant, est calculé comme si le revenu provenant de services d'un marché en ligne, le revenu provenant de services de publicité en ligne, le revenu provenant de services de médias sociaux et le revenu provenant de données d'utilisateurs du contribuable pour l'année n'incluaient pas du revenu compris dans la partie du revenu canadien de services numériques visé aux divisions b)(i)(A) ou (B).

Filing and payment

30 If section 29 applies in respect of a receivership day of a taxpayer during a particular calendar year,

(a) if the receiver is a receiver-manager,

Production et paiement

30 Si l'article 29 s'applique relativement à un jour de mise sous séquestre d'un contribuable au cours d'une année civile donnée :

a) si le séquestre est un séquestre-gérant, à la fois :

(i) sections 45 and 49 do not apply to the taxpayer in respect of the particular calendar year, any year in receivership or a calendar year during which the pre-cease period, if any, occurs,

(ii) the receiver-manager must file all returns — in the form and manner, and containing the information, prescribed by the Minister — in respect of any year or period referred to in subparagraph 29(a)(iii) or (iv) for which the receiver-manager is liable to pay tax greater than nil, and pay the tax payable under this Act in respect of the year or period, on or before the day that is 90 days after the last day of the year or period, and

(iii) the receiver-manager must, unless the Minister waives the requirement in writing, file any return that is required to be filed by the taxpayer in respect of the calendar year immediately preceding the particular calendar year or in respect of the pre-receivership period — in the form and manner, and containing the information, prescribed by the Minister — on or before the day that is 90 days after the receivership day; and

(b) in any other case, the receiver must file all returns — in the form and manner, and containing the information, prescribed by the Minister — in respect of any year or period referred to in subparagraph 29(b)(i) for which the receiver is liable to pay tax greater than nil, and pay the tax payable under this Act in respect of the year or period, on or before the day that is 90 days after the last day of the year or period.

(i) les articles 45 et 49 ne s'appliquent pas au contribuable relativement à l'année civile donnée, à toute année sous séquestre ou à une année civile comprenant la période antérieure à la cessation, s'il y a lieu,

(ii) le séquestre-gérant est tenu de produire toute déclaration — selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier — relativement à toute année ou période visée aux sous-alinéas 29a)(iii) ou (iv) pour laquelle le séquestre-gérant est tenu de payer un montant positif de taxe, et de payer toute taxe en vertu de la présente loi relativement à cette année ou période, au plus tard le quatre-vingt-dixième jour suivant le dernier jour de l'année ou de la période,

(iii) le séquestre-gérant est tenu de présenter au ministre — selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier — toute déclaration que le contribuable est tenu de produire relativement à l'année civile précédant l'année civile donnée ou relativement à la période antérieure à la mise sous séquestre, au plus tard le quatre-vingt-dixième jour suivant le jour de mise sous séquestre, sauf si le ministre renonce par écrit à exiger ces déclarations du séquestre-gérant;

b) dans les autres cas, le séquestre est tenu de produire toute déclaration — selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier — relativement à toute année ou période visée au sous-alinéa 29b)(i) pour laquelle le séquestre est tenu de payer un montant positif de taxe, et de payer toute taxe en vertu de la présente loi relativement à cette année ou période, au plus tard le quatre-vingt-dixième jour suivant le dernier jour de l'année ou de la période.

Non-calendar year periods

31 (1) For the purposes of sections 27 and 29, a taxpayer's taxable Canadian digital services revenue or Canadian digital services revenue for a pre-bankruptcy period, bankruptcy period, pre-discharge period, pre-receivership period, receivership period or pre-cease period is the taxable Canadian digital services revenue or Canadian digital services revenue of the taxpayer, determined in accordance with Parts 3 and 4, with the following modifications:

(a) the references in Parts 3 and 4 to "calendar year" (except in the descriptions of E and F in section 24) are to be read as references to "pre-bankruptcy period", "bankruptcy period", "pre-discharge period",

Périodes hors année civile

31 (1) Pour l'application des articles 27 et 29, le revenu canadien de services numériques imposable d'un contribuable ou son revenu canadien de services numériques pour une période de pré-faillite, une période de faillite, une période antérieure à la libération, une période antérieure à la mise sous séquestre, une période de mise sous séquestre ou une période antérieure à la cessation représente son revenu canadien de services numériques imposable ou son revenu canadien de services numériques calculé conformément aux parties 3 et 4 sous réserve des adaptions suivantes :

a) les mentions de « année civile » aux parties 3 et 4 (sauf dans les éléments E et F de la formule figurant à

"pre-receivership period", "receivership period" or "pre-cease period", as the case may be;

(b) the references in Parts 3 and 4 to "year" (except in the descriptions of E and F in section 24) are to be read as references to "period";

(c) paragraphs (a) and (b) of the definition *relevant time* in section 23 are to be read as follows:

"(a) the first moment of the first day of the period;

(b) the last moment of the last day of the period;"

(d) paragraph (a) of the description of B in section 24 does not apply; and

(e) subsections 12(2) and (3) do not apply.

l'article 24) valent mention de « période de préfaillite », « période de faillite », « période antérieure à la libération », « période antérieure à la mise sous séquestre », « période de mise sous séquestre » ou « période antérieure à la cessation », selon le cas;

b) les mentions de « année » aux parties 3 et 4 (sauf dans les éléments E et F de la formule figurant à l'article 24) valent mention de « période »;

c) les alinéas a) et b) de la définition de *moment pertinent* à l'article 23 sont réputés avoir le libellé suivant :

« a) du premier moment du premier jour de la période;

b) du dernier moment du dernier jour de la période; »

d) l'alinéa a) de l'élément B de la formule figurant à l'article 24 ne s'applique pas;

e) les paragraphes 12(2) et (3) ne s'appliquent pas.

Administration and enforcement

(2) Except as otherwise provided in this Division, Part 6 applies, with any modifications that the circumstances require, to any taxpayer, trustee or receiver in respect of any year or period referred to in this Division.

Application et exécution

(2) Sauf disposition contraire de la présente section, la partie 6 s'applique, avec les adaptations nécessaires, à tout contribuable, syndic ou séquestre relativement à toute année ou période visée à la présente section.

Certificates for receivers

32 (1) Every receiver that controls property of a taxpayer that is, or can reasonably be expected to become, required to pay any amount under this Act must, before distributing the property to any person, obtain a certificate from the Minister certifying that the following amounts have been paid, or that security for the payment of them has been accepted by the Minister, in accordance with this Act:

(a) all amounts that are payable under this Act by the taxpayer or the receiver (in that capacity) in respect of any calendar year, or period, preceding the calendar year, or period, during which the distribution is made; and

(b) all amounts that can reasonably be expected to become payable under this Act by the taxpayer or the receiver (in that capacity) in respect of the calendar year or period during which the distribution is made, or any previous calendar year or period.

Certificats pour les séquestres

32 (1) Le séquestre qui contrôle les biens d'un contribuable tenu de payer des montants en application de la présente loi, ou dont il est raisonnable de s'attendre à ce qu'il le devienne, est tenu d'obtenir du ministre, avant de distribuer les biens à quiconque, un certificat confirmant que les montants ci-après ont été payés, ou qu'une garantie pour leur paiement a été acceptée par le ministre, conformément à la présente loi :

a) les montants qui sont payables par le contribuable ou par le séquestre à ce titre en application de la présente loi pour toute année civile ou période précédant l'année civile ou période qui comprend le moment de la distribution;

b) les montants dont il est raisonnable de s'attendre à ce qu'ils deviennent payables par le contribuable ou le séquestre à ce titre en application de la présente loi pour l'année civile ou la période qui comprend le moment de la distribution ou pour une année civile ou période antérieure.

Liability for failure to obtain certificate

(2) Any receiver that distributes property without obtaining a certificate in respect of the amounts referred to

Obligation d'obtenir un certificat

(2) Le séquestre qui distribue des biens sans obtenir le certificat visé au paragraphe (1) est personnellement

in subsection (1) is personally liable for the payment of those amounts to the extent of the value of the property so distributed.

tenu au paiement des montants en cause, jusqu'à concurrence de la valeur des biens ainsi distribués.

DIVISION B

Partnerships

Partnerships

33 (1) For the purposes of this Act, anything done by a person as a member of a partnership is deemed to have been done by the partnership in the course of the partnership's activities and not to have been done by the person.

Joint and several or solidary liability

(2) A partnership and each member or former member (each of which is referred to in this subsection as the "member") of the partnership (other than a member that is a limited partner and is not a general partner) are jointly and severally, or solidarily, liable for

(a) the payment of all amounts that are required to be paid by the partnership under this Act before or during the period during which the member is a member of the partnership or, if the member was a member of the partnership at the time the partnership was dissolved, after the dissolution of the partnership, except that

(i) the member is liable for the payment of amounts that become payable before the period only to the extent of the property that is regarded as property of the partnership under the relevant laws of general application to partnerships in force in a province or other jurisdiction, and

(ii) the payment by the partnership or by any member of the partnership of an amount in respect of the liability discharges their liability to the extent of that amount; and

(b) all other obligations under this Act that arose before or during that period for which the partnership is liable or, if the member was a member of the partnership at the time the partnership was dissolved, the obligations that arose upon or as a consequence of the dissolution.

SECTION B

Sociétés de personnes

Sociétés de personnes

33 (1) Pour l'application de la présente loi, tout acte accompli par une personne à titre d'associé d'une société de personnes est réputé avoir été accompli par celle-ci dans le cadre de ses activités et non par la personne.

Responsabilité solidaire

(2) Une société de personnes et chacun de ses associés ou anciens associés (chacun étant appelé « associé » au présent paragraphe), à l'exception d'un associé qui est un commanditaire mais qui n'est pas un commandité, sont solidairement responsables de ce qui suit :

a) le paiement des montants que doit payer la société de personnes en application de la présente loi avant ou pendant la période au cours de laquelle l'associé en est un associé ou, si l'associé était un associé de la société au moment de la dissolution de celle-ci, après cette dissolution, toutefois :

(i) l'associé n'est tenu au paiement des montants devenus payables avant la période que jusqu'à concurrence des biens qui sont considérés comme étant ceux de la société selon les lois pertinentes d'application générale concernant les sociétés de personnes qui sont en vigueur dans une province ou dans une autre juridiction,

(ii) le paiement par la société ou par un de ses associés d'un montant au titre de l'obligation réduit d'autant leur obligation;

b) les autres obligations de la société en application de la présente loi qui ont pris naissance avant ou pendant la période visée à l'alinéa a) ou, si l'associé est un associé de la société au moment de la dissolution de celle-ci, les obligations qui découlent de cette dissolution.

DIVISION C

Anti-avoidance

Definitions

34 (1) The following definitions apply in this Division.

tax benefit means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act. (*avantage fiscal*)

tax consequences to a person means the amount of tax or other amount payable by, or refundable to, the person under this Act, or any other amount that is relevant for the purposes of computing that amount. (*attribut fiscal*)

transaction includes an arrangement or event. (*opération*)

General anti-avoidance rule

(2) If a transaction is an avoidance transaction, the tax consequences to a person are to be determined as is reasonable in the circumstances in order to deny a tax benefit that, in the absence of this section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.

Avoidance transaction

(3) An ***avoidance transaction*** means any transaction

(a) that, in the absence of this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit; or

(b) that is part of a series of transactions, which series, in the absence of this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit.

SECTION C

Anti-évitement

Définitions

34 (1) Les définitions qui suivent s'appliquent à la présente section.

attribut fiscal S'agissant des attributs fiscaux d'une personne, taxe ou autre montant payable par cette personne, ou montant qui lui est remboursable, en application de la présente loi, ainsi que tout montant à prendre en compte pour calculer la taxe ou l'autre montant payable par cette personne ou le montant qui lui est remboursable. (*tax consequences*)

avantage fiscal Réduction, évitement ou report de taxe ou d'un autre montant exigible en application de la présente loi ou augmentation d'un remboursement de taxe ou d'un autre montant visé par la présente loi. (*tax benefit*)

opération Sont assimilés à une opération une convention, un mécanisme ou un événement. (*transaction*)

Règle générale anti-évitement

(2) En cas d'opération d'évitement, les attributs fiscaux d'une personne doivent être déterminés de façon raisonnable dans les circonstances de façon à supprimer un avantage fiscal qui, en l'absence du présent article, découlerait, directement ou indirectement, de cette opération ou d'une série d'opérations dont cette opération fait partie.

Opération d'évitement

(3) L'***opération d'évitement*** s'entend :

a) soit de l'opération dont, en l'absence du présent article, découlerait, directement ou indirectement, un avantage fiscal, sauf s'il est raisonnable de considérer que l'opération est principalement effectuée pour des objets véritables, l'obtention de l'avantage fiscal n'étant pas considérée comme un objet véritable;

b) soit de l'opération qui fait partie d'une série d'opérations dont, en l'absence du présent article, découlerait, directement ou indirectement, un avantage fiscal, sauf s'il est raisonnable de considérer que l'opération est principalement effectuée pour des objets véritables, l'obtention de l'avantage fiscal n'étant pas considérée comme un objet véritable.

Application of subsection (2)

(4) Subsection (2) applies to a transaction only if it may reasonably be considered that the transaction

(a) would, if this Act were read without reference to this section, result directly or indirectly in a misuse of the provisions of any one or more of

(i) this Act,

(ii) the *Digital Services Tax Regulations*, or

(iii) any other enactment that is relevant in computing tax or any other amount payable by or refundable to a person under this Act or in determining any amount that is relevant for the purposes of that computation; or

(b) would result directly or indirectly in an abuse having regard to those provisions, other than this section, read as a whole.

Determination of tax consequences

(5) Without restricting the generality of subsection (2) and despite any other enactment, in determining the tax consequences to a person as is reasonable in the circumstances in order to deny a tax benefit that would, in the absence of this section, result directly or indirectly from an avoidance transaction

(a) any deduction, exemption or exclusion in computing Canadian digital services revenue, taxable Canadian digital services revenue or tax payable or any part thereof may be allowed or disallowed in whole or in part;

(b) any such deduction, exemption or exclusion, any revenue or other amount or part thereof may be allocated to any person;

(c) the nature of any payment or other amount may be recharacterized; and

(d) the tax effects that would otherwise result from the application of other provisions of this Act may be ignored.

Request for adjustments

(6) If, with respect to a transaction, a notice of assessment involving the application of subsection (2) with respect to the transaction has been sent to a person, then any person (other than a person to which such a notice has been sent) is entitled, within 180 days after the day of

Application du paragraphe (2)

(4) Le paragraphe (2) ne s'applique qu'à l'opération dont il est raisonnable de considérer, selon le cas :

a) qu'elle entraînerait, directement ou indirectement, s'il n'était pas tenu compte du présent article, un abus dans l'application des dispositions d'un ou de plusieurs des textes suivants :

(i) la présente loi,

(ii) le *Règlement sur la taxe sur les services numériques*,

(iii) tout autre texte législatif qui est utile soit pour le calcul de la taxe ou de toute autre somme exigible ou remboursable sous le régime de la présente loi, soit pour la détermination de toute somme à prendre en compte dans ce calcul;

b) qu'elle entraînerait, directement ou indirectement, un abus dans l'application de ces dispositions, compte non tenu du présent article, lues dans leur ensemble.

Attributs fiscaux à déterminer

(5) Sans préjudice de la portée générale du paragraphe (2) et malgré tout autre texte législatif, dans le cadre de la détermination des attributs fiscaux d'une personne de façon raisonnable dans les circonstances de façon à supprimer l'avantage fiscal qui, en l'absence du présent article, découlerait directement ou indirectement d'une opération d'évitement :

a) toute déduction, exemption ou exclusion dans le calcul de tout ou partie du revenu canadien de services numériques, du revenu canadien de services numériques imposable ou de la taxe payable peut être en totalité ou en partie admise ou refusée;

b) tout ou partie de cette déduction, exemption ou exclusion ainsi que tout ou partie d'un revenu ou d'un autre montant peuvent être attribués à une personne;

c) la nature d'un paiement ou d'un autre montant peut être qualifiée autrement;

d) les effets fiscaux qui découleraient par ailleurs de l'application des autres dispositions de la présente loi peuvent ne pas être pris en compte.

Demande en vue de déterminer les attributs fiscaux

(6) Dans les cent quatre-vingts jours suivant l'envoi à une personne d'un avis de cotisation qui tient compte du paragraphe (2) en ce qui concerne une opération, toute personne autre qu'une personne à laquelle un tel avis a été envoyé a le droit de demander par écrit au ministre

sending of the notice, to request in writing that the Minister make an assessment applying subsection (2) with respect to that transaction.

Exception

(7) Despite any other provision of this Act, the tax consequences to any person, following the application of this section, are only to be determined through a notice of assessment involving the application of this section.

Duties of Minister

(8) On receipt of a request by a person under subsection (6), the Minister must, without delay, consider the request and, despite subsection 70(1), assess the person. However, an assessment may be made under this subsection only to the extent that it may reasonably be regarded as relating to the transaction referred to in subsection (6).

Series of transactions

35 For the purposes of this Division, a series of transactions is deemed to include any related transactions completed in contemplation of the series.

PART 6

General Provisions, Administration and Enforcement

Definitions

36 (1) The following definitions apply in this Part.

Agency means the Canada Revenue Agency continued by subsection 4(1) of the *Canada Revenue Agency Act*. (*Agence*)

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

business number means any number (other than a Social Insurance Number) used by the Minister to identify a person for the purposes of this Act. (*numéro d'entreprise*)

Commissioner means, except in sections 39, 105 and 122, the Commissioner of Revenue appointed under section 25 of the *Canada Revenue Agency Act*. (*commissaire*)

d'établir à son égard une cotisation en application du paragraphe (2) en ce qui concerne l'opération.

Exception

(7) Malgré les autres dispositions de la présente loi, les attributs fiscaux d'une personne, par suite de l'application du présent article, ne peuvent être déterminés que par avis de cotisation compte tenu du présent article.

Obligations du ministre

(8) Sur réception d'une demande présentée par une personne conformément au paragraphe (6), le ministre doit, dès que possible, examiner la demande et, malgré le paragraphe 70(1), établir une cotisation au nom de la personne. Toutefois, une cotisation ne peut être établie en application du présent paragraphe que s'il est raisonnable de considérer que la cotisation concerne l'opération visée au paragraphe (6).

Série d'opérations

35 Pour l'application de la présente section, toute série d'opérations est réputée comprendre les opérations liées terminées en vue de réaliser la série.

PARTIE 6

Dispositions générales, application et exécution

Définitions

36 (1) Les définitions qui suivent s'appliquent à la présente partie.

Agence L'Agence du revenu du Canada, prorogée par le paragraphe 4(1) de la *Loi sur l'Agence du revenu du Canada*. (*Agency*)

banque *Banque*, au sens de l'article 2 de la *Loi sur les banques*, ou *banque étrangère autorisée*, au sens de cet article, qui ne fait pas l'objet des restrictions et exigences visées au paragraphe 524(2) de cette loi. (*bank*)

commissaire Sauf aux articles 39, 105 et 122, le commissaire du revenu, nommé au titre de l'article 25 de la *Loi sur l'Agence du revenu du Canada*. (*Commissioner*)

fonctionnaire Personne qui est ou a été employée par Sa Majesté du chef du Canada ou d'une province, qui occupe ou a occupé une fonction de responsabilité à son service

judge, in respect of any matter, means a judge of a superior court having jurisdiction in the province in which the matter arises or a judge of the Federal Court. (*juge*)

official means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of, His Majesty in right of Canada or a province, or a person who was formerly so employed, who formerly occupied such a position or who formerly was so engaged. (*fonctionnaire*)

record means any material on which representations, in any form, of information or concepts are recorded or marked and that is capable of being read or understood by an individual or a computer system or other device. (*registre*)

registration threshold means the amount prescribed by regulation. (*seuil d'inscription*)

Person resident in Canada

(2) For the purposes of this Part, a person is deemed to be resident in Canada at any time

(a) in the case of a corporation, if the corporation is

(i) incorporated in Canada and not continued elsewhere, or

(ii) continued in Canada;

(b) in the case of a partnership, an unincorporated society, a club, an association or organization, or a branch thereof, if the member or participant, or a majority of the members or participants, having management and control thereof is or are resident in Canada at that time;

(c) in the case of a labour union, if it is carrying on activities as such in Canada and has a local union or branch in Canada at that time; and

(d) in the case of an individual, if the individual is deemed under any of paragraphs 250(1)(a) to (f) of the *Income Tax Act* to be resident in Canada at that time.

Administration or enforcement

(3) For greater certainty, a reference in this Part to the administration or enforcement of this Act includes the collection of any amount payable under this Act.

ou qui est ou a été engagée par elle ou en son nom. (*official*)

juge Relativement à une affaire, juge d'une cour supérieure de la province où l'affaire prend naissance ou juge de la Cour fédérale. (*judge*)

numéro d'entreprise Le numéro, sauf le numéro d'assurance sociale, utilisé par le ministre pour identifier une personne pour l'application de la présente loi. (*business number*)

registre Tout support sur lequel des représentations d'information ou de notions sont enregistrées ou inscrites et qui peut être lu ou compris par un particulier ou par un système informatique ou un autre dispositif. (*record*)

seuil d'inscription Un montant visé par règlement. (*registration threshold*)

Personne résidant au Canada

(2) Pour l'application de la présente partie, sont réputés résider au Canada à un moment donné :

a) la personne morale :

(i) constituée au Canada et non prorogée à l'étranger,

(ii) prorogée au Canada;

b) la société de personnes, le club, l'association ou l'organisation non dotée de la personnalité morale, ou une succursale de ceux-ci, dont le membre ou le participant, ou la majorité des membres ou des participants, qui en assurent la gestion et le contrôle résident au Canada à ce moment;

c) le syndicat ouvrier qui exerce au Canada des activités à ce titre et y a une unité ou section locale à ce moment;

d) le particulier qui est réputé, en vertu de l'un des alinéas 250(1)a) à f) de la *Loi de l'impôt sur le revenu*, résider au Canada à ce moment.

Application ou exécution

(3) Il est entendu que toute mention à la présente partie quant à l'application ou à l'exécution de la présente loi comprend le recouvrement de tout montant payable en vertu de la présente loi.

DIVISION A

Duties of Minister

Minister's duty

37 The Minister must administer and enforce this Act and the Commissioner may exercise the powers and perform the duties of the Minister under this Act.

Staff

38 (1) The persons that are necessary to administer and enforce this Act are to be appointed, employed or engaged in the manner authorized by law.

Delegation of powers

(2) The Minister may authorize any person who is employed or engaged by the Agency, or occupies a position of responsibility in the Agency, to exercise powers or perform duties of the Minister under this Act, including any judicial or quasi-judicial power or duty.

Administration of oaths

39 Any person, if so designated by the Minister, may administer oaths and take and receive affidavits, declarations and affirmations for the purposes of, or incidental to, the administration or enforcement of this Act, and every person so designated has for those purposes all the powers of a commissioner for administering oaths or taking affidavits.

Waiving the filing of documents

40 If any provision of this Act or a regulation requires a person to file a form or other document in the form and manner prescribed by the Minister (other than a return or a form, or other document, with respect to an election) or to provide information, prescribed by the Minister, the Minister may waive the requirement, but at the Minister's request the person must provide the document or information by the date set out in the request.

DIVISION B

Registration

Requirement to register

41 (1) A taxpayer must apply to register under this Act on or before the earliest of

(a) January 31 of the year following the first year of application, if the taxpayer

SECTION A

Fonctions du ministre

Fonctions du ministre

37 Le ministre assure l'application et l'exécution de la présente loi. Le commissaire peut exercer les pouvoirs et les fonctions conférés au ministre par la présente loi.

Personnel

38 (1) Sont nommées, employées ou engagées de la manière autorisée par la loi les personnes nécessaires à l'application et à l'exécution de la présente loi.

Fonctionnaire désigné

(2) Le ministre peut autoriser toute personne employée ou engagée par l'Agence, ou occupant une fonction de responsabilité au sein de celle-ci, à exercer les attributions que lui confère la présente loi, notamment en matière judiciaire ou quasi judiciaire.

Déclaration sous serment

39 Toute personne peut, si le ministre l'a désignée à cette fin, faire prêter les serments et recevoir les déclarations sous serment, solennelles ou autres, exigés pour l'application ou l'exécution de la présente loi, ou qui y sont accessoires. À cet effet, la personne ainsi désignée dispose des pouvoirs d'un commissaire à l'assermentation.

Renonciation

40 Le ministre peut renoncer à exiger qu'une personne produise un formulaire ou autre document en la forme et selon les modalités déterminées par le ministre (autre qu'une déclaration ou un formulaire, ou autre document, relativement à un choix), ou fournisse des renseignements, déterminés par le ministre, aux termes d'une disposition de la présente loi ou d'un règlement, mais la personne doit, à la demande du ministre, fournir le document ou les renseignements au plus tard à la date figurant dans la demande.

SECTION B

Inscription

Demande d'inscription

41 (1) Un contribuable doit présenter une demande d'inscription en vertu de la présente loi au plus tard à la première des dates suivantes :

a) le 31 janvier de l'année suivant la première année d'application, si le contribuable, à la fois :

(i) has Canadian digital services revenue greater than nil

(A) for the first year of application, or

(B) if the rate referred to in the description of B in subsection 10(2) is greater than nil, for any calendar year that is after 2021 and before the first year of application, and

(ii) would meet the conditions set out in paragraphs 10(1)(a) and (b) in respect of a calendar year for which the condition set out in subparagraph (i) is satisfied if the references to "in-scope revenue threshold" in paragraph 10(1)(b) were read as references to "registration threshold"; and

(b) January 31 of the year following a calendar year, after the first year of application, for which calendar year the taxpayer

(i) has Canadian digital services revenue greater than nil, and

(ii) would meet the conditions set out in paragraphs 10(1)(a) and (b) if the references to "in-scope revenue threshold" in paragraph 10(1)(b) were read as references to "registration threshold".

(i) a un revenu canadien de services numériques supérieur à zéro :

(A) soit pour la première année d'application,

(B) soit si le taux visé à l'élément B de la formule figurant au paragraphe 10(2) est supérieur à zéro, pour une année civile postérieure à 2021 et antérieure à la première année d'application,

(ii) remplirait les conditions énoncées aux alinéas 10(1)a) et b) relativement à une année civile pour laquelle la condition énoncée au sous-alinéa (i) est remplie, si les mentions de « seuil de revenu dans le champ d'application » à l'alinéa 10(1)b) valent mentions de « seuil d'inscription »;

b) le 31 janvier de l'année suivant une année civile postérieure à la première année d'application si pour cette année civile le contribuable, à la fois :

(i) a un revenu canadien de services numériques supérieur à zéro,

(ii) remplirait les conditions énoncées aux alinéas 10(1)a) et b) si les mentions de « seuil de revenu dans le champ d'application » à l'alinéa 10(1)b) valent mentions de « seuil d'inscription ».

Waiving requirement under subsection (1)

(2) The Minister may waive a taxpayer's requirement under subsection (1), but at the Minister's request the taxpayer must apply to register by the date set out in the request.

Dispense de l'obligation prévue au paragraphe (1)

(2) Le ministre peut renoncer à exiger qu'un contribuable présente une demande d'inscription prévue au paragraphe (1). Le contribuable est néanmoins tenu de présenter une telle demande à la demande du ministre.

Application to register

42 (1) An application for registration under this Division must be made in the form and manner, and contain the information, prescribed by the Minister.

Demande d'inscription

42 (1) Une demande d'inscription en vertu de la présente section doit être présentée selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier.

Notification

(2) The Minister may register any taxpayer that applies for registration under this Act and, if the Minister does so, the Minister must notify the taxpayer of the effective date of the registration and of the registration number assigned to the taxpayer.

Avis d'inscription

(2) Le ministre peut inscrire tout contribuable qui fait une demande d'inscription en vertu de la présente loi et, le cas échéant, doit aviser le contribuable de la date de prise d'effet de l'inscription et du numéro d'inscription qui lui est attribué.

De-registration

43 (1) The Minister may, upon request by a taxpayer, de-register the taxpayer at any time if the Minister is satisfied that the taxpayer would not have met the conditions set out in paragraphs 10(1)(a) and (b) — in respect of any of the three calendar years immediately preceding that time — if the references to "in-scope revenue

Retrait de l'inscription

43 (1) Le ministre peut, à la demande d'un contribuable, radier l'inscription de ce dernier à tout moment s'il est convaincu que le contribuable n'aurait pas rempli les conditions énoncées aux alinéas 10(1)a) et b) — relativement à l'une des trois années civiles précédant ce moment — si les mentions de « seuil de revenu dans le

threshold" in paragraph 10(1)(b) were read as references to "registration threshold".

Consequences of de-registration

(2) A taxpayer that is, at a particular time, de-registered under subsection (1) is deemed for the purpose of applying subsection 41(1) at any time subsequent to the particular time

(a) not to have applied for registration before the particular time; and

(b) not to have met the conditions set out in paragraph 41(1)(b) before the particular time.

Notification

(3) If the Minister de-registers a taxpayer under this section, the Minister must notify the taxpayer of the de-registration and the effective date of the de-registration.

Notice of intent

44 (1) If the Minister has reason to believe that a taxpayer that is not registered under this Act is required to apply to register and has failed to do so as and when required, the Minister may send a notice of intent in writing to the taxpayer that the Minister proposes to register the taxpayer under this Act.

Notice of intent — requirement to register

(2) On receipt of a notice of intent, a taxpayer must apply to register or establish to the satisfaction of the Minister that the taxpayer is not required to do so.

Notice of intent — notification of registration

(3) If, after 60 days after the day on which a notice of intent was sent by the Minister to a taxpayer, the taxpayer has not applied to register and the Minister is not satisfied that the taxpayer is not required to apply to register, the Minister may register the taxpayer and, on doing so, must notify the taxpayer of the effective date of the registration and the registration number assigned to the taxpayer.

DIVISION C

Returns

Requirement to file return

45 A taxpayer must file a return — in the form and manner, and containing the information, prescribed by the

champ d'application » à l'alinéa 10(1)b) valent mentions de « seuil d'inscription ».

Conséquences du retrait

(2) Un contribuable dont l'inscription est, à un moment donné, radiée en vertu du paragraphe (1) est réputé, pour l'application du paragraphe 41(1) à tout moment postérieur au moment donné, à la fois :

a) ne pas avoir présenté une demande d'inscription avant le moment donné;

b) ne pas avoir rempli les conditions énoncées à l'alinéa 41(1)b) avant le moment donné.

Avis de radiation

(3) Si le ministre radie l'inscription d'un contribuable en application du présent article, il doit aviser le contribuable de la radiation et de la date d'entrée en vigueur de la radiation.

Avis d'intention

44 (1) Si le ministre a des raisons de croire qu'un contribuable qui n'est pas inscrit en vertu de la présente loi est tenu de présenter une demande d'inscription, mais a omis de le faire dans le délai et selon les modalités prévus, il peut lui envoyer par écrit un avis d'intention selon lequel le ministre propose de l'inscrire en vertu de la présente loi.

Avis d'intention — demande d'inscription

(2) À la réception d'un avis d'intention, un contribuable doit présenter une demande d'inscription ou convaincre le ministre qu'il n'est pas tenu de le faire.

Avis d'intention — avis d'inscription

(3) Si, au terme des soixante jours suivant l'envoi par le ministre d'un avis d'intention à un contribuable, celui-ci n'a pas présenté une demande d'inscription et le ministre n'est pas convaincu que le contribuable n'est pas tenu de présenter une telle demande, le ministre peut inscrire le contribuable. Le cas échéant, le ministre doit aviser le contribuable de la date d'entrée en vigueur de l'inscription et du numéro d'inscription qui lui est attribué.

SECTION C

Déclarations

Obligation de produire une déclaration

45 Un contribuable doit produire une déclaration — selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier

Minister — for a particular calendar year, on or before June 30 of the following calendar year, if

(a) the particular calendar year is the first year of application and the taxpayer

(i) has Canadian digital services revenue greater than nil

(A) for the first year of application, or

(B) if the rate referred to in the description of B in subsection 10(2) is greater than nil, for any calendar year that is after 2021 and before the first year of application, and

(ii) meets the conditions set out in paragraphs 10(1)(a) and (b) in respect of a calendar year for which the condition set out in subparagraph (i) is satisfied; or

(b) the particular calendar year is after the first year of application and the taxpayer

(i) has Canadian digital services revenue greater than nil for the particular calendar year, and

(ii) meets the conditions set out in paragraphs 10(1)(a) and (b) in respect of the particular calendar year.

— pour une année civile donnée, au plus tard le 30 juin de l'année civile suivante, dans les circonstances suivantes :

a) si l'année civile donnée est la première année d'application, le contribuable remplit les conditions suivantes :

(i) il a un revenu canadien de services numériques supérieur à zéro :

(A) soit pour la première année d'application,

(B) soit si le taux visé à l'élément B de la formule figurant au paragraphe 10(2) est supérieur à zéro, pour toute année civile postérieure à 2021 et antérieure à la première année d'application,

(ii) il remplit les conditions énoncées aux alinéas 10(1)a) et b) relativement à une année civile pour laquelle la condition énoncée au sous-alinéa (i) est remplie;

b) si l'année civile donnée est postérieure à la première année d'application, le contribuable remplit les conditions suivantes :

(i) il a un revenu canadien de services numériques supérieur à zéro pour l'année civile donnée,

(ii) il remplit les conditions énoncées aux alinéas 10(1)a) et b) relativement à l'année civile donnée.

Election — designated entity

46 (1) A taxpayer that is a constituent entity of a consolidated group at any time in a particular calendar year (other than a taxpayer that is a constituent entity of more than one consolidated group during the particular calendar year) may jointly elect, in respect of the particular calendar year, with one or more other constituent entities of the group (including a particular constituent entity) to designate the particular constituent entity (referred to in this Act as the "designated entity") by making an election on or before June 30 of the following calendar year in the form and manner, and containing the information, prescribed by the Minister.

Choix — entité désignée

46 (1) Un contribuable qui est une entité constitutive d'un groupe consolidé à tout moment au cours d'une année civile donnée (sauf le contribuable qui est une entité constitutive de plus d'un groupe consolidé durant l'année civile donnée) peut faire un choix conjoint, relativement à l'année civile donnée, avec une ou plusieurs autres entités constitutives du groupe (y compris une entité constitutive donnée) de désigner l'entité constitutive donnée (appelée « entité désignée » dans la présente loi) en effectuant le choix au plus tard le 30 juin de l'année civile suivante selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier.

Election — consequences

(2) If a taxpayer elects to designate an entity under subsection (1) in respect of a calendar year

(a) the designated entity must act on behalf of the taxpayer for the purposes of this Part in respect of the year;

Choix — conséquences

(2) Si un contribuable choisit de désigner une entité en vertu du paragraphe (1) relativement à une année civile :

a) l'entité désignée doit agir pour le compte du contribuable pour l'application de la présente partie relativement à l'année;

(b) any action taken by the designated entity on behalf of the taxpayer for the purposes of this Part in respect of the year is deemed to have been performed by the taxpayer; and

(c) the Minister must direct to the designated entity and the taxpayer any communication for the purposes of this Part as it applies to the taxpayer in respect of the year.

b) toute mesure prise par l'entité désignée pour le compte du contribuable pour l'application de la présente partie relativement à l'année est réputée avoir été exécutée par le contribuable;

c) le ministre est tenu de diriger toute communication à l'entité désignée et au contribuable pour l'application de la présente partie telle qu'elle s'applique au contribuable relativement à l'année.

Application for registration — designated entity

(3) If a taxpayer elects to designate an entity under subsection (1) that is not registered under this Act, the designated entity must, at the time of the election, make an application to register in the form and manner, and containing the information, prescribed by the Minister.

Demande d'inscription – entité désignée

(3) Si un contribuable choisit de désigner une entité en vertu du paragraphe (1) qui n'est pas inscrite en vertu de la présente loi, l'entité désignée est tenue, au moment du choix, de présenter une demande d'inscription selon la forme et les modalités que le ministre détermine et contenant les renseignements déterminés par ce dernier.

Extension of time

47 (1) The Minister may at any time extend the time for filing a return, form or other document, providing information, or making an election under this Act.

Prorogation

47 (1) Le ministre peut en tout temps proroger le délai fixé pour produire une déclaration, un formulaire ou un autre document, communiquer des renseignements ou faire un choix en application de la présente loi.

Effect of extension

(2) If the Minister extends the time for filing a return, form or other document, providing information or making an election under subsection (1),

(a) the return, form or other document must be filed, the information must be provided or the election must be made within the time so extended; and

(b) in the case of a return, any penalty payable under section 84 in respect of the return must be determined as though the return were required to be filed on the day on which the extended time expires.

Effet de la prorogation

(2) Les règles ci-après s'appliquent en cas de prorogation d'un délai par le ministre en vertu du paragraphe (1) :

a) la déclaration, le formulaire ou l'autre document doit être produit, les renseignements doivent être communiqués ou le choix doit être effectué dans le délai prorogé;

b) dans le cas d'une déclaration, toute pénalité payable en vertu de l'article 84 relativement à la déclaration doit être calculée comme si la déclaration devait être produite au plus tard à l'expiration du délai prorogé.

Demand for return

48 A taxpayer must, on demand sent by the Minister, file, within any reasonable time that may be specified in the demand, a return under this Act for any calendar year that is designated in the demand.

Mise en demeure de produire une déclaration

48 Tout contribuable doit, sur mise en demeure du ministre, produire, dans le délai raisonnable fixé par la mise en demeure, une déclaration en application de la présente loi visant toute année civile précisée dans la mise en demeure.

DIVISION D

Payments

Payments

49 The tax payable under this Act by a taxpayer in respect of a calendar year must be paid on or before June 30 of the following calendar year.

Manner and form of payments

50 Every person that is required under this Act to pay tax or any other amount must make the payment to the account of the Receiver General for Canada in the manner and form prescribed by the Minister.

Assessment of another constituent entity

51 (1) The Minister may assess a particular constituent entity of a consolidated group in respect of tax and other amounts payable under this Act by another constituent entity of the group. If such an assessment is made, the particular constituent entity is jointly and severally, or solidarily, liable with the other constituent entity to pay the amount assessed and this Part applies to the particular constituent entity in respect of the amount assessed with any modifications that the circumstances require.

Limitation

(2) Subsection (1) does not limit the liability of the other constituent entity under any other provision of this Act or the liability of the particular constituent entity for the interest that the particular constituent entity is liable to pay under this Act on an assessment in respect of the amount that the particular constituent entity is liable to pay because of that subsection.

Rules applicable

(3) If a particular constituent entity of a consolidated group and another constituent entity of the group become, because of subsection (1), jointly and severally, or solidarily, liable in respect of part or all of the liability of the other constituent entity under this Act, the following rules apply:

(a) a payment by the particular constituent entity on account of the particular constituent entity's liability discharges, to the extent of the payment, the joint liability; and

(b) a payment by the other constituent entity on account of the other constituent entity's liability discharges the particular constituent entity's liability only to the extent that the payment operates to reduce that

SECTION D

Paiements

Paiements

49 La taxe exigible en vertu de la présente loi par un contribuable relativement à une année civile doit être payée au plus tard le 30 juin de l'année civile suivante.

Forme et modalités des paiements

50 Quiconque est tenu par la présente loi de payer la taxe ou tout autre montant doit le faire au compte du receveur général du Canada selon les modalités déterminées par le ministre.

Cotisation à l'égard d'une autre entité constitutive

51 (1) Le ministre peut, à tout moment, établir une cotisation à l'égard d'une entité constitutive donnée d'un groupe consolidé concernant la taxe et tout autre montant payable en application de la présente loi d'une autre entité constitutive du groupe. Si une telle cotisation est établie, l'entité constitutive donnée et l'autre entité constitutive sont solidairement responsables de payer le montant établi par la cotisation et la présente partie s'applique à l'entité constitutive donnée à l'égard du montant établi avec les adaptations nécessaires.

Restriction

(2) Le paragraphe (1) n'a pas pour effet de limiter la responsabilité de l'autre entité constitutive en vertu de toute autre disposition de la présente loi ou la responsabilité de l'entité constitutive donnée pour l'intérêt dont cette dernière est tenue de payer en vertu de la présente loi conformément à une cotisation établie à l'égard du montant que l'entité constitutive donnée doit payer en raison de ce paragraphe.

Règles applicables

(3) Lorsqu'une entité constitutive donnée d'un groupe consolidé et une autre entité constitutive du groupe sont devenues, par l'effet du paragraphe (1), solidairement responsables de tout ou partie d'une obligation de l'autre entité constitutive en vertu de la présente loi, les règles suivantes s'appliquent :

a) tout paiement fait par l'entité constitutive donnée au titre de son obligation éteint d'autant leur obligation solidaire;

b) tout paiement fait par l'autre entité constitutive au titre de son obligation n'éteint l'obligation de l'entité constitutive donnée que dans la mesure où il sert à réduire l'obligation de l'autre entité constitutive à une somme inférieure à celle à laquelle l'entité constitutive

liability to an amount less than the amount in respect of which the particular constituent entity is, because of subsection (1), jointly and severally, or solidarily, liable.

donnée est, par l'effet du paragraphe (1), solidairement responsable.

Definition of *transaction*

52 (1) In this section and section 87, a ***transaction*** includes an arrangement or event.

Définition de *opération*

52 (1) Pour l'application du présent article et de l'article 87, sont assimilés à une ***opération*** un mécanisme ou un évènement.

Tax liability — property transferred not at arm's length

(2) If at any time a person transfers property, either directly or indirectly, by means of a trust or by any other means, to another person with which the transferor was not, at that time, dealing at arm's length, the transferee and transferor are jointly and severally, or solidarily, liable to pay under this Act an amount equal to the lesser of

Assujettissement — transfert de biens entre personnes ayant un lien de dépendance

(2) La personne qui transfère un bien, directement ou indirectement, par le biais d'une fiducie ou par tout autre moyen, à une autre personne avec laquelle elle a un lien de dépendance est solidairement tenue, avec le bénéficiaire du transfert, de payer en application de la présente loi le moins élevé des montants suivants :

(a) the amount determined by the formula

A – (B – C)

where

A is the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given by the transferee for the transfer of the property,

B is the total of all amounts, if any, the transferee was assessed under subsection 325(2) of the *Excise Tax Act*, paragraph 97.44(1)(b) of the *Customs Act*, subsection 160(2) of the *Income Tax Act*, subsection 297(3) of the *Excise Act, 2001*, subsection 161(3) of the *Greenhouse Gas Pollution Pricing Act*, subsection 80(3) of the *Underused Housing Tax Act* or subsection 150(4) of the *Select Luxury Items Tax Act* in respect of the property, and

C is the amount paid by the transferor in respect of the amount determined for B, and

(b) the total of all amounts each of which is

(i) an amount that the transferor is liable to pay under this Act in respect of

(A) the calendar year that includes that time, or

(B) any preceding calendar year, or

(ii) interest or penalties (other than amounts included in subparagraph (i)) for which the transferor is liable at that time.

a) la somme obtenue par la formule suivante :

A – (B – C)

où :

A représente l'excédent éventuel de la juste valeur marchande du bien au moment du transfert sur la juste valeur marchande, à ce moment, de la contrepartie payée par le bénéficiaire du transfert pour le transfert du bien,

B le total des montants éventuels pour lesquels une cotisation a été établie à l'égard du bénéficiaire du transfert en vertu du paragraphe 325(2) de la *Loi sur la taxe d'accise*, de l'alinéa 97.44(1)b) de la *Loi sur les douanes*, du paragraphe 160(2) de la *Loi de l'impôt sur le revenu*, du paragraphe 297(3) de la *Loi de 2001 sur l'accise*, du paragraphe 161(3) de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, du paragraphe 80(3) de la *Loi sur la taxe sur les logements sous-utilisés* ou du paragraphe 150(4) de la *Loi sur la taxe sur certains biens de luxe* relativement au bien,

C le montant payé par l'auteur du transfert relativement au montant représenté par l'élément B;

b) le total des montants représentant chacun :

(i) le montant dont l'auteur du transfert est redevable en application de la présente loi relativement à l'année civile qui comprend le moment du transfert ou toute année civile antérieure,

(ii) les intérêts ou les pénalités (sauf les montants inclus au sous-alinéa (i)) dont l'auteur du transfert est redevable au moment du transfert.

Limitation

(3) Subsection (2) does not limit the liability of the transferor under any other provision of this Act or the liability of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of that subsection.

Fair market value of undivided interest or right

(4) For the purposes of this section, the fair market value at any time of an undivided interest in, or for civil law an undivided right in, a property that is expressed as a proportionate interest or right in that property is deemed to be equal to the same proportion of the fair market value of that property at that time.

Assessment

(5) Despite subsection 70(1), the Minister may at any time assess a transferee in respect of any amount payable because of this section and this Part applies to the transferee with any modifications that the circumstances require.

Rules applicable

(6) If a transferor and transferee become, because of subsection (2), jointly and severally, or solidarily, liable in respect of part or all of the liability of the transferor under this Act, the following rules apply:

(a) a payment by the transferee on account of the transferee's liability discharges, to the extent of the payment, the joint liability; and

(b) a payment by the transferor on account of the transferor's liability discharges the transferee's liability only to the extent that the payment operates to reduce the transferor's liability to an amount less than the amount in respect of which the transferee is, because of subsection (2), jointly and severally, or solidarily, liable.

Anti-avoidance rules

(7) For the purposes of subsections (1) to (6), if a person (referred to in this section as the "transferor") has transferred property either directly or indirectly, by means of a trust or by any other means whatever to another person (referred to in this section as the "transferee") in a transaction or as part of a series of transactions, the following rules apply:

Limitation

(3) Le paragraphe (2) n'a pas pour effet de limiter la responsabilité de l'auteur du transfert en vertu de toute autre disposition de la présente loi ou celle du bénéficiaire du transfert pour l'intérêt dont ce dernier est tenu de payer en vertu de la présente loi conformément à une cotisation établie à l'égard du montant que le bénéficiaire du transfert doit payer en raison de ce paragraphe.

Juste valeur marchande d'un intérêt ou droit indivis

(4) Pour l'application du présent article, la juste valeur marchande, à un moment donné, de tout intérêt indivis, ou pour l'application du droit civil de tout droit indivis, sur un bien, exprimé sous forme d'un intérêt ou droit proportionnel sur ce bien, est réputée être égale à la proportion correspondante de la juste valeur marchande du bien à ce moment.

Cotisation

(5) Malgré le paragraphe 70(1), le ministre peut, à tout moment, établir à l'égard d'un bénéficiaire du transfert une cotisation pour tout montant payable en application du présent article. Dès lors, la présente partie s'applique au bénéficiaire du transfert avec les adaptations nécessaires.

Règles applicables

(6) Lorsqu'un auteur du transfert et un bénéficiaire du transfert sont devenus, par l'effet du paragraphe (2), solidairement responsables de tout ou partie d'une obligation de l'auteur du transfert en vertu de la présente loi, les règles suivantes s'appliquent :

a) tout paiement fait par le bénéficiaire du transfert au titre de son obligation éteint d'autant leur obligation solidaire;

b) tout paiement fait par l'auteur du transfert au titre de son obligation n'éteint l'obligation du bénéficiaire du transfert que dans la mesure où il sert à réduire l'obligation de l'auteur du transfert à une somme inférieure à celle à laquelle le bénéficiaire du transfert est, par l'effet du paragraphe (2), solidairement responsable.

Règles anti-évitement

(7) Pour l'application des paragraphes (1) à (6), lorsqu'une personne (appelée « auteur du transfert » au présent article) a transféré des biens, directement ou indirectement, par le biais d'une fiducie ou par tout autre moyen, à une autre personne (appelée « bénéficiaire du transfert » au présent article) par une opération, ou dans le cadre d'une série d'opérations, les règles ci-après s'appliquent :

(a) the transferor is deemed to not be dealing at arm's length with the transferee at all times in the transaction or series of transactions if

(i) the transferor and the transferee do not deal at arm's length at any time during the period beginning immediately before the transaction or series of transactions and ending immediately after the transaction or series of transactions, and

(ii) it is reasonable to conclude that one of the purposes of undertaking or arranging the transaction or series of transactions is to avoid joint and several, or solidary, liability of the transferee and the transferor under this section for an amount payable under this Act;

(b) an amount that the transferor is liable to pay under this Act (including, for greater certainty, an amount that the transferor is liable to pay under this section, regardless of whether the Minister has made an assessment under subsection (5) in respect of that amount) is deemed to have become payable in the calendar year in which the property was transferred, if it is reasonable to conclude that one of the purposes of the transfer of the property is to avoid the payment of a future amount payable under this Act by the transferor or transferee; and

(c) the amount determined for A in paragraph (2)(a) is deemed to be the greater of

(i) the amount otherwise determined for A in paragraph (2)(a) without reference to this paragraph, and

(ii) the amount determined by the formula

A – B

where

A is the fair market value of the property at the time of the transfer, and

B is

(A) the lowest fair market value of the consideration (that is held by the transferor) given for the property at any time during the period beginning immediately before the transaction or series of transactions and ending immediately after the transaction or series of transactions, or

(B) if the consideration is in a form that is cancelled or extinguished during the period referred to in clause (A),

a) l'auteur du transfert est réputé avoir un lien de dépendance avec le bénéficiaire du transfert à tout moment dans le cadre de l'opération ou de la série d'opérations si, à la fois :

(i) à un moment au cours de la période commençant immédiatement avant l'opération ou la série d'opérations et se terminant immédiatement après l'opération ou la série d'opérations, l'auteur du transfert et le bénéficiaire du transfert ont entre eux un lien de dépendance,

(ii) il est raisonnable de conclure que l'un des objets d'entreprendre ou d'organiser l'opération ou la série d'opérations consiste à éviter la responsabilité solidaire du bénéficiaire du transfert et de l'auteur du transfert à l'égard d'une somme à payer en vertu de la présente loi;

b) une somme que l'auteur du transfert est tenu de payer en vertu de la présente loi (notamment, étant entendu que, s'agissant d'un montant ayant ou non fait l'objet d'une cotisation en application du paragraphe (5) qu'il doit payer en vertu du présent article) est réputée être devenue exigible au cours de l'année civile au cours de laquelle les biens ont été transférés, s'il est raisonnable de conclure que l'un des objets du transfert des biens consiste à éviter le paiement d'un montant futur payable en vertu de la présente loi par l'auteur du transfert ou le bénéficiaire du transfert;

c) la valeur de l'élément A de la formule figurant à l'alinéa (2)a) est réputée être la plus élevée des sommes suivantes :

(i) la somme déterminée par ailleurs pour l'élément A de la formule figurant à l'alinéa (2)a) compte non tenu du présent alinéa,

(ii) la somme obtenue par la formule suivante :

A – B

où :

A représente la juste valeur marchande du bien au moment du transfert,

B selon le cas :

(A) la plus petite juste valeur marchande de la contrepartie (qui est détenue par l'auteur du transfert) donnée pour le bien à un moment donné au cours de la période commençant immédiatement avant l'opération ou la série d'opérations et se terminant immédiatement après l'opération ou la série d'opérations,

(I) the amount that is the lower of the amount determined under clause (A) and the fair market value during that period of any property, other than property that is cancelled or extinguished during the period, that is substituted for the consideration referred to in clause (A), or

(II) if no property is substituted for the consideration referred to in clause (A), other than property that is cancelled or extinguished during the period, nil.

(B) si la contrepartie est sous une forme qui est annulée ou éteinte au cours de la période visée à la division (A) :

(I) la moindre des valeurs entre la juste valeur marchande déterminée à la division (A) et la juste valeur marchande au cours de la période de tout bien, autre qu'un bien qui est annulé ou éteint au cours de la période, qui est substitué à la contrepartie visée à la division (A),

(II) si aucun bien n'est substitué à la contrepartie visée à la division (A), autre qu'un bien qui est annulé ou éteint durant la période, zéro.

Payment in Canadian dollars

53 (1) Every person that is required under this Act to pay an amount to the Receiver General for Canada must pay the amount in Canadian dollars.

Exception

(2) The Minister may, at any time, waive the requirement under subsection (1) and accept a currency other than Canadian dollars. If such a waiver is granted, the amount is to be converted from Canadian dollars to the other currency using a rate of exchange that is acceptable to the Minister.

Paiement en dollars canadiens

53 (1) Quiconque est tenu en application de la présente loi de verser au receveur général du Canada une somme doit la payer en dollars canadiens.

Exception

(2) Le ministre peut, en tout temps, dispenser le contribuable de l'obligation prévue au paragraphe (1) et accepter une devise autre que le dollar canadien. Si une telle dispense est accordée, la somme doit être convertie du dollar canadien à l'autre devise en appliquant un taux de change que le ministre estime acceptable.

Definition of *electronic payment*

54 (1) In this section, ***electronic payment*** means any payment to the Receiver General for Canada that is made through electronic services offered by a person described in any of paragraphs (2)(a) to (d) or by any electronic means specified by the Minister.

Définition de *paiement électronique*

54 (1) Au présent article, ***paiement électronique*** s'entend d'un paiement au receveur général du Canada qui est effectué par l'entremise des services électroniques offerts par une personne visée à l'un des alinéas (2)a) à d) ou sous une forme électronique de la manière que le ministre précise.

Electronic payment

(2) Every person that is required under this Act to pay an amount to the Receiver General for Canada must, if the amount is $10,000 or more, make the payment by way of electronic payment, unless the person cannot reasonably pay the amount in that manner, to the account of the Receiver General for Canada at or through

(a) a bank;

(b) a credit union;

(c) a corporation authorized under the laws of Canada or a province to carry on the business of offering its services as a trustee to the public; or

(d) a corporation that is authorized under the laws of Canada or a province to accept deposits from the

Paiement électronique

(2) Quiconque est tenu par la présente loi de payer un montant au receveur général du Canada doit, dans le cas où le montant est de 10 000 $ ou plus, le payer par voie de paiement électronique, sauf si la personne qui effectue le paiement ne peut raisonnablement l'effectuer de cette manière, au compte du receveur général du Canada à ou par l'entremise de l'une des personnes suivantes :

a) une banque;

b) une caisse de crédit;

c) une personne morale qui est autorisée par la législation fédérale ou provinciale à exploiter une entreprise d'offre au public de services de fiduciaire;

public and that carries on the business of lending money on the security of real property or immovables or investing in indebtedness on the security of mortgages on real property or hypothecs on immovables.

d) une personne morale qui est autorisée par la législation fédérale ou provinciale à accepter du public des dépôts et qui exploite une entreprise soit de prêts d'argent garantis sur des biens immeubles ou réels, soit de placements dans des dettes garanties par des hypothèques relatives à des biens immeubles ou réels.

Small amounts owing by a person

55 (1) If, at any time, the total of all unpaid amounts owing by a person to the Receiver General for Canada under this Act does not exceed $2.00, the amount owing by the person is deemed to be nil.

Sommes minimes

55 (1) La somme dont une personne est redevable au receveur général du Canada en application de la présente loi est réputée nulle si, à un moment donné, le total des sommes dont elle est ainsi redevable est égal ou inférieur à 2 $.

Small amounts payable to a person

(2) If, at any time, the total of all amounts payable by the Minister to a person under this Act does not exceed $2.00, the Minister may apply those amounts against any amount owing, at that time, by the person to His Majesty in right of Canada. However, if the person, at that time, does not owe any amount to His Majesty in right of Canada, those amounts payable are deemed to be nil.

Sommes minimes payables à la personne

(2) Si, à un moment donné, le total des sommes à payer par le ministre à une personne en application de la présente loi est égal ou inférieur à 2 $, le ministre peut les déduire de toute somme dont la personne est alors redevable à Sa Majesté du chef du Canada. Toutefois, si la personne n'est alors redevable d'aucune somme à Sa Majesté du chef du Canada, les sommes à payer par le ministre sont réputées nulles.

DIVISION E

Interest

SECTION E

Intérêts

Compound interest

56 (1) If a person fails to pay an amount to the Receiver General for Canada as and when required under this Act, the person must pay to the Receiver General for Canada interest on the amount. The interest must be compounded daily at the rate prescribed by regulation and determined for the period beginning on the first day after the day on or before which the amount was required to be paid and ending on the day on which the amount is paid.

Intérêts composés

56 (1) La personne qui ne verse pas une somme au receveur général du Canada dans le délai et selon les modalités prévus par la présente loi est tenue de payer des intérêts, au taux visé par règlement, calculés et composés quotidiennement sur cette somme pour la période commençant le lendemain de l'expiration du jour prévu pour le versement et se terminant le jour du versement.

Payment of compounded interest

(2) For the purposes of subsection (1), interest that is compounded on a particular day on an unpaid amount of a person is deemed to be required to be paid by the person to the Receiver General for Canada at the end of the particular day and, if the person has not paid the interest so determined by the end of the day after the particular day, the interest must be added to the unpaid amount at the end of the particular day.

Paiement des intérêts composés

(2) Pour l'application du paragraphe (1), les intérêts qui sont composés un jour donné sur le montant impayé d'une personne sont réputés être à verser par elle au receveur général du Canada à la fin du jour donné. Si la personne ne paie pas ces intérêts au plus tard à la fin du jour suivant, ils sont ajoutés au montant impayé à la fin du jour donné.

Period when interest not payable

(3) If the Minister has served a demand that a person pay on or before a specified day all amounts payable by the person under this Act on the date of the demand, and the person pays the amount demanded on or before the

Intérêts non exigibles

(3) Si le ministre met une personne en demeure de verser dans un délai précis la totalité des sommes dont elle est redevable en application de la présente loi à la date de la mise en demeure, et que la personne s'exécute, il doit

specified day, the Minister must waive any interest that would otherwise apply in respect of the amount demanded for the period beginning on the first day after the date of the demand and ending on the day of payment.

Interest and penalty amounts of $25 or less

(4) If, at any time, a person pays an amount that is not less than the total of all amounts, other than interest and penalties, owing at that time to His Majesty in right of Canada under this Act in respect of a calendar year and the total amount of interest and penalties payable by the person under this Act in respect of the year is not more than $25, the Minister may cancel the interest and penalties.

Waiving or cancelling interest

57 (1) The Minister may, on or before the day that is 10 calendar years after the end of a particular calendar year, or on application by a person on or before that day, waive, cancel or reduce any interest otherwise payable by the person under this Act on an amount that is required to be paid by the person in respect of the particular calendar year, and may despite subsection 70(1), make any assessment of the interest payable by the person that is necessary to take into account the waiver, cancellation or reduction of the interest.

Interest on amounts waived or cancelled

(2) If a person has paid an amount of interest and the Minister waives, cancels or reduces any portion of that amount under subsection (1), the Minister must refund the portion of the amount and pay interest on it at the rate prescribed by regulation beginning on the day that is 30 days after the day on which the Minister received an application in a manner satisfactory to the Minister to apply that subsection (or, if there is no such application, on the day on which the Minister waives, cancels or reduces the portion of the amount) and ending on the day on which the portion of the amount is paid as a refund or applied against another amount owed by the person to His Majesty in right of Canada.

renoncer aux intérêts qui s'appliqueraient par ailleurs au montant visé par la mise en demeure pour la période commençant le lendemain de la date de la mise en demeure et se terminant le jour du versement.

Intérêts et pénalités de 25 $ ou moins

(4) Si, à un moment donné, une personne paie une somme égale ou supérieure au total des sommes, sauf les intérêts et pénalités, dont elle est débitrice à ce moment envers Sa Majesté du chef du Canada en vertu de la présente loi relativement à une année civile et que le total des intérêts et pénalités à payer par elle en vertu de la présente loi relativement à l'année n'excède pas 25 $, le ministre peut annuler ces intérêts et pénalités.

Renonciation ou annulation — intérêts

57 (1) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin d'une année civile donnée ou sur demande d'une personne faite au plus tard ce jour-là, annuler ou réduire des intérêts payables par la personne sur toute somme dont elle est redevable en application de la présente loi pour l'année civile, ou y renoncer. Malgré le paragraphe 70(1), le ministre peut établir les cotisations voulues concernant les intérêts payables par la personne pour tenir compte d'une pareille renonciation, annulation ou réduction.

Intérêts sur somme réduite ou annulée

(2) Si une personne a payé un montant d'intérêts et le ministre a réduit ou a annulé toute partie de ce montant, ou y a renoncé, en vertu du paragraphe (1), le ministre rembourse la partie du montant et paie des intérêts au taux visé par règlement sur la partie du montant, pour la période commençant le trentième jour suivant le jour où il a reçu, d'une manière qu'il juge acceptable, une demande en vue de l'application de ce paragraphe (ou en l'absence d'une telle demande, le jour où il annule ou réduit la partie du montant ou y renonce) et se terminant le jour où la partie du montant est versée à titre de remboursement à la personne ou déduite d'une autre somme dont elle est redevable à Sa Majesté du chef du Canada.

DIVISION F

Administrative Charge under Financial Administration Act

Dishonoured instruments

58 For the purposes of this Act and section 155.1 of the *Financial Administration Act*, any charge that is payable at any time by a person under the *Financial Administration Act* in respect of an instrument tendered in payment or settlement of an amount that is payable under this Act

SECTION F

Frais en application de la Loi sur la gestion des finances publiques

Effets refusés

58 Pour l'application de la présente loi et de l'article 155.1 de la *Loi sur la gestion des finances publiques*, les frais qui deviennent payables par une personne à un moment donné en application de la *Loi sur la gestion des finances publiques* relativement à un effet offert en

is deemed to be an amount that is payable by the person at that time under this Act. In addition, Part II of the *Interest and Administrative Charges Regulations* does not apply to the charge and any debt under subsection 155.1(3) of the *Financial Administration Act* in respect of the charge is deemed to be extinguished at the time the total of the amount and any applicable interest under this Act is paid.

paiement ou en règlement d'une somme à payer en application de la présente loi sont réputés être une somme qui devient payable par la personne à ce moment en application de la présente loi. En outre, la partie II du *Règlement sur les intérêts et les frais administratifs* ne s'applique pas aux frais et toute créance relative à ces frais, visée au paragraphe 155.1(3) de la *Loi sur la gestion des finances publiques*, est réputée avoir été éteinte au moment où le total de la somme et des intérêts applicables en application de la présente loi est versé.

DIVISION G

Refunds

Statutory recovery rights

59 Except as specifically provided under this Act or the *Financial Administration Act*, no person has a right to recover any money that has been paid to His Majesty in right of Canada as or on account of, or that has been taken into account by His Majesty in right of Canada as, an amount payable under this Act.

Refund — payment in error

60 (1) If a person, otherwise than because of an assessment, has paid any moneys in error to His Majesty in right of Canada, whether by reason of mistake of fact or law or otherwise, and the moneys have been taken into account by His Majesty in right of Canada as taxes, penalties, interest or other amounts under this Act, then an amount equal to the amount of the moneys must, subject to this Act, be refunded to the person if the person applies for the refund of the amount within two years after the day on which the moneys were paid.

Form and contents of application

(2) An application under subsection (1) must be made in the form and manner, and containing the information, prescribed by the Minister.

Determination

(3) On receipt of an application made under subsection (1), the Minister must, without delay, consider the application and determine the amount of the refund, if any, payable to the applicant.

Minister not bound

(4) In considering an application made under subsection (1), the Minister is not bound by any application made or information provided by or on behalf of any person.

SECTION G

Remboursements

Droits de recouvrement créés par une loi

59 Il est interdit de recouvrer de l'argent qui a été versé à Sa Majesté du chef du Canada au titre d'une somme payable en application de la présente loi ou qu'elle a pris en compte à ce titre, à moins qu'il ne soit expressément permis de le faire en application de la présente loi ou de la *Loi sur la gestion des finances publiques*.

Remboursement — somme payée par erreur

60 (1) Si une personne, autrement qu'en vertu d'une cotisation, a versé des sommes d'argent par erreur de fait ou de droit ou autrement à Sa Majesté du chef du Canada, et que ces sommes ont été prises en compte par celle-ci à titre de taxes, de pénalités, d'intérêts ou d'autres sommes en vertu de la présente loi, un montant égal à ces sommes est versé à la personne, sous réserve des autres dispositions de la présente loi, si elle en fait la demande dans les deux ans suivant le paiement de ces sommes.

Forme et contenu de la demande

(2) Une demande en vertu du paragraphe (1) doit être faite en la forme et les modalités que le ministre détermine et contenant les renseignements qu'il détermine.

Décision

(3) Le ministre saisi d'une demande doit, sans délai, l'examiner et déterminer le montant du remboursement éventuel à verser au demandeur.

La demande ne lie pas le ministre

(4) Lors de l'examen d'une demande, le ministre n'est pas lié par une demande présentée ni par un renseignement fourni par une personne ou au nom de celle-ci.

Notice and payment

(5) After considering an application made under subsection (1), the Minister must

(a) send to the applicant a notice of the determination made under subsection (3); and

(b) pay to the applicant the amount of the refund, if any, payable to the applicant.

Objections and appeals

(6) For the purposes of Divisions J and K and subsections 67(5) and 122(7) and (13), a determination made under subsection (3) is deemed to be an assessment.

Interest on payment

(7) If an amount is paid to an applicant under subsection (5), the Minister must pay interest, at the rate prescribed by regulation, to the applicant on the amount for the period beginning on the day that is 30 days after the day on which the application was received (or deemed received under subsection 67(4)) by the Minister and ending on the day on which the amount is paid.

Determination valid and binding

(8) A determination made under subsection (3), subject to being varied or vacated on an objection or appeal under this Act and subject to an assessment, is deemed to be valid and binding despite any irregularity, informality, error, defect or omission in the notice of the determination or in any proceeding under this Act relating to the determination.

Restriction — application to other debts

61 Instead of paying to a person a refund that might otherwise be paid under this Act, the Minister may, if the person is, or is about to become, liable to make any payment to His Majesty in right of Canada or a province, apply the amount of the refund to that liability and notify the person of that action.

Restriction — unfulfilled filing requirements

62 The Minister must not, in respect of a person, refund, repay, apply to other debts or set off amounts under this Act until the person has filed with the Minister all returns and other records of which the Minister has knowledge that are required to be filed under this Act, the *Income Tax Act*, the *Excise Tax Act*, the *Excise Act 2001*, the *Air Travellers Security Charge Act*, the *Greenhouse Gas*

Avis de paiement

(5) Après avoir examiné une demande, le ministre doit :

a) envoyer au demandeur un avis de décision établi en vertu du paragraphe (3);

b) verser au demandeur le montant du remboursement éventuel qui lui est payable.

Opposition et appel

(6) Pour l'application des sections J et K et des paragraphes 67(5) et 122(7) et (13), une décision en vertu du paragraphe (3) est réputée être une cotisation.

Intérêts sur le paiement

(7) Si un montant est versé à un demandeur en application du paragraphe (5), le ministre paie des intérêts, au taux visé par règlement, au demandeur sur ce montant, pour la période commençant le trentième jour suivant celui où la demande a été reçue (ou réputée avoir été reçue en application du paragraphe 67(4)) par le ministre et se terminant le jour du paiement.

Décision valide et exécutoire

(8) Une décision en vertu du paragraphe (3), sous réserve d'une modification ou d'une annulation lors d'une opposition ou d'un appel fait en vertu de la présente loi et sous réserve d'une cotisation, est réputée être valide et exécutoire même si la décision, ou une procédure s'y rapportant prévue à la présente loi, est entachée d'une irrégularité, d'un vice de forme, d'une erreur, d'un défaut ou d'une omission.

Restriction — imputation du remboursement sur d'autres créances

61 Au lieu de verser à une personne un montant à rembourser qui pourrait autrement être versé en vertu de la présente loi, le ministre peut, lorsque la personne est tenue de faire un paiement à Sa Majesté du chef du Canada ou d'une province, ou est sur le point de l'être, imputer sur cette obligation la somme qui serait par ailleurs remboursable et en aviser la personne.

Restriction — non-respect des exigences de production

62 Une somme n'est remboursée, restituée, appliquée en réduction d'autres dettes ou compensée à une personne en vertu de la présente loi qu'une fois présentés au ministre l'ensemble des déclarations et autres registres dont il a connaissance et qui sont à produire en vertu de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur la taxe d'accise*, de la *Loi de 2001 sur l'accise*, de la *Loi sur le droit pour la sécurité des passagers du*

Pollution Pricing Act, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act*.

transport aérien, de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur certains biens de luxe*.

Restriction — trustees

63 If a trustee is appointed under the *Bankruptcy and Insolvency Act* to act in the administration of the estate of a bankrupt, a refund under this Act that the bankrupt was entitled to claim before the appointment must not be paid after the appointment unless all returns required under this Act to be filed before the appointment have been filed and all amounts required under this Act to be paid by the bankrupt have been paid.

Restriction — syndics

63 En cas de nomination, en application de la *Loi sur la faillite et l'insolvabilité*, d'un syndic pour voir à l'administration de l'actif d'un failli, tout remboursement prévu par la présente loi auquel le failli avait droit avant la nomination n'est effectué après la nomination que si toutes les déclarations à produire en application de la présente loi ont été produites et que les sommes à verser par le failli en application de la présente loi ont été versées.

Overpayment of refund or interest

64 If an amount is paid to, or applied to a liability of, a person as a refund or as interest under this Act and the person is not entitled to the refund or interest or the amount paid or applied exceeds the refund or interest to which the person is entitled, the Minister may, despite subsection 70(1), assess the person at any time and the person must pay to the Receiver General for Canada an amount equal to the refund, interest or excess on the day on which the refund, interest or excess is paid to, or applied to a liability of, the person.

Montant remboursé en trop ou intérêts payés en trop

64 Lorsqu'est payé à une personne, ou imputé sur une somme dont elle est redevable, un montant au titre d'un remboursement ou d'intérêts prévus à la présente loi auxquels la personne n'a pas droit ou qui excède le montant auquel elle a droit, malgré le paragraphe 70(1) le ministre peut, à tout moment, établir une cotisation à l'égard de la personne et celle-ci doit verser au receveur général du Canada un montant égal au montant remboursé, aux intérêts ou à l'excédent le jour du paiement ou de l'imputation.

DIVISION H

Records and Information

SECTION H

Registres et renseignements

Keeping records

65 (1) A person must keep all records that are necessary to determine whether the person has complied with this Act and, if the person is or was a constituent entity of a consolidated group, all of that person's records that are necessary to determine whether other entities of the group have complied with this Act.

Obligation de tenir des registres

65 (1) Toute personne doit tenir tous les registres permettant de vérifier si elle s'est conformée à la présente loi et, si elle est ou était une entité constitutive d'un groupe consolidé, tous les registres de cette personne permettant de vérifier si toutes les autres entités du groupe se sont conformées à la présente loi.

Minister may specify information

(2) The Minister may specify the form that a record is to take and any information that the record must contain.

Forme et contenu

(2) Le ministre peut préciser la forme d'un registre ainsi que les renseignements qu'il doit contenir.

Electronic records

(3) Every person required under this section to keep a record that does so electronically must ensure that all equipment and software necessary to make the record intelligible are available during the retention period required for the record.

Registres électroniques

(3) Quiconque tient un registre, comme l'y oblige le présent article, par voie électronique doit veiller à ce que le matériel et les logiciels nécessaires à son intelligibilité soient accessibles pendant la durée de conservation exigée quant à ce registre.

General period for retention

(4) Subject to subsection (5), every person that is required to keep records must retain them for a period of

Durée de conservation

(4) Sous réserve de paragraphe (5), la personne obligée de tenir des registres doit les conserver pendant une

eight years after the end of the calendar year to which they relate or for any other period that may be prescribed by regulation.

Exception — general period for retention

(5) If, for a calendar year, a person has not filed a return as and when required by section 45 and subsequently files a return for the year, then the person must retain the records that are required by this section to be kept and that relate to the year for a period of eight years after the day on which the return is filed.

Inadequate records

(6) If a person fails to keep adequate records for the purposes of this Act, the Minister may require the person to keep any records that the Minister may specify and the person must keep the records specified.

Objection or appeal

(7) If a person that is required under this section to keep records serves a notice of objection, or is a party to an appeal or reference, under this Act, the person must retain every record that pertains to the subject matter of the objection, appeal or reference until the objection, appeal or reference is finally disposed of.

Demand by Minister

(8) If the Minister is of the opinion that it is necessary for the administration or enforcement of this Act, the Minister may, by a demand served personally, sent by confirmed delivery service or sent electronically, require any person to keep records and retain them for any period that is specified in the demand, and the person must comply with the demand.

Permission for earlier disposal

(9) A person that is required under this section to keep records may dispose of them before the expiry of the period during which they are required to be kept if permission for their disposal is given by the Minister.

Requirement to provide information or records

66 (1) Subject to subsection (2), but despite any other provision of this Act, the Minister may — for any purpose related to the administration or enforcement of this Act by notice served personally, sent by confirmed delivery service or sent electronically — require that any person provide the Minister, within such reasonable time as is specified in the notice, with any information or record.

Unnamed persons

(2) The Minister must not impose on any person (in this section referred to as a "third party") a requirement to

période de huit ans suivant la fin de l'année civile qu'ils visent ou pendant toute autre période visée par règlement.

Exception — période de conservation

(5) La personne qui n'a pas produit une déclaration selon les modalités et dans le délai prévus à l'article 45 et qui produit par la suite une déclaration pour l'année civile est tenue de conserver les registres devant être tenus se rapportant à cette année pendant huit ans suivant la date de production de la déclaration.

Registres insuffisants

(6) Le ministre peut exiger que la personne qui ne tient pas les registres nécessaires à l'application de la présente loi tienne ceux qu'il précise. Dès lors, la personne est tenue d'obtempérer.

Opposition ou appel

(7) La personne obligée de tenir des registres en application du présent article qui signifie un avis d'opposition ou qui est partie à un appel ou à un renvoi en application de la présente loi doit conserver les registres concernant l'objet de celui-ci jusqu'à ce qu'il en soit décidé de façon définitive.

Mise en demeure

(8) Le ministre peut exiger, par mise en demeure signifiée à personne, envoyée par service de messagerie ou par voie électronique, qu'une personne tienne des registres et les conserve pour la période précisée dans la mise en demeure, s'il est d'avis que cela est nécessaire pour l'application ou l'exécution de la présente loi. Dès lors, la personne est tenue d'obtempérer.

Autorisation de se départir des registres

(9) Le ministre peut autoriser une personne à se départir des registres qu'elle doit tenir en application du présent article avant la fin de la période déterminée pour leur conservation.

Obligation de produire des renseignements ou registres

66 (1) Sous réserve du paragraphe (2) et malgré les autres dispositions de la présente loi, le ministre peut — pour l'exécution ou l'application de la présente loi, par avis signifié à personne, envoyé par service de messagerie ou envoyé par voie électronique — exiger de toute personne qu'elle lui fournisse, dans le délai raisonnable que précise l'avis, tout renseignement ou registre.

Personnes non désignées nommément

(2) Le ministre ne peut exiger de quiconque — appelé « tiers » au présent article — la production de

provide information or any record relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection (3).

Judicial authorization

(3) A judge of the Federal Court may, on application by the Minister and subject to any conditions that the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection (1) relating to an unnamed person, or a group of unnamed persons, if the judge is satisfied by information on oath that

(a) the unnamed person or the group is ascertainable; and

(b) the requirement is imposed to verify compliance by the unnamed person, or persons in the group, with any obligation under this Act.

Time period not to count

(4) If a person is sent or served with a notice of requirement under subsection (1), the period between the day on which an application for judicial review in respect of the requirement is made and the day on which the application is finally disposed of is not to be counted in the computation of the period within which an assessment of the person may be made under subsection 70(1).

DIVISION I

Assessments

Assessment

67 (1) The Minister may assess a person for any tax or other amount payable by the person under this Act and may, despite any previous assessment covering, in whole or in part, the same matter, vary the assessment, reassess the person or make any additional assessments that the circumstances require.

Liability not affected

(2) The liability of a person to pay an amount under this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

Minister not bound

(3) The Minister is not bound by any return, application or information provided by or on behalf of any person

renseignements ou de registres concernant une ou plusieurs personnes non désignées nommément, sans y être au préalable autorisé par un juge en vertu du paragraphe (3).

Autorisation judiciaire

(3) Sur requête du ministre, un juge de la Cour fédérale peut, aux conditions qu'il estime indiquées, autoriser le ministre à exiger d'un tiers la production de renseignements ou de registres prévue au paragraphe (1) concernant une personne non désignée nommément ou un groupe de personnes non désignées nommément s'il est convaincu, sur dénonciation sous serment, de ce qui suit :

a) cette personne non désignée nommément ou ce groupe est identifiable;

b) la production est exigée pour vérifier si cette personne non désignée nommément ou les personnes de ce groupe ont respecté toute obligation prévue par la présente loi.

Suspension du délai

(4) Si l'avis visé au paragraphe (1) est signifié ou envoyé à une personne, le délai qui court entre le jour où une demande de contrôle judiciaire est présentée relativement à l'avis et le jour où il est définitivement statué sur la demande ne compte pas dans le calcul du délai dans lequel une cotisation de la personne peut être établie en vertu du paragraphe 70(1).

SECTION I

Cotisations

Cotisation

67 (1) Le ministre peut établir une cotisation pour déterminer la taxe ou les autres montants exigibles d'une personne en vertu de la présente loi et peut, malgré toute cotisation antérieure portant, en tout ou en partie, sur la même question, modifier la cotisation, en établir une nouvelle ou établir des cotisations supplémentaires, selon les circonstances.

Responsabilité inchangée

(2) L'inexactitude, l'insuffisance ou l'absence d'une cotisation ne change rien aux montants dont une personne est redevable en vertu de la présente loi.

Ministre non lié

(3) Le ministre n'est pas lié par quelque déclaration, demande ou renseignement fourni par une personne ou en

and may make an assessment despite any return, application or information provided or not provided.

Determination of refunds

(4) In assessing a person under subsection (1), the Minister may determine whether a refund under section 60 is payable to the person. If the Minister makes such a determination, the person is deemed to have made an application under section 60 within two years after the day on which the moneys were paid and the Minister is deemed to have received the application on the date of the notice of assessment.

Irregularities

(5) No assessment is to be vacated or varied on an appeal by reason only of an irregularity, informality, error, defect or omission by any person in the observance of any directory provision of this Act.

Notice of assessment

68 (1) After assessing a person under this Act, the Minister must send to the person a notice of the assessment.

Payment of remainder

(2) If the Minister has assessed a person for an amount, any portion of that amount remaining unpaid is payable to the Receiver General for Canada as of the date of the notice of assessment.

Payment by Minister on assessment

69 Subject to subsections 72(11), 82(2) and 90(2), if an assessment of a person in respect of a particular calendar year establishes that the person has paid an amount in excess of the amount determined on that assessment to be payable in respect of the particular calendar year by the person, the Minister must pay to the person a refund of the amount of the excess together with interest, at the rate prescribed by regulation, on the amount of the excess for the period beginning on the day that is the later of July 30 of the following calendar year and the day on which the excess was paid and ending on the day on which the refund is paid.

Limitation period for assessments

70 (1) Subject to subsections (2) to (5) and (10), no assessment in respect of any tax or other amount payable by a person under this Act is permitted more than seven years after the day on which the return to which the tax or other amount payable relates was filed under section 45.

son nom; il peut établir une cotisation indépendamment du fait que quelque déclaration, demande ou renseignement ait été fourni.

Détermination des remboursements

(4) En établissant une cotisation en application du paragraphe (1), le ministre peut déterminer si un remboursement en vertu de l'article 60 est à payer à la personne faisant l'objet de la cotisation. Si le ministre prend une telle décision, la personne est réputée avoir présenté une demande en vertu de l'article 60 dans les deux ans suivant la date du paiement de ces sommes, et le ministre est réputé avoir reçu la demande à la date de l'avis de cotisation.

Irrégularités

(5) Une cotisation ne peut être annulée ni modifiée lors d'un appel uniquement par suite d'une irrégularité, d'un vice de forme, d'une omission d'un défaut ou d'une erreur de la part d'une personne lors de l'application d'instructions prévues par la présente loi.

Avis de cotisation

68 (1) Une fois une cotisation établie à l'égard d'une personne en application de la présente loi, le ministre lui envoie un avis de cotisation.

Paiement du solde

(2) Si le ministre a établi une cotisation à l'égard d'une personne, la partie impayée de la cotisation doit être payée au receveur général du Canada à la date de l'avis de cotisation.

Paiement par le ministre

69 Sous réserve des paragraphes 72(11), 82(2) et 90(2), si une cotisation à l'égard d'une personne relativement à une année civile donnée établit que celle-ci a payé un montant qui excède celui qui était exigible dans cette cotisation relativement à l'année civile donnée, le ministre doit lui verser un remboursement équivalent à l'excédent, ainsi que les intérêts, au taux visé par règlement, sur celui-ci pour la période commençant à la dernière date en date du 30 juillet de l'année civile suivante et la date à laquelle l'excédent a été payé et se terminant à la date du remboursement.

Prescription des cotisations

70 (1) Sous réserve des paragraphes (2) à (5) et (10), l'établissement des cotisations à l'égard de la taxe ou de toute autre somme payable par une personne en vertu de la présente loi se prescrit par sept ans à compter de la date de production de la déclaration, à laquelle se

rapporte la taxe ou une autre somme payable, conformément à l'article 45.

Exception — objection or appeal

(2) An assessment in respect of any tax or other amount payable by a person under this Act may be made at any time if the assessment is made

(a) to give effect to a decision on an objection or appeal;

(b) with the written consent of an appellant to dispose of an appeal; or

(c) to give effect to an alternative basis or argument advanced by the Minister under subsection (5).

Exception — opposition ou appel

(2) Une cotisation concernant la taxe ou toute autre somme payable par une personne en application de la présente loi peut être établie à tout moment lorsqu'elle l'est aux fins suivantes :

a) en vue d'exécuter la décision rendue par suite d'une opposition ou d'un appel;

b) avec le consentement écrit d'un appelant, en vue de régler un appel;

c) pour tenir compte d'un nouveau fondement ou d'un nouvel argument mis de l'avant par le ministre en vertu du paragraphe (5).

Exception — neglect or fraud

(3) An assessment in respect of any matter may be made at any time if the person to be assessed or the person filing a return has, in respect of that matter,

(a) made a misrepresentation that is attributable to neglect, carelessness or wilful default; or

(b) committed fraud in filing a return or an application for a refund or in providing any information under this Act.

Exception — négligence ou fraude

(3) Une cotisation peut être établie à tout moment si la personne devant faire l'objet de la cotisation ou la personne produisant une déclaration a, relativement à l'objet de la cotisation, selon le cas :

a) fait une présentation erronée des faits attribuable à sa négligence, son inattention ou son omission volontaire;

b) commis une fraude en produisant une déclaration ou une demande de remboursement ou en fournissant quelque renseignements en application de la présente loi.

Exception — other period

(4) If, in making an assessment, the Minister determines that a person has paid in respect of any matter an amount in respect of a particular calendar year that was in fact payable in respect of another calendar year, the Minister may at any time make an assessment for that other calendar year in respect of that matter.

Exception — autre période

(4) Si le ministre constate, lors de l'établissement d'une cotisation, qu'une personne a payé, au titre de tout objet, un montant pour une année civile donnée qui était à payer pour une autre année civile, il peut établir à tout moment une cotisation pour l'autre année civile relativement à cet objet.

Alternative basis or argument

(5) The Minister may advance an alternative basis or argument in support of an assessment of a person, or in support of all or any portion of the total amount determined on assessment to be payable by a person under this Act, at any time after the period otherwise limited by subsection (1) for making the assessment unless, on an appeal under this Act,

(a) there is relevant evidence that the person is no longer able to adduce without leave of the court; and

Nouveau fondement ou nouvel argument

(5) Le ministre peut mettre de l'avant un nouveau fondement ou un nouvel argument à l'appui d'une cotisation établie à l'égard d'une personne, ou à l'appui de tout ou partie du montant total déterminé lors de l'établissement d'une cotisation comme étant payable par une personne en application de la présente loi, à tout moment après l'expiration de la période prévue au paragraphe (1) pour l'établissement de la cotisation, sauf si, sur appel interjeté en application de la présente loi :

(b) it is not appropriate in the circumstances for the court to order that the evidence be adduced.

a) d'une part, il existe des éléments de preuve pertinents que la personne n'est plus en mesure de produire sans l'autorisation du tribunal;

b) d'autre part, il ne convient pas que le tribunal ordonne la production des éléments de preuve dans les circonstances.

Limitation — alternative basis or argument

(6) If a reassessment of a person gives effect to an alternative basis or argument advanced by the Minister under subsection (5) in support of a particular assessment of the person, the Minister is not to reassess for an amount that is greater than the total amount of the particular assessment.

Restriction — nouveau fondement ou nouvel argument

(6) Si une nouvelle cotisation est établie à l'égard d'une personne pour tenir compte d'un nouveau fondement ou d'un nouvel argument mis de l'avant par le ministre en vertu du paragraphe (5) à l'appui d'une cotisation donnée établie à l'égard de la personne, le ministre ne peut établir la nouvelle cotisation pour un montant supérieur au montant total de la cotisation donnée.

Exception — alternative basis or argument

(7) Subsection (6) does not apply to any portion of an amount determined on reassessment that the Minister would, if this Act were read without reference to subsection (5), be entitled to reassess under this Act at any time after the period otherwise limited by subsection (1) for making the reassessment.

Exception — nouveau fondement ou nouvel argument

(7) Le paragraphe (6) ne s'applique à aucune partie d'un montant déterminé lors de l'établissement d'une nouvelle cotisation à l'égard duquel le ministre pourrait établir une nouvelle cotisation en application de la présente loi à tout moment après l'expiration de la période prévue au paragraphe (1) pour l'établissement de la nouvelle cotisation, s'il n'était pas tenu compte du paragraphe (5).

Filing waiver

(8) A person may, within the period otherwise limited by subsection (1) for an assessment, waive the application of that subsection by filing with the Minister a waiver, in the form and manner prescribed by the Minister, specifying the period for which, and the matter in respect of which, the person waives the application of that subsection.

Présentation de la renonciation

(8) Toute personne peut, dans le délai prévu par ailleurs au paragraphe (1) pour l'établissement d'une cotisation à son égard, renoncer à l'application de ce paragraphe en présentant au ministre une renonciation en la forme et selon les modalités déterminées par celui-ci qui précise l'objet de la renonciation ainsi que sa période d'application.

Revoking waiver

(9) Any person that has filed a waiver may revoke it by filing with the Minister a notice of revocation in the form and manner prescribed by the Minister. The waiver remains in effect for 180 days after the day on which the notice is filed.

Révocation de la renonciation

(9) La renonciation est révocable selon la forme et les modalités déterminées par le ministre. La renonciation demeure en vigueur pendant cent quatre-vingts jours suivant la date de la présentation de l'avis de révocation.

Exception — waiver

(10) An assessment in respect of any matter specified in a waiver filed under subsection (8) may be made at any time within the period specified in the waiver unless the waiver has been revoked under subsection (9), in which case an assessment may be made at any time during the 180 days that the waiver remains in effect.

Exception — renonciation

(10) Une cotisation portant sur une question précisée dans une renonciation présentée en vertu du paragraphe (8) peut être établie à tout moment dans le délai indiqué dans la renonciation ou, en cas de révocation de la renonciation en vertu du paragraphe (9), à tout moment dans les cent quatre-vingts jours pendant lesquels la renonciation demeure en vigueur.

Assessment deemed valid and binding

71 An assessment is, subject to being varied or vacated on an objection or appeal under this Act and subject to a reassessment, deemed to be valid and binding despite any irregularity, informality, error, defect or omission in the assessment or in any proceeding under this Act relating to the assessment.

Présomption de validité de la cotisation

71 Sous réserve des modifications qui peuvent y être apportées, ou de son annulation, lors d'une opposition ou d'un appel fait en vertu de la présente loi et sous réserve d'une nouvelle cotisation, une cotisation est réputée être valide et exécutoire même si la cotisation, ou une procédure s'y rapportant prévue à la présente loi, est entachée d'une irrégularité, d'un vice de forme, d'une erreur, d'un défaut ou d'une omission.

DIVISION J

Objections to Assessment

Objections to assessment

72 (1) A person that has been assessed and that objects to the assessment may, within 90 days after the date of the notice of the assessment, file with the Minister a notice of objection, in the form and manner prescribed by the Minister, setting out the reasons for the objection and all relevant facts.

Issue to be decided

(2) A notice of objection must

(a) reasonably describe each issue to be decided;

(b) specify in respect of each issue the relief sought, expressed as the change in any amount that is relevant for the purposes of the assessment; and

(c) provide the facts and reasons relied on by the person in respect of each issue.

Late compliance

(3) Despite subsection (2), if a notice of objection does not include the information required under paragraph (2)(b) or (c) in respect of an issue to be decided that is described in the notice, the Minister may request that the person provide the information, and that paragraph is deemed to be complied with in respect of the issue if, within 60 days after the request is made, the person submits the information in writing to the Minister.

Limitation on objections

(4) Despite subsection (1), if a person has filed a notice of objection to an assessment (in this section referred to as the "earlier assessment") and the Minister makes a particular assessment under subsection (8) as a result of the notice of objection, the person may object to the particular assessment in respect of an issue only

SECTION J

Opposition aux cotisations

Opposition à la cotisation

72 (1) La personne qui fait opposition à la cotisation établie à son égard peut, dans les quatre-vingt-dix jours suivant la date de l'avis de cotisation, présenter au ministre un avis d'opposition, en la forme et selon les modalités qu'il détermine, exposant les motifs de son opposition et tous les faits pertinents.

Question à trancher

(2) L'avis d'opposition que produit une personne doit contenir les éléments suivants pour chaque question à trancher :

a) une description suffisante;

b) le redressement demandé, sous la forme du montant qui représente le changement apporté à un montant à prendre en compte aux fins de cotisation;

c) les motifs et les faits sur lesquels se fonde la personne.

Observation tardive

(3) Malgré le paragraphe (2), dans le cas où un avis d'opposition ne contient pas les renseignements prévus aux alinéas (2)b) ou c) relativement à une question à trancher qui est décrite dans l'avis, le ministre peut demander à la personne de fournir ces renseignements. La personne est réputée s'être conformée à l'alinéa applicable relativement à la question à trancher si, dans les soixante jours suivant la demande par le ministre, elle communique à celui-ci par écrit les renseignements requis.

Restrictions touchant les oppositions

(4) Malgré le paragraphe (1), si une personne a produit un avis d'opposition à une cotisation (appelée « cotisation antérieure » au présent article) et que le ministre établit, en application du paragraphe (8), une cotisation donnée par suite de l'avis, la personne peut faire opposition à la cotisation donnée relativement à une question à

(a) if the person complied with subsection (2) in the notice with respect to that issue; and

(b) with respect to the relief sought in respect of that issue as specified by the person in the notice.

trancher seulement si, relativement à cette question, elle s'est conformée au paragraphe (2) dans l'avis et seulement à l'égard du redressement, tel qu'il est exposé dans l'avis, qu'elle demande relativement à cette question.

Application of limitations

(5) If a particular assessment is made under subsection (8) as a result of an objection made by a person to an earlier assessment, subsection (4) does not limit the right of the person to object to the particular assessment in respect of an issue that was part of the particular assessment and not part of the earlier assessment.

Application des restrictions

(5) Dans le cas où une cotisation donnée est établie en application du paragraphe (8) par suite d'une opposition faite par une personne à une cotisation antérieure, le paragraphe (4) n'a pas pour effet de limiter le droit de la personne de s'opposer à la cotisation donnée relativement à une question sur laquelle porte cette cotisation mais non la cotisation antérieure.

Limitation on objections

(6) Despite subsection (1), a person is not permitted to make an objection in respect of an issue for which the person has waived the right of objection.

Restriction touchant les oppositions

(6) Malgré le paragraphe (1), aucune opposition ne peut être faite par une personne relativement à une question pour laquelle il a renoncé à son droit d'opposition.

Acceptance of objection

(7) The Minister may accept a notice of objection even if it was not filed in the form and manner prescribed by the Minister.

Acceptation de l'opposition

(7) Le ministre peut accepter l'avis d'opposition qui n'a pas été présenté en la forme et selon les modalités qu'il détermine.

Consideration of objection

(8) On receipt of a notice of objection, the Minister must, without delay, reconsider the assessment and vacate, confirm or vary it or make a reassessment.

Examen de l'opposition

(8) Sans délai après avoir reçu l'avis d'opposition, le ministre examine la cotisation de nouveau et l'annule, la confirme ou la modifie, ou établit une nouvelle.

Waiving reconsideration

(9) If, in a notice of objection, a person that wishes to appeal directly to the Tax Court of Canada requests the Minister not to reconsider the assessment objected to, the Minister may confirm the assessment without reconsideration.

Renonciation au nouvel examen

(9) Le ministre peut confirmer une cotisation sans l'examiner de nouveau sur demande de la personne qui lui fait part, dans son avis d'opposition, de son intention d'en appeler directement à la Cour canadienne de l'impôt.

Notice of decision

(10) After reconsidering an assessment under subsection (8) or confirming an assessment under subsection (9), the Minister must, in writing, notify the person objecting to the assessment of the Minister's decision.

Avis de décision

(10) Après avoir examiné de nouveau ou confirmé une cotisation, le ministre fait part de sa décision par écrit à la personne qui y a fait opposition.

Payment by Minister on objection

(11) If the variation of an assessment for a particular calendar year as a result of an objection establishes that a person has paid an amount in excess of the amount determined on that assessment to be payable by the person, the Minister must pay to the person a refund of the amount of the excess together with interest, at the rate prescribed by regulation, on the amount of the excess for the period beginning on the day that is the later of July 30 of the following calendar year and the day on which

Paiement par le ministre

(11) Lorsque la modification d'une cotisation relativement à une année civile donnée, à la suite d'une opposition, établit que l'opposant a payé un montant qui excède celui qui était exigible dans cette cotisation, le ministre doit lui verser un remboursement équivalent à l'excédent, ainsi que les intérêts au taux visé par règlement, sur celui-ci pour la période commençant à la dernière date en date du 30 juillet de l'année civile suivante et la date à laquelle l'excédent a été payé, et se terminant à la date du remboursement.

the excess was paid and ending on the day on which the refund is paid.

Extension of time by Minister

73 (1) If no objection to an assessment is filed under section 72 within the time limited by this Act, a person may apply to the Minister for an extension of the time for filing a notice of objection and the Minister may grant the application.

Contents of application

(2) An application under subsection (1) must set out the reasons for which the notice of objection was not filed within the time limited by this Act for doing so.

How application made

(3) An application under subsection (1) must be made to the Assistant Commissioner of the Appeals Branch of the Agency in the form and manner prescribed by the Minister and must be accompanied by a copy of the notice of objection.

Defect in application

(4) The Minister may accept an application under subsection (1) even though it was not made in accordance with subsection (3).

Duties of Minister

(5) On receipt of an application under subsection (1), the Minister must, without delay, consider the application and grant or refuse it, and notify the person in writing of the decision.

Date of objection if application granted

(6) If an application under subsection (1) is granted, the notice of objection is deemed to have been filed on the day of the decision of the Minister.

Conditions for grant of application

(7) An application may be granted under this section only if

(a) the application is made within one year after the expiry of the time limited by this Act for objecting; and

(b) the person demonstrates that

(i) within the time limited by this Act for objecting, the person

(A) was unable to act or to give a mandate to act in the person's name, or

Prorogation du délai par le ministre

73 (1) Le ministre peut proroger le délai pour produire un avis d'opposition dans le cas où la personne qui n'a pas fait opposition à une cotisation en vertu de l'article 72 dans le délai imparti par la présente loi lui présente une demande à cet effet.

Contenu de la demande

(2) La demande doit indiquer les raisons pour lesquelles l'avis d'opposition n'a pas été produit dans le délai imparti par la présente loi.

Modalités

(3) La demande, accompagnée d'un exemplaire de l'avis d'opposition, est présentée auprès du sous-commissaire de la Direction générale des appels de l'Agence, selon la forme et les modalités déterminées par le ministre.

Demande non conforme

(4) Le ministre peut accepter la demande qui n'a pas été faite en conformité avec le paragraphe (3).

Obligations du ministre

(5) Sans délai après avoir reçu une demande, le ministre l'examine et y fait droit ou la rejette. Dès lors, il avise la personne par écrit de sa décision.

Date de production de l'avis d'opposition

(6) S'il est fait droit à la demande, l'avis d'opposition est réputé avoir été présenté à la date de la décision du ministre.

Conditions d'acceptation de la demande

(7) Il n'est fait droit à la demande présentée en application du présent article que si les conditions suivantes sont réunies :

a) la demande est présentée dans l'année suivant l'expiration du délai imparti par la présente loi pour faire opposition;

b) la personne démontre ce qui suit :

(i) dans le délai d'opposition imparti par la présente loi, elle n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou elle avait véritablement l'intention de s'opposer à la cotisation,

(B) had a *bona fide* intention to object to the assessment,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application was made as soon as circumstances permitted.

(ii) compte tenu des raisons indiquées dans la demande et des circonstances en l'espèce, il est juste et équitable d'y faire droit,

(iii) la demande a été présentée dès que les circonstances l'ont permis.

DIVISION K

Appeal

Extension of time by Tax Court of Canada

74 (1) A person that has made an application under section 73 may apply to the Tax Court of Canada to have the application granted after either

(a) the Minister has refused the application; or

(b) 90 days have elapsed after the day on which the application was made and the Minister has not notified the person of the Minister's decision.

When application may not be made

(2) A person is not permitted to make an application under subsection (1) after the expiry of 30 days after the day on which notification of the decision referred to in subsection 73(5) was sent to the person.

How application made

(3) An application under subsection (1) must be made by filing in the Registry of the Tax Court of Canada, in accordance with the *Tax Court of Canada Act*, the documents referred to in subsection 73(3) and the notification, if any, referred to in subsection 73(5).

Copy to the Commissioner

(4) The Tax Court of Canada must send a copy of any application received under subsection (3) to the Commissioner.

Powers of Tax Court of Canada

(5) The Tax Court of Canada may dispose of an application received under subsection (3) by dismissing or granting it and, in granting it, the Court may impose any terms that it considers just or order that the notice of objection be deemed to be a valid objection as of the date of the order.

SECTION K

Appel

Prorogation par la Cour canadienne de l'impôt

74 (1) Une personne qui a présenté une demande en vertu de l'article 73 peut demander à la Cour canadienne de l'impôt d'y faire droit après :

a) le rejet de la demande par le ministre;

b) l'expiration d'un délai de quatre-vingt-dix jours suivant la présentation de la demande, si le ministre n'a pas avisé la personne de sa décision dans ce délai.

Irrecevabilité

(2) La demande est toutefois irrecevable après l'expiration d'un délai de trente jours suivant l'envoi de l'avis de la décision visée au paragraphe 73(5) à la personne.

Modalités

(3) La demande présentée en application du paragraphe (1) se fait par dépôt au greffe de la Cour canadienne de l'impôt, conformément à la *Loi sur la Cour canadienne de l'impôt*, des documents visés au paragraphe 73(3) et de l'avis, s'il y a lieu, visé au paragraphe 73(5).

Copie au commissaire

(4) La Cour canadienne de l'impôt envoie une copie de la demande au commissaire.

Pouvoirs de la Cour canadienne de l'impôt

(5) La Cour canadienne de l'impôt peut rejeter la demande ou y faire droit. Dans ce dernier cas, elle peut imposer les conditions qu'elle estime justes ou ordonner que l'avis d'opposition soit réputé valide à compter de la date de l'ordonnance.

Conditions for grant of application

(6) An application is to be granted by the Tax Court of Canada under this section only if

(a) the application under subsection 73(1) is made within one year after the expiry of the time limited by this Act for objecting; and

(b) the person demonstrates that

(i) within the time limited by this Act for objecting, the person

(A) was unable to act or to give a mandate to act in the person's name, or

(B) had a *bona fide* intention to object to the assessment,

(ii) given the reasons set out in the application under this section and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application under subsection 73(1) was made as soon as circumstances permitted.

Conditions d'acceptation de la demande

(6) La Cour canadienne de l'impôt ne peut faire droit à la demande présentée en application du présent article que si les conditions suivantes sont réunies :

a) la demande prévue au paragraphe 73(1) est présentée dans l'année suivant l'expiration du délai imparti par la présente loi pour faire opposition;

b) la personne démontre ce qui suit :

(i) dans le délai d'opposition imparti par la présente loi, elle n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou elle avait véritablement l'intention s'opposer à la cotisation,

(ii) compte tenu des raisons indiquées dans la demande prévue au présent article et des circonstances en l'espèce, il est juste et équitable d'y faire droit,

(iii) la demande prévue au paragraphe 73(1) a été présentée dès que les circonstances l'ont permis.

Appeal to Tax Court of Canada

75 (1) Subject to subsection (2), a person that has filed a notice of objection to an assessment may appeal to the Tax Court of Canada to have the assessment varied or vacated, or a reassessment made, after either

(a) the Minister has confirmed the assessment or has made a reassessment, or

(b) 180 days have elapsed after the day on which the notice of objection was filed and the Minister has not notified the person that the Minister has vacated or confirmed the assessment or has made a reassessment.

Appel

75 (1) Sous réserve du paragraphe (2), la personne qui a présenté un avis d'opposition à une cotisation peut interjeter appel à la Cour canadienne de l'impôt pour faire modifier ou annuler la cotisation, ou en faire établir une nouvelle, dans les cas suivants :

a) le ministre a confirmé la cotisation ou en a établi une nouvelle;

b) un délai de cent quatre-vingts jours après la présentation de l'avis a expiré sans que le ministre ait avisé la personne du fait qu'il a annulé ou confirmé la cotisation ou en a établi une nouvelle.

No appeal

(2) A person is not permitted to institute an appeal under subsection (1) after the expiry of 90 days after the day on which the notice that the Minister has confirmed the assessment or made a reassessment is sent to the person under subsection 72(10).

Aucun appel

(2) Nul appel ne peut être interjeté après l'expiration d'un délai de quatre-vingt-dix jours suivant la date de l'envoi à la personne, en vertu du paragraphe 72(10), d'un avis portant que le ministre a confirmé la cotisation ou procédé à une nouvelle cotisation.

Amendment of appeal

(3) The Tax Court of Canada may, on any terms that it sees fit, authorize a person that has instituted an appeal in respect of a matter to amend the appeal to include any further assessment in respect of the matter that the person is entitled under this section to appeal.

Modification de l'appel

(3) La Cour canadienne de l'impôt peut, de la manière qu'elle estime indiquée, autoriser une personne ayant interjeté appel sur une question à modifier l'appel de façon à ce qu'il porte sur toute cotisation ultérieure concernant la question qui peut faire l'objet d'un appel en application du présent article.

Extension of time to appeal

76 (1) If no appeal to the Tax Court of Canada under section 75 has been instituted within the time limited by that section for doing so, a person may make an application to the Tax Court of Canada for an order extending the time within which an appeal may be instituted, and the Court may make an order extending the time for appealing and may impose any terms that it considers just.

Contents of application

(2) An application under subsection (1) must set out the reasons why the appeal was not instituted within the time limited by section 75 for doing so.

How application made

(3) An application under subsection (1) must be made by filing in the Registry of the Tax Court of Canada, in accordance with the *Tax Court of Canada Act*, the application and the notice of appeal.

Copy to Deputy Attorney General of Canada

(4) The Tax Court of Canada must send a copy of any application under subsection (1) to the office of the Deputy Attorney General of Canada.

Conditions for order to be made

(5) An order may be made under this section only if

(a) the application under subsection (1) is made within one year after the expiry of the time limited by section 75 for appealing; and

(b) the person demonstrates that

(i) within the time limited by section 75 for appealing, the person

(A) was unable to act or to give a mandate to act in the person's name, or

(B) had a *bona fide* intention to appeal,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,

(iii) the application was made as soon as circumstances permitted, and

(iv) there are reasonable grounds for the appeal.

Limitation on appeals

77 (1) Despite section 75, if a person has filed a notice of objection to an assessment, the person may appeal to the

Prorogation du délai d'appel

76 (1) La personne qui n'a pas interjeté appel en vertu de l'article 75 dans le délai imparti peut présenter à la Cour canadienne de l'impôt une demande de prorogation du délai pour interjeter appel. La Cour peut faire droit à la demande et imposer les conditions qu'elle estime justes.

Contenu de la demande

(2) La demande doit indiquer les raisons pour lesquelles l'appel n'a pas été interjeté dans le délai imparti en vertu de l'article 75.

Modalités

(3) La demande est faite en déposant la demande ainsi que l'avis d'appel au greffe de la Cour canadienne de l'impôt conformément à la *Loi sur la Cour canadienne de l'impôt*.

Copie au sous-procureur général du Canada

(4) La Cour canadienne de l'impôt envoie une copie de la demande au bureau du sous-procureur général du Canada.

Conditions d'acceptation de la demande

(5) Il n'est fait droit à la demande que si les conditions suivantes sont réunies :

a) la demande est présentée dans l'année suivant l'expiration du délai d'appel imparti en vertu de l'article 75;

b) la personne démontre ce qui suit :

(i) dans le délai d'appel imparti en vertu de l'article 75, elle n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou elle avait véritablement l'intention d'interjeter appel,

(ii) compte tenu des raisons indiquées dans la demande et des circonstances en l'espèce, il est juste et équitable d'y faire droit,

(iii) la demande a été présentée dès que les circonstances l'ont permis,

(iv) l'appel est raisonnablement fondé.

Restriction touchant les appels

77 (1) Malgré l'article 75, la personne qui a présenté un avis d'opposition à une cotisation ne peut interjeter appel devant la Cour canadienne de l'impôt pour faire annuler

Tax Court of Canada to have the assessment vacated, or a reassessment made, only with respect to

(a) an issue in respect of which the person has complied with subsection 72(2) in the notice and the relief sought in respect of the issue as specified in the notice; or

(b) an issue referred to in subsection 72(5), if the person was not required to file a notice of objection to the assessment that gave rise to the issue.

No appeal if waiver

(2) Despite section 75, a person is not permitted to appeal to the Tax Court of Canada to have an assessment vacated or varied in respect of an issue for which the person has waived the right of objection or appeal.

Institution of appeals

78 An appeal to the Tax Court of Canada under this Act must be instituted in accordance with the *Tax Court of Canada Act*.

Disposition of appeal

79 (1) The Tax Court of Canada may dispose of an appeal from an assessment by

(a) dismissing it; or

(b) allowing it and

(i) vacating the assessment,

(ii) varying the assessment, or

(iii) referring the assessment back to the Minister for reconsideration and reassessment.

Partial disposition of appeal

(2) If an appeal raises more than one issue, the Tax Court of Canada may, with the written consent of the parties to the appeal, dispose of a particular issue by

(a) dismissing the appeal with respect to the particular issue; or

(b) allowing the appeal with respect to the particular issue and

(i) varying the assessment, or

(ii) referring the assessment back to the Minister for reconsideration and reassessment.

la cotisation, ou en faire établir une nouvelle, qu'à l'égard des questions suivantes :

a) une question relativement à laquelle elle s'est conformée au paragraphe 72(2) dans l'avis et le redressement, tel qu'il est exposé dans l'avis, qu'elle demande relativement à cette question;

b) une question visée au paragraphe 72(5), si elle n'était pas tenue de produire un avis d'opposition à la cotisation qui a donné lieu à la question.

Restriction — renonciation

(2) Malgré l'article 75, aucun appel ne peut être interjeté par une personne devant la Cour canadienne de l'impôt pour faire annuler ou modifier une cotisation visant une question pour laquelle elle a renoncé à son droit d'opposition ou d'appel.

Modalités de l'appel

78 Tout appel à la Cour canadienne de l'impôt en application de la présente loi est interjeté conformément à la *Loi sur la Cour canadienne de l'impôt*.

Règlement d'appel

79 (1) La Cour canadienne de l'impôt peut statuer sur un appel concernant une cotisation :

a) en le rejetant;

b) en y faisant droit et en :

(i) annulant la cotisation,

(ii) modifiant la cotisation,

(iii) renvoyant la cotisation au ministre pour nouvel examen et nouvelle cotisation.

Règlement partiel d'un appel

(2) Si un appel porte sur plus d'une question, la Cour canadienne de l'impôt peut, avec le consentement écrit des parties, statuer sur une question donnée :

a) en rejetant l'appel en ce qui concerne cette question;

b) en admettant l'appel en ce qui concerne cette question, auquel cas elle peut modifier la cotisation ou la renvoyer au ministre pour nouvel examen et nouvelle cotisation.

Disposal of remaining issues

(3) If a particular issue has been disposed of under subsection (2), the appeal with respect to the remaining issues may continue.

Appeal to Federal Court of Appeal

(4) If the Tax Court of Canada has disposed of a particular issue under subsection (2), the parties to the appeal may, in accordance with the provisions of the *Tax Court of Canada Act* or the *Federal Courts Act*, as they relate to appeals from decisions of the Tax Court of Canada, appeal the disposition to the Federal Court of Appeal as if it were a final judgment of the Tax Court of Canada.

References to Tax Court of Canada

80 (1) The Minister and a person may agree that a question arising under this Act, in respect of any assessment or proposed assessment of the person, should be determined by the Tax Court of Canada.

Time during consideration not to count

(2) For the purposes of making an assessment, filing a notice of objection to an assessment or instituting an appeal from an assessment, the period beginning on the day on which proceedings are instituted in the Tax Court of Canada to have a question determined under subsection (1) and ending on the day on which the question is finally determined is not to be counted in the computation of

(a) the seven-year period referred to in subsection 70(1);

(b) the period within which a notice of objection to an assessment may be filed under section 72; and

(c) the period within which an appeal may be instituted under section 75.

Reference of common questions to Tax Court

81 (1) If the Minister is of the opinion that a question arising out of one and the same transaction or occurrence, or series of transactions or occurrences, is common to assessments or proposed assessments in respect of two or more persons, the Minister may apply to the Tax Court of Canada for a determination of the question.

Contents of application

(2) An application under subsection (1) must set out

(a) the question in respect of which the Minister requests a determination;

Continuation de l'appel

(3) S'il a été statué sur une question donnée en vertu du paragraphe (2), l'appel peut se poursuivre en ce qui concerne les autres questions sur lesquelles il porte.

Appel à la Cour d'appel fédérale

(4) Si la Cour canadienne de l'impôt a statué sur une question donnée en vertu du paragraphe (2), les parties à l'appel peuvent, conformément aux dispositions de la *Loi sur la Cour canadienne de l'impôt* ou de la *Loi sur les Cours fédérales* applicables aux appels de décisions de la Cour canadienne de l'impôt, interjeter appel de la décision devant la Cour d'appel fédérale comme s'il s'agissait d'un jugement définitif de la Cour canadienne de l'impôt.

Renvoi à la Cour canadienne de l'impôt

80 (1) Le ministre et une personne peuvent convenir qu'une question portant sur une cotisation, réelle ou projetée, découlant de l'application de la présente loi, devrait être tranchée par la Cour canadienne de l'impôt.

Exclusion du délai d'examen

(2) La période commençant à la date où une procédure est introduite à la Cour canadienne de l'impôt afin qu'une question y soit tranchée en application du paragraphe (1) et se terminant à la date où il est définitivement statué sur la question est exclue du calcul des délais ci-après lorsqu'ils ont trait, selon le cas, à l'établissement d'une cotisation, à la présentation d'un avis d'opposition à une cotisation ou à l'interjection d'un appel :

a) le délai de sept ans prévu au paragraphe 70(1);

b) le délai de présentation d'un avis d'opposition à une cotisation prévu à l'article 72;

c) le délai d'appel prévu à l'article 75.

Renvoi de questions communes

81 (1) Si le ministre est d'avis qu'une même opération, un même événement ou une même série d'opérations ou d'événements soulève une question commune qui se rapporte à des cotisations, réelles ou projetées, relatives à deux personnes ou plus, il peut demander à la Cour canadienne de l'impôt de statuer sur la question.

Contenu de la demande

(2) La demande comporte les renseignements suivants :

a) la question sur laquelle le ministre demande une décision;

(b) the names of the persons that the Minister seeks to have bound by the determination; and

(c) the facts and reasons on which the Minister relies and on which the Minister based or intends to base the assessments of each person named in the application.

b) le nom des personnes qu'il souhaite voir liées par la décision;

c) les faits et motifs sur lesquels il s'appuie et sur lesquels il fonde ou a l'intention de fonder la cotisation de chaque personne nommée dans la demande.

Service

(3) A copy of any application under subsection (1) must be served by the Minister on each person named in the application and on any other person that, in the opinion of the Tax Court of Canada, is likely to be affected by the determination of the question.

Signification

(3) Le ministre signifie un exemplaire de la demande à chacune des personnes qui y sont nommées et à toute autre personne qui, de l'avis de la Cour canadienne de l'impôt, est susceptible d'être touchée par la décision.

Determination of question by Tax Court

(4) If the Tax Court of Canada is satisfied that a determination of a question set out in an application under subsection (1) will affect assessments or proposed assessments in respect of two or more persons that have been served with a copy of the application, the Tax Court of Canada may make an order naming the persons in respect of which the question will be determined and may

(a) if none of the persons named in the order has appealed from such an assessment, proceed to determine the question in any manner that it considers appropriate; or

(b) if one or more of the persons named in the order has or have appealed, make any order that it considers appropriate joining a party or parties to that appeal or those appeals and proceed to determine the question in any manner that it considers appropriate.

Décision de la Cour canadienne de l'impôt

(4) Dans le cas où la Cour canadienne de l'impôt est convaincue que la décision rendue sur la question exposée dans une demande aura un effet sur les cotisations, réelles ou projetées, relatives à deux personnes ou plus à qui une copie de la demande a été signifiée, elle peut rendre une ordonnance nommant les personnes à l'égard desquelles la question sera tranchée et elle peut :

a) si aucune des personnes nommées dans l'ordonnance n'en a appelé d'une de ces cotisations, entreprendre de statuer sur la question de la façon qu'elle juge indiquée;

b) si une ou plusieurs des personnes nommées dans l'ordonnance ont interjeté appel, rendre toute ordonnance qu'elle juge indiquée groupant dans cet ou ces appels les parties appelantes et entreprendre de statuer sur la question de la façon qu'elle juge indiquée.

Determination final and conclusive

(5) Subject to subsection (6), if a question set out in an application under subsection (1) is determined by the Tax Court of Canada, the determination is final and conclusive for the purposes of any assessments of persons named in an order by the Court under subsection (4).

Décision définitive

(5) Sous réserve du paragraphe (6), la décision rendue par la Cour canadienne de l'impôt sur une question soumise dans une demande est définitive et sans appel aux fins d'établissement de toute cotisation à l'égard des personnes qui y sont nommées dans une ordonnance.

Appeal

(6) If a question set out in an application under subsection (1) is determined by the Tax Court of Canada, the Minister or any of the persons that have been served with a copy of the application and that are named in an order of the Court under subsection (4) may, in accordance with the provisions of this Act, the *Tax Court of Canada Act* or the *Federal Courts Act*, as they relate to appeals from decisions of the Tax Court of Canada, appeal from the determination.

Appel

(6) Dans le cas où la Cour canadienne de l'impôt statue sur une question soumise dans une demande, le ministre ou l'une des personnes à qui une copie de la demande a été signifiée et qui est nommée dans une ordonnance de la Cour rendue en vertu du paragraphe (4) peut interjeter appel de la décision conformément aux dispositions de la présente loi, de la *Loi sur la Cour canadienne de l'impôt* ou de la *Loi sur les Cours fédérales* concernant les appels des décisions de la Cour canadienne de l'impôt.

Parties to appeal

(7) The parties that are bound by a determination under subsection (4) are parties to any appeal from the determination.

Time during consideration not to count

(8) For the purposes of making an assessment, filing a notice of objection to an assessment or instituting an appeal from an assessment, the period referred to in subsection (9) must not be counted in the computation of

(a) the seven-year period referred to in subsection 70(1);

(b) the period within which a notice of objection to an assessment may be filed under section 72; and

(c) the period within which an appeal may be instituted under section 75.

Excluded periods

(9) The period that is not to be counted in the computation of the periods referred to in paragraphs (8)(a) to (c) is the period beginning on the day on which a copy of an application made under this section is served on a person under subsection (3) and

(a) in the case of a person named in an order of the Tax Court of Canada under subsection (4), ending on the day on which the determination becomes final and conclusive; and

(b) in the case of any other person, ending on the day on which the person is served with a notice that the person has not been named in an order of the Tax Court of Canada under subsection (4).

Payment by the Minister on appeal

82 (1) If the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada has, on the disposition of an appeal in respect of taxes, interest or a penalty payable under this Act by a person, referred an assessment back to the Minister for reconsideration and reassessment, or varied or vacated an assessment, the Minister must, without delay, whether or not an appeal from the decision of the Court has been or may be instituted,

(a) where the assessment has been referred back to the Minister, reconsider the assessment and make a reassessment in accordance with the decision of the Court unless otherwise directed in writing by the person; and

Parties à un appel

(7) Les parties liées par une décision prise en vertu du paragraphe (4) sont parties à un appel de cette décision.

Exclusion du délai d'examen

(8) La période visée au paragraphe (9) est exclue du calcul des délais ci-après lorsqu'ils ont trait, selon le cas, à l'établissement d'une cotisation à l'égard d'une personne, à la présentation d'un avis d'opposition ou à l'interjection d'un appel :

a) le délai de sept ans prévu au paragraphe 70(1);

b) le délai de présentation d'un avis d'opposition à une cotisation prévu à l'article 72;

c) le délai d'appel prévu à l'article 75.

Période exclue

(9) Est exclue du calcul des délais visés aux alinéas (8)a) à c) la période commençant à la date où une copie d'une demande présentée en application du présent article est signifiée à une personne en vertu du paragraphe (3) et se terminant à la date applicable suivante :

a) dans le cas d'une personne nommée dans une ordonnance rendue par la Cour canadienne de l'impôt en vertu du paragraphe (4), la date où la décision devient définitive et sans appel;

b) dans le cas d'une autre personne, la date où il lui est signifié un avis portant qu'elle n'a pas été nommée dans une telle ordonnance.

Paiement à la suite d'un appel

82 (1) Si la Cour canadienne de l'impôt, la Cour d'appel fédérale ou la Cour suprême du Canada, en statuant sur un appel concernant des taxes, intérêts ou pénalités payables en vertu de la présente loi par une personne, ordonne soit le renvoi d'une cotisation au ministre pour réexamen et pour l'établissement d'une nouvelle cotisation, soit la modification ou l'annulation d'une cotisation, le ministre doit, sans délai, qu'un appel de la décision de la Cour ait été ou puisse être interjeté ou non :

a) d'une part, réexaminer la cotisation et en établir une nouvelle conformément à la décision de la Cour, sauf instruction écrite contraire de la personne, dans le cas du renvoi d'une cotisation au ministre;

b) d'autre part, rembourser tout paiement en trop qui découle de la modification ou de l'annulation d'une

(b) refund any overpayment resulting from the variation, vacation or reassessment.

The Minister may repay any tax, interest or penalties or surrender any security accepted by the Minister for tax, interest or penalties to that person or any other person that has filed another objection or instituted another appeal if, having regard to the reasons given on the disposition of the appeal, the Minister is satisfied that it would be just and equitable to do so, but for greater certainty, the Minister may, in accordance with the provisions of this Act, the *Tax Court of Canada Act*, the *Federal Courts Act* or the *Supreme Court Act* as they relate to appeals from decisions of the Tax Court of Canada or the Federal Court of Appeal, appeal from the decision of the Court despite any variation or vacation of any assessment by the Court or any reassessment made by the Minister under paragraph (a).

Interest on refund

(2) If a refund is made under subsection (1) in respect of an assessment for a particular calendar year, interest at the rate prescribed by regulation must be paid for the period beginning on the day that is the later of July 30 of the following calendar year and the day on which the overpayment referred to in that subsection was paid and ending on the day on which the refund is paid.

cotisation, ou de l'établissement d'une nouvelle cotisation.

De plus, le ministre peut rembourser toute taxe, tout intérêt ou toute pénalité ou remettre toute garantie qu'il a acceptée, pour ceux-ci, à cette personne ou à une autre personne qui a fait opposition ou interjeté appel, s'il est convaincu, compte tenu des motifs exposés dans le prononcé sur l'appel, qu'il serait juste et équitable de faire ce remboursement ou cette remise; il est entendu toutefois que le ministre peut en appeler de la décision de la Cour conformément aux dispositions de la présente loi, de la *Loi sur la Cour canadienne de l'impôt*, de la *Loi sur les Cours fédérales* ou de la *Loi sur la Cour suprême* relatives à l'appel d'une décision de la Cour canadienne de l'impôt ou de la Cour d'appel fédérale, malgré la modification ou l'annulation de la cotisation par la Cour ou l'établissement d'une nouvelle cotisation par le ministre en vertu de l'alinéa a).

Intérêts sur remboursement

(2) Des intérêts au taux visé par règlement calculés sur le remboursement versé en application du paragraphe (1) pour une année civile donnée doivent être payés pour la période commençant à la dernière date en date du 30 juillet de l'année civile suivante et la date à laquelle le paiement en trop visé à ce paragraphe est versé, et se terminant à la date du remboursement.

DIVISION L

Penalties

Failure to register when required

83 A taxpayer that does not apply to register as and when required under section 41 is liable to a penalty of $20,000 for each of

(a) the calendar year in which it was required to apply to register;

(b) the calendar year in which it registers (or is registered under section 44), if the year is different from the year referred to in paragraph (a); and

(c) the calendar years, if any, between the years referred to in paragraphs (a) and (b).

Failure to file return when required

84 (1) A taxpayer that fails to file a return in respect of a calendar year as and when required under section 45 is liable to a penalty equal to the total of

SECTION L

Pénalités

Défaut de s'inscrire

83 Tout contribuable qui doit présenter une demande d'inscription en vertu de l'article 41 et omet de le faire dans le délai et selon les modalités prévus est passible d'une pénalité de 20 000 $ pour chacune des périodes suivantes :

a) l'année civile dans laquelle il était tenu de présenter une demande d'inscription;

b) l'année civile dans laquelle il s'inscrit (ou dans laquelle il est inscrit en vertu de l'article 44), si celle-ci est différente de celle visée à l'alinéa a);

c) les années civiles comprises entre celles visées aux alinéas a) et b), le cas échéant.

Défaut de produire une déclaration

84 (1) Tout contribuable qui omet de produire une déclaration pour une année civile, dans le délai et selon les modalités prévus par l'article 45, est passible d'une pénalité égale au total des montants suivants :

(a) an amount equal to 5% of the taxpayer's tax payable under this Act in respect of the year that was unpaid on the day on which the return was required to be filed, and

(b) the amount obtained when 1% of that unpaid tax is multiplied by the number of complete months, not exceeding 12, beginning on the day on which the return was required to be filed and ending on the day on which the return is filed.

Repeated failure to file — conditions

(2) Subsection (3) applies to a taxpayer in respect of a calendar year, if the taxpayer

(a) fails to file a return in respect of the year as and when required by section 45;

(b) fails to comply with a demand sent under section 48 for a return in respect of the year; and

(c) was, before the day on which the return referred to in paragraph (a) was required to be filed, liable to a penalty under subsection (1) for a return in respect of any of the three preceding calendar years.

Repeated failure to file — penalty

(3) If subsection (2) applies to a taxpayer in respect of a calendar year, the taxpayer is liable to a penalty equal to the total of

(a) an amount equal to 10% of the taxpayer's tax payable under this Act in respect of the year that was unpaid on the day on which the return was required to be filed, and

(b) the amount obtained when 2% of that unpaid tax is multiplied by the number of complete months, not exceeding 20, beginning on the day on which the return was required to be filed and ending on the day on which the return is filed.

False statements or omissions

(4) A person who knowingly, or under circumstances amounting to gross negligence, makes or participates in, assents to, or acquiesces in the making of, a false statement or omission in a return, application, form, certificate, statement, document, invoice, record or answer (each of which is in this subsection referred to as a "return") is liable to a penalty equal to the greater of $5,000 and 25% of the total of

(a) if the false statement or omission is relevant to the determination of an amount payable under this Act by the person, the amount, if any, by which

a) 5 % de la taxe payable, relativement à l'année en vertu de la présente loi, qui était impayée à la date où la déclaration devait être produite;

b) le produit de 1 % de cette taxe impayée multiplié par le nombre de mois entiers, jusqu'à concurrence de douze, compris dans la période commençant le jour où la déclaration devait être produite et se terminant le jour où la déclaration est effectivement produite.

Récidive — conditions

(2) Le paragraphe (3) s'applique à un contribuable à l'égard d'une année civile, s'il remplit les conditions suivantes :

a) il ne produit pas de déclaration pour l'année selon les modalités et dans le délai prévus à l'article 45;

b) il a été mis en demeure de le faire conformément à l'article 48 et n'a pas obtempéré;

c) avant la date où la déclaration visée à l'alinéa a) devait être produite, il devait payer une pénalité en application du paragraphe (1) pour l'une des trois années civiles précédant le défaut.

Récidive — pénalité

(3) Si le paragraphe (2) s'applique à un contribuable à l'égard d'une année civile, il est passible d'une pénalité égale au total des montants suivants :

a) 10 % de la taxe payable relativement à l'année en vertu de la présente loi et qui était impayée à la date où, au plus tard, la déclaration devait être produite;

b) le produit de 2 % de cette taxe impayée multiplié par le nombre de mois entiers, jusqu'à concurrence de vingt, compris dans la période commençant à la date où, au plus tard, la déclaration devait être produite et se terminant le jour où la déclaration est effectivement produite.

Faux énoncés ou omissions

(4) Toute personne qui, sciemment ou dans des circonstances équivalant à faute lourde, fait un faux énoncé ou une omission dans une déclaration, une demande, un formulaire, un certificat, un état, un document, une facture, un registre ou une réponse (appelés « déclaration » au présent paragraphe), ou participe, consent ou acquiesce au faux énoncé ou à l'omission, est passible d'une pénalité égale à 5 000 $ ou, si elle est plus élevée, à la somme correspondant à 25 % du total des montants suivants :

(i) the amount that is payable

exceeds

(ii) the amount that would be payable if it were determined on the basis of the information provided in the return, and

(b) if the false statement or omission is relevant to the determination of a refund or any other payment that may be obtained under this Act, the amount, if any, by which

(i) the amount that would be the refund or other payment that would be payable if it were determined on the basis of the information provided in the return

exceeds

(ii) the amount of the refund or other payment that is payable to the person.

a) si le faux énoncé ou l'omission a trait au calcul d'une somme exigible de la personne en vertu de la présente loi, l'excédent éventuel de cette somme sur la somme qui serait exigible de la personne si elle était déterminée d'après sa déclaration;

b) si le faux énoncé ou l'omission a trait au calcul d'un remboursement ou d'un autre paiement pouvant être obtenu en vertu de la présente loi, l'excédent éventuel du remboursement ou autre paiement qui serait à payer à la personne, s'il était déterminé d'après sa déclaration, sur le remboursement ou autre paiement à payer à la personne.

Failure to provide information

85 A person that fails to provide any information or record as and when required under this Act, or as prescribed by regulation, is liable to a penalty of $2,500 for each such failure, in addition to any other penalty under this Act. However, the person is not liable in the case of any information or record required in respect of another person under subsection 66(1) or section 104 if a reasonable effort was made by the person to obtain the information or record.

Unreasonable appeal

86 If the Tax Court of Canada disposes of an appeal by a person in respect of an amount payable under this Act or if such an appeal has been discontinued or dismissed without trial, the Court may, on the application of the Minister and whether or not the Court awards costs, order the person to pay to the Receiver General for Canada an amount not exceeding 10% of any part of the amount that was in controversy in respect of which the Court determines that there were no reasonable grounds for the appeal, if in the opinion of the Court one of the main purposes for instituting or maintaining any part of the appeal was to defer the payment of any amount payable under this Act.

Definitions

87 (1) The following definitions apply in this section.

planning activity includes

Défaut de présenter des renseignements

85 Toute personne qui ne fournit pas des renseignements ou des registres selon les modalités et dans le délai prévus par la présente loi, ou visés par règlement, est passible d'une pénalité de 2 500 $, pour chaque manquement, outre les autres pénalités prévues par la présente loi, à moins, s'il s'agit de renseignements ou registres concernant une autre personne requis en vertu du paragraphe 66(1) ou de l'article 104, que la personne ait fait des efforts raisonnables pour les obtenir.

Appel non fondé

86 Lorsque la Cour canadienne de l'impôt se prononce sur un appel interjeté par une personne à l'égard d'un montant payable en vertu de la présente loi ou lorsqu'il y a désistement ou rejet sans procès de l'appel, la Cour peut, sur demande du ministre et qu'elle accorde ou non des dépens, ordonner à la personne de verser au receveur général du Canada un montant ne dépassant pas 10 % de toute partie de la somme en litige à l'égard de laquelle elle juge que l'appel n'était pas raisonnablement fondé, si la Cour est d'avis qu'une des principales raisons pour lesquelles une partie quelconque de l'appel a été interjeté ou poursuivi était de reporter le paiement d'un montant payable en vertu de la présente loi.

Définition

87 (1) Les définitions qui suivent s'appliquent au présent article.

activité de planification S'entend notamment des activités suivantes :

(a) organizing or creating, or assisting in the organization or creation of, an arrangement, an entity, a plan or a scheme; and

(b) participating, directly or indirectly, in the selling of an interest in, or the promotion of, an arrangement, an entity, a plan, a property or a scheme. (*activité de planification*)

section 52 avoidance planning by a transferor or a transferee, means planning activity in respect of a transaction or series of transactions

(a) that is, or is part of, a section 52 avoidance transaction; and

(b) for which one of the purposes of the transaction or series of transactions is to reduce

(i) a transferee's joint and several, or solidary, liability for tax owing under this Act by the transferor, or

(ii) the transferor's or transferee's ability to pay any amount that is or that may become owing under this Act. (*planification d'évitement en vertu de l'article 52*)

section 52 avoidance transaction means a transaction or series of transactions in respect of which

(a) the conditions set out in paragraph 52(7)(a) or (b) are met; or

(b) if subsection 52(7) applied to the transaction or series of transactions, the amount determined under subparagraph 52(7)(c)(ii) would exceed the amount determined under subparagraph 52(7)(c)(i). (*opération d'évitement en vertu de l'article 52*)

transferee refers to "transferee" as used in subsections 52(2) and (7). (*bénéficiaire du transfert*)

transferor refers to "transferor" as used in subsections 52(2) and (7). (*auteur du transfert*)

a) le fait d'organiser ou de créer un arrangement, une entité, un mécanisme, un plan, un régime ou d'aider à son organisation ou à sa création;

b) le fait de participer, directement ou indirectement, à la vente d'un droit dans un arrangement, un bien, une entité, un mécanisme, un plan ou un régime ou à la promotion d'un arrangement, d'une entité, d'un mécanisme, d'un plan ou d'un régime. (*planning activity*)

auteur du transfert S'entend de l'auteur du transfert visé aux paragraphes 52(2) et (7). (*transferor*)

bénéficiaire du transfert S'entend du bénéficiaire du transfert visé aux paragraphes 52(2) et (7). (*transferee*)

opération d'évitement en vertu de l'article 52 S'entend d'une opération ou d'une série d'opérations, relativement à laquelle, selon le cas :

a) les conditions énoncées aux alinéas 52(7)a) ou b) sont satisfaites;

b) lorsque le paragraphe 52(7) s'applique à l'opération ou à la série d'opérations, la somme déterminée en vertu du sous-alinéa 52(7)c)(ii) excéderait la somme déterminée en vertu du sous-alinéa 52(7)c)(i). (*section 52 avoidance transaction*)

planification d'évitement en vertu de l'article 52 S'entend d'une activité de planification par un auteur du transfert ou un bénéficiaire du transfert, relativement à une opération ou à une série d'opérations, qui remplit les conditions suivantes :

a) elle est ou fait partie d'une opération d'évitement en vertu de l'article 52;

b) l'un des objets de l'opération ou de la série d'opérations est de réduire :

(i) soit la responsabilité solidaire d'un bénéficiaire du transfert à l'égard de la taxe que l'auteur du transfert doit en vertu de la présente loi,

(ii) soit la capacité de l'auteur du transfert ou du bénéficiaire du transfert à payer un montant dû, ou qui pourrait arriver à échéance, en vertu de la présente loi. (*section 52 avoidance planning*)

Section 52 avoidance penalty

(2) Every transferor or transferee that engages in, participates in, assents to or acquiesces in planning activity that the transferor or transferee, as the case may be, knows is section 52 avoidance planning, or would

Pénalité pour évitement en vertu de l'article 52

(2) Tout auteur du transfert ou bénéficiaire du transfert qui se livre, participe, consent ou acquiesce à une activité de planification dont il sait ou aurait vraisemblablement su, n'eussent été les circonstances équivalant à une faute

reasonably be expected to know is section 52 avoidance planning, but for circumstances amounting to gross negligence, is liable to a penalty that is the lesser of

(a) 50% of the amount payable under this Act (determined without reference to this subsection), the joint and several, or solidary liability for which was sought to be avoided through the planning, and

(b) $100,000.

lourde, qu'elle est une planification d'évitement en vertu de l'article 52, est passible d'une pénalité correspondant à la moins élevée des sommes suivantes :

a) 50 % du montant exigible en vertu de la présente loi (déterminé compte non tenu du présent paragraphe) pour lequel il y a eu tentative d'esquiver la responsabilité solidaire au moyen de la planification;

b) 100 000 $.

General penalty

88 A person that fails to comply with any provision of this Act, or the regulations made under this Act, for which no other penalty is specified in this Act is liable to a penalty of $2,500.

Pénalité pour tout autre défaut

88 Toute personne qui omet de se conformer à une disposition de la présente loi ou de ses règlements pour laquelle aucune autre pénalité n'est prévue en vertu de la présente loi est passible d'une pénalité de 2 500 $.

Payment of penalties

89 A person that is required to pay a penalty under this Act must pay it,

(a) in the case of a penalty payable under section 83, on the day on which the taxpayer was required to apply to register;

(b) in the case of a penalty payable under section 84, on the day on which the taxpayer was required to file the return; and

(c) in any other case, on the day on which the notice of original assessment of the penalty was sent.

Paiement des pénalités

89 Une personne qui est tenue de payer une pénalité en vertu de la présente loi est tenue de la payer :

a) dans le cas d'une pénalité payable en vertu de l'article 83, à la date à laquelle le contribuable était tenu de présenter une demande d'inscription;

b) dans le cas d'une pénalité payable en vertu de l'article 84, à la date à laquelle le contribuable était tenu de produire la déclaration;

c) dans tous les autres cas, à la date à laquelle le premier avis de cotisation de la pénalité a été envoyé.

Waiving or cancelling penalties

90 (1) The Minister may, on or before the day that is 10 calendar years after the end of a calendar year in which a penalty became payable under this Act by a person, or on application by the person on or before that day, waive or cancel all or any portion of that penalty, and may despite subsection 70(1), make any assessment of the penalty payable by the person that is necessary to take into account the waiver or cancellation of the penalty.

Renonciation ou annulation

90 (1) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin d'une année civile dans laquelle une pénalité est devenue payable par une personne en vertu de la présente loi ou sur demande de la personne faite au plus tard ce jour-là, annuler tout ou partie de cette pénalité, ou y renoncer. Malgré le paragraphe 70(1), le ministre établit les cotisations voulues concernant les pénalités payables par la personne pour tenir compte de pareille renonciation ou annulation.

Refund of amount waived or cancelled

(2) If a person has paid an amount of penalty and the Minister waives or cancels any portion of that amount under subsection (1), the Minister must refund the portion of the amount and pay interest on it at the rate prescribed by regulation beginning on the day that is 30 days after the day on which the Minister received an application in a manner satisfactory to the Minister to apply that subsection (or, if there is no such application, on the day on which the Minister waives or cancels the portion of the amount) and ending on the day on which the portion of the amount is paid as a refund or applied against

Remboursement — somme annulée

(2) Si une personne a payé un montant de pénalité et que le ministre a annulé toute partie de ce montant, ou y a renoncé, en vertu du paragraphe (1), le ministre rembourse la partie du montant et paie des intérêts au taux visé par règlement sur la partie du montant, pour la période commençant le trentième jour suivant le jour où il a reçu, d'une manière qu'il juge acceptable, une demande en vue de l'application de ce paragraphe (ou en l'absence d'une telle demande, le jour où il annule la partie du montant ou y renonce) et se terminant le jour où la partie du montant est versée à titre de remboursement à la personne ou

another amount owed by the person to His Majesty in right of Canada.

déduite d'une autre somme dont elle est redevable à Sa Majesté du chef du Canada.

DIVISION M

Offences and Punishment

Failure to file or comply

91 (1) A person that fails to file a return as and when required under this Act or that fails to comply with an obligation under subsection 65(6) or (8) or section 66, or an order made under section 97, is guilty of an offence and, in addition to any penalty otherwise provided under this Act, is liable on summary conviction to a fine of not less than $2,000 and not more than $40,000.

Saving

(2) A person that is convicted of an offence under subsection (1) for a failure to comply with a provision of this Act is not liable to a penalty imposed under this Act for the same failure, unless a notice of assessment for the penalty was issued before the information or complaint giving rise to the conviction was laid or made.

Offences for false or deceptive statement

92 (1) A person commits an offence that

(a) makes, or participates in, assents to or acquiesces in the making of, a false or deceptive statement in a return, application, form, certificate, statement, document, invoice, record or answer filed or made under this Act;

(b) for the purposes of evading payment of any amount payable under this Act, or obtaining a refund or other payment payable under this Act to which the person is not entitled,

(i) destroys, alters, mutilates, conceals or otherwise disposes of any records of a person, or

(ii) makes, or assents to or acquiesces in the making of, a false or deceptive entry, or omits, or assents to or acquiesces in the omission, to enter a material particular in the records of a person;

(c) intentionally, in any manner, evades or attempts to evade compliance with this Act or payment of an amount payable under this Act;

SECTION M

Infractions et peines

Omission de rendre compte

91 (1) Toute personne qui omet de produire une déclaration dans le délai et selon les modalités prévus par la présente loi, qui ne respecte pas une obligation prévue aux paragraphes 65(6) ou (8) ou à l'article 66 ou qui contrevient à une ordonnance rendue en application de l'article 97 commet une infraction et, en plus de toute pénalité prévue par ailleurs, est passible, sur déclaration de culpabilité par procédure sommaire, d'une amende minimale de 2 000 $ et maximale de 40 000 $.

Réserve

(2) La personne déclarée coupable d'une infraction prévue au paragraphe (1) n'est passible d'une pénalité prévue par la présente loi relativement aux mêmes faits que si un avis de cotisation concernant la pénalité a été envoyé avant que la dénonciation ou la plainte qui a donné lieu à la déclaration de culpabilité n'ait été déposée ou faite.

Infractions pour déclarations fausses ou trompeuses

92 (1) Commet une infraction quiconque, selon le cas :

a) fait des déclarations fausses ou trompeuses, ou participe, consent ou acquiesce à leur énonciation, dans une déclaration, une demande, un formulaire, un certificat, un état, un document, une facture, un registre ou une réponse produits, présentés ou faits en application de la présente loi;

b) pour éluder le paiement d'une somme payable en application de la présente loi ou pour obtenir un remboursement ou un autre paiement qui serait à payer en application de la présente loi sans que la personne y ait droit aux termes de celle-ci :

(i) détruit, modifie, mutile ou cache les registres d'une personne, ou en dispose autrement,

(ii) fait des inscriptions fausses ou trompeuses, ou consent à leur accomplissement, ou omet d'inscrire un détail important dans les registres d'une personne, ou consent à cette omission;

c) délibérément, de quelque manière que ce soit, élude ou tente d'éluder l'observation de la présente loi

(d) intentionally, in any manner, obtains or attempts to obtain a refund or other payment payable under this Act to which the person is not entitled; or

(e) conspires with any person to commit an offence described in any of paragraphs (a) to (d).

d) délibérément, de quelque manière que ce soit, obtient ou tente d'obtenir un remboursement ou un autre paiement qui serait à payer en application de la présente loi sans que la personne y ait droit aux termes de la présente loi;

e) conspire avec une personne pour commettre l'une des infractions prévues aux alinéas a) à d).

Punishment

(2) A person that commits an offence under subsection (1) is guilty of an offence punishable on summary conviction and, in addition to any penalty otherwise provided under this Act, is liable to a fine of not less than 50% and not more than 200% of the amount payable that was sought to be evaded, or of the refund or other payment sought, or, if the amount that was sought to be evaded cannot be ascertained, a fine of not less than $2,000 and not more than $40,000.

Peine

(2) Quiconque commet l'infraction prévue au paragraphe (1) est coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et, en plus de toute pénalité prévue par ailleurs en application de la présente loi, est passible d'une amende au moins égale au montant représentant 50 % de la somme payable qu'il a tenté d'éluder, ou du remboursement ou un autre paiement qu'il a cherché à obtenir, sans dépasser le montant représentant 200 % de cette somme ou de ce remboursement ou autre paiement, ou, si cette somme n'est pas vérifiable, d'une amende minimale de 2 000 $ et maximale de 40 000 $.

Prosecution on indictment

(3) A person that is charged with an offence described in subsection (1) may, at the election of Attorney General of Canada, be prosecuted on indictment and, if convicted, is, in addition to any penalty otherwise provided for under this Act, liable to a fine of not less than 100% and not more than 200% of the amount payable that was sought to be evaded, or of the refund or other payment sought, or, if the amount that was sought to be evaded cannot be ascertained, a fine of not less than $5,000 and not more than $100,000.

Poursuite par voie de mise en accusation

(3) La personne accusée de l'infraction prévue au paragraphe (1) peut, au choix du procureur général du Canada, être poursuivie par voie de mise en accusation et, si elle est déclarée coupable, encourt, outre toute pénalité prévue par ailleurs en application de la présente loi, une amende minimale de 100 % et maximale de 200 % de la somme payable qu'elle a tenté d'éluder ou du remboursement ou autre paiement qu'elle a cherché à obtenir ou, si cette somme n'est pas vérifiable, une amende minimale de 5 000 $ et maximale de 100 000 $.

Penalty on conviction

(4) A person that is convicted of an offence under subsection (1) is not liable to a penalty imposed under this Act for the same evasion or attempt unless a notice of assessment for that penalty was issued before the information or complaint giving rise to the conviction was laid or made.

Pénalité sur déclaration de culpabilité

(4) La personne déclarée coupable d'une infraction visée au paragraphe (1) n'est passible d'une pénalité prévue à la présente loi pour la même évasion ou la même tentative d'évasion que si un avis de cotisation pour cette pénalité a été envoyé avant que la dénonciation ou la plainte qui a donné lieu à la déclaration de culpabilité ait été déposée ou faite.

Stay of appeal

(5) If, in any appeal under this Act, substantially the same facts are at issue as those that are at issue in a prosecution under this section, the Minister may file a stay of proceedings with the Tax Court of Canada and, on that filing, the proceedings before the Tax Court of Canada are stayed pending a final determination of the outcome of the prosecution.

Suspension d'appel

(5) Le ministre peut demander la suspension d'un appel interjeté en vertu de la présente loi à la Cour canadienne de l'impôt si les faits qui y sont débattus sont pour la plupart les mêmes que ceux qui font l'objet de poursuites entamées en vertu du présent article. Dès lors, l'appel est suspendu en attendant le résultat des poursuites.

Failure to pay tax

93 A person that intentionally fails to pay tax as and when required under this Act is guilty of an offence punishable on summary conviction and, in addition to any penalty or interest otherwise provided for under this Act, is liable to a fine not exceeding 20% of the amount of the tax that should have been paid.

Défaut du paiement de la taxe

93 Quiconque omet délibérément de payer la taxe selon les modalités et dans les délais prévus par la présente loi est coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et, en plus de toute pénalité ou tous intérêts prévus par ailleurs en application de la présente loi, est passible d'une amende maximale de 20 % de la taxe que cette personne aurait dû payer.

Offence — confidential information

94 (1) A person is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 if the person

(a) contravenes subsection 108(2); or

(b) knowingly contravenes an order made under subsection 108(7).

Infraction — renseignements confidentiels

94 (1) Commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 5 000 $ quiconque, selon le cas :

a) contrevient au paragraphe 108(2);

b) contrevient sciemment à une ordonnance rendue en application du paragraphe 108(7).

Offence — confidential information

(2) A person to whom confidential information has been provided for a particular purpose under subsection 108(6) and that for any other purpose knowingly uses, provides to any person, allows the provision to any person of, or allows any person access to, that information is guilty of an offence and is liable on summary conviction to a fine not exceeding $5,000.

Infraction — renseignements confidentiels

(2) Toute personne à qui un renseignement confidentiel est fourni à une fin précise en conformité avec le paragraphe 108(6) et qui, sciemment, utilise ce renseignement, le fournit, le met à disposition ou en permet l'accès à une autre fin commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 5 000 $.

Definition of *confidential information*

(3) In subsection (2), ***confidential information*** has the same meaning as in subsection 108(1).

Définition de *renseignements confidentiels*

(3) Au paragraphe (2), ***renseignements confidentiels*** s'entend au sens du paragraphe 108(1).

General offence

95 A person that fails to comply with any provision of this Act, or the regulations made under this Act, for which no other offence is specified in this Act is guilty of an offence punishable on summary conviction and is liable to a fine of not more than $100,000.

Infraction générale

95 Toute personne qui omet de se conformer à une disposition de la présente loi ou de ses règlements pour laquelle aucune autre infraction n'est prévue commet une infraction et est passible, sur déclaration de culpabilité par procédure sommaire, d'une amende maximale de 100 000 $.

Defence of due diligence

96 No person is to be convicted of an offence under section 91 or 95 of this Act if the person establishes that they exercised all due diligence to prevent the commission of the offence.

Disculpation

96 Nul ne peut être déclaré coupable d'une infraction visée aux articles 91 ou 95 à la présente loi s'il établit qu'il a fait preuve de toute la diligence voulue pour empêcher la perpétration de l'infraction.

Compliance orders

97 If a person is convicted by a court of an offence for a failure to comply with a provision of this Act, the court may make any order that it deems appropriate to enforce compliance with the provision.

Ordonnance d'exécution

97 Le tribunal qui déclare une personne coupable d'une infraction à la présente loi peut rendre toute ordonnance qu'il juge appropriée afin qu'il soit remédié au défaut visé par l'infraction.

Officers of corporations, etc.

98 If a person other than an individual commits an offence under this Act, every officer, director or representative of the person who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and is guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the person has been prosecuted or convicted.

Power to decrease punishment

99 Despite the *Criminal Code* or any other law, the court does not have the power to impose less than the minimum fine fixed under this Act in any prosecution or proceeding under this Act.

Information or complaint

100 (1) An information or complaint under this Act may be laid or made by any official of the Agency, by a member of the Royal Canadian Mounted Police or by any person authorized to do so by the Minister and, if an information or complaint purports to have been laid or made under this Act, it is deemed to have been laid or made by a person so authorized by the Minister and is not to be called in question for lack of authority of the informant or complainant, except by the Minister or a person acting for the Minister or for His Majesty in right of Canada.

Two or more offences

(2) An information or complaint in respect of an offence under this Act may be for one or more offences, and no information, complaint, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

Territorial jurisdiction

(3) An information or complaint in respect of an offence under this Act may be heard, tried or determined by any court having territorial jurisdiction where the accused is resident, carrying on a commercial activity, found, apprehended or in custody, even if the matter of the information or complaint did not arise within that territorial jurisdiction.

Limitation of prosecutions

(4) No proceeding by way of summary conviction in respect of an offence under this Act may be instituted more than eight years after the day on which the subject matter of the proceeding arose, unless the prosecutor and the defendant agree that it may be instituted after the eight years.

Cadres de personnes morales

98 En cas de perpétration par une personne, autre qu'un particulier, d'une infraction prévue par la présente loi, ceux de ses dirigeants, administrateurs ou représentants qui l'ont ordonnée ou autorisée, ou qui y ont consenti ou participé, sont considérés comme des coauteurs de l'infraction et sont passibles, sur déclaration de culpabilité, de la peine prévue, que la personne ait été ou non poursuivie ou déclarée coupable.

Pouvoir de diminuer les peines

99 Malgré le *Code criminel* ou toute autre loi, le tribunal ne peut, dans toute poursuite ou procédure, imposer une amende moindre que l'amende minimale prévue par la présente loi.

Dénonciation ou plainte

100 (1) Toute dénonciation ou plainte faite ou déposée en vertu de la présente loi peut l'être par tout fonctionnaire de l'Agence, par un membre de la Gendarmerie royale du Canada ou par toute personne qui y est autorisée par le ministre. La dénonciation ou la plainte faite ou déposée en vertu de la présente loi est réputée l'avoir été par une personne qui y est autorisée par le ministre, et seul le ministre ou une personne agissant en son nom ou au nom de Sa Majesté du chef du Canada peut la mettre en doute pour défaut de compétence du dénonciateur ou du plaignant.

Deux infractions ou plus

(2) La dénonciation ou la plainte faite à l'égard d'une infraction à la présente loi peut viser une ou plusieurs infractions. Aucune dénonciation, plainte, aucun mandat, aucune déclaration de culpabilité ou autre procédure dans une poursuite intentée en vertu de la présente loi n'est susceptible d'opposition ou n'est insuffisant du fait que deux infractions ou plus sont visées.

District judiciaire

(3) La dénonciation ou plainte à l'égard d'une infraction à la présente loi peut être entendue ou jugée ou faire l'objet d'une décision par tout tribunal compétent du district judiciaire où l'accusé réside, exerce une activité commerciale, est trouvé, appréhendé ou détenu, bien que l'objet de la dénonciation ou de la plainte n'y ait pas pris naissance.

Prescription des poursuites

(4) La poursuite visant une infraction à la présente loi, punissable sur déclaration de culpabilité par procédure sommaire, se prescrit par huit ans à compter de sa perpétration, à moins que le poursuivant et le défendeur ne consentent au prolongement de ce délai.

DIVISION N

Inspections

Authorized person

101 (1) A person authorized by the Minister (in this section referred to as an "authorized person") to do so may, at all reasonable times, for any purpose related to the administration or enforcement of this Act, inspect, audit or examine the records, processes, property or premises of a particular person that may be relevant in determining the obligations of the particular person, or any other person, under this Act and whether the particular person, or any such other person, is in compliance with this Act.

Powers of authorized person

(2) Subject to subsection (3), an authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Act

(a) enter any place in which the authorized person reasonably believes that the particular person keeps or should keep records, carries on any activity to which this Act applies or does anything in relation to that activity;

(b) require any individual to give the authorized person all reasonable assistance, to answer all proper questions relating to the administration or enforcement of this Act and

(i) to attend with the authorized person at a place designated by the authorized person, or by videoconference or by another form of electronic communication, and to answer the questions orally, and

(ii) to answer the questions in writing, in any form specified by the authorized person; and

(c) require any person to give the authorized person all reasonable assistance with anything the authorized person is authorized to do under this Act.

Prior authorization

(3) If any place referred to in subsection (2) is a dwelling-house, an authorized person may not enter that dwelling-house without the consent of the occupant, except under the authority of a warrant issued under subsection (4).

Warrant to enter dwelling-house

(4) A judge may on *ex parte* application by the Minister, issue a warrant authorizing a person to enter a dwelling-house subject to the conditions specified in the warrant if the judge is satisfied by information on oath that

SECTION N

Inspection

Inspection

101 (1) Quiconque est autorisé par le ministre (appelée « personne autorisée » dans le présent article) peut, à toute heure convenable, pour l'application ou l'exécution de la présente loi, inspecter, vérifier ou examiner les registres, les procédés, les biens ou les locaux d'une personne permettant de déterminer ses obligations ou celles de toute autre personne en application de la présente loi et de déterminer si cette personne ou toute autre personne agit en conformité avec la présente loi.

Pouvoirs de la personne autorisée

(2) Sous réserve du paragraphe (3), la personne autorisée peut, à toute heure convenable, pour l'application ou l'exécution de la présente loi :

a) pénétrer dans tout lieu où elle croit, pour des motifs raisonnables, que la personne tient ou devrait tenir des registres, exerce une activité à laquelle s'applique la présente loi ou accomplit un acte relativement à cette activité;

b) requérir toute personne de lui fournir toute l'aide raisonnable et de répondre à toutes les questions pertinentes à l'application ou l'exécution de la présente loi ainsi que :

(i) de l'accompagner à un lieu désigné par celle-ci, de participer avec elle par vidéoconférence ou par tout autre moyen de communication électronique, et de répondre à ses questions de vive voix,

(ii) de répondre aux questions par écrit, en la forme qu'elle précise;

c) requérir toute personne de lui fournir toute l'aide raisonnable concernant tout ce qu'elle est autorisée à accomplir en vertu de la présente loi.

Autorisation préalable

(3) Si le lieu visé au paragraphe (2) est une maison d'habitation, la personne autorisée ne peut y pénétrer sans la permission de l'occupant, à moins d'y être autorisée par un mandat décerné en vertu du paragraphe (4).

Mandat

(4) Sur requête *ex parte* du ministre, le juge saisi peut décerner un mandat qui autorise une personne à pénétrer dans une maison d'habitation aux conditions précisées dans le mandat, s'il est convaincu, sur la foi d'une

(a) there are reasonable grounds to believe that the dwelling-house is a place referred to in subsection (2);

(b) entry into the dwelling-house is necessary for any purpose related to the administration or enforcement of this Act; and

(c) entry into the dwelling-house has been, or there are reasonable grounds to believe that entry will be, refused.

Orders if entry refused

(5) If a judge is not satisfied that entry into a dwelling-house is necessary for any purpose related to the administration or enforcement of this Act, the judge may, to the extent that access was or may be expected to be refused and that a record or property is or may be expected to be kept in the dwelling-house,

(a) order the occupant of the dwelling-house to provide a person with reasonable access to any record or property that is or should be kept in the dwelling-house; and

(b) make any other order that is appropriate in the circumstances to carry out the purposes of this Act.

Definition of *dwelling-house*

(6) In this section, ***dwelling-house*** means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence, and includes

(a) a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered and enclosed passageway; and

(b) a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence.

Compliance order

102 (1) On application by the Minister, a judge may, despite section 97, order a person to provide any access, assistance, information or record sought by the Minister under section 66 or 101 if the judge is satisfied that the person was required under section 66 or 101 to provide the access, assistance, information or record and did not do so.

Notice required

(2) An application under subsection (1) must not be heard before the end of five clear days after the day on

dénonciation faite sous serment, que les éléments suivants sont réunis :

a) il existe des motifs raisonnables de croire que la maison d'habitation est un lieu visé au paragraphe (2);

b) il est nécessaire d'y pénétrer pour l'application ou l'exécution de la présente loi;

c) un refus d'y pénétrer a été opposé, ou il est raisonnable de croire qu'un tel refus sera opposé.

Ordonnance en cas de refus

(5) Dans la mesure où un refus de pénétrer dans une maison d'habitation a été opposé ou pourrait l'être et où des registres ou biens sont gardés dans la maison d'habitation ou pourraient l'être, le juge qui n'est pas convaincu qu'il est nécessaire de pénétrer dans la maison d'habitation pour l'application ou l'exécution de la présente loi peut, à la fois :

a) ordonner à l'occupant de la maison d'habitation de permettre à une personne d'avoir raisonnablement accès à tous registres ou biens qui y sont gardés ou devraient l'être;

b) rendre toute autre ordonnance indiquée en l'espèce pour l'application de la présente loi.

Définition de *maison d'habitation*

(6) Au présent article, ***maison d'habitation*** s'entend de tout ou partie d'un bâtiment ou d'une construction tenu ou occupé comme résidence permanente ou temporaire, y compris :

a) un bâtiment qui se trouve dans la même enceinte qu'une maison d'habitation et qui y est relié par une baie de porte ou par un passage couvert et clos;

b) une unité conçue pour être mobile et pour être utilisée comme résidence permanente ou temporaire et qui est ainsi utilisée.

Ordonnance d'exécution

102 (1) Sur demande du ministre, un juge peut, malgré l'article 97, ordonner à une personne de fournir l'accès, l'aide, les renseignements ou les registres que le ministre cherche à obtenir en vertu des articles 66 ou 101 s'il est convaincu que la personne n'a pas fourni l'accès, l'aide, les renseignements ou les registres bien qu'elle en soit tenue par les articles 66 ou 101.

Avis

(2) La demande n'est entendue qu'une fois écoulés cinq jours francs après signification d'un avis de la demande à

which the notice of application is served on the person against which the order is sought.

Judge may impose conditions

(3) A judge who makes an order under subsection (1) may impose any conditions in respect of the order that the judge considers appropriate.

Contempt of court

(4) If a person fails or refuses to comply with an order under subsection (1), a judge may find the person in contempt of court and the person is subject to the processes and the punishments of the court to which the judge is appointed.

Appeal

(5) An order by a judge under subsection (1) may be appealed to a court having appellate jurisdiction over decisions of the court to which the judge is appointed. An appeal does not suspend the execution of the order unless it is so ordered by a judge of the court to which the appeal is made.

Time period not to count

(6) If an application is commenced by the Minister under subsection (1) to order a person to provide any access, assistance, information, or record, the period between the day on which the person files a notice of appearance, or otherwise opposes the application, and the day on which the application is finally disposed of is not to be counted in the computation of the period within which, under subsection 70(1), an assessment may be made.

Search warrants

103 (1) A judge may, on *ex parte* application by the Minister, issue a warrant authorizing any person named in the warrant to enter and search any building, receptacle or place for any record or thing that may afford evidence of the commission of an offence under this Act and to seize the record or thing and, as soon as is practicable, bring it before, or make a report in respect of it to, the judge or, if that judge is unable to act, another judge of the same court, to be dealt with by the judge in accordance with this section.

Evidence on oath

(2) An application under subsection (1) must be supported by information on oath establishing the facts on which the application is based.

la personne à l'égard de laquelle l'ordonnance est demandée.

Conditions

(3) Le juge peut imposer, à l'égard de l'ordonnance, les conditions qu'il estime indiquées.

Outrage

(4) Quiconque refuse ou fait défaut de se conformer à l'ordonnance peut être reconnu coupable d'outrage au tribunal; il est alors sujet aux procédures et sanctions du tribunal l'ayant ainsi reconnu coupable.

Appel

(5) L'ordonnance est susceptible d'appel devant le tribunal ayant compétence pour entendre les appels des décisions du tribunal ayant rendu l'ordonnance. Toutefois, l'appel n'a pas pour effet de suspendre l'exécution de l'ordonnance, sauf ordonnance contraire d'un juge du tribunal saisi de l'appel.

Suspension du délai

(6) Si la demande est déposée par le ministre pour qu'il soit ordonné à une personne de fournir tout accès, toute aide ou tous renseignements ou registres, le délai qui court entre le jour où la personne dépose un avis de comparution, ou conteste par ailleurs la demande, et le jour où il est définitivement statué sur la demande ne compte pas dans le calcul du délai dans lequel, en vertu du paragraphe 70(1), une cotisation peut être établie.

Requête pour mandat de perquisition

103 (1) Sur requête *ex parte* du ministre, un juge peut décerner un mandat qui autorise toute personne qui y est nommée à pénétrer dans tout bâtiment, contenant ou endroit et y perquisitionner pour y chercher des registres ou choses qui peuvent constituer des éléments de preuve de la perpétration d'une infraction à la présente loi, à saisir ces registres ou choses et, dès que matériellement possible, soit à les apporter au juge ou, en cas d'incapacité d'agir de celui-ci, à un autre juge du même tribunal, soit à lui en faire rapport, pour que le juge en dispose conformément au présent article.

Preuve sous serment

(2) La requête doit être appuyée par une dénonciation sous serment qui expose les faits au soutien de la requête.

Issue of warrants

(3) A judge may issue a warrant under subsection (1) if the judge is satisfied that there are reasonable grounds to believe that

(a) an offence under this Act has been committed;

(b) a record or thing that may afford evidence of the commission of the offence is likely to be found; and

(c) the building, receptacle or place specified in the application is likely to contain a record or thing referred to in paragraph (b).

Contents of warrant

(4) A warrant issued under subsection (1) must refer to the offence for which it is issued, identify the building, receptacle or place to be searched and the person that is alleged to have committed the offence, and it must be reasonably specific as to any record or thing to be searched for and seized.

Seizure

(5) Any person that executes a warrant issued under subsection (1) may seize, in addition to the record or thing referred to in that subsection, any other record or thing that the person believes on reasonable grounds affords evidence of the commission of an offence under this Act and must, as soon as is practicable, bring the record or thing before, or make a report in respect of the record or thing to, the judge that issued the warrant or, if that judge is unable to act, another judge of the same court, to be dealt with by the judge in accordance with this section.

Retention

(6) Subject to subsection (7), if any record or thing seized under subsection (1) or (5) is brought before a judge or a report in respect of the record or thing is made to a judge, the judge must, unless the Minister waives retention, order that the record or thing be retained by the Minister and the Minister must take reasonable care to ensure that the record or thing is preserved until the conclusion of any investigation into the offence in relation to which it was seized or until it is required to be produced for the purposes of a criminal proceeding.

Return of records or things seized

(7) If any record or thing seized under subsection (1) or (5) is brought before a judge or a report in respect of the record or thing is made to a judge, the judge may, on the judge's own motion or on application by a person with an interest in the record or thing on three clear days notice

Mandat décerné

(3) Le juge saisi de la requête peut décerner le mandat s'il est convaincu qu'il existe des motifs raisonnables de croire ce qui suit :

a) une infraction prévue par la présente loi a été commise;

b) des registres ou choses qui peuvent constituer des éléments de preuve de la perpétration de l'infraction seront vraisemblablement trouvés;

c) le bâtiment, contenant ou l'endroit précisé dans la requête contient vraisemblablement des registres ou choses visés à l'alinéa b).

Contenu du mandat

(4) Le mandat doit renvoyer à l'infraction pour laquelle il est décerné, mentionner dans quel bâtiment, contenant ou endroit perquisitionner ainsi que fournir le nom de la personne accusée d'avoir commis l'infraction. Il doit donner suffisamment de précisions sur les registres ou choses à chercher et à saisir.

Saisie

(5) Quiconque exécute le mandat peut saisir, outre les registres ou choses mentionnés au paragraphe (1), tous autres registres ou choses qu'il croit, pour des motifs raisonnables, constituer des éléments de preuve de la perpétration d'une infraction à la présente loi. Il doit, dès que matériellement possible, soit apporter ces registres ou choses au juge qui a décerné le mandat ou, en cas d'incapacité d'agir de celui-ci, à un autre juge du même tribunal, soit lui en faire rapport, pour que le juge en dispose conformément au présent article.

Rétention

(6) Sous réserve du paragraphe (7), lorsque des registres ou choses saisis en vertu des paragraphes (1) ou (5) sont apportés à un juge ou qu'il en est fait rapport à un juge, ce juge ordonne que le ministre les retienne sauf si celui-ci y renonce. Le ministre qui retient des registres ou choses doit en prendre raisonnablement soin pour s'assurer de leur conservation jusqu'à la fin de toute enquête sur l'infraction en rapport avec laquelle les registres ou choses ont été saisis ou jusqu'à ce que leur production soit exigée pour une procédure criminelle.

Restitution des registres ou choses saisis

(7) Le juge à qui des registres ou choses saisis en vertu des paragraphes (1) ou (5) sont apportés ou à qui il en est fait rapport peut, d'office ou sur requête d'une personne ayant un droit sur ces registres ou choses avec avis au sous-procureur général du Canada trois jours francs

of application to the Deputy Attorney General of Canada, order that the record or thing be returned to the person from which the record or thing was seized or to the person that is otherwise legally entitled to the record or thing, if the judge is satisfied that the record or thing

(a) will not be required for an investigation or a criminal proceeding; or

(b) was not seized in accordance with the warrant or this section.

Access and copies

(8) A person from which any record or thing is seized under this section is entitled, at all reasonable times and subject to any reasonable conditions that may be imposed by the Minister, to inspect the record or thing and, in the case of a document, to obtain one copy of the record at the expense of the Minister.

Definition of *foreign-based information or record*

104 (1) For the purposes of this section, ***foreign-based information or record*** means any information or record that is available or located outside Canada and that may be relevant to the administration or enforcement of this Act.

Requirement to provide foreign-based information

(2) Despite any other provision of this Act, the Minister may, by notice served personally, sent by confirmed delivery service or sent electronically, require a person resident in Canada or a non-resident person that carries on business in Canada to provide any foreign-based information or record.

Content of notice

(3) A notice referred to in subsection (2) must set out

(a) a reasonable period of not less than 90 days for the provision of the information or record;

(b) a description of the information or record being sought; and

(c) the consequences under subsection (8) to the person of the failure to provide the information or record being sought within the period set out in the notice.

Review by judge

(4) If a person is served or sent a notice of a requirement under subsection (2), the person may, within 90 days after the day on which the notice was served or sent, apply to a judge for a review of the requirement.

avant qu'il y soit procédé, ordonner que ces registres ou choses soient restitués au saisi ou à la personne qui y a légalement droit par ailleurs, s'il est convaincu que ces registres ou choses :

a) soit ne seront pas nécessaires à une enquête ou à une procédure criminelle;

b) soit n'ont pas été saisis conformément au mandat ou au présent article.

Accès aux registres et copies

(8) La personne à qui des registres ou choses sont saisis en application du présent article a le droit, en tout temps raisonnable et aux conditions raisonnables que peut imposer le ministre, d'examiner ces registres ou choses et d'obtenir une copie unique des registres aux frais du ministre.

Définition de *renseignement ou registre étranger*

104 (1) Au présent article, ***renseignement ou registre étranger*** s'entend d'un renseignement accessible, ou d'un registre situé, en dehors du Canada, qui peut être pris en compte pour l'application ou l'exécution de la présente loi.

Présentation des renseignements étrangers

(2) Malgré les autres dispositions de la présente loi, le ministre peut, par avis signifié à personne, envoyé par service de messagerie ou envoyé par voie électronique, mettre en demeure une personne résidant au Canada ou une personne n'y résidant pas mais y exploitant une entreprise de produire des renseignements ou registres étrangers.

Contenu de l'avis

(3) L'avis doit :

a) indiquer le délai raisonnable, d'au moins quatre-vingt-dix jours, dans lequel les renseignements ou registres étrangers doivent être produits;

b) décrire les renseignements ou registres étrangers recherchés;

c) préciser les conséquences du non-respect de la mise en demeure prévues au paragraphe (8).

Révision par un juge

(4) La personne à qui l'avis est signifié ou envoyé peut, dans les quatre-vingt-dix jours suivant la date de signification ou d'envoi, contester la mise en demeure par requête à un juge.

Powers on review

(5) On hearing an application under subsection (4) in respect of a requirement, a judge may

(a) confirm the requirement;

(b) vary the requirement if the judge is satisfied that it is appropriate to do so in the circumstances; or

(c) set aside the requirement if the judge is satisfied that it is unreasonable.

Pouvoir de révision

(5) À l'audition de la requête, le juge peut confirmer la mise en demeure, la modifier de la façon qu'il estime indiquée dans les circonstances ou la déclarer sans effet s'il est convaincu qu'elle est déraisonnable.

Related person

(6) For the purposes of subsection (5), a requirement to provide information or a record is not to be considered unreasonable because the information or record is under the control of, or available to, a non-resident person that is not controlled by the person on which the notice of the requirement under subsection (2) is served, or to which that notice is sent, if that person is related to the non-resident person.

Personne liée

(6) Pour l'application du paragraphe (5), la mise en demeure de produire des renseignements ou registres étrangers qui sont accessibles à une personne non résidante ou situés chez une personne non résidante qui n'est pas contrôlée par la personne à qui l'avis est signifié ou envoyé, ou qui sont sous la garde de cette personne non résidante, n'est pas de ce seul fait déraisonnable si les deux personnes sont liées.

Time during consideration not to count

(7) The period between the day on which an application for review of a requirement is made under subsection (4) and the day on which the review is decided is not to be counted in the computation of

(a) the period set out in the notice of the requirement; and

(b) the period within which an assessment may be made under section 70.

Suspension du délai

(7) Le délai qui court entre le jour où une requête est présentée en vertu du paragraphe (4) et le jour où il est décidé de la requête ne compte pas dans le calcul :

a) du délai indiqué dans l'avis correspondant à la mise en demeure qui a donné lieu à la requête;

b) du délai dans lequel une cotisation peut être établie en vertu de l'article 70.

Consequence of failure

(8) If a person fails to comply substantially with a notice served or sent under subsection (2) and if the requirement is not set aside under subsection (5), any court having jurisdiction in a civil proceeding relating to the administration or enforcement of this Act must, on motion of the Minister, prohibit the introduction by that person (or by another constituent entity of a consolidated group of which the person is, at any time between the time the notice was served or sent under subsection (2) and the time the motion is heard, a constituent entity) of any foreign-based information or record covered by that notice.

Conséquence du défaut

(8) Tout tribunal saisi d'une affaire civile portant sur l'application ou l'exécution de la présente loi doit, sur requête du ministre, refuser le dépôt en preuve par une personne (ou par une autre entité constitutive d'un groupe consolidé à l'égard duquel la personne est une entité constitutive à un moment donné entre le moment où une mise en demeure est signifiée ou envoyée en application du paragraphe (2) et le moment où la requête est entendue) de tout renseignement ou registre étranger visé par la mise en demeure qui n'est pas déclarée sans effet en application du paragraphe (5) dans le cas où la personne ne produit pas la totalité ou la presque totalité des renseignements et registres étrangers visés par la mise en demeure.

Inquiry

105 (1) The Minister may, for any purpose related to the administration or enforcement of this Act, authorize any person, whether or not the person is an official of the Agency, to make any inquiry that the Minister may deem

Enquête

105 (1) Le ministre peut, pour l'application et l'exécution de la présente loi, autoriser une personne, qu'il s'agisse ou non d'un fonctionnaire de l'Agence, à faire toute enquête que celui-ci estime nécessaire sur quoi que

necessary with reference to anything relating to the administration or enforcement of this Act.

Appointment of hearing officer

(2) If the Minister, under subsection (1), authorizes a person to make an inquiry, the Minister must, without delay, apply to the Tax Court of Canada for an order appointing a hearing officer before whom the inquiry will be held.

Powers of hearing officer

(3) For the purposes of an inquiry authorized under subsection (1), a hearing officer appointed under subsection (2) in relation to the inquiry has all the powers conferred on a commissioner by sections 4 and 5 of the *Inquiries Act* and that may be conferred on a commissioner under section 11 of that Act.

When powers to be exercised

(4) A hearing officer appointed under subsection (2) in relation to an inquiry must exercise the powers conferred on a commissioner by section 4 of the *Inquiries Act* in relation to any persons that the person authorized to make the inquiry considers appropriate for the conduct of the inquiry. However, the hearing officer is not to exercise the power to punish any person unless, on application by the hearing officer, a judge, including a judge of a county court, certifies that the power may be exercised in the matter disclosed in the application and the hearing officer has given to the person in respect of whom the power is proposed to be exercised 24 hours notice of the hearing of the application, or any shorter notice that the judge considers reasonable.

Rights of witnesses

(5) Any person that gives evidence in an inquiry authorized under subsection (1) is entitled to be represented by counsel and, on request made by the person to the Minister, to receive a transcript of that evidence.

Rights of person investigated

(6) Any person whose affairs are investigated in the course of an inquiry authorized under subsection (1) is entitled to be present and to be represented by counsel throughout the inquiry unless the hearing officer appointed under subsection (2), on application by the Minister or a person giving evidence, orders otherwise in relation to all or any part of the inquiry on the ground that the presence of the person and the person's counsel, or either of them, would be prejudicial to the effective conduct of the inquiry.

ce soit qui se rapporte à l'application et à l'exécution de la présente loi.

Nomination d'un président d'enquête

(2) Le ministre qui autorise une personne à faire une enquête doit, sans délai, demander à la Cour canadienne de l'impôt une ordonnance nommant le président d'enquête.

Pouvoirs du président d'enquête

(3) Pour les besoins de l'enquête, le président d'enquête a tous les pouvoirs conférés à un commissaire par les articles 4 et 5 de la *Loi sur les enquêtes* et ceux qui sont susceptibles de l'être par l'article 11 de cette loi.

Exercice des pouvoirs du président d'enquête

(4) Le président d'enquête exerce les pouvoirs conférés à un commissaire par l'article 4 de la *Loi sur les enquêtes* à l'égard des personnes que la personne autorisée à faire enquête considère comme appropriées pour la conduite de celle-ci. Toutefois, le président d'enquête ne peut exercer le pouvoir de punir une personne que si, à la requête de celui-ci, un juge, y compris un juge de comté, atteste que ce pouvoir peut être exercé dans l'affaire exposée dans la requête et que le président d'enquête donne à la personne à l'égard de laquelle il est proposé d'exercer ce pouvoir un avis de l'audition de la requête 24 heures avant ou dans le délai plus court que le juge estime raisonnable.

Droits des témoins

(5) Le témoin à l'enquête a le droit d'être représenté par avocat et, sur demande faite au ministre par le témoin, de recevoir la transcription de sa déposition.

Droits des personnes visées par une enquête

(6) Toute personne dont les affaires donnent lieu à l'enquête a le droit d'être présente et d'être représentée par avocat tout au long de l'enquête. Sur demande du ministre ou d'un témoin, le président d'enquête peut en décider autrement pour tout ou partie de l'enquête, pour le motif que la présence de cette personne et de son avocat, ou de l'un ou l'autre, nuirait à la bonne conduite de l'enquête.

Copies

106 If any record is seized, inspected, audited, examined or provided under any of sections 66, 101 to 103 and 105, the person by whom it is seized, inspected, audited or examined or to whom it is provided or any official of the Agency may make or cause to be made one or more copies of it and, in the case of an electronic record, make or cause to be made a print-out of the electronic record, and any copy or print-out of the record purporting to be certified by the Minister or an authorized person to be a copy or print-out made under this section is evidence of the nature and content of the original record and has the same probative force as the original record would have if it were proven in the ordinary way.

Compliance

107 A person must, unless the person is unable to do so, do everything the person is required to do under any of sections 66, 101 to 104 and 106 and no person is to, physically or otherwise, do or attempt to do any of the following:

(a) interfere with, hinder or molest any official doing anything the official is authorized to do under this Act; and

(b) prevent any official from doing anything the official is authorized to do under this Act.

DIVISION O

Confidentiality of Information

Definitions

108 (1) The following definitions apply in this section.

authorized person means a person who is engaged or employed, or who was formerly engaged or employed, by or on behalf of His Majesty in right of Canada to assist in carrying out the provisions of this Act. (*personne autorisée*)

confidential information means information of any kind and in any form that relates to one or more persons and that is

(a) obtained by or on behalf of the Minister for the purposes of this Act; or

(b) prepared from information referred to in paragraph (a).

Copies

106 Lorsque, en vertu de l'un des articles 66, 101 à 103 et 105, des registres font l'objet d'une opération de saisie, d'inspection, de vérification ou d'examen ou sont produits, la personne qui effectue cette opération ou auprès de qui est faite cette production ou tout fonctionnaire de l'Agence peut en faire ou en faire faire des copies et, s'il s'agit de registres électroniques, les imprimer ou les faire imprimer. Les registres présentés comme registres que le ministre ou une personne autorisée atteste être des copies des registres, ou des imprimés de registres électroniques, faits conformément au présent article font preuve de la nature et du contenu des registres originaux et ont la même force probante qu'auraient ceux-ci si leur authenticité était prouvée de la façon usuelle.

Observation

107 Quiconque est tenu par l'un des articles 66, 101 à 104 et 106 de faire quelque chose doit le faire, sauf impossibilité. Nul ne peut, physiquement ou autrement, entraver, rudoyer ou contrecarrer, ou tenter d'entraver, de rudoyer ou de contrecarrer, un fonctionnaire qui fait une chose qu'il est autorisé à faire en application de la présente loi, ni empêcher ou tenter d'empêcher un fonctionnaire de faire une telle chose.

SECTION O

Renseignements confidentiels

Définitions

108 (1) Les définitions qui suivent s'appliquent au présent article.

cour d'appel S'entend au sens de l'article 2 du *Code criminel*. (*court of appeal*)

personne autorisée Personne qui est ou a été engagée ou employée par Sa Majesté du chef du Canada, ou en son nom, pour aider à l'application des dispositions de la présente loi. (*authorized person*)

renseignement confidentiel Renseignement de toute nature et sous toute forme concernant une ou plusieurs personnes et qui soit est obtenu par le ministre ou en son nom pour l'application de la présente loi, soit est tiré d'un renseignement ainsi obtenu. Est exclu de la présente définition le renseignement qui ne révèle pas, même indirectement, l'identité de la personne en cause. (*confidential information*)

It does not include information that does not directly or indirectly reveal the identity of the person to whom it relates. (*renseignement confidentiel*)

court of appeal has the same meaning as in section 2 of the *Criminal Code*. (*cour d'appel*)

Provision of confidential information

(2) Except as authorized under this section, an official must not knowingly

(a) provide, or allow to be provided, to any person any confidential information;

(b) allow any person to have access to any confidential information; or

(c) use any confidential information other than in the course of the administration or enforcement of this Act.

Confidential information evidence not compellable

(3) Despite any other Act of Parliament or other law, no official is required, in connection with any legal proceedings, to give or produce evidence relating to any confidential information.

Communications — proceedings

(4) Subsections (2) and (3) do not apply in respect of

(a) criminal proceedings, by way of either indictment or summary conviction, that have been commenced by the laying of an information or the preferring of an indictment under an Act of Parliament;

(b) any legal proceedings relating to the administration or enforcement of this Act, the *Canada Pension Plan*, the *Employment Insurance Act* or any other Act of Parliament or law of a province that provides for the payment of a tax or duty, before a court of record, including a court of record in a jurisdiction outside Canada; or

(c) any legal proceedings under an international agreement relating to trade before

(i) a court of record, including a court of record in a jurisdiction outside Canada,

(ii) an international organization, or

(iii) a dispute settlement panel or an appellate body created under an international agreement relating to trade.

Communication de renseignements

(2) Sauf autorisation prévue au présent article, il est interdit à un fonctionnaire :

a) de fournir sciemment à quiconque tout renseignement confidentiel ou d'en permettre sciemment la fourniture;

b) de permettre sciemment à quiconque d'avoir accès à tout renseignement confidentiel;

c) d'utiliser sciemment tout renseignement confidentiel en dehors du cadre de l'application ou de l'exécution de la présente loi.

Communication de renseignements dans le cadre d'une instance

(3) Malgré toute autre loi fédérale et toute règle de droit, nul fonctionnaire ne peut être requis, dans le cadre d'une procédure judiciaire, de témoigner ou de produire quoi que ce soit relativement à un renseignement confidentiel.

Communication

(4) Les paragraphes (2) et (3) ne s'appliquent :

a) ni aux poursuites criminelles, sur déclaration de culpabilité par procédure sommaire ou sur acte d'accusation, engagées par le dépôt d'une dénonciation ou d'un acte d'accusation, en vertu d'une loi fédérale;

b) ni aux procédures judiciaires ayant trait à l'application ou à l'exécution de la présente loi, du *Régime de pensions du Canada*, de la *Loi sur l'assurance-emploi* ou de toute autre loi fédérale ou provinciale qui prévoit le paiement d'une taxe ou d'un droit, engagées devant une cour d'archives, notamment une cour d'archives hors du ressort canadien;

c) ni aux instances engagées, au titre d'un accord commercial international, devant :

(i) une cour d'archives, notamment une cour d'archives hors du ressort canadien,

(ii) une organisation internationale,

(iii) un organe de règlement de différends ou une juridiction d'appel constituée sous le régime d'un accord commercial international.

Authorized provision of confidential information

(5) The Minister may provide appropriate persons with any confidential information that may reasonably be regarded as necessary solely for a purpose relating to the life, health or safety of an individual.

Disclosure of confidential information

(6) An official may

(a) provide to a person any confidential information that may reasonably be regarded as necessary for the purpose of

(i) the administration or enforcement of this Act, solely for that purpose, or

(ii) determining any liability or obligation of the person or any refund or other payment to which the person is or may become entitled under this Act;

(b) provide, allow to be provided, or allow inspection of or access to any confidential information to or by

(i) any person, or any person within a class of persons, that the Minister may authorize, subject to any conditions that the Minister may specify, or

(ii) any person otherwise legally entitled to the information because of an Act of Parliament, solely for the purposes for which that person is entitled to the information;

(c) provide confidential information

(i) to an official of the Department of Finance solely for the purposes of the administration of a federal-provincial agreement made under the *Federal-Provincial Fiscal Arrangements Act*,

(ii) to an official solely for the purpose of the formulation, evaluation or implementation of a fiscal or trade policy or for the purposes of the administration or enforcement of any Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty or an international agreement relating to trade,

(iii) to an official solely for the purposes of the negotiation or implementation of an international agreement relating to trade, a tax treaty or an agreement for the exchange of information for tax purposes,

(iv) to an official as to the name, address, occupation, size or type of business of a person, solely for

Personnes en danger

(5) Le ministre peut fournir, uniquement à une fin reliée à la vie, à la santé ou à la sécurité d'un particulier, aux personnes compétentes tout renseignement confidentiel qui peut raisonnablement être considéré comme nécessaire.

Communication d'un renseignement confidentiel

(6) Un fonctionnaire peut :

a) fournir à toute personne tout renseignement confidentiel qu'il est raisonnable de considérer comme nécessaire à l'application ou à l'exécution de la présente loi, mais uniquement à cette fin, ou à la détermination de toute somme dont la personne est redevable ou du montant de tout remboursement auquel elle a droit ou pourrait avoir droit en vertu de la présente loi;

b) d'une part, fournir ou permettre que soit fourni tout renseignement confidentiel à toute personne que le ministre autorise, ou qui fait partie d'une catégorie de personnes que le ministre autorise, aux conditions précisées par celui-ci, ou à toute personne qui y a par ailleurs légalement droit par l'effet d'une loi fédérale et, d'autre part, lui en permettre l'examen ou l'accès, mais uniquement aux fins auxquelles elle y a droit;

c) fournir tout renseignement confidentiel :

(i) à tout fonctionnaire du ministère des Finances, mais uniquement en vue de l'administration de tout accord fédéral-provincial conclu au titre de la *Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces*,

(ii) à tout fonctionnaire, mais uniquement en vue de la formulation, de l'évaluation et de la mise en œuvre de toute politique fiscale ou commerciale ou en vue de l'exécution ou du contrôle d'application de toute loi fédérale ou provinciale qui prévoit l'imposition ou la perception d'un impôt, d'une taxe ou d'un droit ou de tout accord commercial international,

(iii) à tout fonctionnaire, mais uniquement en vue de la négociation et de la mise en œuvre de tout accord commercial international, de toute convention fiscale ou de tout accord sur l'échange de renseignements à des fins fiscales,

(iv) à tout fonctionnaire, quant aux nom, adresse et profession d'une personne et à la taille et au genre de son entreprise, mais uniquement en vue de permettre au ministère ou à l'organisme de recueillir des données statistiques pour la recherche et l'analyse,

the purposes of enabling that department or agency to obtain statistical data for research and analysis,

(v) to an official solely for the purposes of setting off, against any sum of money that may be payable by His Majesty in right of Canada, a debt due to

(A) His Majesty in right of Canada, or

(B) His Majesty in right of a province on account of taxes payable to the province if an agreement exists between Canada and the province under which Canada is authorized to collect taxes on behalf of the province, or

(vi) to an official solely for the purposes of section 7.1 of the *Federal-Provincial Fiscal Arrangements Act*;

(d) provide confidential information to an official or any person employed by or representing the government of a foreign state, an international organization established by the governments of states, a community of states, or an institution of any such government or organization, in accordance with an international convention, agreement or other written arrangement relating to trade between the Government of Canada or an institution of the Government of Canada and the government of the foreign state, the organization, the community or the institution, solely for the purposes set out in that arrangement;

(e) provide confidential information, or allow the inspection of or access to confidential information, solely for the purposes of a provision contained in a *listed international agreement* or in a *tax treaty* (as those terms are defined in subsection 248(1) of the *Income Tax Act*);

(f) provide confidential information solely for the purposes of sections 23 to 25 of the *Financial Administration Act*;

(g) use confidential information to compile information in a form that does not directly or indirectly reveal the identity of the person to whom the information relates;

(h) use, or provide to any person, confidential information solely for a purpose relating to the supervision, evaluation or discipline of an authorized person by His Majesty in right of Canada in respect of a period during which the authorized person was employed by or engaged by or on behalf of His Majesty in right of Canada to assist in the administration or enforcement of this Act, to the extent that the information is relevant for that purpose;

(v) à tout fonctionnaire, mais uniquement en vue de procéder, par voie de compensation, à la retenue, sur toute somme due par Sa Majesté du chef du Canada, de toute somme correspondant à une créance :

(A) soit de Sa Majesté du chef du Canada,

(B) soit de Sa Majesté du chef d'une province s'il s'agit de taxes ou d'impôts provinciaux visés par un accord entre le Canada et la province en vertu duquel le Canada est autorisé à percevoir les impôts ou taxes à verser à la province,

(vi) à tout fonctionnaire, mais uniquement pour l'application de l'article 7.1 de la *Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces*;

d) fournir tout renseignement confidentiel à tout fonctionnaire, à tout employé ou à tout représentant du gouvernement d'un État étranger, d'une organisation internationale créée par les gouvernements de divers États, d'une communauté internationale ou d'une institution d'un tel gouvernement ou d'une telle organisation, conformément à une convention, une entente ou un autre accord commercial international écrit conclu entre le gouvernement du Canada ou l'une de ses institutions et le gouvernement de l'État étranger, l'organisation, la communauté ou l'institution, aux seules fins qui y sont énoncées;

e) fournir tout renseignement confidentiel, ou en permettre l'examen ou l'accès, mais uniquement pour l'application d'une disposition figurant dans une *convention fiscale* ou dans un *accord international désigné* (au sens du paragraphe 248(1) de la *Loi de l'impôt sur le revenu*);

f) fournir tout renseignement confidentiel, mais uniquement pour l'application des articles 23 à 25 de la *Loi sur la gestion des finances publiques*;

g) utiliser tout renseignement confidentiel en vue de compiler des renseignements sous une forme qui ne révèle pas, même indirectement, l'identité de la personne en cause;

h) utiliser ou fournir tout renseignement confidentiel, mais uniquement à une fin liée à la surveillance ou à l'évaluation, par Sa Majesté du chef du Canada, d'une personne autorisée ou liée à des mesures disciplinaires prises par elle à l'endroit de cette personne relativement à une période au cours de laquelle celle-ci était soit employée par elle, soit engagée par elle ou en son nom pour aider à l'exécution ou au contrôle

(i) provide access to records of confidential information to the Librarian and Archivist of Canada or a person acting on behalf of or under the direction of the Librarian and Archivist, solely for the purposes of section 12 of the *Library and Archives of Canada Act*, and transfer such records to the care and control of such persons solely for the purposes of section 13 of that Act;

(j) use confidential information relating to a person to provide information to that person;

(k) provide confidential information to a *police officer*, as defined in subsection 462.48(17) of the *Criminal Code*, solely for the purpose of investigating whether an offence has been committed under the *Criminal Code*, or the laying of an information or the preferring of an indictment, if

(i) that information can reasonably be regarded as being relevant for the purpose of ascertaining the circumstances in which an offence under the *Criminal Code* may have been committed, or the identity of the person or persons who may have committed an offence, with respect to an official, or with respect to any person related to that official,

(ii) the official was or is engaged in the administration or enforcement of this Act, and

(iii) the offence can reasonably be considered to be related to that administration or enforcement; and

(l) provide information to a law enforcement officer of an appropriate police organization in the circumstances described in subsection 211(6.4) of the *Excise Act, 2001*.

d'application de la présente loi, dans la mesure où le renseignement a rapport à cette fin;

i) donner accès à des registres renfermant des renseignements confidentiels au bibliothécaire et à l'archiviste du Canada ou à toute personne agissant en son nom ou sur son ordre, mais uniquement pour l'application de l'article 12 de la *Loi sur la Bibliothèque et les Archives du Canada*, et transférer de tels registres sous la garde et la responsabilité de ces personnes, mais uniquement pour l'application de l'article 13 de cette loi;

j) utiliser tout renseignement confidentiel concernant une personne en vue de lui fournir un renseignement;

k) fournir tout renseignement confidentiel à tout *policier*, au sens du paragraphe 462.48(17) du *Code criminel*, mais uniquement en vue de déterminer si une infraction visée à cette loi a été commise ou en vue du dépôt d'une dénonciation ou d'un acte d'accusation, si, à la fois :

(i) il est raisonnable de considérer que le renseignement est nécessaire pour confirmer les circonstances dans lesquelles l'infraction au *Code criminel* peut avoir été commise, ou l'identité de la ou des personnes pouvant avoir commis l'infraction, à l'égard d'un fonctionnaire ou de toute personne qui lui est liée,

(ii) le fonctionnaire est ou était chargé de l'application ou de l'exécution de la présente loi,

(iii) il est raisonnable de considérer que l'infraction est liée à cette application ou cette exécution;

l) fournir des renseignements à un agent d'exécution de la loi d'une organisation policière pertinente dans les circonstances visées au paragraphe 211(6.4) de la *Loi de 2001 sur l'accise*.

Measures to prevent unauthorized use or disclosure

(7) The person presiding at a legal proceeding relating to the supervision, evaluation or discipline of an authorized person may order any measures that are necessary to ensure that confidential information is not used or provided to any person for any purpose not relating to that proceeding, including

(a) holding a hearing *in camera*;

(b) banning the publication of the information;

(c) concealing the identity of the person to whom the information relates; and

Prévention de l'utilisation non autorisée

(7) La personne qui préside une instance concernant la surveillance ou l'évaluation d'une personne autorisée ou des mesures disciplinaires prises à son endroit peut ordonner la mise en œuvre de mesures nécessaires pour éviter qu'un renseignement confidentiel soit utilisé ou fourni à toute fin étrangère à la procédure, notamment :

a) la tenue d'une audience à huis clos;

b) la non-publication du renseignement;

c) la non-divulgation de l'identité de la personne en cause;

(d) sealing the records of the proceeding.

d) la mise sous scellé du procès-verbal des délibérations.

Disclosure to person or on consent

(8) An official may provide confidential information relating to a person

(a) to that person; and

(b) with the consent of that person, to any other person.

Divulgation d'un renseignement confidentiel

(8) Un fonctionnaire peut fournir un renseignement confidentiel :

a) à la personne en cause;

b) à toute autre personne, avec le consentement de la personne en cause.

Appeal from order or direction

(9) An order or direction that is made in the course of or in connection with any legal proceedings and that requires an official to give or produce evidence relating to any confidential information may, by notice served on all interested parties, be appealed without delay by the Minister or by the person against whom the order or direction is made to

(a) the court of appeal of the province in which the order or direction is made, in the case of an order or direction made by a court or other tribunal established under the laws of the province, whether or not that court or tribunal is exercising a jurisdiction conferred by the laws of Canada; or

(b) the Federal Court of Appeal, in the case of an order or direction made by a court or other tribunal established under the laws of Canada.

Appel d'une ordonnance ou d'une directive

(9) Le ministre ou la personne contre laquelle une ordonnance est rendue, ou à l'égard de laquelle une directive est donnée, dans le cadre ou à l'occasion d'une procédure judiciaire enjoignant à un fonctionnaire de témoigner, ou de produire quoi que ce soit, relativement à un renseignement confidentiel peut sans délai, par avis signifié aux parties intéressées, interjeter appel de l'ordonnance ou de la directive devant :

a) la cour d'appel de la province dans laquelle l'ordonnance est rendue ou la directive est donnée, s'il s'agit d'une ordonnance ou d'une directive émanant d'un tribunal établi en application des lois de la province, que ce tribunal exerce ou non une compétence conférée par les lois fédérales;

b) la Cour d'appel fédérale, s'il s'agit d'une ordonnance ou d'une directive émanant d'une cour ou d'un autre tribunal établi en application des lois fédérales.

Disposition of appeal

(10) The court to which an appeal is taken under subsection (9) may allow the appeal and quash the order or direction appealed from or dismiss the appeal, and the rules of practice and procedure from time to time governing appeals to the courts apply, with such modifications as the circumstances require, to an appeal instituted under that subsection.

Décision d'appel

(10) Le tribunal saisi de l'appel visé au paragraphe (9) peut soit accueillir celui-ci et annuler l'ordonnance ou la directive en cause, soit le rejeter; les règles de pratique et de procédure régissant les appels devant les tribunaux judiciaires s'appliquent à l'appel avec les adaptations nécessaires.

Stay

(11) An appeal instituted under subsection (9) stays the operation of the order or direction appealed from until judgment is pronounced.

Sursis

(11) L'application de l'ordonnance ou de la directive objet de l'appel est différée jusqu'au prononcé du jugement.

DIVISION P

Collection

Definitions

109 (1) The following definitions apply in this section.

SECTION P

Recouvrement

Définitions

109 (1) Les définitions qui suivent s'appliquent au présent article.

action means an action to collect a tax debt of a person and includes a proceeding in a court and anything done by the Minister under any of sections 112 to 117. (*action*)

legal representative of a person means a trustee in bankruptcy, an assignee, a liquidator, a curator, a receiver of any kind, a trustee, an heir, an administrator, an executor, a liquidator of a succession, a committee, or any other similar person, administering, winding up, controlling or otherwise dealing in a representative or fiduciary capacity with any property, business, commercial activity or estate or succession that belongs or belonged to, or that is or was held for the benefit of, the person or the person's estate or succession. (*représentant légal*)

tax debt means any amount payable by a person under this Act. (*dette fiscale*)

action Toute action en recouvrement d'une dette fiscale d'une personne, y compris les procédures judiciaires et toute mesure prise par le ministre en vertu de l'un des articles 112 à 117. (*action*)

dette fiscale Toute somme payable par une personne en application de la présente loi. (*tax debt*)

représentant légal Syndic de faillite, cessionnaire, liquidateur, curateur, séquestre de tout genre, fiduciaire, héritier, administrateur du bien d'autrui, exécuteur testamentaire, liquidateur de succession, curateur ou autre personne semblable, qui administre, liquide ou contrôle, en qualité de représentant ou de fiduciaire, les biens, les affaires, les activités commerciales ou les actifs qui appartiennent ou appartenaient à une personne ou à sa succession, ou qui sont ou étaient détenus pour leur compte, ou qui, en cette qualité, s'en occupe de toute autre façon. (*legal representative*)

Debts to His Majesty

(2) A tax debt is a debt due to His Majesty in right of Canada and is recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided under this Act.

Court proceedings

(3) The Minister may not commence a proceeding in a court to collect a tax debt of a person in respect of an amount that may be assessed under this Act unless when the proceeding is commenced the person has been assessed for that amount.

No actions after limitation period

(4) The Minister may not commence an action to collect a tax debt after the end of the limitation period for the collection of the tax debt.

Limitation period

(5) The limitation period for the collection of a tax debt of a person

(a) begins

(i) if a notice of assessment in respect of the tax debt, or a notice referred to in subsection 118(1) in respect of the tax debt, is sent to or served on the person, on the day that is 90 days after the day on which the last one of those notices is sent or served, and

(ii) if no notice referred to in subparagraph (i) in respect of the tax debt was sent or served, on the

Créances de Sa Majesté

(2) Toute dette fiscale est une créance de Sa Majesté du chef du Canada et est recouvrable à ce titre devant la Cour fédérale ou devant tout autre tribunal compétent ou de toute autre manière prévue par la présente loi.

Procédures judiciaires

(3) Une procédure judiciaire en vue du recouvrement de la dette fiscale d'une personne à l'égard d'une somme qui peut faire l'objet d'une cotisation en application de la présente loi ne peut être intentée par le ministre que si, au moment où la procédure est intentée, la personne a fait l'objet d'une cotisation pour cette somme.

Prescription

(4) Une action en recouvrement d'une dette fiscale ne peut être entreprise par le ministre après l'expiration du délai de prescription pour le recouvrement de la dette fiscale.

Délai de prescription

(5) Le délai de prescription pour le recouvrement d'une dette fiscale d'une personne :

a) commence à courir :

(i) si un avis de cotisation, ou un avis visé au paragraphe 118(1), concernant la dette fiscale est envoyé ou signifié à la personne, quatre-vingt-dix jours suivant le dernier en date des jours où l'un de ces avis est envoyé ou signifié,

(ii) si aucun des avis visés au sous-alinéa (i) n'a été envoyé ou signifié, le premier jour où le ministre

earliest day on which the Minister can commence an action to collect that tax debt, and

(b) ends, subject to subsection (9), on the day that is 10 years after the day on which it begins.

Limitation period restarted

(6) The limitation period referred to in subsection (5) for the collection of a tax debt of a person restarts (and ends, subject to subsection (9), on the day that is 10 years after the day on which it restarts) on any day, before it would otherwise end, on which

(a) the person acknowledges the tax debt in accordance with subsection (7);

(b) all or part of the tax debt is reduced by the application of a refund under section 61;

(c) the Minister commences an action to collect the tax debt; or

(d) the Minister assesses, under this Act, another person in respect of the tax debt.

Acknowledgement of tax debts

(7) A person acknowledges a tax debt if the person

(a) promises, in writing, to pay the tax debt;

(b) makes a written acknowledgement of the tax debt, whether or not a promise to pay can be inferred from the acknowledgement and whether or not it contains a refusal to pay; or

(c) makes a payment, including a purported payment by way of a negotiable instrument that is dishonoured, on account of the tax debt.

Agent or mandatary or legal representative

(8) For the purposes of this section, an acknowledgement made by a person's agent or mandatary or legal representative has the same effect as if it were made by the person.

Extension of limitation period

(9) In computing the day on which a limitation period ends, there must be added the number of days on which one or more of the following is the case:

(a) the Minister has postponed the collection action against the person under subsection (11) in respect of the tax debt;

peut entreprendre une action en recouvrement de la dette fiscale;

b) prend fin, sous réserve du paragraphe (9), dix ans après le jour de son début.

Reprise du délai de prescription

(6) Le délai de prescription recommence à courir — et prend fin, sous réserve du paragraphe (9), dix ans plus tard — le jour, antérieur à celui où il prendrait fin par ailleurs, où, selon le cas :

a) la personne reconnaît la dette fiscale conformément au paragraphe (7);

b) la dette fiscale, ou une partie de celle-ci, est réduite par un remboursement en vertu de l'article 61;

c) le ministre entreprend une action en recouvrement de la dette fiscale;

d) le ministre établit, en application de la présente loi, une cotisation à l'égard d'une autre personne relativement à la dette fiscale.

Reconnaissance des dettes fiscales

(7) Se reconnaît débitrice d'une dette fiscale la personne qui, selon le cas :

a) promet, par écrit, de régler la dette fiscale;

b) reconnaît la dette fiscale par écrit, que cette reconnaissance soit ou non rédigée en des termes qui permettent de déduire une promesse de règlement et renferment ou non un refus de payer;

c) fait un paiement au titre de la dette fiscale, y compris un prétendu paiement fait au moyen d'un titre négociable qui fait l'objet d'un refus de paiement.

Mandataire ou représentant légal

(8) Pour l'application du présent article, la reconnaissance faite par le mandataire ou le représentant légal d'une personne a la même valeur que si elle était faite par la personne.

Prorogation du délai de prescription

(9) Le nombre de jours où au moins un des faits suivants se vérifie prolonge d'autant la durée du délai de prescription :

a) le ministre a reporté, en vertu du paragraphe (11), les mesures de recouvrement concernant la dette fiscale;

(b) the Minister has accepted and holds security in lieu of payment of the tax debt;

(c) if the person was resident in Canada on the applicable day referred to in paragraph (5)(a) in respect of the tax debt, the person is non-resident;

(d) the Minister may not, because of any of subsections 110(2) to (5), take any of the actions referred to in subsection 110(1) in respect of the tax debt; and

(e) an action that the Minister may otherwise take in respect of the tax debt is restricted or not permitted under any provision of the *Bankruptcy and Insolvency Act*, of the *Companies' Creditors Arrangement Act* or of the *Farm Debt Mediation Act*.

b) le ministre a accepté et détient une garantie pour le paiement de la dette fiscale;

c) la personne, qui résidait au Canada à la date applicable visée à l'alinéa (5)a) relativement à la dette fiscale, est un non-résident;

d) en raison de l'un des paragraphes 110(2) à (5), le ministre n'est pas en mesure d'exercer les actions visées au paragraphe 110(1) relativement à la dette fiscale;

e) l'une des actions que le ministre peut exercer par ailleurs relativement à la dette fiscale est limitée ou interdite en vertu d'une disposition de la *Loi sur la faillite et l'insolvabilité*, de la *Loi sur les arrangements avec les créanciers des compagnies* ou de la *Loi sur la médiation en matière d'endettement agricole*.

Assessment before collection

(10) The Minister may not take any collection action under sections 112 to 117 in respect of any amount payable by a person that may be assessed under this Act, other than interest under section 56, unless the amount has been or may be assessed.

Cotisation avant recouvrement

(10) Le ministre ne peut, outre exiger des intérêts en vertu de l'article 56, prendre des mesures de recouvrement en vertu des articles 112 à 117 relativement à une somme susceptible de cotisation en application de la présente loi que si la somme a fait l'objet ou peut faire l'objet d'une cotisation.

Postponement of collection

(11) The Minister may, subject to any terms and conditions that the Minister may stipulate, postpone collection action against a person in respect of all or any part of any amount assessed that is the subject of a dispute between the Minister and the person.

Report des mesures de recouvrement

(11) Sous réserve des modalités qu'il fixe, le ministre peut reporter les mesures de recouvrement concernant tout ou partie du montant d'une cotisation qui fait l'objet d'un litige entre une personne et lui.

Interest on judgments

(12) If a judgment is obtained for any amount payable under this Act, including by the registration of a certificate under section 112, the provisions of this Act under which interest is payable for a failure to pay an amount apply, with any modifications that the circumstances require, to the failure to pay the judgment debt and the interest is recoverable in the same manner as the judgment debt.

Intérêts à la suite de jugements

(12) Dans le cas où un jugement est obtenu pour une somme à payer en application de la présente loi, y compris l'enregistrement d'un certificat en vertu de l'article 112, les dispositions de la présente loi en application desquelles des intérêts sont payables pour défaut de paiement de la somme s'appliquent, avec les adaptations nécessaires, au défaut de paiement de la créance constatée par le jugement, et les intérêts sont recouvrables de la même manière que cette créance.

Litigation costs

(13) If an amount is payable by a person to His Majesty in right of Canada because of an order, judgment or award of a court in respect of the costs of litigation relating to a matter to which this Act applies, sections 112 to 118 apply to the amount as if it were payable under this Act.

Frais de justice

(13) Dans le cas où une somme doit être payée par une personne à Sa Majesté du chef du Canada en exécution d'une ordonnance, d'un jugement ou d'une décision d'un tribunal concernant l'attribution des frais de justice relatifs à une question régie par la présente loi, les articles 112 à 118 s'appliquent à la somme comme si elle était payable en application de la présente loi.

Collection restrictions

110 (1) If a person is liable for the payment of an amount under this Act, the Minister must not, for the purpose of collecting the amount, take any of the following actions until the end of 90 days after the date of a notice of assessment issued under this Act in respect of the amount:

(a) commence legal proceedings in a court;

(b) certify the amount under section 112;

(c) require a person to make a payment under subsection 113(1);

(d) require an institution (within the meaning of subsection 113(2)) or a person to make a payment under subsection 113(2);

(e) require a person to turn over moneys under subsection 116(1); and

(f) give a notice, issue a certificate or make a direction under subsection 117(1).

No action after service of notice of objection

(2) If a person has served a notice of objection under this Act to an assessment of an amount payable under this Act, the Minister must not, for the purpose of collecting the amount in controversy, take any of the actions referred to in subsection (1) until the end of 90 days after the date of the notice to the person that the Minister has confirmed or varied the assessment.

No action after appeal

(3) If a person has appealed to the Tax Court of Canada from an assessment of an amount payable under this Act, the Minister must not, for the purpose of collecting the amount in controversy, take any of the actions referred to in subsection (1) before the earlier of the day on which a copy of the decision of the Court is mailed to the person and the day on which the person discontinues the appeal.

No action pending determination

(4) If a person has agreed under subsection 80(1) that a question should be determined by the Tax Court of Canada, or if a person is served with a copy of an application made under subsection 81(1) to that Court for the determination of a question, the Minister must not take any of the actions referred to in subsection (1) for the purpose of collecting that part of an amount assessed, the liability for payment of which could be affected by the

Restrictions au recouvrement

110 (1) Lorsqu'une personne est redevable d'une somme en application de la présente loi, le ministre, pour recouvrer la somme, ne peut, avant le lendemain du quatre-vingt-dixième jour suivant la date d'un avis de cotisation en vertu de la présente loi délivré relativement à la somme :

a) entamer une poursuite devant un tribunal;

b) attester la somme dans un certificat, en vertu de l'article 112;

c) obliger une personne à faire un paiement, en vertu du paragraphe 113(1);

d) obliger une institution (au sens du paragraphe 113(2)) ou une personne à faire un paiement, en vertu du paragraphe 113(2);

e) obliger une personne à verser des sommes, en vertu du paragraphe 116(1);

f) donner un avis, délivrer un certificat ou donner un ordre, en vertu du paragraphe 117(1).

Signification d'un avis d'opposition

(2) Lorsqu'une personne signifie un avis d'opposition à une cotisation pour une somme exigible en vertu de la présente loi, le ministre, pour recouvrer la somme en litige, ne peut prendre aucune des mesures visées au paragraphe (1) avant le lendemain du quatre-vingt-dixième jour suivant la date de l'avis à la personne portant qu'il confirme ou modifie la cotisation.

Appel devant la Cour canadienne de l'impôt

(3) Lorsqu'une personne interjette appel auprès de la Cour canadienne de l'impôt d'une cotisation pour une somme exigible en application de la présente loi, le ministre, pour recouvrer la somme en litige, ne peut prendre aucune des mesures mentionnées au paragraphe (1) avant la première en date des dates suivantes : la date d'envoi à la personne d'une copie de la décision de la Cour et la date où la personne se désiste de l'appel.

Appel à la Cour canadienne de l'impôt

(4) Lorsqu'une personne convient de faire statuer, en vertu du paragraphe 80(1), la Cour canadienne de l'impôt sur une question ou qu'une personne se voit signifier une copie d'une demande présentée en vertu du paragraphe 81(1) devant cette cour pour qu'elle statue sur une question, le ministre, pour recouvrer la partie du montant d'une cotisation dont la personne pourrait être redevable selon ce que la cour statuera, ne peut prendre aucune des

determination of the question, before the day on which the question is determined by the Court.

Action after judgment

(5) Despite any other provision of this section, if a person has served a notice of objection under this Act to an assessment or has appealed to the Tax Court of Canada from an assessment and agrees in writing with the Minister to delay proceedings on the objection or appeal, as the case may be, until judgment has been given in another action before the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada in which the issue is the same, or substantially the same, as that raised in the objection or appeal of the person, the Minister may take any of the actions referred to in subsection (1) for the purpose of collecting the amount assessed, or a part of it, determined in a manner consistent with the judgment of the Court in the other action at any time after the Minister notifies the person in writing that the judgment has been given by the Court in the other action.

Collection of large amounts

(6) Despite subsections (1) to (5), if, at any time, the total of all amounts that a person has been assessed under this Act and that remain unpaid exceeds $1,000,000, the Minister may collect up to 50% of the total.

Security

111 (1) The Minister may, if the Minister considers it advisable, accept security in an amount and a form satisfactory to the Minister for the payment of any amount that is or may become payable under this Act.

Surrender of excess security

(2) If a person that has given security, or on whose behalf security has been given, under this section requests in writing that the Minister surrender the security or any part of it, the Minister must surrender the security to the extent that its value exceeds, at the time the request is received by the Minister, the amount that is sought to be secured.

Additional security

(3) The adequacy of security furnished by or on behalf of a person under subsection (1) is to be determined by the Minister, and the Minister may require additional security to be given or maintained from time to time by or on behalf of the person if the Minister determines that the security that has been given or maintained is no longer adequate.

mesures mentionnées au paragraphe (1) avant que la cour ne statue sur la question.

Mesures postérieures à un jugement

(5) Malgré les autres dispositions du présent article, lorsqu'une personne signifie, conformément à la présente loi, un avis d'opposition à une cotisation ou interjette appel à l'égard d'une cotisation auprès de la Cour canadienne de l'impôt et qu'elle convient par écrit avec le ministre de retarder la procédure d'opposition ou d'appel jusqu'à ce que la Cour canadienne de l'impôt, la Cour d'appel fédérale ou la Cour suprême du Canada rende jugement dans une autre action qui soulève la même question, ou essentiellement la même, que celle soulevée dans l'opposition ou l'appel, le ministre peut prendre les mesures visées au paragraphe (1) pour recouvrer tout ou partie du montant de la cotisation établie de la façon envisagée par le jugement rendu dans cette autre action, à tout moment après qu'il a avisé la personne par écrit que le tribunal a rendu jugement dans l'autre action.

Recouvrement de sommes importantes

(6) Malgré les paragraphes (1) à (5), le ministre peut recouvrer jusqu'à 50 % du total des sommes visées par les cotisations établies à l'égard d'une personne en application de la présente loi si la partie impayée du total de ces sommes dépasse 1 000 000 $.

Garanties

111 (1) Le ministre peut, s'il le juge opportun, accepter des garanties dont le montant et la forme lui sont acceptables pour le paiement d'un montant qui est ou pourrait devenir payable en vertu de la présente loi.

Remise d'une garantie

(2) Sur demande écrite de la personne qui a donné une garantie, ou au nom de laquelle une garantie a été donnée, le ministre doit remettre tout ou partie de la garantie dans la mesure où la valeur de celle-ci dépasse, au moment où il reçoit la demande, la somme objet de la garantie.

Garantie supplémentaire

(3) Le ministre détermine la suffisance de la garantie fournie par une personne en application du paragraphe (1) ou en son nom, et il peut exiger qu'une garantie supplémentaire soit donnée ou maintenue de temps à autre par la personne ou en son nom lorsqu'il détermine que la garantie donnée ou maintenue ne suffit plus.

Certificates

112 (1) Any amount payable by a person (in this section referred to as the "debtor") under this Act that has not been paid as and when required under this Act may be certified by the Minister as an amount payable by the debtor.

Registration in court

(2) On production to the Federal Court, a certificate made under subsection (1) in respect of a debtor is to be registered in the Court and, when so registered, has the same effect, and all proceedings may be taken on the certificate as if it were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest on the amount as provided under this Act to the day of payment and, for the purposes of those proceedings, the certificate is deemed to be a judgment of the Court against the debtor for a debt due to His Majesty in right of Canada and enforceable as such.

Costs

(3) All reasonable costs and charges incurred or paid for the registration in the Federal Court of a certificate made under subsection (1), or in respect of any proceedings taken to collect the amount certified, are recoverable in the same manner as if they had been included in the amount certified in the certificate when it was registered.

Charge on property

(4) A document issued by the Federal Court that is evidence of a registered certificate in respect of a debtor, a writ of that Court issued in accordance with the certificate or any notification of the document or writ (which document, writ or notification is in this section referred to as a "memorial") may be filed, registered or otherwise recorded for the purpose of creating a charge, lien or priority on, or a binding interest in, property in a province, or any interest in, or for civil law any right in, such property, held by the debtor, in the same manner as a document that is evidence of

(a) a judgment of the superior court of the province against a person for a debt owing by the person, or

(b) an amount payable or required to be remitted by a person in the province in respect of a debt owing to His Majesty in right of the province

may be filed, registered or otherwise recorded in accordance with the law of the province to create a charge, lien or priority on, or a binding interest in, the property or interest.

Certificat

112 (1) Toute somme exigible d'une personne (appelée « débiteur » au présent article) en vertu de la présente loi qui n'a pas été payée selon les modalités et dans le délai prévus en application de la présente loi peut, par certificat du ministre, être déclarée exigible du débiteur.

Enregistrement à la Cour fédérale

(2) Sur production à la Cour fédérale, le certificat fait en vertu du paragraphe (1) à l'égard d'un débiteur est enregistré à cette cour. Il a alors le même effet que s'il s'agissait d'un jugement rendu par cette cour contre le débiteur pour une dette de la somme attestée dans le certificat, augmentée des intérêts courus comme le prévoit la présente loi jusqu'au jour du paiement, et toutes les procédures peuvent être engagées à la faveur du certificat comme s'il s'agissait d'un tel jugement. Pour ce qui est de ces procédures, le certificat est réputé être un jugement exécutoire de la cour contre le débiteur pour une créance de Sa Majesté du chef du Canada.

Frais et dépens

(3) Les frais et dépens raisonnables engagés ou payés pour l'enregistrement à la Cour fédérale d'un certificat, ou pour l'exécution des procédures de recouvrement de la somme qui y est attestée sont recouvrables de la même manière que s'ils avaient été inclus dans cette somme au moment de l'enregistrement du certificat.

Charge sur un bien

(4) Tout document délivré par la Cour fédérale et faisant preuve du contenu d'un certificat enregistré à l'égard d'un débiteur, tout bref de cette cour délivré au titre du certificat ou toute notification du document ou du bref (le document, le bref ou la notification étant appelé « extrait » au présent article) peut être produit, enregistré ou autrement inscrit en vue de grever d'une sûreté, d'une priorité ou d'une autre charge sur un bien du débiteur situé dans une province, ou un intérêt ou, pour l'application du droit civil, un droit sur un tel bien, de la même manière que peut l'être, au titre ou en application du droit provincial, un document faisant preuve :

a) soit du contenu d'un jugement rendu par la cour supérieure de la province contre une personne pour une dette de celle-ci;

b) soit d'une somme à payer ou à remettre par une personne dans la province au titre d'une créance de Sa Majesté du chef de la province.

Creation of charge

(5) If a memorial has been filed, registered or otherwise recorded under subsection (4),

(a) a charge, lien or priority is created on, or a binding interest is created in, property in the province, or any interest in, or for civil law any right in, such property, held by the debtor, or

(b) such property, or interest or right in the property, is otherwise bound,

in the same manner and to the same extent as if the memorial were a document that is evidence of a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b), and the charge, lien, priority or binding interest created is subordinate to any charge, lien, priority or binding interest in respect of which all steps necessary to make it effective against other creditors were taken before the day on which the memorial was filed, registered or otherwise recorded.

Charge sur un bien

(5) Une fois l'extrait produit, enregistré ou autrement inscrit en application du paragraphe (4), une sûreté, une priorité ou une autre charge grève un bien du débiteur situé dans la province, ou un intérêt ou, pour l'application du droit civil, un droit sur un tel bien, de la même manière et dans la même mesure que si l'extrait était un document faisant preuve du contenu d'un jugement visé à l'alinéa (4)a) ou d'une somme visée à l'alinéa (4)b). Cette sûreté, priorité ou charge prend rang après toute autre sûreté, priorité ou charge à l'égard de laquelle les mesures requises pour la rendre opposable aux autres créanciers ont été prises avant la production, l'enregistrement ou toute autre inscription de l'extrait.

Proceedings in respect of memorial

(6) If a memorial is filed, registered or otherwise recorded in a province under subsection (4), proceedings may be taken in the province in respect of the memorial, including proceedings

(a) to enforce payment of the amount evidenced by the memorial, interest on the amount and all costs and charges paid or incurred in respect of

(i) the filing, registration or other recording of the memorial, and

(ii) proceedings taken to collect the amount,

(b) to renew or otherwise prolong the effectiveness of the filing, registration or other recording of the memorial,

(c) to cancel or withdraw the memorial wholly or in respect of any of the property, or interests or rights, affected by the memorial, or

(d) to postpone the effectiveness of the filing, registration or other recording of the memorial in favour of any right, charge, lien or priority that has been or is intended to be filed, registered or otherwise recorded in respect of any property, or interest or rights, affected by the memorial,

in the same manner and to the same extent as if the memorial were a document that is evidence of a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b). However, if in any such proceeding or as a condition precedent to any such

Procédure engagée à la faveur d'un extrait

(6) L'extrait produit, enregistré ou autrement inscrit dans une province en vertu du paragraphe (4) peut, de la même manière et dans la même mesure que s'il s'agissait d'un document faisant preuve du contenu d'un jugement visé à l'alinéa (4)a) ou d'une somme visée à l'alinéa (4)b), faire l'objet dans la province de procédures visant notamment les mesures suivantes :

a) exiger le paiement de la somme attestée par l'extrait, des intérêts y afférents et des frais et dépens payés ou engagés en vue de la production, de l'enregistrement ou autre inscription de l'extrait ou en vue de l'exécution des procédures de recouvrement de la somme;

b) renouveler ou autrement prolonger l'effet de la production, de l'enregistrement ou autre inscription de l'extrait;

c) annuler ou retirer l'extrait dans son ensemble ou uniquement en ce qui concerne un ou plusieurs biens ou intérêts ou droits sur lesquels l'extrait a une incidence;

d) différer l'effet de la production, de l'enregistrement ou autre inscription de l'extrait en faveur d'un droit, d'une sûreté, d'une priorité ou d'une autre charge qui a été ou qui sera produit, enregistré ou autrement inscrit à l'égard d'un bien ou d'un intérêt ou d'un droit sur lequel l'extrait a une incidence.

Toutefois, dans le cas où la loi provinciale exige — soit dans le cadre de ces procédures, soit préalablement à leur exécution — l'obtention d'une ordonnance, d'une

proceeding, any order, consent or ruling is required under the law of the province to be made or given by the superior court of the province or by a judge or official of the court, a similar order, consent or ruling may be made or given by the Federal Court or by a judge or official of the Federal Court and, when so made or given, has the same effect for the purposes of the proceeding as if it were made or given by the superior court of the province or by a judge or official of the court.

Presentation of documents

(7) If

(a) a memorial is presented for filing, registration or other recording under subsection (4), or a document relating to the memorial is presented for filing, registration or other recording for the purpose of any proceeding referred to in subsection (6), to any official in the land registry system, personal property or movable property registry system, or other registry system, of a province, or

(b) access is sought to any person, place or thing in a province to make the filing, registration or other recording,

the memorial or document must be accepted for filing, registration or other recording or the access must be granted, as the case may be, in the same manner and to the same extent as if the memorial or document relating to the memorial were a document that is evidence of a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b) for the purpose of a similar proceeding. However, if the memorial or document is issued by the Federal Court or signed or certified by a judge or official of the Court, any affidavit, declaration or other evidence required under the law of the province to be provided with or to accompany the memorial or document in the proceedings is deemed to have been provided with or to have accompanied the memorial or document as so required.

Prohibition — sale, etc., without consent

(8) Despite any other law of Canada or law of a province, a sheriff or other person must not, without the written consent of the Minister, sell or otherwise dispose of any property or publish any notice or otherwise advertise in respect of any sale or other disposition of any property as a result of any process issued or charge, lien, priority or binding interest created in any proceeding to collect an amount certified in a certificate made under subsection (1), interest on the amount or costs. However, if that consent is subsequently given, any property that would have been affected by that process, charge, lien, priority or binding interest if the Minister's consent had been given at the time the process was issued or the charge, lien,

décision ou d'un consentement de la cour supérieure de la province ou d'un juge ou d'un fonctionnaire de celle-ci, la Cour fédérale ou un juge ou un fonctionnaire de celle-ci peut rendre une telle ordonnance ou décision ou donner un tel consentement. Cette ordonnance, cette décision ou ce consentement a alors le même effet dans le cadre des procédures que s'il était rendu ou donné par la cour supérieure de la province ou par un juge ou un fonctionnaire de celle-ci.

Présentation des documents

(7) L'extrait qui est présenté pour production, enregistrement ou autre inscription en vertu du paragraphe (4), ou un document concernant l'extrait qui est présenté pour production, enregistrement ou autre inscription dans le cadre des procédures mentionnées au paragraphe (6), à un agent d'un régime d'enregistrement foncier ou des droits sur des biens meubles ou personnels ou autres droits d'une province est accepté pour production, enregistrement ou autre inscription de la même manière et dans la même mesure que s'il s'agissait d'un document faisant preuve du contenu d'un jugement visé à l'alinéa (4)a) ou d'une somme visée à l'alinéa (4)b) dans le cadre de procédures semblables. Pour ce qui est de la production, de l'enregistrement ou autre inscription de cet extrait ou ce document, l'accès à une personne, à un endroit ou à une chose situé dans une province est donné de la même manière et dans la même mesure que si l'extrait ou le document était un document semblable ainsi délivré ou établi. Si l'extrait ou le document est délivré par la Cour fédérale ou porte la signature ou fait l'objet d'un certificat d'un juge ou d'un fonctionnaire de cette cour, tout affidavit, toute déclaration ou tout autre élément de preuve qui doit, selon la loi provinciale, être fourni avec l'extrait ou le document ou l'accompagner dans le cadre des procédures est réputé avoir été ainsi fourni ou accompagner ainsi l'extrait ou le document.

Interdiction — vente sans consentement

(8) Malgré les autres lois fédérales et les lois provinciales, ni le shérif ni aucune autre personne ne peut, sans le consentement écrit du ministre, vendre un bien ou autrement en disposer ou publier un avis concernant la vente ou la disposition d'un bien ou autrement l'annoncer, par suite de l'émission d'un bref ou de la création d'une sûreté, d'une priorité ou d'une autre charge dans le cadre de procédures de recouvrement d'une somme attestée dans un certificat fait en application du paragraphe (1), des intérêts y afférents et des dépens et frais. Toutefois, si ce consentement est obtenu ultérieurement, tout bien sur lequel un tel bref ou une telle sûreté, priorité ou charge aurait une incidence si ce consentement

priority or binding interest was created, as the case may be, is to be bound, seized, attached, charged or otherwise affected as it would have been if that consent had been given at the time that process was issued or the charge, lien, priority or binding interest was created, as the case may be.

avait été obtenu au moment de l'émission du bref ou de la création de la sûreté, priorité ou charge, selon le cas, est saisi ou autrement grevé comme si le consentement avait été obtenu à ce moment.

Completion of notices, etc.

(9) If information required to be set out by any sheriff or other person in a minute, notice or document required to be completed for any purpose cannot, because of subsection (8), be so set out without the written consent of the Minister, the sheriff or other person must complete the minute, notice or document to the extent possible without that information and, when that consent of the Minister is given, a further minute, notice or document setting out all the information must be completed for the same purpose, and the sheriff or other person, having complied with this subsection, is deemed to have complied with the Act, regulation or rule requiring the information to be set out in the minute, notice or document.

Établissement des avis

(9) Dans le cas où des renseignements qu'un shérif ou une autre personne doit indiquer dans un procès-verbal, un avis ou un document à établir à une fin quelconque ne peuvent, en raison du paragraphe (8), être ainsi indiqués sans le consentement écrit du ministre, le shérif ou l'autre personne doit établir le procès-verbal, l'avis ou le document en omettant les renseignements en question. Une fois le consentement du ministre obtenu, un autre procès-verbal, avis ou document indiquant tous les renseignements doit être établi à la même fin. S'il se conforme au présent paragraphe, le shérif ou l'autre personne est réputé se conformer à la loi, à la disposition réglementaire ou à la règle qui exige que les renseignements soient indiqués dans le procès-verbal, l'avis ou le document.

Application for order

(10) A sheriff or other person who is unable, because of subsection (8) or (9), to comply with any law or rule of court is bound by any order made by a judge of the Federal Court, on an *ex parte* application by the Minister, for the purpose of giving effect to the proceeding, charge, lien, priority or binding interest.

Demande d'ordonnance

(10) S'il ne peut se conformer à une loi ou à une règle de pratique en raison des paragraphes (8) ou (9), le shérif ou l'autre personne est lié par toute ordonnance rendue, sur requête *ex parte* du ministre, par un juge de la Cour fédérale visant à donner effet à des procédures ou à une sûreté, une priorité ou une autre charge.

Deemed security

(11) If a charge, lien, priority or binding interest created under subsection (5) by filing, registering or otherwise recording a memorial under subsection (4) is registered in accordance with subsection 87(1) of the *Bankruptcy and Insolvency Act*, it is deemed

(a) to be a claim that is secured by a security and that, subject to subsection 87(2) of that Act, ranks as a secured claim under that Act; and

(b) to also be a claim referred to in paragraph 86(2)(a) of that Act.

Présomption de garantie

(11) La sûreté, la priorité ou l'autre charge créée selon le paragraphe (5) par la production, l'enregistrement ou autre inscription d'un extrait en application du paragraphe (4) qui est enregistrée en conformité avec le paragraphe 87(1) de la *Loi sur la faillite et l'insolvabilité* est réputée, à la fois :

a) être une réclamation garantie et, sous réserve du paragraphe 87(2) de cette loi, prendre rang comme réclamation garantie aux termes de cette loi;

b) être une réclamation visée à l'alinéa 86(2)a) de cette loi.

Details in certificates and memorials

(12) Despite any other law of Canada or a province, in any certificate made under subsection (1) in respect of a debtor, any memorial that is evidence of a certificate or any writ or document issued for the purpose of collecting an amount certified, it is sufficient for all purposes

Contenu des certificats et extraits

(12) Malgré les lois fédérales et provinciales, dans le certificat fait à l'égard d'un débiteur, dans l'extrait faisant preuve du contenu d'un tel certificat ou encore dans le bref ou document délivré en vue du recouvrement de la perception d'un montant attesté dans un tel certificat, il suffit, à toutes fins utiles :

(a) to set out, as the amount payable by the debtor, the total of amounts payable by the debtor without setting out the separate amounts making up that total; and

(b) to refer to the rate of interest to be charged on the separate amounts making up the amount payable in general terms as interest at the rate prescribed by regulation applicable from time to time on amounts payable to the Receiver General for Canada, without indicating the specific rates of interest to be charged on each of the separate amounts or to be charged for any period.

a) d'une part, d'indiquer, comme montant payable par le débiteur, le total des montants payables par celui-ci et non les montants distincts qui forment ce total;

b) d'autre part, d'indiquer de façon générale le taux d'intérêt applicable aux montants distincts qui forment le montant payable au receveur général du Canada comme étant des intérêts calculés au taux prévu par la réglementation applicable sur les montants payables au receveur général, sans détailler les taux d'intérêt applicables à chaque montant distinct ou pour toute période.

Garnishment

113 (1) If the Minister has knowledge or suspects that a person is, or will be within one year, liable to make a payment to another person that is liable to pay an amount under this Act (in this section referred to as a "debtor"), the Minister may, by notice in writing, require the person to pay without delay, if the money is immediately payable, and in any other case, as and when the money becomes payable, the money otherwise payable to the debtor in whole or in part to the Receiver General for Canada on account of the debtor's liability under this Act.

Garnishment of loans or advances

(2) Without limiting the generality of subsection (1), if the Minister has knowledge or suspects that within 90 days

(a) a bank, credit union, trust company or other similar person (in this section referred to as an "institution") will loan or advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a debtor that is indebted to the institution and that has granted security in respect of the indebtedness, or

(b) a person, other than an institution, will loan or advance money to, or make a payment on behalf of, a debtor who the Minister knows or suspects

(i) is employed by, or is engaged in providing services or property to, that person or was or will be, within 90 days, so employed or engaged, or

(ii) if that person is a corporation, is not dealing at arm's length with that person,

the Minister may, by notice in writing, require the institution or person, as the case may be, to pay in whole or in part to the Receiver General for Canada on account of the debtor's liability under this Act the money that would otherwise be so loaned, advanced or paid.

Saisie-arrêt

113 (1) S'il sait ou soupçonne qu'une personne est, ou sera dans un délai d'un an, tenue de faire un paiement à une autre personne (appelée « débiteur » au présent article) qui elle-même est redevable d'une somme en application de la présente loi, le ministre peut exiger de cette personne, par avis écrit, que tout ou partie des sommes par ailleurs à payer au débiteur soient versées, sans délai si les sommes sont alors à payer, sinon, dès qu'elles le deviennent, au receveur général du Canada au titre de l'obligation du débiteur en application de la présente loi.

Saisie-arrêt de prêts ou d'avances

(2) Sans que soit limitée la portée générale du paragraphe (1), le ministre peut, par avis écrit, obliger les institutions et personnes ci-après à verser au receveur général du Canada, au titre de l'obligation du débiteur en application de la présente loi, tout ou partie de la somme qui serait autrement prêtée, avancée ou payée au nom du débiteur, s'il sait ou soupçonne que, dans les quatre-vingt-dix jours, selon le cas :

a) une banque, une caisse de crédit, une compagnie de fiducie ou une personne semblable (appelée « institution » au présent article) prêtera ou avancera une somme au débiteur qui a une dette garantie envers elle, ou effectuera un paiement au nom d'un tel débiteur ou au titre d'un effet de commerce émis par un tel débiteur;

b) une personne autre qu'une institution prêtera ou avancera une somme à un débiteur, ou effectuera un paiement en son nom, dont le ministre sait ou soupçonne :

(i) qu'il est le salarié de cette personne, ou le fournisseur de biens ou de services à cette personne, ou qu'il l'a été ou le sera dans les quatre-vingt-dix jours,

(ii) si cette personne est une personne morale, qu'il a un lien de dépendance avec cette personne.

Effect of receipt

(3) A receipt issued by the Minister for money paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Effect of requirement

(4) If the Minister has, under this section, required a person to pay to the Receiver General for Canada on account of a debtor's liability under this Act money otherwise payable by the person to the debtor as interest, rent, remuneration, a dividend, an annuity or another periodic payment, the requirement applies to all such payments to be made by the person to the debtor until the liability under this Act is satisfied and the requirement operates to require payments to the Receiver General for Canada out of each such payment of any amount that is specified by the Minister in a notice in writing.

Failure to comply

(5) A person that fails to comply with a requirement under subsection (1) or (4) is liable to pay to His Majesty in right of Canada an amount equal to the amount that the person was required under that subsection to pay to the Receiver General for Canada.

Other failures to comply

(6) An institution or person that fails to comply with a requirement under subsection (2) with respect to money to be loaned, advanced or paid is liable to pay to His Majesty in right of Canada an amount equal to the lesser of

(a) the total of money so loaned, advanced or paid, and

(b) the amount that the institution or person was required under that subsection to pay to the Receiver General for Canada.

Assessment

(7) The Minister may assess any person for any amount payable under this section by the person to the Receiver General for Canada and, if the Minister sends a notice of assessment, sections 55 and 67 to 82 apply with any modifications that the circumstances require.

Time limit

(8) An assessment of an amount payable under this section by a person to the Receiver General for Canada is not to be made more than four years after the person

Récépissé du ministre

(3) Le récépissé du ministre relatif aux sommes versées comme l'exige le présent article constitue une quittance valable et suffisante de l'obligation initiale jusqu'à concurrence du paiement.

Étendue de l'obligation

(4) L'obligation, imposée par le ministre, d'une personne de verser au receveur général du Canada, au titre d'une somme dont un débiteur est redevable en application de la présente loi, des sommes à payer par ailleurs par cette personne au débiteur à titre d'intérêts, de loyer, de rémunération, de dividende, de rente ou autre paiement périodique s'étend à tous les paiements analogues à être effectués par la personne au débiteur tant que la somme dont celui-ci est redevable n'est pas acquittée. De plus, l'obligation exige que des paiements soient versés au receveur général du Canada sur chacun de ces paiements analogues, selon la somme que le ministre établit dans un avis écrit.

Défaut de se conformer

(5) Toute personne qui ne se conforme pas aux paragraphes (1) ou (4) est redevable à Sa Majesté du chef du Canada d'une somme égale à celle qu'elle était tenue de verser au receveur général du Canada en application de ces paragraphes.

Défaut de se conformer

(6) Toute institution ou personne qui ne se conforme pas au paragraphe (2) est redevable à Sa Majesté du chef du Canada, à l'égard des sommes à prêter, à avancer ou à payer, d'une somme égale à la moins élevée des sommes suivantes :

a) le total des sommes ainsi prêtées, avancées ou payées;

b) la somme qu'elle était tenue de verser au receveur général du Canada en application de ce paragraphe.

Cotisation

(7) Le ministre peut établir une cotisation pour une somme qu'une personne est tenue de payer au receveur général du Canada en application du présent article. Les articles 55 et 67 à 82 s'appliquent, avec les adaptations nécessaires, dès l'envoi par le ministre de l'avis de cotisation.

Délai

(8) La cotisation ne peut être établie plus de quatre ans après le jour de la réception, par la personne, de l'avis du ministre exigeant le paiement de la somme.

receives the notice from the Minister requiring the payment.

Effect of payment as required

(9) If an amount that would otherwise have been advanced, loaned or paid to or on behalf of a debtor is paid by a person to the Receiver General for Canada in accordance with a notice from the Minister issued under this section, or with an assessment under subsection (7), the person is deemed for all purposes to have advanced, loaned or paid the amount to or on behalf of the debtor.

Recovery by deduction or set-off

114 If a person is indebted to His Majesty in right of Canada under this Act, the Minister may require the retention by way of deduction or set-off of any amount that the Minister may specify out of any amount that may be or become payable to that person by His Majesty in right of Canada.

Acquisition of debtor's property

115 For the purpose of collecting debts owed by a person to His Majesty in right of Canada under this Act, the Minister may purchase or otherwise acquire any interest in, or for civil law any right in, the person's property that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption and may dispose of any interest or right so acquired in any manner that the Minister considers reasonable.

Money seized from debtor

116 (1) If the Minister has knowledge or suspects that a person is holding money that was seized by a police officer, in the course of administering or enforcing the criminal law of Canada, from another person that is liable to pay any amount under this Act (in this section referred to as the "debtor") and that is restorable to the debtor, the Minister may in writing require the person to turn over the money otherwise restorable to the debtor, in whole or in part, to the Receiver General for Canada on account of the debtor's liability under this Act.

Receipt of Minister

(2) A receipt issued by the Minister for money turned over as required under this section is a good and sufficient discharge of the requirement to restore the money to the debtor to the extent of the amount so turned over.

Seizure if failure to pay

117 (1) If a person fails to pay an amount as required under this Act, the Minister may in writing give 30 days notice to the person, addressed to their latest known address, of the Minister's intention to direct that the

Effet du paiement

(9) La personne qui, conformément à l'avis du ministre envoyé aux termes du présent article ou à une cotisation établie en vertu du paragraphe (7), paie au receveur général du Canada une somme qui aurait par ailleurs été avancée, prêtée ou payée à un débiteur, ou pour son compte, est réputée, à toutes fins utiles, avoir avancé, prêté ou payé la somme au débiteur ou pour son compte.

Déduction ou compensation

114 Le ministre peut exiger la retenue par voie de déduction ou de compensation de la somme qu'il précise sur toute somme qui est à payer par Sa Majesté du chef du Canada, ou qui peut le devenir, à la personne contre qui elle détient une créance en vertu de la présente loi.

Acquisition de biens du débiteur

115 Pour recouvrer des créances de Sa Majesté du chef du Canada contre une personne en application de la présente loi, le ministre peut acheter ou autrement acquérir tout intérêt ou, pour l'application du droit civil, droit sur les biens de la personne auxquels il a droit par suite de procédure judiciaire ou conformément à l'ordonnance d'un tribunal, ou qui sont offerts en vente ou peuvent être rachetés, et peut disposer de ces intérêts ou droits de la manière qu'il estime raisonnable.

Sommes saisies d'un débiteur

116 (1) S'il sait ou soupçonne qu'une personne détient des sommes qui ont été saisies par un agent de police, pour l'application du droit criminel canadien, d'une autre personne (appelée « débiteur » au présent article) redevable de sommes en application de la présente loi et qui doivent être restituées au débiteur, le ministre peut par écrit obliger la personne à verser tout ou partie des sommes autrement restituables au débiteur au receveur général du Canada au titre de la somme dont le débiteur est redevable en application de la présente loi.

Récépissé du ministre

(2) Le récépissé du ministre relatif aux sommes versées, tel qu'exigé par le présent article, constitue une quittance valable et suffisante de l'obligation de restituer les sommes jusqu'à concurrence du versement.

Saisie — non-paiement

117 (1) Le ministre peut donner à la personne qui n'a pas payé une somme payable en application de la présente loi un préavis écrit de trente jours, envoyé à la dernière adresse connue de la personne, de son intention

person's goods and chattels, or moveable property, be seized and disposed of. If the person fails to make the payment before the expiry of the 30 days, the Minister may issue a certificate of the failure and direct that the person's goods and chattels, or movable property, be seized.

d'ordonner la saisie et la disposition de biens meubles ou personnels de cette personne. Il peut délivrer un certificat de défaut et ordonner la saisie des biens meubles ou personnels de cette personne si, au terme des trente jours, la personne est encore en défaut de paiement.

Disposition

(2) Property that has been seized under subsection (1) must be kept for 10 days at the expense and risk of the owner. If the owner does not pay the amount due together with all expenses within the 10 days, the Minister may dispose of the property in a manner that the Minister considers appropriate in the circumstances.

Disposition des choses saisies

(2) Les biens saisis en vertu du paragraphe (1) sont gardés pendant dix jours aux frais et risques du propriétaire. Si le propriétaire ne paie pas la somme due ainsi que les dépenses dans les dix jours, le ministre peut disposer des biens de la manière qu'il estime indiquée dans les circonstances.

Proceeds of disposition

(3) Any surplus resulting from a disposition, after deduction of the amount owing and all expenses, must be paid or returned to the owner of the property seized.

Produit de la disposition

(3) Le surplus de la disposition, déduction faite de la somme due et des dépenses, est payé ou rendu au propriétaire des biens saisis.

Exemptions from seizure

(4) Goods and chattels, or moveable property, of any person in default that would be exempt from seizure under a writ of execution issued by a superior court of the province in which the seizure is made is exempt from seizure under this section.

Restriction

(4) Le présent article ne s'applique pas aux biens meubles ou personnels appartenant à la personne en défaut qui seraient insaisissables malgré la délivrance d'un bref d'exécution par une cour supérieure de la province dans laquelle la saisie est opérée.

Person leaving Canada

118 (1) If the Minister suspects that a person has left or is about to leave Canada, the Minister may, before the day otherwise fixed for payment, by notice to the person served personally or sent by confirmed delivery service addressed to their latest known address, demand payment of any amount for which the person is liable under this Act or would be so liable if the time for payment had arrived, and the amount must be paid without delay despite any other provision of this Act.

Personnes quittant le Canada

118 (1) S'il soupçonne qu'une personne a quitté ou s'apprête à quitter le Canada, le ministre peut, avant le jour par ailleurs fixé pour le paiement, par avis signifié à personne ou envoyé par service de messagerie à la dernière adresse connue de la personne, exiger le paiement de toute somme dont celle-ci est redevable en vertu de la présente loi ou serait ainsi redevable si le paiement était échu. Cette somme doit être payée sans délai malgré les autres dispositions de la présente loi.

Seizure

(2) If a person fails to pay an amount required under subsection (1), the Minister may direct that goods and chattels, or movable property, of the person be seized, and subsections 117(2) to (4) apply, with any modifications that the circumstances require.

Saisie

(2) Le ministre peut ordonner la saisie des biens meubles ou personnels appartenant à la personne qui n'a pas payé une somme exigée aux termes du paragraphe (1); dès lors, les paragraphes 117(2) à (4) s'appliquent avec les adaptations nécessaires.

Authorization to proceed without delay

119 (1) Despite section 110, if, on *ex parte* application by the Minister, a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of a person would be jeopardized by a delay in its collection, the judge must, on any terms that the judge considers reasonable in the circumstances, authorize the Minister to, without

Recouvrement compromis

119 (1) Malgré l'article 110, sur requête *ex parte* du ministre, le juge saisi autorise celui-ci à prendre sans tarder toute mesure visée aux articles 112 à 117 à l'égard du montant d'une cotisation établie relativement à la personne en cause, aux conditions qu'il estime raisonnables dans les circonstances, s'il est convaincu qu'il existe des motifs raisonnables de croire que l'octroi à cette

delay, take any of the actions referred to in sections 112 to 117 in respect of that amount.

Notice of assessment not sent

(2) An authorization under subsection (1) in respect of an amount assessed in respect of a person may be granted by a judge even if a notice of assessment in respect of that amount has not been sent to the person at or before the time the application is made if the judge is satisfied that the receipt of the notice of assessment by the person would likely further jeopardize the collection of the amount. For the purposes of sections 109, 112, 113, 114, 116 and 117, the amount in respect of which the authorization is granted is deemed to be an amount payable under this Act.

Affidavits

(3) Statements contained in an affidavit of a person filed in the context of an application under this section may be based on belief, in which case the affidavit must include the grounds for that belief.

Service of authorization and notice of assessment

(4) An authorization granted under this section in respect of a person must be served by the Minister on the person within 72 hours after it is granted, unless the judge orders the authorization to be served at some other time specified in the authorization, and, if a notice of assessment has not been sent to the person at or before the time of the application, a notice of assessment for the assessed period must be served on the person together with the authorization.

How service effected

(5) For the purposes of subsection (4), service on a person must be effected by

(a) personal service on the person; or

(b) service in accordance with the directions, if any, of a judge.

Application to judge for direction

(6) If service on a person cannot reasonably be effected as and when required under this section, the Minister may, as soon as practicable, apply to a judge for further direction.

Review of authorization

(7) If a judge of a court has granted an authorization under this section in respect of a person, the person may, on six clear days notice to the Deputy Attorney General of

personne d'un délai pour payer la somme compromettrait le recouvrement de tout ou partie de celle-ci.

Recouvrement compromis par la réception d'un avis de cotisation

(2) Le juge saisi peut accorder l'autorisation visée au paragraphe (1), même si un avis de cotisation pour le montant de la cotisation établie à l'égard d'une personne n'a pas été envoyé à cette dernière au plus tard à la date de la présentation de la requête, s'il est convaincu que la réception de cet avis par cette dernière compromettrait davantage, selon toute vraisemblance, le recouvrement du montant. Pour l'application des articles 109, 112, 113, 114, 116 et 117, le montant visé par l'autorisation est réputé être un montant payable en vertu de la présente loi.

Affidavits

(3) Les déclarations contenues dans un affidavit produit dans le cadre de la requête prévue au présent article peuvent être fondées sur une opinion pour autant que celle-ci soit motivée dans l'affidavit.

Signification de l'autorisation et de l'avis de cotisation

(4) Le ministre signifie à la personne intéressée l'autorisation visée au présent article dans les soixante-douze heures suivant le moment où elle est accordée, sauf si le juge ordonne qu'elle soit signifiée dans un autre délai qui y est précisé. L'avis de cotisation est signifié en même temps que l'autorisation s'il n'a pas été envoyé à la personne au plus tard au moment de la présentation de la requête.

Mode de signification

(5) Pour l'application du paragraphe (4), l'autorisation est signifiée à la personne soit par voie de signification à personne, soit par tout autre mode ordonné par le juge.

Demande d'instructions au juge

(6) Si la signification à la personne ne peut être raisonnablement effectuée conformément au présent article, le ministre peut, dès que matériellement possible, demander d'autres instructions au juge.

Révision de l'autorisation

(7) Si le juge saisi accorde l'autorisation visée au présent article à l'égard d'une personne, celle-ci peut, après avis

Canada, apply to a judge of the court to review the authorization.

Limitation period for review application

(8) An application under subsection (7) to review an authorization must be made

(a) within 30 days after the day on which the authorization was served on the person in accordance with this section; or

(b) within any further time that a judge may allow, on being satisfied that the application was made as soon as practicable.

Hearing *in camera*

(9) An application under subsection (7) may, on the application of the person, be heard *in camera*, if the person establishes to the satisfaction of the judge that the circumstances of the case justify *in camera* proceedings.

Disposition of application

(10) On an application under subsection (7), the judge must determine the question summarily and may confirm, vary or set aside the authorization and make any other order that the judge considers appropriate.

Directions

(11) If any question arises as to the course to be followed in connection with anything done or being done under this section and there is no relevant direction in this section, a judge may give any direction with regard to the course to be followed that the judge considers appropriate.

No appeal from review order

(12) No appeal lies from an order of a judge made under subsection (10).

DIVISION Q

Evidence and Procedure

Service

120 (1) If the Minister is authorized or required to serve, issue or send a notice or other document on or to a person that

(a) is a partnership, the notice or document may be addressed to the name of the partnership;

(b) is a union, the notice or document may be addressed to the name of the union;

de six jours francs au sous-procureur général du Canada, demander à un juge de la cour de réviser l'autorisation.

Délai de présentation de la requête

(8) La requête visée au paragraphe (7) doit être présentée :

a) dans les trente jours suivant la date où l'autorisation a été signifiée à la personne;

b) dans le délai supplémentaire que le juge peut accorder s'il est convaincu que l'intéressé a présenté la requête dès que cela a été matériellement possible.

Huis clos

(9) La requête de révision peut, à la demande de l'intéressé, être entendue à huis clos si celui-ci établit, à la satisfaction du juge, que les circonstances le justifient.

Ordonnance

(10) Le juge saisi de la requête de révision tranche la question de façon sommaire et peut confirmer, annuler ou modifier l'autorisation et rendre toute autre ordonnance qu'il juge indiquée.

Mesures non prévues

(11) Si aucune mesure n'est prévue au présent article sur une question à résoudre en rapport avec une chose accomplie ou en voie d'accomplissement en application de cet article, un juge peut décider des mesures qu'il estime les plus aptes à atteindre le but recherché.

Ordonnance sans appel

(12) L'ordonnance rendue en vertu du paragraphe (10) est sans appel.

SECTION Q

Procédure et preuve

Signification

120 (1) L'avis ou autre document que le ministre a l'autorisation ou l'obligation de signifier, de délivrer ou d'envoyer :

a) à une société de personnes peut être adressé à la dénomination de la société de personnes;

b) à un syndicat peut être adressé à la dénomination du syndicat;

(c) is a society, club, association, organization or other body, the notice or document may be addressed to the name of the body; and

(d) carries on business under a name or style other than the name of the person, the notice or document may be addressed to the name or style under which the person carries on business.

c) à une société, un club, une association ou un autre organisme peut être adressé à la dénomination de l'organisme;

d) à une personne qui exploite une entreprise sous une dénomination ou raison sociale autre que son nom peut être adressé à cette dénomination ou raison.

Personal service

(2) If the Minister is authorized or required to serve, issue or send a notice or other document on or to a person that carries on a business, the notice or document is deemed to have been validly served, issued or sent if it is

(a) if the person is a partnership, served personally on one of the partners or left with an adult person employed at the place of business of the partnership; or

(b) left with an adult person employed at the place of business of the person.

Signification à personne

(2) L'avis ou autre document que le ministre a l'autorisation ou l'obligation de signifier, de délivrer ou d'envoyer à une personne qui exploite une entreprise est réputé valablement signifié, délivré ou envoyé :

a) dans le cas où la personne est une société de personnes, s'il est signifié à l'un des associés ou laissé à une personne adulte employée à l'établissement de la société;

b) s'il est laissé à une personne adulte employée à l'établissement de la personne.

Timing of receipt

121 (1) For the purposes of this Act and subject to subsection (2), anything sent by confirmed delivery service or first class mail is deemed to have been received by the person to which it was sent on the day it was mailed or sent.

Date de réception

121 (1) Pour l'application de la présente loi et sous réserve de paragraphe (2), tout envoi en première classe ou par service de messagerie est réputé reçu par le destinataire à la date de sa mise à la poste ou de son envoi.

Timing of payment

(2) A person that is required under this Act to pay an amount is deemed not to have paid it until it is received by the Receiver General for Canada.

Date de paiement

(2) Le paiement qu'une personne est tenue de faire en application de la présente loi n'est réputé avoir été effectué que le jour de sa réception par le receveur général du Canada.

Proof of sending or service by mail

122 (1) If, under this Act, provision is made for sending by confirmed delivery service a request for information, a notice or a demand, then an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the sending and of the request, notice or demand if the affidavit sets out that

(a) the official has knowledge of the facts in the particular case;

(b) the request, notice or demand was sent by confirmed delivery service on a specified day to a specified person and address; and

(c) the official identifies as exhibits attached to the affidavit a true copy of the request, notice or demand and

Preuve de signification

122 (1) Si la présente loi prévoit l'envoi par service de messagerie d'une demande de renseignements, d'un avis ou d'une mise en demeure, l'affidavit d'un fonctionnaire de l'Agence, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, constitue la preuve de l'envoi ainsi que de la demande, de l'avis ou de la mise en demeure, si l'affidavit indique, à la fois :

a) que le fonctionnaire est au courant des faits en l'espèce;

b) que la demande, l'avis ou la mise en demeure a été envoyé par service de messagerie à une date précise à une personne dont les nom et adresse sont précisés;

(i) if the request, notice or demand was sent by registered or certified mail, the post office certificate of registration of the letter or a true copy of the relevant portion of the certificate, or

(ii) in any other case, the record that the document has been sent or a true copy of the relevant portion of the record.

c) que le fonctionnaire reconnaît, comme pièce jointe à l'affidavit, une copie conforme de la demande, de l'avis ou de la mise en demeure et, selon le cas :

(i) si la demande, l'avis ou la mise en demeure a été envoyé par courrier recommandé ou certifié, le certificat de recommandation remis par le bureau de poste ou une copie conforme de la partie pertinente du certificat,

(ii) sinon, la preuve documentaire de l'envoi du document ou une copie conforme de la partie pertinente de la preuve.

Proof of personal service

(2) If, under this Act, provision is made for personal service of a request for information, a notice or a demand, then an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the personal service and of the request, notice or demand if the affidavit sets out that

(a) the official has knowledge of the facts in the particular case;

(b) the request, notice or demand was served personally on a named day on the person to which it was directed; and

(c) the official identifies as an exhibit attached to the affidavit a true copy of the request, notice or demand.

Preuve de la signification à personne

(2) Si la présente loi prévoit la signification à personne d'une demande de renseignements, d'un avis ou d'une mise en demeure, l'affidavit d'un fonctionnaire de l'Agence, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, constitue la preuve de la signification à personne ainsi que de la demande, de l'avis ou de la mise en demeure, si l'affidavit indique, à la fois :

a) que le fonctionnaire est au courant des faits en l'espèce;

b) que la demande, l'avis ou la mise en demeure a été signifié à l'intéressé à une date précise;

c) que le fonctionnaire reconnaît, comme pièce jointe à l'affidavit, une copie conforme de la demande, de l'avis ou de la mise en demeure.

Proof of electronic delivery

(3) If, under this Act, provision is made for sending a notice to a person electronically, then an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the sending and of the notice if the affidavit sets out that

(a) the official has knowledge of the facts in the particular case;

(b) the notice was sent electronically to the person on a named day; and

(c) the official identifies as exhibits attached to the affidavit copies of

(i) an electronic message confirming that the notice has been sent to the person, and

(ii) the notice.

Preuve de livraison par voie électronique

(3) Si la présente loi prévoit l'envoi par voie électronique d'un avis à une personne, l'affidavit d'un fonctionnaire de l'Agence, souscrit en présence d'un commissaire aux serments ou autre personne autorisée à le recevoir, constitue la preuve de l'envoi et de l'avis si l'affidavit indique, à la fois :

a) que le fonctionnaire est au courant des faits en l'espèce;

b) que l'avis a été envoyé par voie électronique à la personne à une date précise;

c) que le fonctionnaire reconnaît, comme pièces jointes à l'affidavit, une copie :

(i) d'une part, d'un message électronique confirmant que l'avis a été envoyé à la personne,

(ii) d'autre part, de l'avis.

Proof of failure to comply

(4) If, under this Act, a person is required to file a return or make an application, a statement, an answer or a certificate, then an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the official has charge of the appropriate records and that, after a careful examination of the records, the official has been unable to find in a given case that the return, application, statement, answer or certificate has been filed or made by that person is evidence that in that case the person did not file the return or make the application, statement, answer or certificate.

Proof of time of compliance

(5) If, under this Act, a person is required to file a return or make an application, a statement, an answer or a certificate, then an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the official has charge of the appropriate records and that, after a careful examination of the records, the official has found that the return, application, statement, answer or certificate was filed or made on a particular day is evidence that it was filed or made on that day.

Proof of documents

(6) An affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the official has charge of the appropriate records and that a document attached to the affidavit is a document or true copy of a document, or a printout of an electronic document, made by or on behalf of the Minister or a person exercising the powers of the Minister or by or on behalf of a person, is evidence of the nature and contents of the document.

Proof of no appeal

(7) An affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the official has charge of the appropriate records and has knowledge of the practice of the Agency, that an examination of the records shows that a notice of assessment was mailed or otherwise sent to a person on a particular day under this Act, and that, after a careful examination of the records, the official has been unable to find that a notice of objection to or of appeal from the assessment was received within the time allowed is evidence of the statements contained in the affidavit.

Preuve de non-observation

(4) Si la présente loi oblige une personne à produire une déclaration ou à faire une demande, un état, une réponse ou un certificat, l'affidavit d'un fonctionnaire de l'Agence, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, indiquant qu'il a la charge des registres pertinents et que, après avoir fait un examen attentif de ceux-ci, il lui a été impossible de constater, dans un cas particulier, que la déclaration, la demande, l'état, la réponse ou le certificat a été fait par la personne, constitue la preuve que la personne n'a pas fait de déclaration, de demande, d'état, de réponse ou de certificat.

Preuve — moment de l'observation

(5) Si la présente loi oblige une personne à produire une déclaration ou à faire une demande, un état, une réponse ou un certificat, l'affidavit d'un fonctionnaire de l'Agence du revenu du Canada, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, indiquant qu'il a la charge des registres pertinents et que, après avoir fait un examen attentif de ceux-ci, il a constaté que la déclaration, la demande, l'état, la réponse ou le certificat a été fait un jour donné, constitue la preuve que ces documents ont été faits ce jour-là.

Preuve de documents

(6) L'affidavit d'un fonctionnaire de l'Agence, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, indiquant qu'il a la charge des registres pertinents et qu'un document qui est annexé à l'affidavit est un document ou la copie conforme d'un document, ou l'imprimé d'un document électronique, fait par le ministre ou pour le ministre ou une autre personne exerçant les pouvoirs de celui-ci, ou par une personne ou pour une personne, constitue la preuve de la nature et du contenu du document.

Preuve de l'absence d'appel

(7) Constitue la preuve des énonciations qui y sont renfermées l'affidavit d'un fonctionnaire de l'Agence, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, indiquant qu'il a la charge des registres pertinents, qu'il connaît la pratique de l'Agence, et qu'un examen des registres démontre qu'un avis de cotisation a été posté ou autrement envoyé à une personne un jour donné, en application de la présente loi, et que, après avoir fait un examen attentif des registres, il lui a été impossible de constater qu'un avis d'opposition ou d'appel concernant la cotisation a été reçu dans le délai imparti à cette fin.

Presumption

(8) If evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an official of the Agency, it is not necessary to prove the signature of the person or that the person is such an official, nor is it necessary to prove the signature or official character of the person before whom the affidavit was sworn.

Proof of documents

(9) Every document purporting to have been executed under or in the course of the administration or enforcement of this Act over the name in writing of the Minister, the Commissioner or an official authorized to exercise the powers or perform the duties of the Minister under this Act is deemed to be a document signed, made and issued by the Minister, the Commissioner or the official, unless it has been called into question by the Minister or a person acting for the Minister or for His Majesty in right of Canada.

Mailing or sending date

(10) For the purposes of this Act, if a notice or demand that the Minister is required or authorized under this Act to send to a person is mailed, or sent electronically, to the person, the day of mailing or sending, as the case may be, is presumed to be the date of the notice or demand.

Date electronic notice sent

(11) For the purposes of this Act, if a notice or other communication in respect of a person, other than a notice or other communication that refers to the business number of the person, is made available in electronic format such that it can be read or perceived by a person or a computer system or other similar device, the notice or other communication is presumed to be sent to and received by the person on the day on which an electronic message is sent, to the electronic address most recently provided before that day by the person to the Minister for the purposes of this subsection, informing the person that a notice or other communication requiring the person's immediate attention is available in the person's secure electronic account. A notice or other communication is considered to be made available if it is posted by the Minister in the person's secure electronic account and the person has authorized that notices or other communications may be made available in this manner and has not before that day revoked that authorization in a manner specified by the Minister.

Signature ou fonction réputée

(8) Si une preuve est donnée en vertu du présent article par un affidavit d'où il ressort que la personne le souscrivant est un fonctionnaire de l'Agence, il n'est pas nécessaire d'attester sa signature ou de prouver qu'il est un tel fonctionnaire, ni d'attester la signature ou la qualité de la personne en présence de laquelle l'affidavit a été souscrit.

Preuve de documents

(9) Tout document paraissant avoir été établi en application de la présente loi, ou dans le cadre de son application ou exécution, au nom ou sous l'autorité du ministre, du commissaire ou d'un fonctionnaire autorisé à exercer les pouvoirs ou les fonctions du ministre en application de la présente loi est réputé être un document signé, fait et délivré par le ministre, le commissaire ou le fonctionnaire, sauf s'il a été mis en doute par le ministre ou par une autre personne agissant pour lui ou pour Sa Majesté du chef du Canada.

Date d'envoi ou de mise à la poste

(10) Pour l'application de la présente loi, la date d'envoi ou de mise à la poste d'un avis ou d'une mise en demeure que le ministre a l'obligation ou l'autorisation, en vertu de la présente loi, d'envoyer par voie électronique ou par la poste à une personne est présumée être la date de l'avis ou de la mise en demeure.

Date d'envoi d'un avis électronique

(11) Pour l'application de la présente loi, tout avis ou autre communication concernant une personne, autre que tout avis ou autre communication qui fait état du numéro d'entreprise de la personne, qui est rendue disponible sous une forme électronique pouvant être lue ou perçue par une personne ou par un système informatique ou un dispositif semblable est présumé être envoyé à la personne, et être reçu par elle, à la date où un message électronique est envoyé — à l'adresse électronique la plus récente que la personne a fournie avant cette date au ministre pour l'application du présent paragraphe — pour l'informer qu'un avis ou une autre communication nécessitant son attention immédiate se trouve dans son compte électronique sécurisé. Un avis ou une autre communication est considéré comme étant rendu disponible s'il est affiché par le ministre sur le compte électronique sécurisé de la personne et si celle-ci a donné son autorisation pour que des avis ou d'autres communications soient rendus disponibles de cette manière et n'a pas retiré cette autorisation avant cette date selon les modalités établies par le ministre.

Date electronic notice sent — business account

(12) For the purposes of this Act, a notice or other communication in respect of a person that refers to the business number of the person and is made available in electronic format such that it can be read or perceived by a person or computer system or other similar device is presumed to be sent to and received by the person on the day on which it is posted by the Minister in the secure electronic account in respect of the person's business number, unless the person has requested, at least 30 days before that day, in a manner specified by the Minister, that such notices or other communications be sent by mail.

Date d'envoi d'un avis électronique — compte d'entreprise

(12) Pour l'application de la présente loi, tout avis ou autre communication concernant une personne qui fait état du numéro d'entreprise de la personne et qui est rendu disponible sous une forme électronique pouvant être lue ou perçue par une personne ou par un système informatique ou un dispositif semblable est présumé être envoyé à la personne, et être reçu par elle, à la date où il est envoyé par le ministre dans un compte électronique sécurisé relativement au numéro d'entreprise de la personne, sauf si la personne a demandé, au moins trente jours avant cette date, selon les modalités établies par le ministre, que ces avis ou autres communications soient envoyés par la poste.

Date of assessment

(13) If a notice of assessment has been sent by the Minister as required under this Act, the assessment is deemed to have been made on the day on which the notice of assessment was sent.

Date d'établissement de la cotisation

(13) Lorsqu'un avis de cotisation a été envoyé par le ministre de la manière prévue par la présente loi, la cotisation est réputée établie à la date d'envoi de l'avis.

Proof of return — prosecutions

(14) In a prosecution for an offence under this Act, the production of a return, an application, a certificate, a statement or an answer required under this Act, purporting to have been filed, delivered, made or signed by or on behalf of the person charged with the offence is evidence that the return, application, certificate, statement or answer was filed, delivered, made or signed by or on behalf of that person.

Preuve de déclaration

(14) Dans toute poursuite concernant une infraction à la présente loi, la production d'une déclaration, d'une demande, d'un état, d'une réponse ou d'un certificat, prévu par la présente loi, donné comme ayant été produit, livré, fait ou signé par l'accusé ou pour son compte constitue la preuve que la déclaration, la demande, l'état, la réponse ou le certificat a été produit, livré, fait ou signé par l'accusé ou pour son compte.

Proof of return — production of returns, etc.

(15) In a proceeding under this Act, the production of a return, an application, a certificate, a statement or an answer required under this Act, purporting to have been filed, delivered, made or signed by or on behalf of a person is evidence that the return, application, certificate, statement or answer was filed, delivered, made or signed by or on behalf of that person.

Preuve de production — déclarations

(15) Dans toute procédure mise en œuvre en application de la présente loi, la production d'une déclaration, d'une demande, d'un état, d'une réponse ou d'un certificat prévu par la présente loi, donné comme ayant été produit, livré, fait ou signé par une personne ou pour son compte constitue la preuve que la déclaration, la demande, l'état, la réponse ou le certificat a été produit, livré, fait ou signé par la personne ou pour son compte.

Evidence

(16) In a prosecution for an offence under this Act, an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the official has charge of the appropriate records and that an examination of the records shows that an amount required under this Act to be paid to the Receiver General for Canada has not been received by the Receiver General for Canada is evidence of the statements contained in the affidavit.

Preuve

(16) Dans toute poursuite concernant une infraction à la présente loi, l'affidavit d'un fonctionnaire de l'Agence, souscrit en présence d'un commissaire aux serments ou d'une autre personne autorisée à le recevoir, indiquant qu'il a la charge des registres pertinents et qu'un examen des registres démontre que le receveur général du Canada n'a pas reçu la somme au titre des sommes dont la présente loi exige le versement constitue la preuve des énonciations qui y sont renfermées.

PART 7

Regulations

Regulations

123 (1) The Governor in Council may make regulations

(a) prescribing anything that, by this Act, is to be prescribed, determined or regulated by regulation;

(b) requiring any taxpayer to provide its registration number to any class of persons required to make a return containing that registration number;

(c) requiring any person to provide any information, including the person's name and address, to any class of persons required to make a return containing that information;

(d) requiring any individual to provide the Minister with the individual's Social Insurance Number;

(e) prescribing the evidence required to establish facts relevant to assessments under this Act;

(f) requiring any class of persons to make information returns respecting any class of information required in connection with the administration or enforcement of this Act;

(g) distinguishing among any class of persons, property or activities; and

(h) generally to carry out the purposes and provisions of this Act.

Effect

(2) A regulation made under this Act has effect from the day on which it is published in the *Canada Gazette* or at any later time that may be specified in the regulation, unless it provides otherwise and

(a) has a relieving effect only;

(b) corrects an ambiguous or deficient enactment that was not in accordance with the objects of this Act or the *Digital Services Tax Regulations*;

(c) is consequential on an amendment to this Act that is applicable before the day on which the regulation is published in the *Canada Gazette*; or

(d) gives effect to a budgetary or other public announcement, in which case the regulation is not,

PARTIE 7

Règlement

Règlement

123 (1) Le gouverneur en conseil peut, par règlement :

a) prendre toute mesure d'ordre réglementaire prévue par la présente loi;

b) obliger un contribuable à communiquer son numéro d'inscription à une catégorie de personnes tenue de produire une déclaration renfermant ce numéro d'inscription;

c) obliger une personne à communiquer des renseignements, notamment ses nom et adresse à une catégorie de personnes tenue de produire une déclaration les renfermant;

d) obliger une personne à aviser le ministre de son numéro d'assurance sociale;

e) déterminer les éléments de preuve requis pour l'établissement des faits se rapportant aux cotisations prévues à la présente loi;

f) obliger une catégorie de personnes à produire les déclarations relatives à toute catégorie de renseignements nécessaires à l'application ou à l'exécution de la présente loi;

g) faire la distinction entre des catégories de personnes, de biens ou d'activités;

h) prendre toute mesure d'application de la présente loi.

Effet

(2) Les règlements pris en application de la présente loi prennent effet à compter de leur publication dans la *Gazette du Canada* ou après s'ils le prévoient. Un règlement peut toutefois avoir un effet rétroactif, s'il comporte une disposition en ce sens, dans les cas suivants :

a) il a pour seul résultat d'alléger une charge;

b) il corrige une disposition ambiguë ou erronée, non conforme à un objet de la présente loi ou du *Règlement sur la taxe sur les services numériques*;

c) il procède d'une modification de la présente loi applicable avant qu'il ne soit publié dans la *Gazette du Canada*;

unless paragraph (a), (b) or (c) applies, to have effect before the day on which the announcement was made.

d) il met en œuvre une mesure annoncée publiquement, auquel cas, si aucun des alinéas a), b) ou c) ne s'applique par ailleurs, il ne peut avoir d'effet avant la date où la mesure est ainsi annoncée.

Positive or negative amount — regulations

124 For greater certainty,

(a) in prescribing an amount under subsection 123(1), the Governor in Council may prescribe a positive or negative amount; and

(b) in prescribing a manner of determining an amount under subsection 123(1), the Governor in Council may prescribe a manner that could result in a positive or negative amount.

Montant positif ou négatif — règlement

124 Il est entendu que :

a) le gouverneur en conseil peut, en prenant une mesure d'ordre réglementaire en application du paragraphe 123(1) pour viser un montant par règlement, viser un montant positif ou négatif;

b) le gouverneur en conseil peut, en prenant une mesure d'ordre réglementaire en application du paragraphe 123(1) pour prévoir des modalités réglementaires selon lesquelles un montant doit être déterminé, prévoir des modalités réglementaires qui pourraient conduire à un résultat qui est un montant positif ou négatif.

Incorporation by reference — limitation removed

125 The limitation set out in paragraph 18.1(2)(a) of the *Statutory Instruments Act*, to the effect that a document must be incorporated as it exists on a particular date, does not apply to any power to make regulations under this Act.

Incorporation par renvoi — suppression de restriction

125 La restriction prévue à l'alinéa 18.1(2)a) de la *Loi sur les textes réglementaires* selon laquelle le document doit être incorporé par renvoi dans sa version à une date donnée ne s'applique pas au pouvoir de prendre des règlements conféré par la présente loi.

Certificates and registrations not statutory instruments

126 For greater certainty, any registration or certificate issued under this Act is not a statutory instrument for the purposes of the *Statutory Instruments Act*.

Un certificat ou une inscription n'est pas un texte réglementaire

126 Il est entendu qu'une inscription ou un certificat en application de la présente loi n'est pas un texte réglementaire au sens de la *Loi sur les textes réglementaires*.

Coming into force

(2) Subsection (1) comes into force on the day that is fixed by order of the Governor in Council, but not earlier than January 1, 2024. In fixing that day, the Governor in Council must consider

(a) the intent of the October 8, 2021 Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy; and

(b) Canada's preference for a multilateral approach to addressing the tax challenges arising from the digitalization of the economy and the status of international negotiations and implementation in respect of such an approach.

Entrée en vigueur

(2) Le paragraphe (1) entre en vigueur à la date fixée par ordre du gouverneur en conseil, mais pas plus tôt que le 1er janvier 2024. En fixant cette date, le gouverneur en conseil doit considérer :

a) l'objet de la Déclaration sur une solution reposant sur deux piliers pour résoudre les défis fiscaux soulevés par la numérisation de l'économie, datée du 8 octobre 2021;

b) la préférence du Canada pour une approche multilatérale pour résoudre les défis fiscaux soulevés par la numérisation de l'économie et le statut des négociations internationales et de la mise en œuvre relativement à une telle approche.

Making of Regulations

Making

97 (1) The *Digital Services Tax Regulations* are made as follows:

Digital Services Tax Regulations

Interpretation

Definitions

1 The following definitions apply in these Regulations.

Act means the *Digital Services Tax Act*. (*Loi*)

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

Prescribed Rates of Interest

Interest to be paid to the Receiver General

2 (1) For the purposes of every provision of the Act that requires interest at a prescribed rate to be paid to the Receiver General for Canada, the prescribed rate in effect during any particular quarter is the total of

(a) the rate that is the simple arithmetic mean, expressed as a percentage per year and rounded to the next higher whole percentage if the mean is not a whole percentage, of all amounts each of which is the average equivalent yield, expressed as a percentage per year, of Government of Canada Treasury Bills that mature approximately three months after their date of issue and that are sold at auctions of Government of Canada Treasury Bills during the first month of the quarter preceding the particular quarter, and

(b) 4%.

Interest to be paid by the Minister

(2) For the purposes of every provision of the Act that requires interest at a prescribed rate to be paid or applied on an amount payable by the Minister to a person, the prescribed rate in effect during any particular quarter is the rate determined under paragraph (1)(a) in respect of the particular quarter.

Prise du règlement

Prise

97 (1) Est pris le *Règlement sur la taxe sur les services numériques*, dont le texte suit :

Règlement sur la taxe sur les services numériques

Interprétation

Définitions

1 Les définitions qui suivent s'appliquent au présent règlement.

Loi La *Loi sur la taxe sur les services numériques*. (*Act*)

trimestre Toute période de trois mois consécutifs commençant à l'une des dates suivantes : le 1er janvier, le 1er avril, le 1er juillet ou le 1er octobre. (*quarter*)

Taux d'intérêt

Intérêts à verser au receveur général

2 (1) Pour l'application des dispositions de la Loi selon lesquelles des intérêts calculés au taux visé par règlement sont à payer au receveur général du Canada, le taux d'intérêt applicable à un trimestre donné correspond au total des taux suivants :

a) le taux qui représente la moyenne arithmétique simple exprimée en pourcentage annuel et arrondie au point de pourcentage supérieur, des pourcentages dont chacun représente le taux de rendement moyen, exprimé en pourcentage annuel, des bons du Trésor du gouvernement du Canada qui arrivent à échéance environ trois mois après la date de leur émission et qui sont vendus au cours d'adjudication de bons du Trésor pendant le premier mois du trimestre qui précède le trimestre donné;

b) 4 %.

Intérêts à payer par le ministre

(2) Pour l'application des dispositions de la Loi selon lesquelles des intérêts calculés au taux visé par règlement sont à payer ou à imputer sur un montant que le ministre verse à une personne, le taux d'intérêt applicable à un trimestre donné correspond au taux déterminé selon l'alinéa (1)a) pour le trimestre donné.

Prescribed Thresholds

Global revenue threshold

3 For the purposes of the Act, the amount of the "global revenue threshold" is €750,000,000.

In-scope revenue threshold

4 For the purposes of the Act, the amount of the "in-scope revenue threshold" is $20,000,000.

Registration threshold

5 For the purposes of Part 6 of the Act, the amount of the "registration threshold" is $10,000,000.

Prescribed Rate of Tax

Rate

6 For the purpose of the description of B in subsection 10(2) of the Act, the rate prescribed in respect of a taxpayer is 3%.

Prescribed Deduction

Deduction amount

7 For the purpose of Part 4 of the Act, the "deduction amount" is $20,000,000.

(2) The *Digital Services Tax Regulations*, as made by subsection (1), come into force on the same day as subsection 96(1) of this Act.

(3) The *Digital Services Tax Regulations*, as made by subsection (1), are deemed

(a) to have been made under section 123 of the *Digital Services Tax Act*;

(b) for the purposes of subsection 5(1) of the *Statutory Instruments Act*, to have been transmitted to the Clerk of the Privy Council for registration; and

(c) to have met the publication requirements of subsection 11(1) of the *Statutory Instruments Act*.

Seuils

Seuil de revenu global

3 Pour l'application de la Loi, le montant du « seuil de revenu global » est 750 000 000 euros.

Seuil de revenu dans le champ d'application

4 Pour l'application de la Loi, le montant du « seuil de revenu dans le champ d'application » est 20 000 000 $.

Seuil d'inscription

5 Pour l'application de la partie 6 de la Loi, le montant du « seuil d'inscription » est 10 000 000 $.

Taux de taxe

Taux

6 Pour l'application de l'élément B de la formule figurant au paragraphe 10(2) de la Loi, le taux visé relativement à un contribuable est 3 %.

Déduction

Montant de la déduction

7 Pour l'application de la partie 4 de la Loi, le « montant de la déduction » est 20 000 000 $.

(2) Le *Règlement sur la taxe sur les services numériques*, pris en vertu du paragraphe (1), entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

(3) Le *Règlement sur la taxe sur les services numériques*, pris en vertu du paragraphe (1), est réputé, à la fois :

a) avoir été pris en vertu de l'article 123 de la *Loi sur la taxe sur les services numériques*;

b) pour l'application du paragraphe 5(1) de la *Loi sur les textes réglementaires*, avoir été transmis au greffier du Conseil privé pour enregistrement;

c) avoir rempli les exigences de publication prévues au paragraphe 11(1) de la *Loi sur les textes réglementaires*.

Consequential Amendments

R.S., c. A-1

Access to Information Act

98 (1) Schedule II to the *Access to Information Act* is amended by adding, in alphabetical order, a reference to

Digital Services Tax Act
Loi sur la taxe sur les services numériques

and a corresponding reference to "section 108".

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

R.S., c. B-3; 1992, c. 27, s. 2

Bankruptcy and Insolvency Act

99 (1) Subsection 149(3) of the *Bankruptcy and Insolvency Act* is amended by striking out "and" at the end of paragraph (h), by adding "and" at the end of paragraph (i) and by adding the following after paragraph (i):

(j) the *Digital Services Tax Act*.

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

R.S., c. C-46

Criminal Code

100 (1) Paragraph 462.48(2)(c) of the *Criminal Code* is replaced by the following:

(c) the type of information or book, record, writing, return or other document obtained by or on behalf of the Minister of National Revenue for the purposes of Part IX of the *Excise Tax Act*, the *Income Tax Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* or the *Digital Services Tax Act* to which access is sought or that is proposed to be examined or communicated; and

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

Modifications corrélatives

L.R., ch. A-1

Loi sur l'accès à l'information

98 (1) L'annexe II de la *Loi sur l'accès à l'information* est modifiée par adjonction, selon l'ordre alphabétique, de ce qui suit :

Loi sur la taxe sur les services numériques
Digital Services Tax Act

ainsi que de la mention « article 108 » en regard de ce titre de loi.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

L.R., ch. B-3; 1992, ch. 27, art. 2

Loi sur la faillite et l'insolvabilité

99 (1) Le paragraphe 149(3) de la *Loi sur la faillite et l'insolvabilité* est modifié par adjonction, après l'alinéa i), de ce qui suit :

j) la *Loi sur la taxe sur les services numériques*.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

L.R., ch. C-46

Code criminel

100 (1) L'alinéa 462.48(2)c) du *Code criminel* est remplacé par ce qui suit :

c) désignation du genre de renseignements ou de documents — livre, dossier, texte, rapport ou autre document — qu'a obtenus le ministre du Revenu national — ou qui ont été obtenus en son nom — dans le cadre de l'application de la partie IX de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* ou de la *Loi sur la taxe sur les services numériques* et dont la communication ou l'examen est demandé;

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

R.S., c. E-15

Excise Tax Act

101 (1) Section 77 of the *Excise Tax Act* is replaced by the following:

Restriction on refunds and credits

77 A refund shall not be paid, and a credit shall not be allowed, to a person under this Act until the person has filed with the Minister all returns and other records of which the Minister has knowledge that are required to be filed under the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act*.

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

102 (1) Subsection 229(2) of the Act is replaced by the following:

Restriction

(2) A net tax refund for a reporting period of a person shall not be paid to the person under subsection (1) at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

103 (1) Subsection 230(2) of the Act is replaced by the following:

Restriction

(2) An amount paid on account of net tax for a reporting period of a person shall not be refunded to the person under subsection (1) at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing*

L.R., ch. E-15

Loi sur la taxe d'accise

101 (1) L'article 77 de la *Loi sur la taxe d'accise* est remplacé par ce qui suit :

Restriction

77 Un montant n'est remboursé à une personne, et un crédit ne lui est accordé, en vertu de la présente loi qu'une fois présentés au ministre l'ensemble des déclarations et autres registres dont il a connaissance et qui sont à produire en vertu de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques*.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

102 (1) Le paragraphe 229(2) de la même loi est remplacé par ce qui suit :

Restriction

(2) Le remboursement de taxe nette pour la période de déclaration d'une personne ne lui est versé en vertu du paragraphe (1) à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques* ont été présentées au ministre.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

103 (1) Le paragraphe 230(2) de la même loi est remplacé par ce qui suit :

Restriction

(2) Un montant payé au titre de la taxe nette d'une personne pour sa période de déclaration ne lui est remboursé en vertu du paragraphe (1) à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur*

Tax Act, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

104 (1) Subparagraph 238.1(2)(c)(iii) of the Act is replaced by the following:

(iii) all amounts required under this Act (other than this Part), sections 21 and 33 of the *Canada Pension Plan*, the *Excise Act*, the *Customs Act*, the *Income Tax Act*, section 82 and Part VII of the *Employment Insurance Act*, the *Customs Tariff*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act* to be remitted or paid before that time by the registrant have been remitted or paid, and

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

105 (1) Section 263.02 of the Act is replaced by the following:

Restriction on rebate

263.02 A rebate under this Part shall not be paid to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

106 (1) Subsection 296(7) of the Act is replaced by the following:

Restriction on refunds

(7) An amount under this section shall not be refunded to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the

l'accise, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques* ont été présentées au ministre.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

104 (1) Le sous-alinéa 238.1(2)c)(iii) de la même loi est remplacé par ce qui suit :

(iii) les montants à verser ou à payer par l'inscrit avant ce moment en conformité avec la présente loi, sauf la présente partie, les articles 21 et 33 du *Régime de pensions du Canada*, la *Loi sur l'accise*, la *Loi sur les douanes*, la *Loi de l'impôt sur le revenu*, l'article 82 et la partie VII de la *Loi sur l'assurance-emploi*, le *Tarif des douanes*, la *Loi de 2001 sur l'accise*, la *Loi sur la taxe sur les logements sous-utilisés*, la *Loi sur la taxe sur certains biens de luxe* et la *Loi sur la taxe sur les services numériques* ont été versés ou payés,

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

105 (1) L'article 263.02 de la même loi est remplacé par ce qui suit :

Restriction

263.02 Le montant d'un remboursement prévu par la présente partie n'est versé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques* ont été présentées au ministre.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

106 (1) Le paragraphe 296(7) de la même loi est remplacé par ce qui suit :

Restriction

(7) Un montant prévu au présent article n'est remboursé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en

Income Tax Act, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

application de la présente loi, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques* ont été présentées au ministre.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

R.S., c. E-20; 2001, c. 33, s. 2(F)

Export Development Act

107 (1) Paragraph 24.3(2)(c) of the *Export Development Act* is replaced by the following:

(c) to the Minister of National Revenue solely for the purpose of administering or enforcing the *Excise Tax Act*, the *Income Tax Act*, the *Select Luxury Items Tax Act* or the *Digital Services Tax Act*; or

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

L.R., ch. E-20; 2001, ch. 33, art. 2(F)

Loi sur le développement des exportations

107 (1) L'alinéa 24.3(2)c) de la *Loi sur le développement des exportations* est remplacé par ce qui suit :

c) ils sont destinés au ministre du Revenu national uniquement pour l'administration ou l'application de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur la taxe sur certains biens de luxe* ou de la *Loi sur la taxe sur les services numériques*;

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

R.S., c. F-11

Financial Administration Act

108 (1) Paragraph 155.2(6)(c) of the *Financial Administration Act* is replaced by the following:

(c) an amount owing by a person to Her Majesty in right of Canada, or payable by the Minister of National Revenue to any person, under the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Softwood Lumber Products Export Charge Act, 2006*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* or the *Digital Services Tax Act*.

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

L.R., ch. F-11

Loi sur la gestion des finances publiques

108 (1) L'alinéa 155.2(6)c) de la *Loi sur la gestion des finances publiques* est remplacé par ce qui suit :

c) aux sommes à payer par toute personne à Sa Majesté du chef du Canada ou à payer par le ministre du Revenu national à toute personne au titre de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* ou de la *Loi sur la taxe sur les services numériques*.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

R.S., c. T-2

Tax Court of Canada Act

109 (1) Subsection 12(1) of the *Tax Court of Canada Act* is replaced by the following:

Jurisdiction

12 (1) The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under the *Canada Pension Plan*, the *Cultural Property Export and Import Act*, Part IX of the *Excise Tax Act*, the *Old Age Security Act*, the *Petroleum and Gas Revenue Tax Act*, Part V.1 of the *Customs Act*, the *Income Tax Act*, the *Employment Insurance Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Softwood Lumber Products Export Charge Act, 2006*, the *Disability Tax Credit Promoters Restrictions Act*, Part 1 of the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act* when references or appeals to the Court are provided for in those Acts.

(2) Subsections 12(3) and (4) of the Act are replaced by the following:

Further jurisdiction

(3) The Court has exclusive original jurisdiction to hear and determine questions referred to it under section 310 or 311 of the *Excise Tax Act*, section 97.58 of the *Customs Act*, section 173 or 174 of the *Income Tax Act*, section 51 or 52 of the *Air Travellers Security Charge Act*, section 204 or 205 of the *Excise Act, 2001*, section 62 or 63 of the *Softwood Lumber Products Export Charge Act, 2006*, section 121 or 122 of the *Greenhouse Gas Pollution Pricing Act*, section 45 or 46 of the *Underused Housing Tax Act*, section 105 or 106 of the *Select Luxury Items Tax Act* or section 80 or 81 of the *Digital Services Tax Act*.

Extensions of time

(4) The Court has exclusive original jurisdiction to hear and determine applications for extensions of time under subsection 28(1) of the *Canada Pension Plan*, section 33.2 of the *Cultural Property Export and Import Act*,

L.R., ch. T-2

Loi sur la Cour canadienne de l'impôt

109 (1) Le paragraphe 12(1) de la *Loi sur la Cour canadienne de l'impôt* est remplacé par ce qui suit :

Compétence

12 (1) La Cour a compétence exclusive pour entendre les renvois et les appels portés devant elle sur les questions découlant de l'application du *Régime de pensions du Canada*, de la *Loi sur l'exportation et l'importation de biens culturels*, de la partie IX de la *Loi sur la taxe d'accise*, de la *Loi sur la sécurité de la vieillesse*, de la *Loi de l'impôt sur les revenus pétroliers*, de la partie V.1 de la *Loi sur les douanes*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur l'assurance-emploi*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, de la *Loi sur les restrictions applicables aux promoteurs du crédit d'impôt pour personnes handicapées*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques*, dans la mesure où ces lois prévoient un droit de renvoi ou d'appel devant elle.

(2) Les paragraphes 12(3) et (4) de la même loi sont remplacés par ce qui suit :

Autre compétence

(3) La Cour a compétence exclusive pour entendre les questions qui sont portées devant elle en vertu des articles 310 ou 311 de la *Loi sur la taxe d'accise*, de l'article 97.58 de la *Loi sur les douanes*, des articles 173 ou 174 de la *Loi de l'impôt sur le revenu*, des articles 51 ou 52 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, des articles 204 ou 205 de la *Loi de 2001 sur l'accise*, des articles 62 ou 63 de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, des articles 121 ou 122 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, des articles 45 ou 46 de la *Loi sur la taxe sur les logements sous-utilisés*, des articles 105 ou 106 de la *Loi sur la taxe sur certains biens de luxe* ou des articles 80 ou 81 de la *Loi sur la taxe sur les services numériques*.

Prorogation des délais

(4) La Cour a compétence exclusive pour entendre toute demande de prorogation de délai présentée en vertu du paragraphe 28(1) du *Régime de pensions du Canada*, de l'article 33.2 de la *Loi sur l'exportation et l'importation*

section 304 or 305 of the *Excise Tax Act*, section 97.51 or 97.52 of the *Customs Act*, section 166.2 or 167 of the *Income Tax Act*, subsection 103(1) of the *Employment Insurance Act*, section 45 or 47 of the *Air Travellers Security Charge Act*, section 197 or 199 of the *Excise Act, 2001*, section 115 or 117 of the *Greenhouse Gas Pollution Pricing Act*, section 39 or 41 of the *Underused Housing Tax Act*, section 99 or 101 of the *Select Luxury Items Tax Act* or section 74 or 76 of the *Digital Services Tax Act*.

de biens culturels, des articles 304 et 305 de la *Loi sur la taxe d'accise*, des articles 97.51 et 97.52 de la *Loi sur les douanes*, des articles 166.2 et 167 de la *Loi de l'impôt sur le revenu*, du paragraphe 103(1) de la *Loi sur l'assurance-emploi*, des articles 45 et 47 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, des articles 197 et 199 de la *Loi de 2001 sur l'accise*, des articles 115 et 117 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, des articles 39 ou 41 de la *Loi sur la taxe sur les logements sous-utilisés*, des articles 99 et 101 de la *Loi sur la taxe sur certains biens de luxe* ou des articles 74 ou 76 de la *Loi sur la taxe sur les services numériques*.

(3) Subsections (1) and (2) come into force on the same day as subsection 96(1) of this Act.

(3) Les paragraphes (1) et (2) entrent en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

110 (1) Paragraph 18.29(3)(a) of the Act is amended by striking out "or" at the end of subparagraph (ix), by replacing "and" at the end of subparagraph (x) with "or" and by adding the following after subparagraph (x):

110 (1) L'alinéa 18.29(3)a) de la même loi est modifié par adjonction, après le sous-alinéa (x), de ce qui suit :

(xi) section 74 or 76 of the *Digital Services Tax Act*; and

(xi) les articles 74 et 76 de la *Loi sur la taxe sur les services numériques*;

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

111 (1) Subsection 18.31(2) of the Act is replaced by the following:

111 (1) Le paragraphe 18.31(2) de la même loi est remplacé par ce qui suit :

Determination of a question

(2) If it is agreed under section 310 of the *Excise Tax Act*, section 97.58 of the *Customs Act*, section 51 of the *Air Travellers Security Act*, section 204 of the *Excise Act, 2001*, section 62 of the *Softwood Lumber Products Export Act, 2006*, section 121 of the *Greenhouse Gas Pollution Pricing Act*, section 45 of the *Underused Housing Tax Act*, section 105 of the *Select Luxury Items Tax Act* or section 80 of the *Digital Services Tax Act* that a question should be determined by the Court, sections 17.1, 17.2 and 17.4 to 17.8 apply, with any modifications that the circumstances require, in respect of the determination of the question.

Procédure générale

(2) Les articles 17.1, 17.2 et 17.4 à 17.8 s'appliquent, avec les adaptations nécessaires, aux décisions sur les questions soumises à la Cour en vertu de l'article 310 de la *Loi sur la taxe d'accise*, de l'article 97.58 de la *Loi sur les douanes*, de l'article 51 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de l'article 204 de la *Loi de 2001 sur l'accise*, de l'article 62 de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, de l'article 121 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de l'article 45 de la *Loi sur la taxe sur les logements sous-utilisés*, de l'article 105 de la *Loi sur la taxe sur certains biens de luxe* ou de l'article 80 de la *Loi sur la taxe sur les services numériques*.

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

112 (1) Subsection 18.32(2) of the Act is replaced by the following:

112 (1) Le paragraphe 18.32(2) de la même loi est remplacé par ce qui suit :

Provisions applicable to determination of a question

(2) If an application has been made under section 311 of the *Excise Tax Act*, section 52 of the *Air Travellers Security Charge Act*, section 205 of the *Excise Act, 2001*, section 63 of the *Softwood Lumber Products Export Charge Act, 2006*, section 122 of the *Greenhouse Gas Pollution Pricing Act*, section 46 of the *Underused Housing Tax Act*, section 106 of the *Select Luxury Items Tax Act* or section 81 of the *Digital Services Tax Act* for the determination of a question, the application or determination of the question must, subject to section 18.33, be determined in accordance with sections 17.1, 17.2 and 17.4 to 17.8, with any modifications that the circumstances require.

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

Dispositions applicables à la détermination d'une question

(2) Les articles 17.1, 17.2 et 17.4 à 17.8 s'appliquent, sous réserve de l'article 18.33 et avec les adaptations nécessaires, à toute demande présentée à la Cour en vertu de l'article 311 de la *Loi sur la taxe d'accise*, de l'article 52 de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de l'article 205 de la *Loi de 2001 sur l'accise*, de l'article 63 de la *Loi de 2006 sur les droits d'exportation de produits de bois d'œuvre*, de l'article 122 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* de l'article 46 de la *Loi sur la taxe sur les logements sous-utilisés*, de l'article 106 de la *Loi sur la taxe sur certains biens de luxe* ou de l'article 81 de la *Loi sur la taxe sur les services numériques* et à la détermination de la question en cause.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

R.S., c. 1 (2nd Supp.)

Customs Act

113 (1) The description of B in paragraph 97.29(1)(a) of the *Customs Act* is replaced by the following:

B is the amount, if any, by which the amount assessed the transferee under subsection 325(2) of the *Excise Tax Act*, subsection 160(2) of the *Income Tax Act* and subsection 297(3) of the *Excise Act, 2001* in respect of the property exceeds the amount paid by the transferor in respect of the amount so assessed, and

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

L.R., ch. 1 (2e suppl.)

Loi sur les douanes

113 (1) L'élément B de la formule figurant à l'alinéa 97.29(1)a) de la *Loi sur les douanes* est remplacée par ce qui suit :

B l'excédent éventuel du montant de la cotisation établie à l'égard du cessionnaire en vertu du paragraphe 325(2) de la *Loi sur la taxe d'accise*, du paragraphe 160(2) de la *Loi de l'impôt sur le revenu* et du paragraphe 297(3) de la *Loi de 2001 sur l'accise* relativement au bien sur la somme payée par le cédant relativement à cette cotisation;

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

R.S., c. 1 (5th Supp.)

Income Tax Act

114 (1) Paragraph 18(1)(t) of the *Income Tax Act* is amended by striking out "or" at the end of subparagraph (iv), by adding "or" at the end of subparagraph (v) and by adding the following after subparagraph (v):

(vi) as interest under the *Digital Services Tax Act*;

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

L.R., ch. 1 (5e suppl.)

Loi de l'impôt sur le revenu

114 (1) L'alinéa 18(1)t) de la *Loi de l'impôt sur le revenu* est modifié par adjonction, après le sous-alinéa (v), de ce qui suit :

(vi) à titre d'intérêts en vertu de la *Loi sur la taxe sur les services numériques*;

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

115 (1) Subsection 164(2.01) of the Act is replaced by the following:

Withholding of refunds

(2.01) The Minister shall not, in respect of a taxpayer, refund, repay, apply to other debts or set-off amounts under this Act at any time unless all returns of which the Minister has knowledge and that are required to be filed by the taxpayer at or before that time under this Act, the *Excise Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

116 (1) The portion of subsection 221.2(2) of the Act before paragraph (a) is replaced by the following:

Re-appropriation of amounts

(2) If a particular amount was appropriated to an amount (in this section referred to as the "debt") that is or may become payable by a person under this Act, the *Excise Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* or the *Digital Services Tax Act*, the Minister may, on application by the person, appropriate the particular amount, or a part of it, to another amount that is or may become payable under any of those Acts and, for the purposes of any of those Acts,

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

1999, c. 17; 2005, c. 38, s. 35

Canada Revenue Agency Act

117 (1) Paragraph (a) of the definition *program legislation* in section 2 of the *Canada Revenue Agency Act* is amended by striking out "and" at the end of subparagraph (ix), by replacing "or" at the end of subparagraph (x) with "and" and by adding the following after subparagraph (x):

(xi) the *Digital Services Tax Act*; or

115 (1) Le paragraphe 164(2.01) de la même loi est remplacé par ce qui suit :

Restriction

(2.01) Une somme n'est remboursée, restituée, appliquée en réduction d'autres dettes ou compensée en vertu de la présente loi à un moment donné relativement à un contribuable qu'une fois présentées au ministre toutes les déclarations dont celui-ci a connaissance et que le contribuable avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques*.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

116 (1) Le passage du paragraphe 221.2(2) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Réaffectation de montants

(2) Lorsqu'un montant est affecté à une somme (appelée « dette » au présent article) qui est ou peut devenir payable par une personne en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* ou de la *Loi sur la taxe sur les services numériques*, le ministre peut, à la demande de la personne, affecter tout ou partie du montant à une autre somme qui est ou peut devenir ainsi payable. Pour l'application de ces lois :

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

1999, ch. 17; 2005, ch. 38, art. 35

Loi sur l'Agence du revenu du Canada

117 (1) L'alinéa a) de la définition de *législation fiscale*, à l'article 2 de la *Loi sur l'Agence du revenu du Canada*, est modifié par adjonction, après le sous-alinéa (x), ce qui suit :

(xi) la *Loi sur la taxe sur les services numériques*;

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

2002, c. 9, s. 5

Air Travellers Security Charge Act

118 (1) Subsection 40(4) of the *Air Travellers Security Charge Act* is replaced by the following:

Restriction

(4) A refund shall not be paid until the person has filed with the Minister all returns and other records of which the Minister has knowledge that are required to be filed under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act*.

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

2002, ch. 9, art. 5

Loi sur le droit pour la sécurité des passagers du transport aérien

118 (1) Le paragraphe 40(4) de la *Loi sur le droit pour la sécurité des passagers du transport aérien* est remplacé par ce qui suit :

Restriction

(4) Le remboursement n'est versé qu'une fois présentés au ministre l'ensemble des déclarations et autres registres dont il a connaissance et qui sont à produire en vertu de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques*.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

2002, c. 22

Excise Act, 2001

119 (1) Paragraph 188(6)(a) of the *Excise Act, 2001* is replaced by the following:

(a) the Minister under this Act, the *Excise Act*, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act*; or

(2) Clause 188(7)(b)(ii)(A) of the Act is replaced by the following:

(A) the Minister under this Act, the *Excise Act*, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act*, or

(3) Subsections (1) and (2) come into force on the same day as subsection 96(1) of this Act.

2002, ch. 22

Loi de 2001 sur l'accise

119 (1) L'alinéa 188(6)a) de la *Loi de 2001 sur l'accise* est remplacé par ce qui suit :

a) soit au ministre en vertu de la présente loi, de la *Loi sur l'accise*, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques*;

(2) La division 188(7)b)(ii)(A) de la même loi est remplacée par ce qui suit :

(A) soit au ministre en vertu de la présente loi, de la *Loi sur l'accise*, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques*,

(3) Les paragraphes (1) et (2) entrent en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

120 (1) Subsection 189(4) of the Act is replaced by the following:

Restriction

(4) A refund shall not be paid until the person has filed with the Minister or the Minister of Public Safety and Emergency Preparedness all returns and other records of which the Minister has knowledge and that are required to be filed under this Act, the *Excise Act*, the *Excise Tax Act*, the *Customs Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Underused Housing Tax Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act*.

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

121 (1) The description of B in paragraph 297(1)(d) of the Act is replaced by the following:

B is the amount, if any, by which the total of all amounts, if any, the transferee was assessed under subsection 325(2) of the *Excise Tax Act* or subsection 160(2) of the *Income Tax Act* in respect of the property exceeds the amount paid by the transferor in respect of the amounts so assessed, and

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

2022, c. 5, s. 10

Underused Housing Tax Act

122 (1) Section 34 of the *Underused Housing Tax Act* is replaced by the following:

Restriction on payment by Minister

34 An amount under section 33 is not to be paid to a person by the Minister at any time, unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Excise Act, 2001*, the *Air Travellers Security Charge Act*, Part 1 of the *Greenhouse Gas Pollution Pricing Act*, the *Select Luxury Items Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

120 (1) Le paragraphe 189(4) de la même loi est remplacé par ce qui suit :

Restriction

(4) Un montant de remboursement n'est versé qu'une fois présentés au ministre ou au ministre de la Sécurité publique et de la Protection civile l'ensemble des déclarations et autres registres dont le ministre a connaissance et qui sont à produire en vertu de la présente loi, de la *Loi sur l'accise*, de la *Loi sur la taxe d'accise*, de la *Loi sur les douanes*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi sur la taxe sur les logements sous-utilisés*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques*.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

121 (1) L'élément B de la formule figurant à l'alinéa 297(1)a) de la même loi est remplacé par ce qui suit :

B l'excédent éventuel du total des cotisations établies à l'égard du cessionnaire en application du paragraphe 325(2) de la *Loi sur la taxe d'accise* ou du paragraphe 160(2) de la *Loi de l'impôt sur le revenu* relativement au bien sur la somme payée par le cédant relativement à ces cotisations;

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

2022, ch. 5, art. 10

Loi sur la taxe sur les logements sous-utilisés

122 (1) L'article 34 de la *Loi sur la taxe sur les logements sous-utilisés* est remplacé par ce qui suit :

Restriction visant les paiements par le ministre

34 Un montant prévu à l'article 33 n'est remboursé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à présenter au plus tard à ce moment en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi de 2001 sur l'accise*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur certains biens de luxe* et de la *Loi sur la taxe sur les services numériques* ont été présentées au ministre.

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

2022, c. 10, s. 135

Select Luxury Items Tax Act

123 (1) Section 45 of the *Select Luxury Items Tax Act* is replaced by the following:

Restriction on rebate

45 A rebate under this Subdivision is not to be paid to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, Part 1 of the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

124 (1) Section 48 of the Act is replaced by the following:

Restriction — bankruptcy

48 If a trustee is appointed under the *Bankruptcy and Insolvency Act* to act in the administration of the estate or succession of a bankrupt, a rebate under this Division that the bankrupt was entitled to claim before the appointment must not be paid after the appointment unless all returns required to be filed in respect of the bankrupt under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, Part 1 of the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act* and the *Digital Services Tax Act* in respect of periods ending before the appointment have been filed and all amounts required under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, Part 1 of the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act* and the *Digital Services Tax Act* to be paid by the bankrupt in respect of those periods have been paid.

2022, ch. 10, art. 135

Loi sur la taxe sur certains biens de luxe

123 (1) L'article 45 de la *Loi sur la taxe sur certains biens de luxe* est remplacé par ce qui suit :

Restriction — remboursements

45 Le montant d'un remboursement visé à la présente sous-section n'est payé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne doit produire au plus tard à ce moment en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur les services numériques* ont été présentées au ministre.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

124 (1) L'article 48 de la même loi est remplacé par ce qui suit :

Restriction — faillite

48 En cas de nomination, en application de la *Loi sur la faillite et l'insolvabilité*, d'un syndic pour voir à l'administration de l'actif ou de la succession d'un failli, un remboursement prévu par la présente section auquel le failli avait droit avant la nomination n'est payé après la nomination que si toutes les déclarations à produire relativement au failli en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur les services numériques* relativement aux périodes qui ont pris fin avant la nomination ont été produites et que si les montants à payer par le failli en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la*

taxe sur les services numériques relativement à ces périodes ont été payés.

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

125 (1) The portion of subsection 53(3) of the Act before the formula is replaced by the following:

125 (1) Le passage du paragraphe 53(3) de la même loi précédant la formule est remplacé par ce qui suit :

Failure to comply

(3) If, at any time, a person referred to in subsection (1) or (2) fails to give or maintain security in an amount satisfactory to the Minister, the Minister may retain as security, out of any amount that may be or may become payable to the person under this Act, the *Excise Tax Act*, the *Excise Act, 2001*, Part 1 of the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act* or the *Digital Services Tax Act*, an amount not exceeding the amount determined by the formula

Défaut de se conformer

(3) Si, à un moment donné, la personne mentionnée aux paragraphes (1) ou (2) omet de donner ou de maintenir une garantie d'un montant que le ministre estime acceptable, le ministre peut retenir comme garantie, sur un montant qui peut être ou peut devenir payable à la personne en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de 2001 sur l'accise*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur les logements sous-utilisés* ou de la *Loi sur la taxe sur les services numériques*, un montant ne dépassant pas le montant obtenu par la formule suivante :

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

126 (1) Subsection 57(6) of the Act is replaced by the following:

126 (1) Le paragraphe 57(6) de la même loi est remplacé par ce qui suit :

Restriction — rebate of net tax

(6) A rebate under subsection (4) is not to be paid to a person at any time unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, Part 1 of the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

Restriction — remboursement de la taxe nette

(6) Un remboursement prévu au paragraphe (4) n'est payé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien,* de la *Loi de 2001 sur l'accise*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur les services numériques* ont été produites au ministre.

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

127 (1) Section 94 of the Act is replaced by the following:

127 (1) L'article 94 de la même loi est remplacé par ce qui suit :

Restriction on payment by Minister

94 An amount under section 92 or 93 is not to be paid to a person by the Minister at any time, unless all returns of which the Minister has knowledge and that are required to be filed at or before that time by the person under this Act, the *Excise Tax Act*, the *Income Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, Part 1 of the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act* and the *Digital Services Tax Act* have been filed with the Minister.

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

128 (1) The description of B in paragraph 150(2)(d) of the Act is replaced by the following:

B is the amount, if any, by which the amount assessed the transferee under subsection 325(2) of the *Excise Tax Act*, paragraph 97.44(1)(b) of the *Customs Act*, subsection 160(2) of the *Income Tax Act*, subsection 297(3) of the *Excise Act, 2001*, subsection 161(3) of the *Greenhouse Gas Pollution Pricing Act* or subsection 80(3) of the *Underused Housing Tax Act* in respect of the property exceeds the amount paid by the transferor in respect of the amount so assessed, and

(2) Subsection (1) comes into force on the same day as subsection 96(1) of this Act.

Restriction visant les paiements par le ministre

94 Un montant en application de l'article 92 ou 93 n'est remboursé à une personne à un moment donné que si toutes les déclarations dont le ministre a connaissance et que la personne avait à produire au plus tard à ce moment en application de la présente loi, de la *Loi sur la taxe d'accise*, de la *Loi de l'impôt sur le revenu*, de la *Loi sur le droit pour la sécurité des passagers du transport aérien*, de la *Loi de 2001 sur l'accise*, de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre*, de la *Loi sur la taxe sur les logements sous-utilisés* et de la *Loi sur la taxe sur les services numériques* ont été présentées au ministre.

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

128 (1) L'élément B de la formule figurant à l'alinéa 150(2)a) de la même loi est remplacé par ce qui suit :

B l'excédent éventuel du montant de la cotisation établie à l'égard du cessionnaire en application du paragraphe 325(2) de la *Loi sur la taxe d'accise*, de l'alinéa 97.44(1)b) de la *Loi sur les douanes*, du paragraphe 160(2) de la *Loi de l'impôt sur le revenu*, du paragraphe 297(3) de la *Loi de 2001 sur l'accise*, du paragraphe 161(3) de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* ou du paragraphe 80(3) de la *Loi sur la taxe sur les logements sous-utilisés* relativement au bien sur la somme payée par le cédant relativement à ce montant;

(2) Le paragraphe (1) entre en vigueur à la date d'entrée en vigueur du paragraphe 96(1) de la présente loi.

PART 3

Amendments to the Excise Tax Act and to Related Legislation

R.S., c. E-15

Excise Tax Act

129 (1) Section 68.19 of the *Excise Tax Act* is replaced by the following:

Payment — use by province

68.19 (1) If tax under Part III has been paid in respect of any goods that His Majesty in right of a province has purchased or imported, an amount equal to the amount

PARTIE 3

Modification de la Loi sur la taxe d'accise et de textes connexes

L.R., ch. E-15

Loi sur la taxe d'accise

129 (1) L'article 68.19 de la *Loi sur la taxe d'accise* est remplacé par ce qui suit :

Utilisation par une province

68.19 (1) Si la taxe a été payée en vertu de la partie III à l'égard de marchandises que Sa Majesté du chef d'une province a achetées ou importées, une somme égale au

of that tax shall, subject to this Part, be paid to His Majesty in right of the province if His Majesty in right of the province has purchased or imported those goods for any purpose other than

(a) resale;

(b) use by any board, commission, railway, public utility, university, manufactory, company or agency owned, controlled or operated by the government of the province or under the authority of the legislature or the lieutenant governor in council of the province; or

(c) use by His Majesty in right of the province, or by any agents or servants of His Majesty in right of the province, in connection with the manufacture or production of goods or use for other commercial or mercantile purposes.

montant de cette taxe doit, sous réserve des autres dispositions de la présente partie, être versée à Sa Majesté du chef de la province si celle-ci a acheté ou importé les marchandises à une fin autre que :

a) la revente;

b) l'utilisation par un conseil, une commission, un chemin de fer, un service public, une université, une usine, une compagnie ou un organisme que le gouvernement de la province possède, contrôle ou exploite, ou sous l'autorité de la législature ou du lieutenant-gouverneur en conseil de la province;

c) l'utilisation par Sa Majesté du chef de la province, ou par ses mandataires ou préposés, relativement à la fabrication ou la production de marchandises, ou pour d'autres fins commerciales ou mercantiles.

Application

(1.1) No amount shall be paid under subsection (1) in respect of goods purchased or imported by His Majesty in right of a province unless an application for the payment is made within two years after His Majesty in right of the province purchased or imported those goods.

Demande de paiement

(1.1) Nulle somme ne sera versée en application du paragraphe (1) relativement à des marchandises que Sa Majesté du chef d'une province a achetées ou importées à moins qu'une demande de paiement ne soit faite dans les deux ans suivant l'achat ou l'importation des marchandises par Sa Majesté du chef de la province.

Election

(1.2) His Majesty in right of a province and the particular person that is, as the case may require, the importer, transferee, manufacturer, producer, wholesaler, jobber or other dealer in respect of goods that His Majesty in right of the province purchases or imports may jointly elect, in prescribed form containing prescribed information, to have the following rules apply in respect of the purchase or importation:

(a) the particular person, and not His Majesty in right of the province, is entitled to apply for a payment under subsection (1) in respect of the purchase or importation; and

(b) the amount payable by the Minister under subsection (1) in respect of the purchase or importation shall be paid to the particular person, and not to His Majesty in right of the province.

Choix

(1.2) Sa Majesté du chef d'une province et la personne donnée qui est, selon le cas, l'importateur, le cessionnaire, le fabricant, le producteur, le marchand en gros, l'intermédiaire ou un autre commerçant relativement à des marchandises que Sa Majesté du chef de la province a achetées ou importées peuvent faire un choix conjoint, sur formulaire prescrit contenant les renseignements prescrits, pour que les règles ci-après s'appliquent relativement à l'achat ou à l'importation :

a) la personne donnée, et non Sa Majesté du chef de la province, a le droit de demander un paiement en vertu du paragraphe (1) relativement à l'achat ou à l'importation;

b) la somme payable par le ministre en vertu du paragraphe (1) relativement à l'achat ou à l'importation doit être versée à la personne donnée et non à Sa Majesté du chef de la province.

Limitation

(1.3) No more than one election under subsection (1.2) may be made by His Majesty in right of a province in respect of a particular purchase or importation of goods.

Restriction

(1.3) Sa Majesté du chef d'une province ne peut faire qu'un seul choix en vertu du paragraphe (1.2) relativement à un achat ou à une importation de marchandises donné.

Exception

(2) Subsection (1.2) does not apply in respect of goods purchased or imported by His Majesty in right of a province at a time when a reciprocal taxation agreement referred to in section 32 of the *Federal-Provincial Fiscal Arrangements Act* is in force in respect of the province.

Non-application of subsection 68.2(1)

(3) For greater certainty, if an application for a payment in respect of goods can be made by any person in accordance with subsection (1), subsection 68.2(1) does not apply in respect of the goods.

(2) Subsection (1) applies in respect of any goods purchased or imported after 2021.

130 (1) The definition *financial instrument* in subsection 123(1) of the Act is amended by adding the following after paragraph (b):

(b.1) a right (other than a right as a creditor), whether absolute or contingent, conferred by a corporation that does not have capital divided into shares to receive, either immediately or in the future, an amount that can reasonably be regarded as all or any part of the capital, revenue or income of the corporation,

(2) Paragraph (h) of the definition *financial instrument* in subsection 123(1) of the Act is replaced by the following:

(h) a guarantee, an acceptance or an indemnity in respect of anything described in any of paragraphs (a) to (b.1), (d), (e) and (g), or

(3) Subsections (1) and (2) are deemed to have come into force on August 10, 2022.

131 (1) Subsection 149(4) of the Act is replaced by the following:

Exclusion of interest and dividend

(4) In determining a total for a person under paragraph (1)(b) or (c), there shall not be included interest, or any dividend, from

(a) if the person is a partnership, a corporation that is controlled by

(i) the person,

(ii) a corporation that is controlled by the person,

(iii) a corporation that is related to a corporation described in subparagraph (ii), or

Exception

(2) Le paragraphe (1.2) ne s'applique pas relativement aux marchandises achetées ou importées par Sa Majesté du chef d'une province à un moment où la province est liée par un accord de réciprocité fiscale prévu à l'article 32 de la *Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces*.

Non-application du paragraphe 68.2(1)

(3) Il est entendu que le paragraphe 68.2(1) ne s'applique pas si un paiement relatif aux marchandises peut être demandé en application du paragraphe (1).

(2) Le paragraphe (1) s'applique relativement aux marchandises achetées ou importées après 2021.

130 (1) La définition de *effet financier*, au paragraphe 123(1) de la même loi, est modifiée par adjonction, après l'alinéa b), de ce qui suit :

b.1) un droit (sauf un droit à titre de créancier), absolu ou conditionnel, conféré par une personne morale dont le capital n'est pas divisé en actions de recevoir, dans l'immédiat ou dans le futur, une somme qu'il est raisonnable de considérer comme représentant tout ou partie de son capital ou de son revenu;

(2) L'alinéa h) de la définition de *effet financier*, au paragraphe 123(1) de la même loi, est remplacé par ce qui suit :

h) garantie, acceptation ou indemnité visant un effet visé à l'un des alinéas a) à b.1), d), e) et g);

(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 10 août 2022.

131 (1) Le paragraphe 149(4) de la même loi est remplacé par ce qui suit :

Éléments à exclure

(4) Sont exclus du calcul du total visé aux alinéas (1)b) ou c) pour une personne les intérêts et les dividendes provenant, selon le cas :

a) si la personne est une société de personnes, d'une personne morale qui est contrôlée par, selon le cas :

(i) la personne,

(ii) une personne morale qui est contrôlée par la personne,

(iv) a combination of persons described in subparagraphs (i) to (iii); or

(b) in any other case, a corporation related to the person.

(iii) une personne morale qui est liée à une personne morale visée au sous-alinéa (ii),

(iv) une combinaison de personnes visées aux sous-alinéas (i) à (iii);

b) dans les autres cas, d'une personne morale liée à la personne.

(2) Subsection (1) applies to taxation years that begin after August 9, 2022.

(2) Le paragraphe (1) s'applique aux années d'imposition commençant après le 9 août 2022.

132 (1) Paragraph 150(4)(c) of the Act is replaced by the following:

(c) the day specified in the revocation of the election, which day is at least 365 days after the day specified in the election.

132 (1) L'alinéa 150(4)c) de la même loi est remplacé par ce qui suit :

c) le jour précisé dans un avis de révocation du choix, lequel jour tombe au moins 365 jours après le jour précisé dans le choix.

(2) Section 150 of the Act is amended by adding the following after subsection (4):

(2) L'article 150 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :

Form of revocation

(4.1) A revocation of an election made under subsection (1) by a member of a closely related group and a corporation shall

(a) be made jointly in prescribed form containing prescribed information by the member and the corporation;

(b) specify the day on which the revocation is to become effective; and

(c) be filed with the Minister in prescribed manner on or before

(i) the particular day that is the earlier of

(A) the day on or before which the member is required to file a return under Division V for the reporting period of the member that includes the day specified in the revocation, and

(B) the day on or before which the corporation is required to file a return under Division V for the reporting period of the corporation that includes the day specified in the revocation, or

(ii) any day after the particular day that the Minister may allow.

Forme de la révocation

(4.1) La révocation d'un choix fait par un membre d'un groupe étroitement lié et une personne morale :

a) est faite conjointement par le membre et la personne morale en la forme déterminée par le ministre et contenant les renseignements qu'il détermine;

b) précise la date de son entrée en vigueur;

c) est présentée au ministre, selon les modalités qu'il détermine, au plus tard :

(i) à celle des dates ci-après qui est antérieure à l'autre :

(A) la date où le membre est tenu, au plus tard, de produire une déclaration aux termes de la section V pour sa période de déclaration qui comprend la date précisée dans la révocation,

(B) la date où la personne morale est tenue, au plus tard, de produire une déclaration aux termes de la section V pour sa période de déclaration qui comprend la date précisée dans la révocation,

(ii) à toute date postérieure que fixe le ministre.

(3) Subsections (1) and (2) are deemed to have come into force on August 10, 2022.

(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 10 août 2022.

133 (1) The definition *Canadian partnership* in subsection 156(1) of the Act is repealed.

(2) Paragraph (b) of the definition *qualifying group* in subsection 156(1) of the Act is replaced by the following:

(b) a group of specified partnerships, or of specified partnerships and corporations, each member of which is closely related, within the meaning of this section, to each other member of the group. (*groupe admissible*)

(3) The portion of the definition *qualifying member* in subsection 156(1) of the Act before paragraph (a) is replaced by the following:

qualifying member of a qualifying group means a registrant that is a corporation resident in Canada or a specified partnership, each member of which is resident in Canada, and that meets the following conditions:

(4) The portion of the definition *temporary member* in subsection 156(1) of the Act before paragraph (a) is replaced by the following:

temporary member of a qualifying group means a particular corporation

(5) Paragraph (f) of the definition *temporary member* in subsection 156(1) of the Act is replaced by the following:

(f) that receives a supply of property that meets the following conditions:

(i) the supply is made by another corporation that is a qualifying member of the qualifying group and in contemplation of a distribution made in the course of a reorganization whereby the shares of the particular corporation are to be transferred upon the distribution to one or more corporations (in this definition referred to as the "transferee corporations"),

(ii) the supplied property includes property that is neither a financial instrument nor property having a nominal value, and

(iii) all or substantially all of the supplied property (other than financial instruments and property having a nominal value)

133 (1) La définition de *société de personnes canadienne*, au paragraphe 156(1) de la même loi, est abrogée.

(2) L'alinéa b) de la définition de *groupe admissible*, au paragraphe 156(1) de la même loi, est remplacé par ce qui suit :

b) groupe de sociétés de personnes déterminées, ou de sociétés de personnes déterminées et de personnes morales, dont chaque membre est étroitement lié, au sens du présent article, à chacun des autres membres du groupe. (*qualifying group*)

(3) Le passage de la définition de *membre admissible* précédant l'alinéa a), au paragraphe 156(1) de la même loi, est remplacé par ce qui suit :

membre admissible Est membre admissible d'un groupe admissible l'inscrit qui est une personne morale résidant au Canada, ou une société de personnes déterminée, dont chaque associé réside au Canada, et qui répond aux conditions suivantes :

(4) Le passage de la définition de *membre temporaire* précédant l'alinéa a), au paragraphe 156(1) de la même loi, est remplacé par ce qui suit :

membre temporaire Est membre temporaire d'un groupe admissible la personne morale donnée qui répond aux conditions suivantes :

(5) L'alinéa f) de la définition de *membre temporaire*, au paragraphe 156(1) de la même loi, est remplacé par ce qui suit :

f) elle reçoit une fourniture de biens qui répond aux conditions suivantes :

(i) la fourniture est effectuée par une autre personne morale qui est un membre admissible du groupe et en prévision d'une attribution faite dans le cadre d'une réorganisation selon laquelle les actions de la personne morale donnée doivent faire l'objet d'un transfert à une ou plusieurs personnes morales (appelées « personnes morales bénéficiaires » dans la présente définition) au moment de l'attribution,

(ii) les biens fournis incluent des biens qui ne sont ni des effets financiers ni des biens d'une valeur nominale,

(iii) la totalité ou la presque totalité des biens fournis (autres que des effets financiers et des biens

(A) was last manufactured, produced, acquired or imported by the other corporation for consumption, use or supply exclusively in the course of the commercial activities of the other corporation,

(B) is not consumed, used or supplied by the particular corporation otherwise than exclusively in the course of its commercial activities, and

(C) may reasonably be expected to be consumed, used or supplied by the transferee corporations exclusively in the course of their commercial activities within 12 months after the time the supply is made;

d'une valeur nominale) répondent aux conditions suivantes :

(A) ils ont été fabriqués, produits, acquis ou importés, la dernière fois, par l'autre personne morale pour les consommer, les utiliser ou les fournir exclusivement dans le cadre de ses activités commerciales,

(B) ils ne sont ni consommés, ni utilisés ni fournis par la personne morale donnée autrement qu'exclusivement dans le cadre de ses activités commerciales,

(C) il est raisonnable de s'attendre à ce que les personnes morales bénéficiaires les consomment, les utilisent ou les fournissent exclusivement dans le cadre de leurs activités commerciales dans les douze mois à compter du moment où la fourniture est effectuée;

(6) Paragraph (h) of the definition *temporary member* in subsection 156(1) of the Act is replaced by the following:

(h) the shares of which are transferred to the transferee corporations upon the distribution referred to in subparagraph (f)(i). (*membre temporaire*)

(6) L'alinéa h) de la définition de *membre temporaire*, au paragraphe 156(1) de la même loi, est remplacé par ce qui suit :

h) ses actions sont transférées aux personnes morales bénéficiaires au moment de l'attribution mentionnée au sous-alinéa f)(i). (*temporary member*)

(7) Subsection 156(1) of the Act is amended by adding the following in alphabetical order:

specified partnership means a partnership each member of which is a corporation or a partnership. (*société de personnes déterminée*)

(7) Le paragraphe 156(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

société de personnes déterminée Société de personnes dont chaque associé est une personne morale ou une société de personnes. (*specified partnership*)

(8) The portion of subsection 156(1.1) of the Act before subparagraph (a)(i) is replaced by the following:

Closely related persons

(1.1) For the purposes of this section, a particular specified partnership and another person that is a specified partnership or a corporation are closely related to each other at any time if, at that time,

(a) in the case where the other person is a specified partnership,

(8) Le passage du paragraphe 156(1.1) de la même loi précédant le sous-alinéa a)(i) est remplacé par ce qui suit :

Personnes étroitement liées

(1.1) Pour l'application du présent article, une société de personnes déterminée donnée et une autre personne — société de personnes déterminée ou personne morale — sont étroitement liées l'une à l'autre à un moment donné si, à ce moment :

a) dans le cas où l'autre personne est une société de personnes déterminée, l'une des situations suivantes se vérifie :

(9) Clause 156(1.1)(a)(i)(B) of the Act is replaced by the following:

(9) La division 156(1.1)a)(i)(B) de la même loi est remplacée par ce qui suit :

(B) a corporation, or a specified partnership, that is a member of a qualifying group of which the particular partnership is a member, or

(B) soit par une personne morale, ou une société de personnes déterminée, qui est membre d'un groupe admissible dont la société de personnes donnée est membre,

(10) Clause 156(1.1)(a)(ii)(B) of the Act is replaced by the following:

(10) La division 156(1.1)a)(ii)(B) de la même loi est remplacée par ce qui suit :

(B) holds all or substantially all of the interest in a specified partnership that is a member of a qualifying group of which the other person is a member; and

(B) détient la totalité ou la presque totalité des participations dans une société de personnes déterminée qui est membre d'un groupe admissible dont l'autre personne est membre;

(11) Clause 156(1.1)(b)(i)(B) of the Act is replaced by the following:

(11) La division 156(1.1)b)(i)(B) de la même loi est remplacée par ce qui suit :

(B) a corporation, or a specified partnership, that is a member of a qualifying group of which the particular partnership is a member, or

(B) une personne morale, ou une société de personnes déterminée, qui est membre d'un groupe admissible dont la société de personnes donnée est membre,

(12) Clause 156(1.1)(b)(iii)(B) of the Act is replaced by the following:

(12) La division 156(1.1)b)(iii)(B) de la même loi est remplacée par ce qui suit :

(B) a corporation, or a specified partnership, that is a member of a qualifying group of which the other person is a member, or

(B) soit par une personne morale, ou une société de personnes déterminée, qui est membre d'un groupe admissible dont l'autre personne est membre,

(13) Subparagraph 156(1.1)(b)(iv) of the Act is replaced by the following:

(13) Le sous-alinéa 156(1.1)b)(iv) de la même loi est remplacé par ce qui suit :

(iv) all or substantially all of the interest in a specified partnership is held by

(iv) la totalité ou la presque totalité des participations dans une société de personnes déterminée sont détenues :

(A) if the specified partnership is a member of a qualifying group of which the particular partnership is a member, the other person, and

(A) par l'autre personne, si la société de personnes déterminée est membre d'un groupe admissible dont la société de personnes donnée est membre,

(B) if the specified partnership is a member of a qualifying group of which the other person is a member, the particular partnership.

(B) par la société de personnes donnée, si la société de personnes déterminée est membre d'un groupe admissible dont l'autre personne est membre.

(14) Subsection 156(1.2) of the Act is replaced by the following:

(14) Le paragraphe 156(1.2) de la même loi est remplacé par ce qui suit :

Persons closely related to the same person

(1.2) If, under subsection (1.1), two persons are closely related to the same corporation or specified partnership, the two persons are closely related to each other for the purposes of this section.

Personnes étroitement liées à la même personne

(1.2) Sont étroitement liées l'une à l'autre pour l'application du présent article les personnes qui, aux termes du paragraphe (1.1), sont étroitement liées à la même personne morale ou société de personnes déterminée.

(15) Paragraph 156(2.1)(c) of the Act is replaced by the following:

(15) L'alinéa 156(2.1)c) de la même loi est remplacé par ce qui suit :

(c) a supply that is not a supply of property that meets the conditions set out in paragraph (f) of the definition *temporary member* in subsection (1), if the recipient of the supply is a temporary member.

(16) Subsections (1) to (3) and (7) to (14) are deemed to have come into force on August 10, 2022.

(17) Subsections (4) to (6) are deemed to have come into force on August 9, 2022.

(18) Subsection (15) applies in respect of any supply made on or after August 9, 2022.

134 (1) Paragraph (k) of the definition *permitted deduction* in section 217 of the Act is replaced by the following:

(k) consideration (other than interest referred to in paragraph (g), dividends referred to in paragraph (h) or consideration referred to in paragraph (k.1) or (k.2)) for a specified non-arm's length supply made to the qualifying taxpayer less the total of all amounts, each of which is a part of the value of the consideration and is loading;

(2) The definition *permitted deduction* in section 217 of the Act is amended by adding the following after paragraph (k.1):

(k.2) consideration (other than interest referred to in paragraph (g) or dividends referred to in paragraph (h)) for a supply that is deemed by subsection 150(1) to be a supply of a financial service and that is made to the qualifying taxpayer by another person, if the other person is a qualifying taxpayer throughout each specified year of the other person during which the other person makes an outlay, or incurs an expense, outside Canada for the purpose of making the supply;

(3) Subsections (1) and (2) apply to any specified year of a person that ends after November 16, 2005, except that for the purposes of applying the definition *permitted deduction* in section 217 of the Act, as amended by subsections (1) and (2), in respect of an amount of consideration for a specified non-arm's length supply that became due, or was paid without having become due, on or before that day, paragraph (k) of that definition is to be read without reference to the words "less the total of all amounts, each of which is a part of the value of the consideration and is loading".

c) la fourniture qui n'est pas une fourniture de biens qui répond aux conditions de l'alinéa f) de la définition de *membre temporaire* au paragraphe (1), si l'acquéreur de la fourniture est un membre temporaire.

(16) Les paragraphes (1) à (3) et (7) à (14) sont réputés être entrés en vigueur le 10 août 2022.

(17) Les paragraphes (4) à (6) sont réputés être entrés en vigueur le 9 août 2022.

(18) Le paragraphe (15) s'applique relativement à toute fourniture effectuée après le 8 août 2022.

134 (1) L'alinéa k) de la définition de *déduction autorisée*, à l'article 217 de la même loi, est remplacé par ce qui suit :

k) la contrepartie — à l'exclusion des intérêts visés à l'alinéa g), des dividendes visés à l'alinéa h) et de la contrepartie visée aux alinéas k.1) ou k.2) — d'une fourniture déterminée entre personnes ayant un lien de dépendance effectuée au profit du contribuable moins le total des montants dont chacun représente du chargement et une partie de la valeur de la contrepartie;

(2) La définition de *déduction autorisée*, à l'article 217 de la même loi, est modifiée par adjonction, après l'alinéa k.1), de ce qui suit :

k.2) la contrepartie, à l'exclusion des intérêts visés à l'alinéa g) et des dividendes visés à l'alinéa h), d'une fourniture qui est réputée par le paragraphe 150(1) être une fourniture de services financiers et qui est effectuée au profit du contribuable admissible par une autre personne si l'autre personne est un contribuable admissible tout au long de chacune de ses années déterminées au cours desquelles elle engage ou effectue une dépense à l'étranger dans le but d'effectuer la fourniture;

(3) Les paragraphes (1) et (2) s'appliquent aux années déterminées d'une personne se terminant après le 16 novembre 2005. Toutefois, pour l'application de la définition de *déduction autorisée* à l'article 217 de la même loi, modifiée par les paragraphes (1) et (2), relativement à la contrepartie, même partielle, pour une fourniture déterminée entre personnes ayant un lien de dépendance qui est devenue due, ou qui a été payée sans être devenue due, au plus tard à cette date, il n'est pas tenu compte, à l'alinéa k) de cette définition, du passage « moins le total des montants

(4) If, in assessing under section 296 of the Act tax payable by a person under Division IV of Part IX of the Act for a particular specified year of the person, an amount was taken into consideration as an external charge or as qualifying consideration for the particular specified year and as a result of the application of the definition *permitted deduction* in section 217 of the Act, as amended by subsections (1) and (2), the amount or part of the amount is neither qualifying consideration for any specified year of the person nor an external charge for any specified year of the person for which an election under subsection 217.2(1) of the Act is in effect, the person is entitled until the day that is one year after the day on which this Act receives royal assent to request in writing that the Minister of National Revenue make an assessment, reassessment or additional assessment for the purpose of taking into account that the amount or the part of the amount, as the case may be, is neither, if an election under subsection 217.2(1) of the *Excise Tax Act* is in effect for the particular specified year, an external charge for the particular specified year nor, in any other case, qualifying consideration for the particular specified year and, on receipt of the request, the Minister must with all due dispatch

(a) consider the request; and

(b) under section 296 of the Act, assess, reassess or make an additional assessment of the tax payable by the person under Division IV of Part IX of the Act for any specified year of the person and of any interest, penalty or other obligation of the person, solely for the purpose of taking into account that the amount or the part of the amount, as the case may be, is neither, if an election under subsection 217.2(1) of the Act is in effect for the particular specified year, an external charge for the particular specified year nor, in any other case, qualifying consideration for the particular specified year.

135 (1) The formula in paragraph 273.2(2)(c) of the Act is replaced by the following:

$2,000,000 × A ÷ 365

dont chacun représente du chargement et une partie de la valeur de la contrepartie ».

(4) Si, lors de l'établissement d'une cotisation en vertu de l'article 296 de la même loi concernant la taxe payable par une personne en application de la section IV de la partie IX de la même loi pour une année déterminée donnée de la personne, un montant a été pris en compte à titre de frais externes ou de contrepartie admissible pour cette année et que, par l'effet de l'application de la définition de *déduction autorisée* à l'article 217 de la même loi, modifiée par les paragraphes (1) et (2), ce montant ou une partie de ce montant ne constitue pas une contrepartie admissible pour une année déterminée de la personne ni des frais externes pour une année déterminée de la personne pour laquelle le choix prévu au paragraphe 217.2(1) de la même loi est en vigueur, la personne peut demander par écrit au ministre du Revenu national, au plus tard un an après la date de sanction de la présente loi, d'établir une cotisation, une nouvelle cotisation ou une cotisation supplémentaire afin de tenir compte du fait que le montant ou la partie du montant, selon le cas, ne représente pas, si le choix prévu au paragraphe 217.2(1) de la *Loi sur la taxe d'accise* est en vigueur pour l'année déterminée donnée, des frais externes pour cette année ni, dans les autres cas, une contrepartie admissible pour cette année. Dès réception de la demande, le ministre, avec diligence :

a) examine la demande;

b) établit, en vertu de l'article 296 de la même loi, une cotisation, une nouvelle cotisation ou une cotisation supplémentaire concernant la taxe payable par la personne en vertu de la section IV de la partie IX de la même loi pour une année déterminée de la personne et les intérêts, pénalités ou autres obligations de celle-ci, mais seulement afin de déterminer que le montant ou la partie du montant, selon le cas, ne constitue pas, si le choix prévu au paragraphe 217.2(1) de la même loi est en vigueur pour l'année déterminée donnée, des frais externes pour cette année ni, dans les autres cas, une contrepartie admissible pour cette année.

135 (1) La formule figurant à l'alinéa 273.2(2)c) de la même loi est remplacée par ce qui suit :

2 000 000 $ × A ÷ 365

(2) Subsection (1) applies in respect of fiscal years of a person that end after August 9, 2022.

136 (1) Subsection 298(1) of the Act is amended by adding the following after paragraph (a):

(a.01) despite paragraph (a), in the case of an assessment of the net tax of the person for a reporting period of the person that is made solely to take into account an amount of tax payable under section 218.01, more than seven years after the later of the day on or before which the person was required under section 238 to file a return for the period and the day the return was filed;

(2) Subsection (1) is deemed to have come into force on August 4, 2023.

137 (1) The portion of the definition *practitioner* in section 1 of Part II of Schedule V to the Act before paragraph (b) is replaced by the following:

practitioner, in respect of a supply of optometric, chiropractic, physiotherapy, chiropodic, podiatric, osteopathic, audiological, speech-language pathology, occupational therapy, psychological, psychotherapy, counselling therapy, midwifery, dietetic, acupuncture or naturopathic services, means a person who

(a) practises the profession of optometry, chiropractic, physiotherapy, chiropody, podiatry, osteopathy, audiology, speech-language pathology, occupational therapy, psychology, psychotherapy, counselling therapy, midwifery, dietetics, acupuncture or naturopathy as a naturopathic doctor, as the case may be,

(2) Section 7 of Part II of Schedule V to the Act is amended by adding the following after paragraph (j):

(j.1) psychotherapy services;

(j.2) counselling therapy services;

SOR/91-26; SOR/2011-56, s. 4; SOR/2013-71, s. 17

Financial Services and Financial Institutions (GST/HST) Regulations

138 (1) The *Financial Services and Financial Institutions (GST/HST) Regulations* are amended by adding the following after section 3.1:

(2) Le paragraphe (1) s'applique relativement aux exercices d'une personne se terminant après le 9 août 2022.

136 (1) Le paragraphe 298(1) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :

a.01) malgré l'alinéa a), s'agissant d'une cotisation visant la taxe nette de la personne pour sa période de déclaration établie afin de tenir compte uniquement d'un montant de taxe payable en vertu de l'article 218.01, sept ans après le dernier en date du jour où la personne était tenue par l'article 238 de produire une déclaration pour la période de déclaration et du jour de la production de la déclaration;

(2) Le paragraphe (1) est réputé être entré en vigueur le 4 août 2023.

137 (1) Le passage de la définition *praticien* précédant l'alinéa b), à l'article 1 de la partie II de l'annexe V de la même loi, est remplacé par ce qui suit :

praticien Quant à la fourniture de services d'optométrie, de chiropraxie, de physiothérapie, de chiropodie, de podiatrie, d'ostéopathie, d'audiologie, d'orthophonie, d'ergothérapie, de psychologie, de psychothérapie, de counseling thérapeutique, de sage-femme, de diététique, d'acupuncture ou de naturopathie, personne qui répond aux conditions suivantes :

a) elle exerce l'optométrie, la chiropraxie, la physiothérapie, la chiropodie, la podiatrie, l'ostéopathie, l'audiologie, l'orthophonie, l'ergothérapie, la psychologie, la psychothérapie, la profession de conseiller thérapeutique, la profession de sage-femme, la diététique, l'acupuncture ou la naturopathie à titre de docteur en naturopathie, selon le cas;

(2) L'article 7 de la partie II de l'annexe V de la même loi est modifié par adjonction, après l'alinéa j), de ce qui suit :

j.1) services de psychothérapie;

j.2) services de counseling thérapeutique;

DORS/91-26; DORS/2011-56, art. 4; DORS/2013-71, art. 17

Règlement sur les services financiers et les institutions financières (TPS/TVH)

138 (1) Le *Règlement sur les services financiers et les institutions financières (TPS/TVH)* est

3.2 (1) In this section, ***acquirer***, ***issuer***, ***payment card***, ***payment card network*** and ***payment card network operator*** have the same meanings as in section 3 of the *Payment Card Networks Act*.

(2) The following services are prescribed for the purposes of paragraph (r.6) of the definition *financial service* in subsection 123(1) of the Act:

(a) a service that

(i) is supplied by a payment card network operator in its capacity as the acquirer for a transaction made by payment card, and

(ii) is supplied to the person that accepted the payment card used for the transaction or to a *payment service provider* (as defined in section 2 of the *Retail Payment Activities Act*) engaged by that person;

(b) a service that is rendered to a holder of a payment card and that is supplied by a payment card network operator in its capacity as the issuer of the payment card;

(c) a service, in respect of the settlement of a transaction made by payment card, that is supplied

(i) by a payment card network operator, in its capacity as the acquirer for the transaction, to the issuer of the payment card, or

(ii) by a payment card network operator, in its capacity as the issuer of the payment card, to the acquirer for the transaction; and

(d) a service, in respect of the settlement of a transaction made by payment card, that is supplied by a payment card network operator to the acquirer for the transaction and that consists of paying to the acquirer the amount charged to the payment card in respect of the transaction, but only if the issuer of the payment card supplies to the payment card network operator a service, in respect of the settlement of the transaction, of paying to the payment card network operator the amount charged to the payment card in respect of the transaction.

(2) Subsection (1) applies to a supply of a service for which

modifié par adjonction, après l'article 3.1, de ce qui suit :

3.2 (1) Au présent article, ***acquéreur***, ***carte de paiement***, ***émetteur***, ***exploitant de réseau de cartes de paiement*** et ***réseau de cartes de paiement*** s'entendent au sens de l'article 3 de la *Loi sur les réseaux de cartes de paiement*.

(2) Pour l'application de l'alinéa r.6) de la définition de *service financier*, au paragraphe 123(1) de la Loi, sont visés les services suivants :

a) un service qui, à la fois :

(i) est fourni par un exploitant de réseau de cartes de paiement en sa qualité d'acquéreur pour une transaction effectuée par carte de paiement,

(ii) est fourni à la personne ayant accepté la carte de paiement utilisée pour la transaction ou à un *fournisseur de services de paiement* (au sens de l'article 2 de la *Loi sur les activités associées aux paiements de détail*) engagé par celle-ci;

b) un service qui est rendu à un détenteur d'une carte de paiement et qui est fourni par un exploitant de réseau de cartes de paiement en sa qualité d'émetteur de la carte de paiement;

c) un service, relativement au règlement d'une transaction effectuée par carte de paiement, qui est fourni, selon le cas :

(i) par un exploitant de réseau de cartes de paiement, en sa qualité d'acquéreur pour la transaction, à l'émetteur de la carte de paiement,

(ii) par un exploitant de réseau de cartes de paiement, en sa qualité d'émetteur de la carte de paiement, à l'acquéreur pour la transaction;

d) un service, relativement au règlement d'une transaction effectuée par carte de paiement, qui est fourni par un exploitant de réseau de cartes de paiement à l'acquéreur pour la transaction et qui consiste à lui verser le montant imputé à la carte de paiement au titre de la transaction, mais seulement si l'émetteur de la carte de paiement fournit un service à l'exploitant de réseau de cartes de paiement, relativement au règlement de la transaction, de versement à ce dernier du montant imputé à la carte de paiement relativement à la transaction.

(2) Le paragraphe (1) s'applique à la fourniture d'un service à l'égard duquel, selon le cas :

(a) any consideration becomes due after March 28, 2023 or is paid after that day without having become due; or

(b) all of the consideration became due or was paid before March 29, 2023.

139 Section 4.1 of the Regulations, as made by section 6 of the *Regulations Amending Various GST/HST Regulations, No. 11*, is renumbered as section 4.2 and that section — and the heading before that section, as made by section 6 of those Regulations — are repositioned accordingly.

SOR/91-36; SOR/2006-162, s. 2

Joint Venture (GST/HST) Regulations

140 (1) Subsection 3(1) of the *Joint Venture (GST/HST) Regulations* is amended by striking out "and" at the end of paragraph (o), by adding "and" at the end of paragraph (p) and by adding the following after paragraph (p):

(q) the operation of a pipeline, rail terminal or truck terminal if the pipeline, rail terminal or truck terminal is used for the transportation of oil, natural gas or related or ancillary products.

(2) Subsection (1) is deemed to have come into force on January 1, 1991.

SOR/91-45; SOR/2000-180, s. 1; SOR/2014-248, s. 15

Input Tax Credit Information (GST/HST) Regulations

141 (1) The definition *intermediary* in section 2 of the *Input Tax Credit Information (GST/HST) Regulations* is replaced by the following:

intermediary of a person, means, in respect of a supply made by the person, a registrant

(a) that, acting as agent of the person or under an agreement with the person, causes or facilitates the making of the supply, or

(b) that is deemed under subsection 177(1.11) of the Act to have acted as agent of the person in making the supply; (*intermédiaire*)

a) tout ou partie de la contrepartie devient due après le 28 mars 2023 ou est payée après ce jour sans être devenue due;

b) la totalité de la contrepartie est devenue due ou a été payée avant le 29 mars 2023.

139 L'article 4.1 du même règlement, édicté par l'article 6 du *Règlement nº 11 modifiant divers règlements relatifs à la TPS/TVH*, devient l'article 4.2 et cet article — et l'intertitre précédant cet article, édicté par l'article 6 de ce règlement — sont déplacés en conséquence.

DORS/91-36; DORS/2006-162, art. 2

Règlement sur les coentreprises (TPS/TVH)

140 (1) Le paragraphe 3(1) du *Règlement sur les coentreprises (TPS/TVH)* est modifié par adjonction, après l'alinéa p), de ce qui suit :

q) l'exploitation d'un pipeline, d'un terminal ferroviaire ou d'un terminal de camions si le pipeline, le terminal ferroviaire ou le terminal de camions sert au transport du pétrole, du gaz naturel ou de produits connexes ou accessoires.

(2) Le paragraphe (1) est réputé être entré en vigueur le 1er janvier 1991.

DORS/91-45; DORS/2000-180, art. 1; DORS/2014-248, art. 15

Règlement sur les renseignements nécessaires à une demande de crédit de taxe sur les intrants (TPS/TVH)

141 (1) La définition de *intermédiaire*, à l'article 2 du *Règlement sur les renseignements nécessaires à une demande de crédit de taxe sur les intrants (TPS/TVH)*, est remplacée par ce qui suit :

intermédiaire Inscrit qui, à l'égard d'une fourniture effectuée par une personne :

a) soit, agissant à titre de mandataire de la personne ou aux termes d'une convention conclue avec la personne, permet à cette dernière d'effectuer la fourniture ou en facilite la réalisation;

b) soit, est réputé, en vertu du paragraphe 177(1.11) de la Loi, avoir effectué la fourniture à titre de mandataire de la personne. (*intermediary*)

(2) Subsection (1) is deemed to have come into force on April 20, 2021.

(2) Le paragraphe (1) est réputé être entré en vigueur le 20 avril 2021.

142 (1) The portion of paragraph 3(a) of the Regulations before subparagraph (i) is replaced by the following:

142 (1) Le passage de l'alinéa 3a) du même règlement précédant le sous-alinéa (i) est remplacé par ce qui suit :

(a) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is less than $100,

a) lorsque le montant total payé ou payable, selon la pièce justificative, à l'égard d'une ou de plusieurs fournitures est de moins de 100 $:

(2) The portion of paragraph 3(b) of the Regulations before subparagraph (i) is replaced by the following:

(2) Le passage de l'alinéa 3b) du même règlement précédant le sous-alinéa (i) est remplacé par ce qui suit :

(b) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is $100 or more and less than $500,

b) lorsque le montant total payé ou payable, selon la pièce justificative, à l'égard d'une ou de plusieurs fournitures est de 100 $ ou plus et de moins de 500 $:

(3) The portion of paragraph 3(c) of the Regulations before subparagraph (i) is replaced by the following:

(3) Le passage de l'alinéa 3c) du même règlement précédant le sous-alinéa (i) est remplacé par ce qui suit :

(c) where the total amount paid or payable shown on the supporting documentation in respect of the supply or, if the supporting documentation is in respect of more than one supply, the supplies, is $500 or more,

c) lorsque le montant total payé ou payable, selon la pièce justificative, à l'égard d'une ou de plusieurs fournitures est de 500 $ ou plus :

(4) Subsections (1) to (3) are deemed to have come into force on April 20, 2021.

(4) Les paragraphes (1) à (3) sont réputés être entrés en vigueur le 20 avril 2021.

Coordinating Amendments

Dispositions de coordination

Bill C-56

143 (1) If Bill C-56, introduced in the 1st session of the 44th Parliament and entitled the *Affordable Housing and Groceries Act*, receives royal assent, then section 256.2 of the *Excise Tax Act* is amended by adding the following after subsection (2):

Projet de loi C-56

143 (1) En cas de sanction du projet de loi C-56, déposé au cours de la 1re session de la 44e législature et intitulé *Loi sur le logement et l'épicerie à prix abordable*, l'article 256.2 de la *Loi sur la taxe d'accise* est modifié par adjonction, après le paragraphe (2), de ce qui suit :

Purpose-built rental housing — cooperative housing corporation

(2.1) For the purposes of applying subsections (3) and (5) and section 255 in respect of a taxable supply to a person that is a cooperative housing corporation of property that is prescribed for the purposes of subsection (3.1), if the taxable supply and the property meet the conditions

Logements construits spécialement pour la location — coopérative d'habitation

(2.1) Pour l'application des paragraphes (3) et (5) et de l'article 255 relativement à une fourniture taxable d'un bien visé par règlement pour l'application du paragraphe (3.1) à une personne qui est une coopérative d'habitation, si la fourniture taxable et le bien satisfont aux conditions

described in paragraph (3.1)(a) or (b) and if prescribed conditions are met, the person is deemed not to be a co-operative housing corporation in respect of the taxable supply.

(2) If subsection (1) has produced its effects, subsection 256.2(2.1) of the *Excise Tax Act*, as enacted by subsection (1), is deemed to have come into force on September 14, 2023.

visées aux alinéas (3.1)a) ou b) et si les conditions visées par règlement sont réunies, la personne est réputée ne pas être une coopérative d'habitation relativement à la fourniture taxable.

(2) Si le paragraphe (1) a produit ses effets, le paragraphe 256.2(2.1) de la *Loi sur la taxe d'accise*, édicté par ce paragraphe (1), est réputé être entré en vigueur le 14 septembre 2023.

Bill C-323

144 (1) Subsections (2) to (4) apply if Bill C-323, introduced in the 1st session of the 44th Parliament and entitled *An Act to amend the Excise Tax Act (mental health services)* (in this section referred to as the "other Act"), receives royal assent.

(2) If section 1 of the other Act comes into force before section 137 of this Act, then

(a) subsection 137(2) of this Act is deemed never to have come into force and is repealed; and

(b) paragraph 7(j.2) of Part II of Schedule V to the *Excise Tax Act* is replaced by the following:

(j.2) counselling therapy services;

(3) If section 137 of this Act comes into force before section 1 of the other Act, then that section 1 is repealed.

(4) If section 1 of the other Act comes into force on the same day as section 137 of this Act, then that section 1 is deemed to have come into force before that section 137 and subsection (2) applies as a consequence.

(5) For greater certainty, if this Act receives royal assent, then the other Act is deemed never to have produced its effects.

Projet de loi C-323

144 (1) Les paragraphes (2) à (4) s'appliquent en cas de sanction du projet de loi C-323, déposé au cours de la 1re session de la 44e législature et intitulé *Loi modifiant la Loi sur la taxe d'accise (services de santé mentale)* (appelé « autre loi » au présent article).

(2) Si l'article 1 de l'autre loi entre en vigueur avant l'article 137 de la présente loi :

a) le paragraphe 137(2) de la présente loi est réputé ne pas être entré en vigueur et est abrogé;

b) l'alinéa 7j.2) de la partie II de l'annexe V de la *Loi sur la taxe d'accise* est remplacé par ce qui suit :

j.2) services de counseling thérapeutique;

(3) Si l'article 137 de la présente loi entre en vigueur avant l'article 1 de l'autre loi, cet article 1 est abrogé.

(4) Si l'entrée en vigueur de l'article 1 de l'autre loi et celle de l'article 137 de la présente loi sont concomitantes, cet article 1 est réputé être entré en vigueur avant cet article 137, le paragraphe (2) s'appliquant en conséquence.

(5) Il est entendu que l'autre loi est réputée ne pas avoir produit ses effets si la présente loi est sanctionnée.

PART 4

Amendments to the Excise Act, 2001 and to Related Legislation

2002, c. 22

Excise Act, 2001

145 (1) Paragraph 14(1)(f) of the *Excise Act, 2001* is replaced by the following:

(f) a vaping product licence, authorizing the person to

(i) manufacture vaping products, or

(ii) import packaged vaping products for stamping by the person.

(2) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.

(3) For greater certainty, a vaping product licence issued to a person before January 1, 2024 under paragraph 14(1)(f) of the Act, as it read immediately before that day, also authorizes the person under subparagraph 14(1)(f)(ii) of the Act, as enacted by subsection (1), as of that day.

146 (1) Section 158.46 of the Act is amended by adding "and" at the end of paragraph (b) and by replacing paragraphs (c) and (d) with the following:

(c) before the end of the second calendar month following the calendar month in which the licensee packages the vaping product,

(i) the vaping product is stamped by the licensee to indicate that vaping duty has been paid, and

(ii) if the vaping product is to be entered in the duty-paid market of a specified vaping province, the vaping product is stamped by the licensee to indicate that additional vaping duty in respect of the specified vaping province has been paid.

(2) Section 158.46 of the Act is renumbered as subsection 158.46(1) and is amended by adding the following:

PARTIE 4

Modification de la Loi de 2001 sur l'accise et de textes connexes

2002, ch. 22

Loi de 2001 sur l'accise

145 (1) L'alinéa 14(1)f) de la *Loi de 2001 sur l'accise* est remplacé par ce qui suit :

f) une licence de produits de vapotage, autorisant son titulaire :

(i) à fabriquer des produits de vapotage,

(ii) à importer des produits de vapotage emballés pour estampillage par son titulaire.

(2) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.

(3) Il est entendu qu'une licence de produits de vapotage délivrée à son titulaire avant le 1er janvier 2024 en vertu de l'alinéa 14(1)f) de la même loi, dans sa version antérieure à cette date, confère également à celui-ci une autorisation en vertu du sous-alinéa 14(1)f)(ii) de la même loi, édicté par le paragraphe (1), à compter de cette date.

146 (1) Les alinéas 158.46c) et d) de la même loi sont remplacés par ce qui suit :

c) avant la fin du deuxième mois civil suivant celui au cours duquel il emballe les produits de vapotage, les conditions suivantes sont réunies :

(i) le produit de vapotage est estampillé par lui pour indiquer que le droit sur le vapotage a été acquitté,

(ii) si le produit de vapotage est destiné au marché des marchandises acquittées d'une province déterminée de vapotage, le produit de vapotage est estampillé par lui pour indiquer que le droit additionnel sur le vapotage relativement à la province déterminée de vapotage a été acquitté.

(2) L'article 158.46 de la même loi devient le paragraphe 158.46(1) et est modifié par adjonction de ce qui suit :

Stamping of imported packaged vaping products

(2) A vaping product licensee that imports a packaged vaping product for stamping shall not enter the vaping product into the duty-paid market unless

(a) the vaping product is packaged in a package that has printed on it prescribed information; and

(b) before the end of the second calendar month following the calendar month in which the vaping product is released under the *Customs Act*,

(i) the vaping product is stamped by the licensee to indicate that vaping duty has been paid, and

(ii) if the vaping product is to be entered in the duty-paid market of a specified vaping province, the vaping product is stamped by the licensee to indicate that additional vaping duty in respect of the specified vaping province has been paid.

Estampillage des produits de vapotage emballés importés

(2) Le titulaire de licence de produits de vapotage qui importe un produit de vapotage emballé pour estampillage ne peut le mettre sur le marché des marchandises acquittées que si les conditions suivantes sont réunies :

a) le produit de vapotage est présenté dans un emballage portant les mentions prévues par règlement;

b) avant la fin du deuxième mois civil suivant celui au cours duquel le dédouanement du produit de vapotage est effectué en vertu de la *Loi sur les douanes*, les conditions suivantes sont réunies :

(i) le produit de vapotage est estampillé par le titulaire de licence pour indiquer que le droit sur le vapotage a été acquitté,

(ii) si le produit de vapotage est destiné au marché des marchandises acquittées d'une province déterminée de vapotage, le produit de vapotage est estampillé par le titulaire de licence pour indiquer que le droit additionnel sur le vapotage relativement à la province déterminée de vapotage a été acquitté.

(3) Subsection (1) applies in respect of vaping products manufactured in Canada that are packaged after 2023.

(3) Le paragraphe (1) s'applique relativement aux produits de vapotage fabriqués au Canada qui sont emballés après 2023.

(4) Subsection (2) applies in respect of vaping products that are imported into Canada or *released*, as defined in subsection 2(1) of the *Customs Act*, after 2023.

(4) Le paragraphe (2) s'applique relativement aux produits de vapotage importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, après 2023.

147 (1) Subsection 158.47(2) of the Act is amended by adding the following after paragraph (a):

147 (1) Le paragraphe 158.47(2) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :

(a.1) that is a packaged vaping product imported by a vaping product licensee for stamping by the licensee;

a.1) les produits de vapotage emballés qui sont importés par un titulaire de licence de produits de vapotage pour estampillage par lui;

(2) Subsection (1) applies in respect of vaping products that are imported into Canada or *released*, as defined in subsection 2(1) of the *Customs Act*, after 2023.

(2) Le paragraphe (1) s'applique relativement aux produits de vapotage importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, après 2023.

148 (1) Section 158.49 of the Act is replaced by the following:

148 (1) L'article 158.49 de la même loi est remplacé par ce qui suit :

Unstamped products to be warehoused

158.49 If vaping products (other than vaping product drugs) manufactured in Canada are not stamped by a vaping product licensee, the vaping product licensee must

Entreposage de produits non estampillés

158.49 Le titulaire de licence de produits de vapotage qui n'estampille pas des produits de vapotage (sauf des

immediately enter the vaping products into its excise warehouse.

(2) Section 158.49 of the Act, as amended by subsection (1), is replaced by the following:

Unstamped products to be warehoused

158.49 (1) If vaping products manufactured in Canada are not stamped by a vaping product licensee before the end of the particular calendar month that is the second calendar month following the calendar month in which the vaping product licensee packages the vaping products, the vaping product licensee must enter the vaping products into its excise warehouse before the end of the particular calendar month.

Imported unstamped packaged products to be warehoused

(2) If a vaping product licensee imports packaged vaping products for stamping but does not stamp the vaping products before the end of the particular calendar month that is the second calendar month following the calendar month in which the vaping products are released under the *Customs Act*, the vaping product licensee must enter the vaping products into its excise warehouse before the end of the particular calendar month.

Exceptions

(3) Subsections (1) and (2) do not apply

(a) in respect of vaping product drugs; or

(b) in prescribed circumstances.

(3) Subsection (1) is deemed to have come into force on October 1, 2022.

(4) Subsection (2) applies in respect of vaping products manufactured in Canada that are packaged after 2023 and in respect of vaping products that are imported into Canada or *released*, as defined in subsection 2(1) of the *Customs Act*, after 2023.

149 (1) Section 158.5 of the Act is amended by adding the following after subsection (1):

Vaping product markings — exports and accredited representatives

(1.1) Subject to subsection (4), no person shall remove a container of vaping products that are not stamped from the premises of a vaping product licensee for export or for delivery to an accredited representative unless the

drogues de produit de vapotage) fabriqués au Canada doit aussitôt les déposer dans son entrepôt d'accise.

(2) L'article 158.49 de la même loi, modifié par le paragraphe (1), est remplacé par ce qui suit :

Entreposage de produits non estampillés

158.49 (1) Le titulaire de licence de produits de vapotage qui n'estampille pas des produits de vapotage fabriqués au Canada avant la fin du mois civil donné qui est le deuxième mois civil suivant celui au cours duquel il emballe les produits de vapotage doit les déposer dans son entrepôt d'accise avant la fin du mois civil donné.

Entreposage de produits emballés non estampillés importés

(2) Le titulaire de licence de produits de vapotage qui importe des produits de vapotage emballés pour estampillage, mais qui ne les estampille pas avant la fin du mois civil donné qui est le deuxième mois civil suivant celui au cours duquel ils sont dédouanés en vertu de la *Loi sur les douanes*, doit les déposer dans son entrepôt d'accise avant la fin du mois civil donné.

Exceptions

(3) Les paragraphes (1) et (2) ne s'appliquent :

a) ni relativement aux drogues de produit de vapotage;

b) ni dans les circonstances prévues par règlement.

(3) Le paragraphe (1) est réputé être entré en vigueur le 1er octobre 2022.

(4) Le paragraphe (2) s'applique relativement aux produits de vapotage fabriqués au Canada qui sont emballés après 2023 et aux produits de vapotage qui sont importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, après 2023.

149 (1) L'article 158.5 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :

Mentions obligatoires — produits exportés et représentants accrédités

(1.1) Sous réserve du paragraphe (4), il est interdit à quiconque de sortir des contenants de produits de vapotage non estampillés des locaux d'un titulaire de licence de produits de vapotage pour exportation ou pour livraison

container has printed on it, or affixed to it, vaping product markings and other prescribed information.

(2) Subsection (1) applies in respect of vaping products manufactured in Canada that are packaged after 2023 and in respect of vaping products that are imported into Canada or *released*, as defined in subsection 2(1) of the *Customs Act*, after 2023.

150 (1) Subsection 158.51(3) of the Act is replaced by the following:

Exceptions

(3) Subsections (1) and (2) do not apply

(a) in respect of a packaged vaping product that is imported by a vaping product licensee for stamping by the vaping product licensee; or

(b) in prescribed circumstances.

(2) Subsection (1) applies in respect of vaping products that are imported into Canada or *released*, as defined in subsection 2(1) of the *Customs Act*, after 2023.

151 (1) The Act is amended by adding the following after section 158.51:

Imports for stamping — delivery to premises

158.511 If a vaping product licensee imports a packaged vaping product for stamping by the vaping product licensee, the vaping product licensee shall, immediately after the vaping product is released under the *Customs Act*, deliver the vaping product to its premises for stamping.

(2) Subsection (1) applies in respect of vaping products that are imported into Canada or *released*, as defined in subsection 2(1) of the *Customs Act*, after 2023.

152 (1) Paragraphs 158.57(a) and (b) of the Act are replaced by the following:

(a) in the case of vaping products manufactured in Canada, by the vaping product licensee that packaged the vaping products and at the time they are stamped;

(a.1) in the case of packaged vaping products that are imported by a vaping product licensee for stamping by the vaping product licensee, by the vaping product licensee and at the time they are stamped; and

à un représentant accrédité à moins que les mentions obligatoires pour vapotage et autres mentions prévues par règlement y aient été imprimées ou apposées.

(2) Le paragraphe (1) s'applique relativement aux produits de vapotage fabriqués au Canada qui sont emballés après 2023 et aux produits de vapotage qui sont importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, après 2023.

150 (1) Le paragraphe 158.51(3) de la même loi est remplacé par ce qui suit :

Exceptions

(3) Les paragraphes (1) et (2) ne s'appliquent :

a) ni relativement à un produit de vapotage emballé qui est importé par un titulaire de licence de produits de vapotage pour estampillage par lui;

b) ni dans les circonstances visées par règlement.

(2) Le paragraphe (1) s'applique relativement aux produits de vapotage qui sont importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, après 2023.

151 (1) La même loi est modifiée par adjonction, après l'article 158.51, de ce qui suit :

Importation pour estampillage — livraison dans les locaux

158.511 Si le titulaire de licence de produits de vapotage importe un produit de vapotage emballé pour estampillage par lui, il doit, aussitôt après son dédouanement en vertu de la *Loi sur les douanes*, le livrer dans ses locaux pour estampillage.

(2) Le paragraphe (1) s'applique relativement aux produits de vapotage qui sont importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, après 2023.

152 (1) Les alinéas 158.57a) et b) de la même loi sont remplacés par ce qui suit :

a) dans le cas de produits de vapotage fabriqués au Canada, du titulaire de licence de produits de vapotage qui les a emballés et au moment de leur estampillage;

a.1) dans le cas de produits de vapotage emballés qui sont importés par un titulaire de licence de produits de vapotage pour estampillage par lui, du titulaire de

(b) in the case of any other imported vaping products, by the importer, owner or other person that is liable under the *Customs Act* to pay duty levied under section 20 of the *Customs Tariff* or that would be liable to pay that duty on the vaping products if they were subject to that duty.

(2) Subsection (1) applies in respect of vaping products manufactured in Canada that are packaged after 2023 and in respect of vaping products that are imported into Canada or *released*, as defined in subsection 2(1) of the *Customs Act*, after 2023.

153 (1) Paragraphs 158.58(a) and (b) of the Act are replaced by the following:

(a) in the case of vaping products manufactured in Canada, by the vaping product licensee that packaged the vaping products and at the time they are stamped;

(a.1) in the case of packaged vaping products that are imported by a vaping product licensee for stamping by the vaping product licensee, by the vaping product licensee and at the time they are stamped; and

(b) in the case of any other imported vaping products, by the importer, owner or other person that is liable under the *Customs Act* to pay duty levied under section 20 of the *Customs Tariff* or that would be liable to pay that duty on the vaping products if they were subject to that duty.

(2) Subsection (1) applies in respect of vaping products manufactured in Canada that are packaged after 2023 and in respect of vaping products that are imported into Canada or *released*, as defined in subsection 2(1) of the *Customs Act*, after 2023.

154 (1) Section 158.59 of the Act is replaced by the following:

Application of *Customs Act*

158.59 The duties imposed under paragraphs 158.57(b) and 158.58(b) on imported vaping products shall be paid and collected under the *Customs Act*, and interest and penalties shall be imposed, calculated, paid and collected under that Act, as if the duties were a duty levied under section 20 of the *Customs Tariff*, and, for those purposes,

licence de produits de vapotage et au moment de leur estampillage;

b) dans le cas de tous autres produits de vapotage importés, de l'importateur, du propriétaire ou d'une autre personne qui est tenue, aux termes de la *Loi sur les douanes*, de payer les droits perçus en vertu de l'article 20 du *Tarif des douanes* ou qui serait tenue de payer ces droits sur les produits de vapotage s'ils y étaient assujettis.

(2) Le paragraphe (1) s'applique relativement aux produits de vapotage fabriqués au Canada qui sont emballés après 2023 et aux produits de vapotage qui sont importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, après 2023.

153 (1) Les alinéas 158.58a) et b) de la même loi sont remplacés par ce qui suit :

a) dans le cas de produits de vapotage fabriqués au Canada, du titulaire de licence de produits de vapotage qui les a emballés et au moment de leur estampillage;

a.1) dans le cas de produits de vapotage emballés qui sont importés par un titulaire de licence de produits de vapotage pour estampillage par lui, du titulaire de licence de produits de vapotage et au moment de leur estampillage;

b) dans le cas de tous autres produits de vapotage importés, de l'importateur, du propriétaire ou d'une autre personne qui est tenu, aux termes de la *Loi sur les douanes*, de payer les droits perçus en vertu de l'article 20 du *Tarif des douanes* ou qui serait tenu de payer ces droits sur les produits de vapotage s'ils y étaient assujettis.

(2) Le paragraphe (1) s'applique relativement aux produits de vapotage fabriqués au Canada qui sont emballés après 2023 et aux produits de vapotage qui sont importés au Canada ou *dédouanés*, au sens du paragraphe 2(1) de la *Loi sur les douanes*, après 2023.

154 (1) L'article 158.59 de la même loi est remplacé par ce qui suit :

Application de la *Loi sur les douanes*

158.59 Les droits imposés en vertu des alinéas 158.57b) et 158.58b) sur les produits de vapotage importés sont payés et perçus aux termes de la *Loi sur les douanes*. Des intérêts et pénalités sont imposés, calculés, payés et perçus aux termes de cette loi comme si les droits étaient des droits perçus en vertu de l'article 20 du *Tarif des*

the *Customs Act* applies with any modifications that the circumstances require.

(2) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.

155 (1) Subsections 159.2(1) and (2) of the Act are replaced by the following:

Definition of *calendar quarter*

159.2 (1) In this section, ***calendar quarter*** means a period of three months beginning on the first day of January, April, July or October.

Reporting period — calendar quarters

(2) On application by a cannabis licensee, the Minister may, in writing, authorize the reporting periods of the cannabis licensee to be calendar quarters, beginning on the first day of a calendar quarter.

(2) Subsection 159.2(4) of the Act is repealed.

(3) Subsections 159.2(6) and (7) of the Act are replaced by the following:

Notice of revocation

(6) If the Minister revokes an authorization in respect of a cannabis licensee, the following rules apply:

(a) the Minister shall send a notice in writing of the revocation to the cannabis licensee and shall specify in the notice the fiscal month of the cannabis licensee for which the revocation becomes effective; and

(b) if the revocation becomes effective before the last day of a calendar quarter, the period beginning on the first day of the calendar quarter and ending immediately before the first day of that fiscal month is deemed to be a reporting period of the cannabis licensee.

(4) Subsections (1) to (3) are deemed to have come into force on April 1, 2023.

156 The Act is amended by adding the following after section 233.2:

Contravention of section 158.47

233.3 Every person that is liable to pay a duty imposed under paragraph 158.57(b) on a vaping product is liable to a penalty equal to the amount determined by the following formula if the vaping product is released under

douanes. À ces fins, la *Loi sur les douanes* s'applique avec les adaptations nécessaires.

(2) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.

155 (1) Les paragraphes 159.2(1) et (2) de la même loi sont remplacés par ce qui suit :

Définition de *trimestre civil*

159.2 (1) Au présent article, ***trimestre civil*** s'entend d'une période de trois mois débutant le premier jour de janvier, avril, juillet ou octobre.

Période de déclaration — trimestres civils

(2) Sur demande d'un titulaire de licence de cannabis, le ministre peut donner son autorisation écrite pour que la période de déclaration du titulaire de licence de cannabis corresponde à un trimestre civil, à compter du premier jour d'un trimestre civil.

(2) Le paragraphe 159.2(4) de la même loi est abrogé.

(3) Les paragraphes 159.2(6) et (7) de la même loi sont remplacés par ce qui suit :

Avis de révocation

(6) Si le ministre révoque une autorisation relativement à un titulaire de licence de cannabis, les règles suivantes s'appliquent :

a) le ministre l'en avise par écrit et précise dans l'avis son mois d'exercice pour lequel la révocation prend effet;

b) si la révocation prend effet avant la fin d'un trimestre civil, la période commençant le premier jour du trimestre civil et se terminant immédiatement avant le premier jour de ce mois d'exercice est réputée être une période de déclaration du titulaire de licence de cannabis.

(4) Les paragraphes (1) à (3) sont réputés être entrés en vigueur le 1er avril 2023.

156 La même loi est modifiée par adjonction, après l'article 233.2, de ce qui suit :

Contravention — article 158.47

233.3 Quiconque est tenu d'acquitter un droit imposé en vertu de l'alinéa 158.57b) sur un produit de vapotage est passible d'une pénalité égale à la somme obtenue par la formule ci-après si le produit de vapotage est dédouané en vertu de la *Loi sur les douanes* en vue de son entrée

the *Customs Act* for entry into the duty paid market in contravention of section 158.47:

(A + B) × 200%

where

A is the amount determined under Schedule 8 in respect of the vaping product, using the rates of duty applicable at the time the contravention occurred; and

B is

(a) if the contravention occurred in a specified vaping province, the amount determined for A, and

(b) in any other case, 0.

157 The portion of section 234.2 of the Act before the formula is replaced by the following:

Contravention — sections 158.35 and 158.43 to 158.45

234.2 Every person that contravenes section 158.35, 158.43, 158.44 or 158.45 is liable to a penalty equal to the amount determined by the formula

158 The Act is amended by adding the following after section 249:

Contravention of section 158.511

249.1 Every person that contravenes section 158.511 is liable to a penalty equal to the amount determined by the formula

(A + B) × 50%

where

A is the amount determined under Schedule 8 in respect of the vaping products to which the contravention relates, using the rates of duty applicable at the time the contravention occurred; and

B is

(a) if the contravention occurred in a specified vaping province, the amount determined for A, and

(b) in any other case, 0.

159 Schedule 8 to the Act is amended by replacing the references after the heading "SCHEDULE 8" with the following:

(Sections 158.57, 158.6, 158.61, 218.2, 233.2, 233.3, 234.2, 237, 238.01 and 249.1)

dans le marché des marchandises acquittées en contravention de l'article 158.47 :

(A + B) × 200 %

où :

A représente la somme déterminée selon l'annexe 8 relativement au produit de vapotage, d'après les taux applicables au moment où la contravention a été commise;

B :

a) si la contravention est commise dans une province déterminée de vapotage, la valeur de l'élément A,

b) sinon, zéro.

157 Le passage de l'article 234.2 de la même loi précédant la formule est remplacé par ce qui suit :

Contravention — articles 158.35 et 158.43 à 158.45

234.2 Quiconque contrevient aux articles 158.35, 158.43, 158.44 ou 158.45 est passible d'une pénalité égale à la somme obtenue par la formule suivante :

158 La même loi est modifiée par adjonction, après l'article 249, de ce qui suit :

Contravention — article 158.511

249.1 Quiconque contrevient à l'article 158.511 est passible d'une pénalité égale à la somme obtenue par la formule suivante :

(A + B) × 50 %

où :

A représente la somme déterminée selon l'annexe 8 relativement aux produits de vapotage auxquels la contravention se rapporte, d'après les taux applicables au moment où la contravention a été commise;

B :

a) si la contravention est commise dans une province déterminée de vapotage, la valeur de l'élément A,

b) sinon, zéro.

159 Les renvois qui suivent le titre « ANNEXE 8 », à l'annexe 8 de la même loi, sont remplacés par ce qui suit :

(articles 158.57, 158.6, 158.61, 218.2, 233.2, 233.3, 234.2, 237, 238.01 et 249.1)

SOR/98-61

Returning Persons Exemption Regulations

160 Paragraph 3(2)(b) of the *Returning Persons Exemption Regulations* is replaced by the following:

(b) tobacco or vaping products (other than a *vaping product drug* as defined in section 2 of the *Excise Act, 2001*) imported by a person who has not attained 18 years of age.

SOR/2003-115

Regulations Respecting Excise Licences and Registrations

161 (1) The portion of subsection 5(1) of the English version of the *Regulations Respecting Excise Licences and Registrations* before paragraph (a) is replaced by the following:

5 (1) For the purposes of paragraph 23(3)(b) of the Act, the amount of security to be provided by an applicant for a spirits licence, a tobacco licence, a cannabis licence or a vaping product licence must be an amount of not less than $5,000 and

(2) Subsection 5(1) of the Regulations is amended by striking out "and" at the end of paragraph (a) and by replacing paragraph (b) with the following:

(b) in the case of a tobacco licence or a vaping product licence, be sufficient to ensure payment of the amount of duty referred to in paragraph 160(b) of the Act up to a maximum amount of $5 million per licence; and

(c) in the case of a cannabis licence,

(i) if the licensee is authorized under subsection 159.2(2) of the Act to have reporting periods that are calendar quarters, be sufficient to ensure payment of one-third of the amount of duty referred to in paragraph 160(b) of the Act up to a maximum amount of $5 million per licence, and

(ii) in any other case, be sufficient to ensure payment of the amount of duty referred to in paragraph 160(b) of the Act up to a maximum amount of $5 million per licence.

(3) Subsections (1) and (2) are deemed to have come into force on April 1, 2023.

DORS/98-61

Règlement sur l'exemption accordée aux personnes revenant au Canada

160 L'alinéa 3(2)b) du *Règlement sur l'exemption accordée aux personnes revenant au Canada* est remplacé par ce qui suit :

b) au tabac ou aux produits de vapotage (sauf une *drogue de produit de vapotage* au sens de l'article 2 de la *Loi de 2001 sur l'accise*) importés par une personne qui n'a pas atteint l'âge de dix-huit ans.

DORS/2003-115

Règlement sur les licences, agréments et autorisations d'accise

161 (1) Le passage du paragraphe 5(1) de la version anglaise du *Règlement sur les licences, agréments et autorisations d'accise* précédant l'alinéa a) est remplacé par ce qui suit :

5 (1) For the purposes of paragraph 23(3)(b) of the Act, the amount of security to be provided by an applicant for a spirits licence, a tobacco licence, a cannabis licence or a vaping product licence must be an amount of not less than $5,000 and

(2) L'alinéa 5(1)b) du même règlement est remplacé par ce qui suit :

b) dans le cas d'une licence de tabac ou d'une licence de produits de vapotage, garantir le paiement, jusqu'à concurrence de cinq millions de dollars par licence, des droits visés à l'alinéa 160b) de la Loi;

c) dans le cas d'une licence de cannabis :

(i) si le titulaire d'une telle licence est autorisé en vertu du paragraphe 159.2(2) de la Loi à faire correspondre ses périodes de déclaration à des trimestres civils, garantir le paiement, jusqu'à concurrence de cinq millions de dollars par licence, d'un tiers des droits visés à l'alinéa 160b) de la Loi,

(ii) sinon, garantir le paiement, jusqu'à concurrence de cinq millions de dollars par licence, des droits visés à l'alinéa 160b) de la Loi.

(3) Les paragraphes (1) et (2) sont réputés être entrés en vigueur le 1er avril 2023.

SOR/2003-288; 2018, c. 12, s. 108; 2022, c. 10, s. 116

Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations

162 (1) The portion of section 3.6 of the *Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations* before paragraph (a) is replaced by the following:

3.6 For the purposes of paragraphs 158.46(1)(b) and (2)(a) of the Act, the prescribed information is

(2) Section 3.6 of the Regulations, as amended by subsection (1), is replaced by the following:

3.6 For the purposes of paragraphs 158.46(1)(b) and (2)(a) of the Act, the prescribed information is

(a) one of the following:

(i) the vaping product licensee's name and address,

(ii) the vaping product licensee's licence number, or

(iii) if the vaping product is packaged by the vaping product licensee for another person, the person's name and the address of their principal place of business; and

(b) the volume in millilitres of the vaping substance in liquid form, and the weight in grams of the vaping substance in solid form, contained in each vaping device or immediate container in the package and the number of vaping devices and immediate containers in the package.

(3) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.

(4) Subsection (2) comes into force on the day that is six months after the first day of the month following the month in which this Act receives royal assent.

163 (1) Section 3.7 of the Regulations is replaced by the following:

3.7 For the purposes of paragraph 158.47(1)(a) of the Act, the prescribed information is

DORS/2003-288; 2018, ch. 12, art. 108; 2022, ch. 10, art. 116

Règlement sur l'estampillage et le marquage des produits du tabac, du cannabis et de vapotage

162 (1) Le passage de l'article 3.6 du *Règlement sur l'estampillage et le marquage des produits du tabac, du cannabis et de vapotage*, précédant l'alinéa a), est remplacé par ce qui suit :

3.6 Pour l'application des alinéas 158.46(1)b) et (2)a) de la Loi, les mentions réglementaires sont l'une ou l'autre des mentions suivantes :

(2) L'article 3.6 du même règlement, modifié par le paragraphe (1), est remplacé par ce qui suit :

3.6 Pour l'application des alinéas 158.46(1)b) et (2)a) de la Loi, les mentions ci-après sont les mentions réglementaires :

a) l'une des mentions suivantes :

(i) les nom et adresse du titulaire de licence de produits de vapotage,

(ii) le numéro de licence du titulaire de licence de produits de vapotage,

(iii) si les produits de vapotage sont emballés par le titulaire de licence de produits de vapotage pour une autre personne, le nom de cette personne et l'adresse de son principal établissement;

b) le volume en millilitres des substances de vapotage sous forme liquide, et le poids en grammes des substances de vapotage sous forme solide, contenues dans chaque dispositif de vapotage ou contenant immédiat dans l'emballage et le nombre de dispositifs de vapotage et contenants immédiats que l'emballage contient.

(3) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.

(4) Le paragraphe (2) entre en vigueur le jour qui suit de six mois le premier jour du mois suivant celui de la sanction de la présente loi.

163 (1) L'article 3.7 du même règlement est remplacé par ce qui suit :

3.7 Pour l'application de l'alinéa 158.47(1)a) de la Loi, les mentions ci-après sont les mentions réglementaires :

(a) if the vaping product was imported by a vaping product licensee, the licensee's name and address or vaping product licence number;

(b) if the vaping product was imported by a person other than a vaping product licensee, the person's name and address; and

(c) the volume in millilitres of the vaping substance in liquid form, and the weight in grams of the vaping substance in solid form, contained in each vaping device or immediate container in the package and the number of vaping devices and immediate containers in the package.

(2) Subsection (1) comes into force on the day that is six months after the first day of the month following the month in which this Act receives royal assent.

164 (1) The portion of section 3.8 of the Regulations before paragraph (a) is replaced by the following:

3.8 For the purposes of paragraphs 158.46(1)(b) and (2)(a) and 158.47(1)(a) of the Act, the following information is prescribed for cases of vaping products:

(2) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.

165 (1) Paragraph 4(4)(b) of the Regulations is replaced by the following:

(b) a person that has in their possession vaping excise stamps only for the purpose of applying adhesive to the stamps on behalf of the person to which the stamps are issued.

(2) Subsection (1) is deemed to have come into force on June 23, 2022.

166 Section 5.1 of the Regulations, as enacted by section 122 of the *Budget Implementation Act, 2022, No. 1*, is renumbered as section 5.01 and that section is repositioned immediately after section 5 of the Regulations.

167 (1) The portion of subsection 8(1) of the Regulations before paragraph (a) is replaced by the following:

8 (1) For the purposes of subsections 158.5(1) and (1.1) of the Act, the required vaping product markings are

a) si les produits de vapotage ont été importés par un titulaire de licence de produits de vapotage, son nom et son adresse ou le numéro de sa licence;

b) si les produits de vapotage ont été importés par une personne autre qu'un titulaire de licence de produits de vapotage, les nom et adresse de celle-ci;

c) le volume en millilitres des substances de vapotage sous forme liquide, et le poids en grammes des substances de vapotage sous forme solide, contenues dans chaque dispositif de vapotage ou contenant immédiat dans l'emballage et le nombre de dispositifs de vapotage et contenants immédiats que l'emballage contient.

(2) Le paragraphe (1) entre en vigueur le jour qui suit de six mois le premier jour du mois suivant celui de la sanction de la présente loi.

164 (1) Le passage de l'article 3.8 du même règlement précédant l'alinéa a) est remplacé par ce qui suit :

3.8 Pour l'application des alinéas 158.46(1)b) et (2)a) et 158.47(1)a) de la Loi, les mentions ci-après sont des mentions réglementaires à l'égard de caisses de produit de vapotage :

(2) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.

165 (1) L'alinéa 4(4)b) du même règlement est remplacé par ce qui suit :

b) la personne qui a en sa possession des timbres d'accise de vapotage dans le seul but d'y appliquer un adhésif pour le compte de la personne à qui les timbres ont été émis.

(2) Le paragraphe (1) est réputé être entré en vigueur le 23 juin 2022.

166 L'article 5.1 du même règlement, édicté par l'article 122 de la *Loi nº 1 d'exécution du budget de 2022*, devient l'article 5.01 et est déplacé immédiatement après l'article 5 du même règlement.

167 (1) Le passage du paragraphe 8(1) du même règlement précédant l'alinéa a) est remplacé par ce qui suit :

8 (1) Pour l'application des paragraphes 158.5(1) et (1.1) de la Loi, les mentions obligatoires pour vapotage sont les suivantes :

(2) Subsection (1) comes into force or is deemed to have come into force on January 1, 2024.

(2) Le paragraphe (1) entre en vigueur ou est réputé être entré en vigueur le 1er janvier 2024.

PART 5

Various Measures

DIVISION 1

Federal Financial Institutions

SUBDIVISION A

Information Technology Activities

2018, c.12

Budget Implementation Act, 2018, No. 1

168 (1) Subsection 310(1) of the *Budget Implementation Act, 2018, No. 1* is amended by replacing the portion of the subparagraph 410(1)(c)(ii) that it enacts before clause (A) with the following:

(ii) designing, developing, manufacturing, selling and otherwise dealing with information technology, if those activities relate to

(2) Subsection 310(5) of the Act is amended by replacing the paragraph 410(3)(c) that it enacts with the following:

(c) respecting the circumstances in which a company may engage in the activities referred to in paragraphs (1)(b.1) and (c), including the circumstances in which it may collect, manipulate and transmit information under subparagraph (1)(c)(i).

169 Subsection 312(1) of the French version of the Act is amended by replacing the paragraphs 453(2.2)(b) and (c) that it enacts with the following:

b) assortir de conditions l'acquisition par la société, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en

PARTIE 5

Mesures diverses

SECTION 1

Institutions financières fédérales

SOUS-SECTION A

Activités liées aux technologies de l'information

2018, ch. 12

Loi n° 1 d'exécution du budget de 2018

168 (1) Le paragraphe 310(1) de la *Loi n° 1 d'exécution du budget de 2018* est modifié par remplacement du sous-alinéa 410(1)c)(ii) qui y est édicté par ce qui suit :

(ii) la conception, le développement, la fabrication et la vente de technologies de l'information, ou toute autre manière de s'occuper de celles-ci, si ces activités sont relatives à toute activité prévue au présent paragraphe qui est exercée par la société ou toute entité de son groupe ou lorsque ces activités sont relatives à la prestation de services financiers par toute autre entité,

(2) Le paragraphe 310(5) de la même loi est modifié par remplacement de l'alinéa 410(3)c) qui y est édicté par ce qui suit :

c) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut exercer les activités visées aux alinéas (1)b.1) et c), notamment en ce qui a trait à la collecte, la manipulation et la transmission d'information en vertu du sous-alinéa (1)c)(i).

169 Le paragraphe 312(1) de la version française de la même loi est modifié par remplacement des alinéas 453(2.2)b) et c) qui y sont édictés par ce qui suit :

b) assortir de conditions l'acquisition par la société, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en

vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

c) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

170 Section 313 of the French version of the Act is amended by replacing the paragraphs 453.1(a) and (b) that it enacts with the following:

a) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut acquérir le contrôle d'une entité qui exerce des activités qu'une société est autorisée à exercer dans le cadre des alinéas 410(1)b.1) et c) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

b) assortir de conditions l'acquisition par la société du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société, en vertu de cet alinéa, d'un intérêt de groupe financier dans une telle entité.

171 (1) Subsection 316(1) of the Act is amended by replacing the portion of the subparagraph 410(1)(c)(ii) that it enacts before clause (A) with the following:

(ii) designing, developing, manufacturing, selling and otherwise dealing with information technology, if those activities relate to

(2) Subsection 316(5) of the French version of the Act is amended by replacing the paragraph 410(3)(c) that it enacts with the following:

c) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque peut exercer les activités visées aux alinéas (1)b.1) et c), notamment en ce qui a trait à la collecte, la manipulation et la transmission d'information en vertu du sous-alinéa (1)c)(i).

172 Subsection 318(1) of the French version of the Act is amended by replacing the paragraphs

vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

c) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

170 L'article 313 de la version française de la même loi est modifié par remplacement des alinéas 453.1a) et b) qui y sont édictés par ce qui suit :

a) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut acquérir le contrôle d'une entité qui exerce des activités qu'une société est autorisée à exercer dans le cadre des alinéas 410(1)b.1) et c) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

b) assortir de conditions l'acquisition par la société du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société, en vertu de cet alinéa, d'un intérêt de groupe financier dans une telle entité.

171 (1) Le paragraphe 316(1) de la même loi est modifié par remplacement du sous-alinéa 410(1)c)(ii) qui y est édicté par ce qui suit :

(ii) la conception, le développement, la fabrication et la vente de technologies de l'information, ou toute autre manière de s'occuper de celles-ci, si ces activités sont relatives à toute activité prévue au présent paragraphe qui est exercée par la banque ou toute entité de son groupe ou lorsque ces activités sont relatives à la prestation de services financiers par toute autre entité,

(2) Le paragraphe 316(5) de la version française de la même loi est modifié par remplacement de l'alinéa 410(3)c) qui y est édicté par ce qui suit :

c) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque peut exercer les activités visées aux alinéas (1)b.1) et c), notamment en ce qui a trait à la collecte, la manipulation et la transmission d'information en vertu du sous-alinéa (1)c)(i).

172 Le paragraphe 318(1) de la version française de la même loi est modifié par remplacement des

468(2.2)(b) and (c) that it enacts with the following:

b) assortir de conditions l'acquisition par la banque, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette banque, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

c) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

173 Section 319 of the French version of the Act is amended by replacing the paragraphs 468.1(a) and (b) that it enacts with the following:

a) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque peut acquérir le contrôle d'une entité qui exerce des activités qu'une banque est autorisée à exercer dans le cadre des alinéas 410(1)b.1) et c) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

b) assortir de conditions l'acquisition par la banque du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette banque, en vertu de cet alinéa, d'un intérêt de groupe financier dans une telle entité.

174 Section 321 of the French version of the Act is amended by replacing the paragraphs 522.08(1.2)(a) and (b) that it enacts with the following:

a) assortir de conditions l'acquisition ou la détention par la banque étrangère ou l'entité liée à une banque étrangère du contrôle d'une entité canadienne — ou l'acquisition ou la détention d'un intérêt de groupe financier dans une telle entité — en vertu du paragraphe (1.1);

b) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque étrangère ou l'entité liée à une banque étrangère peut acquérir ou détenir le contrôle d'une entité canadienne — ou acquérir ou détenir un intérêt de groupe financier dans une telle entité — en vertu du paragraphe (1.1).

alinéas 468(2.2)b) et c) qui y sont édictés par ce qui suit :

b) assortir de conditions l'acquisition par la banque, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette banque, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

c) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

173 L'article 319 de la version française de la même loi est modifié par remplacement des alinéas 468.1a) et b) qui y sont édictés par ce qui suit :

a) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque peut acquérir le contrôle d'une entité qui exerce des activités qu'une banque est autorisée à exercer dans le cadre des alinéas 410(1)b.1) et c) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

b) assortir de conditions l'acquisition par la banque du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette banque, en vertu de cet alinéa, d'un intérêt de groupe financier dans une telle entité.

174 L'article 321 de la version française de la même loi est modifié par remplacement des alinéas 522.08(1.2)a) et b) qui y sont édictés par ce qui suit :

a) assortir de conditions l'acquisition ou la détention par la banque étrangère ou l'entité liée à une banque étrangère du contrôle d'une entité canadienne — ou l'acquisition ou la détention d'un intérêt de groupe financier dans une telle entité — en vertu du paragraphe (1.1);

b) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque étrangère ou l'entité liée à une banque étrangère peut acquérir ou détenir le contrôle d'une entité canadienne — ou acquérir ou détenir un intérêt de groupe financier dans une telle entité — en vertu du paragraphe (1.1).

175 Section 322 of the French version of the Act is amended by replacing the paragraphs 522.081(a) and (b) that it enacts with the following:

a) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque étrangère ou l'entité liée à une banque étrangère peut acquérir ou détenir le contrôle d'une entité canadienne qui exerce des activités qu'une banque est autorisée à exercer dans le cadre des alinéas 410(1)b.1) et c) ou acquérir ou détenir un intérêt de groupe financier dans une telle entité;

b) assortir de conditions l'acquisition ou la détention par la banque étrangère ou l'entité liée à une banque étrangère du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou la détention d'un intérêt de groupe financier dans une telle entité.

175 L'article 322 de la version française de la même loi est modifié par remplacement des alinéas 522.081a) et b) qui y sont édictés par ce qui suit :

a) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque étrangère ou l'entité liée à une banque étrangère peut acquérir ou détenir le contrôle d'une entité canadienne qui exerce des activités qu'une banque est autorisée à exercer dans le cadre des alinéas 410(1)b.1) et c) ou acquérir ou détenir un intérêt de groupe financier dans une telle entité;

b) assortir de conditions l'acquisition ou la détention par la banque étrangère ou l'entité liée à une banque étrangère du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou la détention d'un intérêt de groupe financier dans une telle entité.

176 (1) Subsection 324(1) of the Act is amended by replacing the portion of the subparagraph 539(1)(b.2)(ii) that it enacts before clause (A) with the following:

(ii) designing, developing, manufacturing, selling and otherwise dealing with information technology, if those activities relate to

176 (1) Le paragraphe 324(1) de la même loi est modifié par remplacement du sous-alinéa 539(1)b.2)(ii) qui y est édicté par ce qui suit :

(ii) la conception, le développement, la fabrication et la vente de technologies de l'information, ou toute autre manière de s'occuper de celles-ci, si ces activités sont relatives à toute activité prévue au présent paragraphe qui est exercée par la banque étrangère autorisée ou toute entité de son groupe ou lorsque ces activités sont relatives à la prestation de services financiers par toute autre entité,

(2) Subsection 324(3) of the Act is amended by replacing the paragraph 539(3)(c) that it enacts with the following:

(c) respecting the circumstances in which an authorized foreign bank may engage in the activities referred to in paragraphs (1)(b.1) and (b.2), including the circumstances in which it may collect, manipulate and transmit information under subparagraph (1)(b.2)(i).

(2) Le paragraphe 324(3) de la même loi est modifié par remplacement de l'alinéa 539(3)c) qui y est édicté par ce qui suit :

c) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la banque étrangère autorisée peut exercer les activités visées aux alinéas (1)b.1) et b.2), notamment en ce qui a trait à la collecte, la manipulation et la transmission d'information en vertu du sous-alinéa (1)b.2)(i).

177 Subsection 326(1) of the French version of the Act is amended by replacing the paragraphs 930(2.2)(a) and (b) that it enacts with the following:

a) assortir de conditions l'acquisition par la société de portefeuille bancaire, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

177 Le paragraphe 326(1) de la version française de la même loi est modifié par remplacement des alinéas 930(2.2)a) et b) qui y sont édictés par ce qui suit :

a) assortir de conditions l'acquisition par la société de portefeuille bancaire, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

b) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de portefeuille bancaire peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

178 Section 327 of the French version of the Act is amended by replacing the paragraphs 930.1(a) and (b) that it enacts with the following:

a) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de portefeuille bancaire peut acquérir le contrôle d'une entité qui exerce des activités qu'une banque est autorisée à exercer dans le cadre des alinéas 410(1)b.1) et c) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

b) assortir de conditions l'acquisition par la société de portefeuille bancaire du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société d'un intérêt de groupe financier dans une telle entité.

179 (1) Subsection 329(1) of the Act is amended by replacing the portion of the subparagraph 441(1)(d)(ii) that it enacts before clause (A) with the following:

(ii) designing, developing, manufacturing, selling and otherwise dealing with information technology, if those activities relate to

(2) Subsection 329(5) of the French version of the Act is amended by replacing the paragraph 441(4)(c) that it enacts with the following:

c) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut exercer les activités visées aux alinéas (1)c.1) et d), notamment en ce qui a trait à la collecte, la manipulation et la transmission d'information en vertu du sous-alinéa (1)d)(i).

180 (1) Subsection 331(1) of the French version of the Act is amended by replacing the paragraphs 495(2.2)(b) and (c) that it enacts with the following:

b) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de portefeuille bancaire peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

178 L'article 327 de la version française de la même loi est modifié par remplacement des alinéas 930.1a) et b) qui y sont édictés par ce qui suit :

a) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de portefeuille bancaire peut acquérir le contrôle d'une entité qui exerce des activités qu'une banque est autorisée à exercer dans le cadre des alinéas 410(1)b.1) et c) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

b) assortir de conditions l'acquisition par la société de portefeuille bancaire du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société d'un intérêt de groupe financier dans une telle entité.

179 (1) Le paragraphe 329(1) de la même loi est modifié par remplacement du sous-alinéa 441(1)d)(ii) qui y est édicté par ce qui suit :

(ii) la conception, le développement, la fabrication et la vente de technologies de l'information, ou toute autre manière de s'occuper de celles-ci, si ces activités sont relatives à toute activité prévue au présent paragraphe ou au paragraphe (1.1) qui est exercée par la société ou toute entité de son groupe ou lorsque ces activités sont relatives à la prestation de services financiers par toute autre entité,

(2) Le paragraphe 329(5) de la version française de la même loi est modifié par remplacement de l'alinéa 441(4)c) qui y est édicté par ce qui suit :

c) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut exercer les activités visées aux alinéas (1)c.1) et d), notamment en ce qui a trait à la collecte, la manipulation et la transmission d'information en vertu du sous-alinéa (1)d)(i).

180 (1) Le paragraphe 331(1) de la version française de la même loi est modifié par remplacement des alinéas 495(2.2)b) et c) qui y sont édictés par ce qui suit :

b) assortir de conditions l'acquisition par la société d'assurance-vie, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

c) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société d'assurance-vie peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

(2) Subsection 331(3) of the French version of the Act is amended by replacing the paragraphs 495(4.2)(a) and (b) that it enacts with the following:

a) assortir de conditions l'acquisition par la société d'assurances multirisques ou la société d'assurance maritime, en vertu du paragraphe (4.1), d'une entité ou l'acquisition ou l'augmentation par l'une de ces sociétés, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

b) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société d'assurances multirisques ou la société d'assurance maritime peut, en vertu du paragraphe (4.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

181 Section 332 of the French version of the Act is amended by replacing the paragraphs 495.1(a) and (b) that it enacts with the following:

a) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut acquérir le contrôle d'une entité qui exerce des activités qu'une société est autorisée à exercer dans le cadre des alinéas 441(1)c.1) et d) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

b) assortir de conditions l'acquisition par la société du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société, en vertu de cet alinéa, d'un intérêt de groupe financier dans une telle entité.

182 Subsection 335(1) of the French version of the Act is amended by replacing the paragraphs 554(2.2)(b) and (c) that it enacts with the following:

b) assortir de conditions l'acquisition par la société d'assurance-vie, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

c) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société d'assurance-vie peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

(2) Le paragraphe 331(3) de la version française de la même loi est modifié par remplacement des alinéas 495(4.2)a) et b) qui y sont édictés par ce qui suit :

a) assortir de conditions l'acquisition par la société d'assurances multirisques ou la société d'assurance maritime, en vertu du paragraphe (4.1), d'une entité ou l'acquisition ou l'augmentation par l'une de ces sociétés, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

b) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société d'assurances multirisques ou la société d'assurance maritime peut, en vertu du paragraphe (4.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

181 L'article 332 de la version française de la même loi est modifié par remplacement des alinéas 495.1a) et b) qui y sont édictés par ce qui suit :

a) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société peut acquérir le contrôle d'une entité qui exerce des activités qu'une société est autorisée à exercer dans le cadre des alinéas 441(1)c.1) et d) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

b) assortir de conditions l'acquisition par la société du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société, en vertu de cet alinéa, d'un intérêt de groupe financier dans une telle entité.

182 Le paragraphe 335(1) de la version française de la même loi est modifié par remplacement des alinéas 554(2.2)b) et c) qui y sont édictés par ce qui suit :

b) assortir de conditions l'acquisition par la société de secours, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

c) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de secours peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

183 Section 336 of the French version of the Act is amended by replacing the paragraphs 554.1(a) and (b) that it enacts with the following:

a) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de secours peut acquérir le contrôle d'une entité qui exerce des activités qu'une société d'assurances multirisques est autorisée à exercer dans le cadre des alinéas 441(1)c.1) et d) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

b) assortir de conditions l'acquisition par la société de secours du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société, en vertu de cet alinéa, d'un intérêt de groupe financier dans une telle entité.

184 Subsection 337(1) of the French version of the Act is amended by replacing the paragraphs 971(2.2)(b) and (c) that it enacts with the following:

b) assortir de conditions l'acquisition par la société de portefeuille d'assurances, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

c) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de portefeuille d'assurances peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

185 Section 338 of the French version of the Act is amended by replacing the paragraphs 971.1(a) and (b) that it enacts with the following:

b) assortir de conditions l'acquisition par la société de secours, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

c) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de secours peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

183 L'article 336 de la version française de la même loi est modifié par remplacement des alinéas 554.1a) et b) qui y sont édictés par ce qui suit :

a) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de secours peut acquérir le contrôle d'une entité qui exerce des activités qu'une société d'assurances multirisques est autorisée à exercer dans le cadre des alinéas 441(1)c.1) et d) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité, notamment dans quelles circonstances une telle acquisition ou augmentation est interdite;

b) assortir de conditions l'acquisition par la société de secours du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société, en vertu de cet alinéa, d'un intérêt de groupe financier dans une telle entité.

184 Le paragraphe 337(1) de la version française de la même loi est modifié par remplacement des alinéas 971(2.2)b) et c) qui y sont édictés par ce qui suit :

b) assortir de conditions l'acquisition par la société de portefeuille d'assurances, en vertu du paragraphe (2.1), du contrôle d'une entité ou l'acquisition ou l'augmentation par cette société, en vertu de ce paragraphe, d'un intérêt de groupe financier dans une telle entité;

c) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de portefeuille d'assurances peut, en vertu du paragraphe (2.1), acquérir le contrôle d'une entité ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité.

185 L'article 338 de la version française de la même loi est modifié par remplacement des alinéas 971.1a) et b) qui y sont édictés par ce qui suit :

a) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de portefeuille d'assurances peut acquérir le contrôle d'une entité qui exerce des activités qu'une société est autorisée à exercer dans le cadre des alinéas 441(1)c.1) et d) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité;

b) assortir de conditions l'acquisition par une société de portefeuille d'assurances du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société d'un intérêt de groupe financier dans une telle entité.

SUBDIVISION B

Virtual Meetings

1991, c. 45

Trust and Loan Companies Act

186 (1) Subsection 139(1) of the French version of the *Trust and Loan Companies Act* is replaced by the following:

Lieu des assemblées

139 (1) Les assemblées des actionnaires se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

(2) Subsection 139(2) of the Act is replaced by the following:

Participation by electronic means

(2) Unless the by-laws provide otherwise and in accordance with any regulations, any person who is entitled to attend a meeting of shareholders may participate in the meeting by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting if the company makes one available. A person who is participating in a meeting by one of those means is deemed for the purposes of this Act to be present at the meeting.

Meeting held by electronic means

(2.1) If the directors or shareholders of a company call a meeting of shareholders under this Act, those directors or shareholders may determine that the meeting shall be held, in accordance with any regulations, entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate

a) prendre toute mesure d'ordre réglementaire concernant les circonstances dans lesquelles la société de portefeuille d'assurances peut acquérir le contrôle d'une entité qui exerce des activités qu'une société est autorisée à exercer dans le cadre des alinéas 441(1)c.1) et d) ou acquérir ou augmenter un intérêt de groupe financier dans une telle entité;

b) assortir de conditions l'acquisition par une société de portefeuille d'assurances du contrôle d'une entité visée à l'alinéa a) ou l'acquisition ou l'augmentation par cette société d'un intérêt de groupe financier dans une telle entité.

SOUS-SECTION B

Assemblées virtuelles

1991, ch. 45

Loi sur les sociétés de fiducie et de prêt

186 (1) Le paragraphe 139(1) de la version française de la *Loi sur les sociétés de fiducie et de prêt* est remplacé par ce qui suit :

Lieu des assemblées

139 (1) Les assemblées des actionnaires se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

(2) Le paragraphe 139(2) de la même loi est remplacé par ce qui suit :

Participation aux assemblées par moyen de communication électronique

(2) Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne qui a le droit d'assister à une assemblée des actionnaires peut y participer par moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer adéquatement entre eux et mis à leur disposition par la société. Elle est alors réputée, pour l'application de la présente loi, avoir assisté à l'assemblée.

Tenue d'assemblées par moyen de communication électronique

(2.1) Les administrateurs ou les actionnaires qui convoquent une assemblée des actionnaires conformément à la présente loi peuvent prévoir que celle-ci sera tenue, conformément aux éventuels règlements, entièrement par un moyen de communication — téléphonique, électronique ou autre — permettant à tous les

adequately with each other during the meeting, if the by-laws so provide.

187 Subsection 154(4) of the Act is replaced by the following:

Voting while participating electronically

(4) Unless the by-laws provide otherwise and in accordance with any regulations, any person who is participating in a meeting of shareholders under subsection 139(2) or (2.1) and entitled to vote at that meeting may vote by means of the telephonic, electronic or other communication facility that the company has made available for that purpose.

1991, c. 46

Bank Act

188 (1) Subsection 136(1) of the French version of the *Bank Act* is replaced by the following:

Lieu des assemblées

136 (1) Les assemblées des actionnaires ou des membres se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

(2) Subsection 136(2) of the Act is replaced by the following:

Participation by electronic means

(2) Unless the by-laws provide otherwise and in accordance with any regulations, any person who is entitled to attend a meeting of shareholders or members may participate in the meeting by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting if the bank makes one available. A person who is participating in a meeting by one of those means is deemed for the purposes of this Act to be present at the meeting.

Meeting held by electronic means

(2.1) If the directors, shareholders or members of a bank call a meeting of shareholders or members under this Act, those directors, shareholders or members may determine that the meeting shall be held, in accordance with any regulations, entirely by means of a telephonic, electronic or other communication facility that permits

participants de communiquer adéquatement entre eux, pourvu que les règlements administratifs permettent une telle assemblée.

187 Le paragraphe 154(4) de la même loi est remplacé par ce qui suit :

Vote en cas de participation par moyen de communication électronique

(4) Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne participant à une assemblée des actionnaires de la manière prévue aux paragraphes 139(2) ou (2.1) et habile à y voter peut le faire par le moyen de communication téléphonique, électronique ou autre mis à sa disposition par la société à cette fin.

1991, ch. 46

Loi sur les banques

188 (1) Le paragraphe 136(1) de la version française de la *Loi sur les banques* est remplacé par ce qui suit :

Lieu des assemblées

136 (1) Les assemblées des actionnaires ou des membres se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

(2) Le paragraphe 136(2) de la même loi est remplacé par ce qui suit :

Participation aux assemblées par moyen de communication électronique

(2) Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne qui a le droit d'assister à une assemblée des actionnaires ou des membres peut y participer par moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer adéquatement entre eux et mis à leur disposition par la banque. Elle est alors réputée, pour l'application de la présente loi, avoir assisté à l'assemblée.

Tenue d'assemblées par moyen de communication électronique

(2.1) Les administrateurs, les actionnaires ou les membres qui convoquent une assemblée des actionnaires ou des membres conformément à la présente loi peuvent prévoir que celle-ci sera tenue, conformément aux éventuels règlements, entièrement par un moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer

all participants to communicate adequately with each other during the meeting, if the by-laws so provide.

189 Subsection 151(4) of the Act is replaced by the following:

Voting while participating electronically

(4) Unless the by-laws provide otherwise and in accordance with any regulations, any person who is participating in a meeting under subsection 136(2) or (2.1) and entitled to vote at that meeting may vote by means of the telephonic, electronic or other communication facility that the bank has made available for that purpose.

190 (1) Subsection 725(1) of the French version of the Act is replaced by the following:

Lieu des assemblées

725 (1) Les assemblées des actionnaires se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

(2) Subsection 725(2) of the Act is replaced by the following:

Participation by electronic means

(2) Unless the by-laws provide otherwise and in accordance with any regulations, any person who is entitled to attend a meeting of shareholders may participate in the meeting by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting if the bank holding company makes one available. A person who is participating in a meeting by one of those means is deemed for the purposes of this Part to be present at the meeting.

Meeting held by electronic means

(2.1) If the directors or shareholders of a bank holding company call a meeting of shareholders under this Act, those directors or shareholders may determine that the meeting shall be held, in accordance with any regulations, entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the by-laws so provide.

191 Subsection 740(4) of the Act is replaced by the following:

adéquatement entre eux, pourvu que les règlements administratifs permettent une telle assemblée.

189 Le paragraphe 151(4) de la même loi est remplacé par ce qui suit :

Vote en cas de participation par moyen de communication électronique

(4) Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne participant à une assemblée de la manière prévue aux paragraphes 136(2) ou (2.1) et habile à y voter peut le faire par le moyen de communication téléphonique, électronique ou autre mis à sa disposition par la banque à cette fin.

190 (1) Le paragraphe 725(1) de la version française de la même loi est remplacé par ce qui suit :

Lieu des assemblées

725 (1) Les assemblées des actionnaires se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

(2) Le paragraphe 725(2) de la même loi est remplacé par ce qui suit :

Participation aux assemblées par moyen de communication électronique

(2) Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne qui a le droit d'assister à une assemblée des actionnaires peut y participer par moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer adéquatement entre eux et mis à leur disposition par la société de portefeuille bancaire. Elle est alors réputée, pour l'application de la présente partie, avoir assisté à l'assemblée.

Tenue d'assemblées par moyen de communication électronique

(2.1) Les administrateurs ou les actionnaires qui convoquent une assemblée des actionnaires conformément à la présente loi peuvent prévoir que celle-ci sera tenue, conformément aux éventuels règlements, entièrement par un moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer adéquatement entre eux, pourvu que les règlements administratifs permettent une telle assemblée.

191 Le paragraphe 740(4) de la même loi est remplacé par ce qui suit :

Voting while participating electronically

(4) Unless the by-laws provide otherwise and in accordance with any regulations, any person who is participating in a meeting of shareholders under subsection 725(2) or (2.1) and entitled to vote at that meeting may vote by means of the telephonic, electronic or other communication facility that the bank holding company has made available for that purpose.

Vote en cas de participation par moyen de communication électronique

(4) Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne participant à une assemblée des actionnaires de la manière prévue aux paragraphes 725(2) ou (2.1) et habile à y voter peut le faire par le moyen de communication téléphonique, électronique ou autre mis à sa disposition par la société à cette fin.

1991, c. 47

Insurance Companies Act

192 (1) Subsection 140(1) of the French version of the *Insurance Companies Act* is replaced by the following:

Lieu des assemblées

140 (1) Les assemblées des actionnaires ou des souscripteurs se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

(2) Subsection 140(2) of the Act is replaced by the following:

Participation by electronic means

(2) Unless the by-laws provide otherwise and in accordance with any regulations, any person who is entitled to attend a meeting of shareholders or policyholders may participate in the meeting by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting if the company makes one available. A person who is participating in a meeting by one of those means is deemed for the purposes of this Act to be present at the meeting.

Meeting held by electronic means

(2.1) If the directors, shareholders or policyholders of a company call a meeting of shareholders or policyholders under this Act, those directors, shareholders or policyholders may determine that the meeting shall be held, in accordance with any regulations, entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the by-laws so provide.

193 Subsection 157(4) of the Act is replaced by the following:

1991, ch. 47

Loi sur les sociétés d'assurances

192 (1) Le paragraphe 140(1) de la version française de la *Loi sur les sociétés d'assurances* est remplacé par ce qui suit :

Lieu des assemblées

140 (1) Les assemblées des actionnaires ou des souscripteurs se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

(2) Le paragraphe 140(2) de la même loi est remplacé par ce qui suit :

Participation aux assemblées par moyen de communication électronique

(2) Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne qui a le droit d'assister à une assemblée des actionnaires ou des souscripteurs peut y participer par moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer adéquatement entre eux et mis à leur disposition par la société. Elle est alors réputée, pour l'application de la présente loi, avoir assisté à l'assemblée.

Tenue d'assemblées par moyen de communication électronique

(2.1) Les administrateurs, les actionnaires ou les souscripteurs qui convoquent une assemblée des actionnaires ou des souscripteurs conformément à la présente loi peuvent prévoir que celle-ci sera tenue, conformément aux éventuels règlements, entièrement par un moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer adéquatement entre eux, pourvu que les règlements administratifs permettent une telle assemblée.

193 Le paragraphe 157(4) de la même loi est remplacé par ce qui suit :

Voting while participating electronically

(4) Unless the by-laws provide otherwise and in accordance with any regulations, any person who is participating in a meeting of shareholders or policyholders under subsection 140(2) or (2.1) and entitled to vote at that meeting may vote by means of the telephonic, electronic or other communication facility that the company has made available for that purpose.

194 (1) Subsection 764(1) of the French version of the Act is replaced by the following:

Lieu des assemblées

764 (1) Les assemblées des actionnaires se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

(2) Subsection 764(2) of the Act is replaced by the following:

Participation by electronic means

(2) Unless the by-laws provide otherwise and in accordance with any regulations, any person who is entitled to attend a meeting of shareholders may participate in the meeting by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting if the insurance holding company makes one available. A person who is participating in a meeting by one of those means is deemed for the purposes of this Part to be present at the meeting.

Meeting held by electronic means

(2.1) If the directors or shareholders of an insurance holding company call a meeting of shareholders under this Act, those directors or shareholders may determine that the meeting shall be held, in accordance with any regulations, entirely by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the by-laws so provide.

195 Subsection 778(4) of the Act is replaced by the following:

Voting while participating electronically

(4) Unless the by-laws provide otherwise and in accordance with any regulations, any person who is participating in a meeting of shareholders under subsection 764(2) or (2.1) and entitled to vote at that meeting may vote by

Vote en cas de participation par moyen de communication électronique

(4) Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne participant à une assemblée des actionnaires ou des souscripteurs de la manière prévue aux paragraphes 140(2) ou (2.1) et habile à y voter peut le faire par le moyen de communication téléphonique, électronique ou autre mis à sa disposition par la société à cette fin.

194 (1) Le paragraphe 764(1) de la version française de la même loi est remplacé par ce qui suit :

Lieu des assemblées

764 (1) Les assemblées des actionnaires se tiennent au Canada, au lieu que prévoient les règlements administratifs ou, à défaut, que choisissent les administrateurs.

(2) Le paragraphe 764(2) de la même loi est remplacé par ce qui suit :

Participation aux assemblées par moyen de communication électronique

(2) Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne qui a le droit d'assister à une assemblée des actionnaires peut y participer par moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer adéquatement entre eux et mis à leur disposition par la société de portefeuille d'assurances. Elle est alors réputée, pour l'application de la présente partie, avoir assisté à l'assemblée.

Tenue d'assemblées par moyen de communication électronique

(2.1) Les administrateurs ou les actionnaires qui convoquent une assemblée des actionnaires conformément à la présente loi peuvent prévoir que celle-ci sera tenue, conformément aux éventuels règlements, entièrement par un moyen de communication — téléphonique, électronique ou autre — permettant à tous les participants de communiquer adéquatement entre eux, pourvu que les règlements administratifs permettent une telle assemblée.

195 Le paragraphe 778(4) de la même loi est remplacé par ce qui suit :

Vote en cas de participation par moyen de communication électronique

(4) Sauf disposition contraire des règlements administratifs et conformément aux éventuels règlements, toute personne participant à une assemblée des actionnaires de la manière prévue aux paragraphes 764(2) ou (2.1) et

means of the telephonic, electronic or other communication facility that the insurance holding company has made available for that purpose.

habile à y voter peut le faire par le moyen de communication téléphonique, électronique ou autre mis à sa disposition par la société à cette fin.

Coming into Force

Entrée en vigueur

Order in council

196 This Subdivision comes into force on a day to be fixed by order of the Governor in Council.

Décret

196 La présente sous-section entre en vigueur à la date fixée par décret.

DIVISION 2

Leave Related to Pregnancy Loss and Bereavement Leave

R.S., c. L-2

Canada Labour Code

197 Section 187.1 of the *Canada Labour Code* is amended by adding the following after subsection (2):

Application of section 210.2

(2.1) If an employee interrupts a vacation to take leave under Division VIII and resumes the vacation immediately at the end of that leave, section 210.2 applies to them as if they did not resume the vacation before returning to work.

198 The Act is amended by adding the following after section 206.5:

Leave Related to Pregnancy Loss

Definitions

206.51 (1) The following definitions apply in this section.

common-law partner, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year. (*conjoint de fait*)

stillbirth means the complete expulsion or extraction of a foetus from a person on or after the 20th week of pregnancy or after the foetus has attained at least 500 g, without any breathing, beating of the heart, pulsation of the umbilical cord or movement of voluntary muscle from the foetus after the expulsion or extraction. (*mortinaissance*)

SECTION 2

Congé en cas de perte de grossesse et congé de décès

L.R., ch. L-2

Code canadien du travail

197 L'article 187.1 du *Code canadien du travail* est modifié par adjonction, après le paragraphe (2), de ce qui suit :

Application de l'article 210.2

(2.1) Si l'employé a interrompu son congé annuel afin de prendre congé au titre de la section VIII et a repris son congé annuel immédiatement après la fin de ce congé, l'article 210.2 s'applique à lui comme s'il n'avait pas repris son congé annuel avant son retour au travail.

198 La même loi est modifiée par adjonction, après l'article 206.5, de ce qui suit :

Congé en cas de perte de grossesse

Définitions

206.51 (1) Les définitions qui suivent s'appliquent au présent article.

conjoint de fait La personne qui vit avec la personne en cause dans une relation conjugale depuis au moins un an. (*common-law partner*)

mortinaissance Expulsion ou extraction complète du foetus du corps d'une personne, à compter de la vingtième semaine de grossesse ou après que le foetus a atteint un poids d'au moins 500 g, sans qu'il y ait, chez le foetus, respiration, battement de cœur, pulsation du cordon ombilical ou contraction volontaire d'un muscle après cette expulsion ou extraction. (*stillbirth*)

Eligible employees

(2) An employee is eligible for the leave of absence referred to in subsection (3) if

(a) their pregnancy does not result in a live birth;

(b) the pregnancy of their spouse or common-law partner does not result in a live birth; or

(c) they intended to be the legal parent of the child that would have been born had another person's pregnancy resulted in a live birth.

Entitlement to leave

(3) An employee who is eligible for a leave of absence under subsection (2) is entitled to and shall be granted a leave of absence of up to

(a) eight weeks, if the pregnancy resulted in a stillbirth; or

(b) three days, in any other case.

Pregnancy with multiples

(4) For the purposes of this section, the following apply in respect of a pregnancy of more than one foetus:

(a) an employee may take only one leave of absence under subsection (3) in respect of the pregnancy; and

(b) a pregnancy that does not result in a live birth includes a pregnancy that has ended without a live birth in respect of at least one foetus.

Period when leave may be taken

(5) The period during which the employee may take a leave of absence begins on the day on which the pregnancy does not result in a live birth and ends 26 weeks after that day.

Leave with pay

(6) If the employee has completed three consecutive months of continuous employment with the employer, the employee is entitled to the first three days of leave with pay at their regular rate of wages for their normal hours of work, and such pay shall for all purposes be considered to be wages.

Division of leave

(7) The leave of absence may be taken in one or two periods. The employer may require that each period of leave be not less than one day's duration.

Employés en cause

(2) Ont droit au congé prévu au paragraphe (3) les employés suivants :

a) l'employée dont la grossesse se termine sans naissance vivante;

b) l'employé dont l'épouse ou la conjointe de fait voit sa grossesse se terminer sans naissance vivante;

c) l'employé qui avait l'intention d'être le parent légal de l'enfant qui serait né de la grossesse d'une autre personne si cette grossesse s'était terminée par une naissance vivante.

Droit à un congé

(3) Tout employé visé au paragraphe (2) a droit à un congé :

a) d'au plus huit semaines, dans le cas d'une mortinaissance;

b) d'au plus trois jours, dans tout autre cas.

Grossesse multiple

(4) Pour l'application du présent article, les dispositions qui suivent s'appliquent à l'égard d'une grossesse multiple :

a) l'employé n'a droit qu'à un seul congé au titre du paragraphe (3) à l'égard de la grossesse;

b) la grossesse se termine sans naissance vivante notamment dans le cas où elle se termine sans naissance vivante à l'égard d'au moins un des foetus.

Période de congé

(5) La période au cours de laquelle l'employé peut prendre le congé commence à la date où la grossesse se termine sans naissance vivante et se termine vingt-six semaines après cette date.

Rémunération

(6) Si l'employé travaille pour l'employeur sans interruption depuis au moins trois mois, les trois premiers jours du congé lui sont payés au taux régulier de salaire pour une journée normale de travail; l'indemnité de congé qui est ainsi accordée est assimilée à un salaire.

Division du congé

(7) Le congé peut être pris en une ou deux périodes; l'employeur peut toutefois exiger que chaque période de congé soit d'une durée minimale d'une journée.

Regulations

(8) The Governor in Council may make regulations defining any expression for the purposes of this section, including the expressions "regular rate of wages" and "normal hours of work".

Règlements

(8) Le gouverneur en conseil peut, par règlement, définir tout terme pour l'application du présent article, notamment « taux régulier de salaire » et « journée normale de travail ».

199 (1) Subsection 207.3(3) of the Act is replaced by the following:

Notice — leave of more than four weeks

(3) If the length of the leave taken under any of sections 206.3 to 206.5, paragraph 206.51(3)(a) or section 206.9 is more than four weeks, the notice in writing of any change in the length of the leave shall be provided on at least four weeks' notice, unless there is a valid reason why that cannot be done.

199 (1) Le paragraphe 207.3(3) de la même loi est remplacé par ce qui suit :

Préavis — congé de plus de quatre semaines

(3) Sauf motif valable, le préavis doit être d'au moins quatre semaines si le congé pris en vertu de l'un des articles 206.3 à 206.5, de l'alinéa 206.51(3)a) ou de l'article 206.9 est de plus de quatre semaines.

(2) Subsection 207.3(5) of the Act is replaced by the following:

Return to work postponed

(5) If an employee who takes a leave of more than four weeks under any of sections 206.3 to 206.5 or paragraph 206.51(3)(a) wishes to shorten the length of the leave but does not provide the employer with four weeks' notice, the employer may postpone the employee's return to work for a period of up to four weeks after the day on which the employee informs the employer of the new end date of the leave. If the employer informs the employee that their return to work is postponed, the employee is not entitled to return to work until the day that is indicated by the employer.

(2) Le paragraphe 207.3(5) de la même loi est remplacé par ce qui suit :

Report de la date de retour au travail

(5) Si l'employé qui a pris un congé de plus de quatre semaines en vertu de l'un des articles 206.3 à 206.5 ou de l'alinéa 206.51(3)a) désire en raccourcir la durée mais omet de fournir le préavis exigé au paragraphe (3), l'employeur peut retarder le retour au travail d'une période d'au plus quatre semaines suivant le jour où l'employé l'informe de la nouvelle date de la fin du congé. Si l'employeur avise l'employé que le retour au travail est retardé, l'employé ne peut retourner au travail avant la date précisée.

200 (1) Paragraph 209.4(a) of the Act is replaced by the following:

(a) specifying the absences from employment that are deemed not to have interrupted continuous employment referred to in any of sections 206.51 to 206.8;

200 (1) L'alinéa 209.4a) de la même loi est remplacé par ce qui suit :

a) préciser les absences qui sont réputées ne pas interrompre la continuité de l'emploi pour l'application des articles 206.51 à 206.8;

(2) Paragraph 209.4(g) of the Act is replaced by the following:

(g) prescribing shorter periods of consecutive months of continuous employment for the purposes of subsections 206.51(6), 206.6(2), 206.7(2.1) and 206.8(1);

(2) L'alinéa 209.4g) de la même loi est remplacé par ce qui suit :

g) préciser des périodes plus courtes de travail sans interruption pour l'application des paragraphes 206.51(6), 206.6(2), 206.7(2.1) et 206.8(1);

201 (1) Subsection 210(1.3) of the Act is replaced by the following:

Notice to employer

(1.3) Every employee who takes the leave of absence shall, as soon as possible, provide the employer with a notice in writing of the beginning of any period of leave

201 (1) Le paragraphe 210(1.3) de la même loi est remplacé par ce qui suit :

Avis à l'employeur

(1.3) L'employé qui prend le congé informe dès que possible l'employeur par écrit du moment où chaque période de congé commence ainsi que des raisons et de la durée du congé qu'il entend prendre.

of absence, the reasons for the leave and the length of the leave that they intend to take.

Notice — change in length of leave

(1.4) Every employee who is on the leave of absence shall, as soon as possible, provide the employer with a notice in writing of any change in the length of the leave that they intend to take.

Notice — leave of more than four weeks

(1.5) If the length of the leave of absence is more than four weeks, the notice in writing of any change in the length of the leave shall be provided on at least four weeks' notice, unless there is a valid reason why that cannot be done.

Return to work postponed

(1.6) If an employee who takes the leave of absence for more than four weeks wishes to shorten the length of the leave but does not provide the employer with four weeks' notice, the employer may postpone the employee's return to work for a period of up to four weeks after the day on which the employee informs the employer of the new end date of the leave. If the employer informs the employee that their return to work is postponed, the employee is not entitled to return to work until the day that is indicated by the employer.

Deemed part of leave

(1.7) The period of the postponement is deemed to be part of the leave.

(2) Subsection 210(3) of the Act is repealed.

202 The Act is amended by adding the following after section 210:

Right to notice of employment opportunities

210.1 An employee who takes a leave of absence from employment under this Division is entitled, on written request, to be informed in writing of every employment, promotion or training opportunity that arises during the period when the employee is on the leave of absence and for which the employee is qualified, and on receiving the request, every employer of the employee shall inform the employee accordingly.

Resumption of employment in same position

210.2 (1) An employee who takes a leave of absence from employment under this Division is entitled to be reinstated in the position that the employee occupied when the leave of absence commenced, and the employer of the

Préavis — modification de la durée du congé

(1.4) Toute modification de la durée prévue du congé est portée dès que possible à l'attention de l'employeur par un préavis écrit.

Préavis — congé de plus de quatre semaines

(1.5) Sauf motif valable, le préavis doit être d'au moins quatre semaines si le congé est de plus de quatre semaines.

Report de la date de retour au travail

(1.6) Si l'employé qui a pris un congé de plus de quatre semaines désire en raccourcir la durée mais omet de fournir le préavis exigé au paragraphe (1.5), l'employeur peut retarder le retour au travail d'une période d'au plus quatre semaines suivant le jour où l'employé l'informe de la nouvelle date de la fin du congé. Si l'employeur avise l'employé que le retour au travail est retardé, l'employé ne peut retourner au travail avant la date précisée.

Période incluse

(1.7) La période d'attente qui précède le retour au travail est réputée faire partie du congé.

(2) Le paragraphe 210(3) de la même loi est abrogé.

202 La même loi est modifiée par adjonction, après l'article 210, de ce qui suit :

Information quant aux possibilités d'emploi

210.1 L'employé qui prend un congé aux termes de la présente section a le droit, sur demande écrite, d'être informé par écrit de toutes les possibilités d'emploi, d'avancement et de formation qui surviennent pendant son congé et qui sont en rapport avec ses qualifications professionnelles, l'employeur étant tenu de fournir l'information.

Reprise de l'emploi

210.2 (1) L'employé a le droit de reprendre l'emploi qu'il a quitté pour prendre son congé, l'employeur étant tenu de l'y réintégrer à la fin du congé.

employee shall reinstate the employee in that position at the end of the leave.

Comparable position

(2) If for any valid reason an employer cannot reinstate an employee in the position referred to in subsection (1), the employer shall reinstate the employee in a comparable position with the same wages and benefits and in the same location.

Wages and benefits affected by reorganization

(3) If an employee takes leave under this Division and, during the period of that leave, the wages and benefits of the group of employees of which that employee is a member are changed as part of a plan to reorganize the industrial establishment in which that group is employed, that employee is entitled, on being reinstated in employment under this section, to receive the wages and benefits in respect of that employment that the employee would have been entitled to receive had they been working when the reorganization took place.

Notice of changes in wages and benefits

(4) The employer of every employee who is on a leave of absence under this Division and whose wages and benefits would be changed as a result of a reorganization referred to in subsection (3) shall notify the employee in writing of that change as soon as possible.

Right to benefits

210.3 (1) The pension, health and disability benefits and the seniority of any employee who takes a leave of absence from employment under this Division accumulate during the entire period of the leave.

Contributions by employee

(2) If contributions are required from an employee in order for the employee to be entitled to a benefit referred to in subsection (1), the employee is responsible for and shall, within a reasonable time, pay those contributions for the period of any leave of absence under this Division unless, before or within a reasonable time after taking the leave, the employee notifies the employer of the employee's intention to discontinue contributions during that period.

Contributions by employer

(3) An employer who pays contributions in respect of a benefit referred to in subsection (1) shall continue to pay those contributions during an employee's leave of absence under this Division in at least the same proportion as if the employee were not on leave unless the employee

Emploi comparable

(2) Faute — pour un motif valable — de pouvoir réintégrer l'employé dans son poste antérieur, l'employeur lui fournit un emploi comparable, au même endroit, au même salaire et avec les mêmes avantages.

Modifications consécutives à une réorganisation

(3) Si, pendant sa période de congé, le salaire et les avantages du groupe dont il fait partie sont modifiés dans le cadre de la réorganisation de l'établissement où ce groupe travaille, l'employé, à sa reprise du travail, a droit au salaire et aux avantages afférents à l'emploi qu'il réoccupe comme s'il avait travaillé au moment de la réorganisation.

Avis de modification

(4) Dans le cas visé au paragraphe (3), l'employeur avise par écrit l'employé en congé de la modification du salaire et des avantages de son poste, et ce dans les meilleurs délais.

Calcul des prestations

210.3 (1) Les périodes pendant lesquelles l'employé prend congé aux termes de la présente section sont prises en compte pour le calcul des prestations de retraite, de maladie et d'invalidité et pour la détermination de l'ancienneté.

Versement des cotisations de l'employé

(2) Il incombe à l'employé, quand il est normalement responsable du versement des cotisations ouvrant droit à ces prestations, de les payer dans un délai raisonnable sauf si, avant de prendre le congé ou dans un délai raisonnable, il avise son employeur de son intention de cesser les versements pendant le congé.

Versement des cotisations de l'employeur

(3) L'employeur qui verse des cotisations pour que l'employé ait droit aux prestations doit, pendant le congé, poursuivre ses versements dans au moins la même proportion que si l'employé n'était pas en congé, sauf si ce dernier ne verse pas dans un délai raisonnable les cotisations qui lui incombent.

does not pay the employee's contributions, if any, within a reasonable time.

Failure to pay contributions

(4) For the purposes of calculating the pension, health and disability benefits of an employee in respect of whom contributions have not been paid as required under subsections (2) and (3), the benefits do not accumulate during the leave of absence and employment on the employee's return to work is deemed to be continuous with employment before the employee's absence.

Deemed continuous employment

(5) For the purposes of calculating benefits, other than benefits referred to in subsection (1), of an employee who takes a leave of absence under this Division, employment on the employee's return to work is deemed to be continuous with employment before the employee's absence.

Effect of leave

210.4 Despite the provisions of any income-replacement scheme or any insurance plan in force at the workplace, an employee who takes a leave of absence from employment under this Division is entitled to benefits under the scheme or plan on the same terms as any employee who is absent from work for health-related reasons and is entitled to benefits under the scheme or plan.

Prohibition

210.5 No employer shall

(a) dismiss, suspend, lay off, demote or discipline an employee because the employee applies for, intends to take or has taken a leave of absence from employment under this Division; or

(b) take into account the fact that an employee applies for, intends to take or has taken a leave of absence from employment under this Division in any decision to promote or train that employee.

Regulations

210.6 The Governor in Council may make regulations

(a) defining the expression "immediate family" for the purposes of subsection 210(1);

(b) for the purposes of subsection 210(2),

(i) defining the expressions "regular rate of wages" and "normal hours of work", and

(ii) prescribing shorter periods of consecutive months of continuous employment;

Défaut de versement

(4) Pour le calcul des prestations, en cas de défaut de versement des cotisations visées aux paragraphes (2) et (3), la durée de l'emploi est réputée ne pas avoir été interrompue, la période de congé n'étant toutefois pas prise en compte.

Continuité d'emploi

(5) Pour le calcul des avantages — autres que les prestations citées au paragraphe (1) — de l'employé en situation de congé sous le régime de la présente section, la durée de l'emploi est réputée ne pas avoir été interrompue, la période de congé n'étant toutefois pas prise en compte.

Conséquence du congé

210.4 Malgré les dispositions du régime de remplacement de revenu ou du régime d'assurance en vigueur à son lieu de travail, l'employé qui prend un congé aux termes de la présente section est admissible aux avantages que le régime prévoit aux mêmes conditions que tout employé qui s'absente pour cause de maladie et qui y est admissible.

Interdiction

210.5 L'employeur ne peut invoquer le fait qu'un employé a présenté une demande de congé aux termes de la présente section ou a l'intention de prendre ou a pris un tel congé pour le congédier, le suspendre, le mettre à pied, le rétrograder ou prendre des mesures disciplinaires contre lui, ni en tenir compte dans ses décisions en matière d'avancement ou de formation.

Règlements

210.6 Le gouverneur en conseil peut, par règlement :

a) préciser, pour l'application du paragraphe 210(1), le sens de « proche parent »;

b) préciser, pour l'application du paragraphe 210(2) :

(i) le sens de « taux régulier de salaire » et de « journée normale de travail »,

(ii) des périodes plus courtes de travail sans interruption;

(c) specifying what does not constitute a valid reason for not reinstating an employee in the position referred to in subsection 210.2(2);

(d) for the purposes of this Division, specifying the absences from employment that are deemed not to have interrupted continuity of employment;

(e) specifying the circumstances in which a leave under this Division may be interrupted; and

(f) extending the period within which a leave under this Division may be taken.

203 Subsection 246.1(1) of the Act is amended by adding the following after paragraph (a):

(a.1) the employer has taken action against the employee in contravention of paragraph 210.5(a) or (b);

c) préciser, pour l'application du paragraphe 210.2(2), ce qui ne constitue pas un motif valable pour ne pas réintégrer un employé dans son poste antérieur;

d) préciser, pour l'application de la présente section, les cas d'absence qui n'ont pas pour effet d'interrompre le service chez un employeur;

e) préciser les cas où le congé prévu par la présente section peut être interrompu;

f) prolonger la période au cours de laquelle peut être pris le congé prévu par la présente section.

203 Le paragraphe 246.1(1) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :

a.1) toute mesure contrevenant à l'article 210.5;

2021, c. 27

An Act to amend the Criminal Code and the Canada Labour Code

204 (1) Section 6.1 of *An Act to amend the Criminal Code and the Canada Labour Code* is amended by replacing the subsection 210(1) that it enacts with the following:

Employee entitled

210 (1) Except when subsection (1.01) applies, every employee is entitled to and shall be granted, in the event of the death of a member of their immediate family or a family member in respect of whom the employee is, at the time of the death, on leave under section 206.3 or 206.4, a leave of absence from employment of up to 10 days that may be taken during the period that begins on the day on which the death occurs and ends six weeks after the latest of the days on which any funeral, burial or memorial service of that deceased person occurs.

(2) Section 6.1 of the Act is amended by replacing the subsections 210(1.02) and (1.03) that it enacts with the following:

Definition of *child*

(1.02) In subsection (1.01), ***child*** means

(a) a person who is under 18 years of age; or

(b) a person in respect of whom the employee or their spouse or common-law partner, as the case may be, is entitled to the Canada caregiver credit under paragraph 118(1)(d) of the *Income Tax Act*.

2021, ch. 27

Loi modifiant le Code criminel et le Code canadien du travail

204 (1) L'article 6.1 de la *Loi modifiant le Code criminel et le Code canadien du travail* est modifié par remplacement du paragraphe 210(1) qui y est édicté par ce qui suit :

Droit

210 (1) Sauf lorsque le paragraphe (1.01) s'applique, en cas de décès d'un proche parent ou d'un membre de la famille relativement auquel il est, au moment du décès, en congé au titre des articles 206.3 ou 206.4, l'employé a droit à un congé d'au plus dix jours qui peut être pris pendant la période qui commence à la date du décès et se termine six semaines après la date des funérailles de la personne décédée, de son inhumation ou du service commémoratif tenu à son égard, selon celle qui est la plus éloignée.

(2) L'article 6.1 de la même loi est modifié par remplacement des paragraphes 210(1.02) et (1.03) qui y sont édictés par ce qui suit :

Définition de *enfant*

(1.02) Au paragraphe (1.01), ***enfant*** s'entend d'une personne qui est âgée de moins de dix-huit ans ou à l'égard de qui l'employé ou son époux ou conjoint de fait, selon le cas, est admissible au crédit canadien pour aidant naturel au titre de l'alinéa 118(1)d) de la *Loi de l'impôt sur le revenu*.

205 Subsection 8(3) of the Act is replaced by the following:

Section 6.1

(3) Section 6.1 comes into force on the day on which section 198 of the *Fall Economic Statement Implementation Act, 2023* comes into force.

Transitional Provision

Subsection 210(1.3)

206 Subsection 210(1.3) of the *Canada Labour Code*, as enacted by subsection 201(1), applies only with respect to leaves under section 210 of that Act that begin on or after the day on which that subsection 201(1) comes into force.

Coordinating Amendments

2021, c. 27

207 (1) In this section, *other Act* means *An Act to amend the Criminal Code and the Canada Labour Code*, chapter 27 of the Statutes of Canada, 2021.

(2) If section 6.1 of the other Act comes into force before section 204 of this Act, then

(a) sections 204 and 205 of this Act are deemed never to have come into force and are repealed;

(b) subsection 210(1) of the *Canada Labour Code* is replaced by the following:

Employee entitled

210 (1) Except when subsection (1.01) applies, every employee is entitled to and shall be granted, in the event of the death of a member of their immediate family or a family member in respect of whom the employee is, at the time of the death, on leave under section 206.3 or 206.4, a leave of absence from employment of up to 10 days that may be taken during the period that begins on the day on which the death occurs and ends six weeks after the latest of the days on which any funeral, burial or memorial service of that deceased person occurs.

(c) subsections 210(1.02) and (1.03) of the *Canada Labour Code* are replaced by the following:

205 Le paragraphe 8(3) de la même loi est remplacé par ce qui suit :

Article 6.1

(3) L'article 6.1 entre en vigueur à la date d'entrée en vigueur de l'article 198 de la *Loi d'exécution de l'énoncé économique de l'automne 2023*.

Disposition transitoire

Paragraphe 210(1.3)

206 Le paragraphe 210(1.3) du *Code canadien du travail*, édicté par le paragraphe 201(1), ne s'applique qu'aux congés pris aux termes de l'article 210 de cette loi qui commencent à la date d'entrée en vigueur de ce paragraphe 201(1) ou après cette date.

Dispositions de coordination

2021, ch. 27

207 (1) Au présent article, *autre loi* s'entend de la *Loi modifiant le Code criminel et le Code canadien du travail*, chapitre 27 des Lois du Canada (2021).

(2) Si l'article 6.1 de l'autre loi entre en vigueur avant l'article 204 de la présente loi :

a) les articles 204 et 205 de la présente loi sont réputés ne pas être entrés en vigueur et sont abrogés;

b) le paragraphe 210(1) du *Code canadien du travail* est remplacé par ce qui suit :

Droit

210 (1) Sauf lorsque le paragraphe (1.01) s'applique, en cas de décès d'un proche parent ou d'un membre de la famille relativement auquel il est, au moment du décès, en congé au titre des articles 206.3 ou 206.4, l'employé a droit à un congé d'au plus dix jours qui peut être pris pendant la période qui commence à la date du décès et se termine six semaines après la date des funérailles de la personne décédée, de son inhumation ou du service commémoratif tenu à son égard, selon celle qui est la plus éloignée.

c) les paragraphes 210(1.02) et (1.03) du *Code canadien du travail* sont remplacés par ce qui suit :

Definition of *child*

(1.02) In subsection (1.01), ***child*** means

(a) a person who is under 18 years of age; or

(b) a person in respect of whom the employee or their spouse or common-law partner, as the case may be, is entitled to the Canada caregiver credit under paragraph 118(1)(d) of the *Income Tax Act*.

(3) If section 6.1 of the other Act and section 204 of this Act come into force on the same day, then that section 204 is deemed to have come into force before that section 6.1.

Coming into Force

540th day or order in council

208 Sections 197 to 203 come into force on the 540th day after the day on which this Act receives royal assent or on an earlier day to be fixed by order of the Governor in Council.

DIVISION 3

Canada Water Agency Act

Enactment of Act

Enactment

209 The *Canada Water Agency Act* is enacted as follows:

An Act respecting the Canada Water Agency

Preamble

Whereas the Government of Canada recognizes the importance of taking action to respond to the growing challenges threatening the health and sustainable management of freshwater ecosystems;

Whereas the Government of Canada wishes to foster collaboration with respect to freshwater issues;

Whereas the Government of Canada wishes to contribute to the protection, conservation and restoration of the quality of fresh water and the health of freshwater ecosystems in Canada and to take other collaborative measures, including the development of policy and the promotion of sound governance with respect to fresh water, as well as the improvement of the ease of access to and use of relevant data;

Définition de *enfant*

(1.02) Au paragraphe (1.01), ***enfant*** s'entend d'une personne qui est âgée de moins de dix-huit ans ou à l'égard de qui l'employé ou son époux ou conjoint de fait, selon le cas, est admissible au crédit canadien pour aidant naturel au titre de l'alinéa 118(1)d) de la *Loi de l'impôt sur le revenu*.

(3) Si l'entrée en vigueur de l'article 6.1 de l'autre loi et celle de l'article 204 de la présente loi sont concomitantes, cet article 204 est réputé être entré en vigueur avant cet article 6.1.

Entrée en vigueur

Cinq cent quarantième jour ou décret

208 Les articles 197 à 203 entrent en vigueur le cinq cent quarantième jour suivant la date de sanction de la présente loi ou, si elle est antérieure, à la date fixée par décret.

SECTION 3

Loi sur l'Agence canadienne de l'eau

Édiction de la loi

Édiction

209 Est édictée la *Loi sur l'Agence canadienne de l'eau*, dont le texte suit :

Loi concernant l'Agence canadienne de l'eau

Préambule

Attendu :

que le gouvernement du Canada reconnaît l'importance d'agir pour faire face aux défis croissants qui mettent en péril la santé et la gestion durable des écosystèmes d'eau douce;

qu'il entend encourager la collaboration à l'égard des enjeux relatifs à l'eau douce;

qu'il entend contribuer à la protection, la conservation et la restauration de la qualité de l'eau douce et de la santé des écosystèmes d'eau douce au Canada et prendre d'autres mesures collaboratives, notamment le développement de politiques relatives à l'eau douce, la promotion d'une saine gouvernance dans le domaine de l'eau douce et l'amélioration de l'accessibilité aux données pertinentes de leur utilisation;

Whereas the Government of Canada recognizes the importance of relying on scientific knowledge related to fresh water and of relying, through cooperation with the Indigenous peoples of Canada, on Indigenous knowledge related to fresh water;

Whereas the Government of Canada wishes to coordinate federal policies and programs with respect to freshwater issues;

Whereas the Government of Canada is committed, in the course of exercising and performing its powers, duties and functions with respect to fresh water, to fostering reconciliation with the Indigenous peoples of Canada and to ensuring respect for their rights recognized and affirmed under section 35 of the *Constitution Act, 1982*;

Whereas the Government of Canada is committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples;

Whereas the Government of Canada is committed to promoting cooperation with respect to freshwater issues with provincial and territorial governments and the Indigenous peoples of Canada;

Whereas the Government of Canada wishes to promote cooperation with respect to freshwater issues with foreign governments, international organizations and interested persons and organizations;

And whereas the Government of Canada considers that the creation of the Canada Water Agency will contribute to the coordination of federal efforts to promote sustainable freshwater management;

Now, therefore, His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

qu'il reconnaît l'importance de s'appuyer sur les connaissances scientifiques en matière d'eau douce et de s'appuyer, en coopérant avec les peuples autochtones du Canada, sur les connaissances autochtones à ce même sujet;

qu'il entend coordonner les politiques et les programmes de l'administration publique fédérale relatifs à l'eau douce;

qu'il s'engage, dans l'exercice de ses attributions relatives à l'eau douce, à promouvoir la réconciliation avec les peuples autochtones du Canada et à veiller au respect de leurs droits reconnus et confirmés par l'article 35 de la *Loi constitutionnelle de 1982*;

qu'il s'engage à mettre en œuvre la Déclaration des Nations Unies sur les droits des peuples autochtones;

qu'il s'engage à favoriser la coopération, en ce qui concerne les enjeux liés à l'eau douce, avec les gouvernements provinciaux et territoriaux et les peuples autochtones du Canada;

qu'il entend favoriser la coopération, en ce qui concerne les enjeux liés à l'eau douce, avec les gouvernements étrangers et les organisations internationales ainsi que les organismes et les personnes intéressés;

qu'il estime que la création de l'Agence canadienne de l'eau contribuera à coordonner l'action fédérale exercée en vue de promouvoir une gestion durable de l'eau douce,

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

Short Title

Short title

1 This Act may be cited as the *Canada Water Agency Act*.

Titre abrégé

Titre abrégé

1 *Loi sur l'Agence canadienne de l'eau*.

Definitions

Definitions

2 The following definitions apply in this Act.

Agency means the Canada Water Agency established by section 3. (*Agence*)

Minister means the Minister of the Environment. (*ministre*)

Définitions

Définitions

2 Les définitions qui suivent s'appliquent à la présente loi.

Agence L'Agence canadienne de l'eau constituée par l'article 3. (*Agency*)

ministre Le ministre de l'Environnement. (*Minister*)

President means the President of the Agency appointed under section 7. (*président*)

Canada Water Agency

Establishment

3 The Canada Water Agency is established for the purpose of assisting the Minister in exercising or performing the Minister's powers, duties and functions in relation to fresh water under any Act of Parliament, including the *Department of the Environment Act* and the *Canada Water Act*.

Head office

4 The head office of the Agency is to be at a place in Canada that is designated by the Governor in Council.

Minister to preside

5 The Minister presides over the Agency and has the management and direction of it.

Delegation to Agency

6 (1) The Minister may, subject to any terms and conditions that the Minister specifies, delegate to an officer or employee of the Agency any power, duty or function that the Minister is authorized to exercise or perform under any Act of Parliament in relation to fresh water.

Restriction

(2) However, the Minister is not authorized to delegate a power to make regulations or a power to delegate under subsection (1).

President

Appointment

7 The President of the Agency is to be appointed by the Governor in Council to hold office during pleasure for a renewable term of up to five years.

Chief executive officer

8 The President is the chief executive officer of the Agency and has the rank and status of a deputy head of a department.

Remuneration

9 The President is to be paid the remuneration fixed by the Governor in Council.

président Le président de l'Agence nommé en vertu de l'article 7. (*President*)

Agence canadienne de l'eau

Constitution

3 Est constituée l'Agence canadienne de l'eau, chargée d'assister le ministre dans l'exercice de ses attributions relatives à l'eau douce au titre de toute loi fédérale, notamment la *Loi sur le ministère de l'Environnement* et la *Loi sur les ressources en eau du Canada*.

Siège

4 Le siège de l'Agence est situé au Canada, au lieu désigné par le gouverneur en conseil.

Autorité du ministre

5 L'Agence est placée sous l'autorité du ministre; il en assure la direction et la gestion.

Délégation d'attributions à l'Agence

6 (1) Le ministre peut, selon les modalités qu'il fixe, déléguer à tout dirigeant ou employé de l'Agence les attributions relatives à l'eau douce qui lui sont conférées sous le régime de toute loi fédérale.

Réserve

(2) Il ne peut toutefois déléguer le pouvoir de prendre des règlements ni le pouvoir de délégation prévu au paragraphe (1).

Président

Nomination

7 Le gouverneur en conseil nomme le président de l'Agence, à titre amovible, pour un mandat renouvelable d'au plus cinq ans.

Premier dirigeant

8 Le président est le premier dirigeant de l'Agence; il a rang et statut d'administrateur général de ministère.

Rémunération

9 Le président reçoit la rémunération fixée par le gouverneur en conseil.

General Provisions

Officers and employees

10 The officers and employees necessary for the proper conduct of the work of the Agency are to be appointed in accordance with the *Public Service Employment Act*.

Other government services and facilities

11 (1) A department, board or agency of the Government of Canada may provide to the Agency services and facilities that are necessary for carrying out the Agency's purpose.

Use of services and facilities

(2) In exercising its powers and performing its duties and functions, the Agency must, where appropriate, make use of those services and facilities.

Provision of services and facilities

12 The Agency may provide services and facilities to departments, boards and agencies of the Government of Canada.

Committees

13 (1) The Minister may establish advisory committees in relation to fresh water and provide for their membership, duties, functions and operation.

Remuneration

(2) The Minister may fix the remuneration that members of a committee are to be paid for the performance of their duties and functions.

Reimbursement

(3) The Minister may determine whether members of a committee are to be reimbursed for the travel, living and other expenses incurred in the performance of their duties and functions while absent from their ordinary place of residence. Any such reimbursement is to be paid in accordance with Treasury Board directives.

Transitional Provisions

Definitions

14 The following definitions apply in sections 15 to 18.

former agency means the portion of the federal public administration, within the Department of the Environment, known as the Canada Water Agency. (*ancienne agence*)

Dispositions générales

Personnel

10 Le personnel nécessaire à l'exécution des travaux de l'Agence est nommé conformément à la *Loi sur l'emploi dans la fonction publique*.

Autres services fédéraux et installations fédérales

11 (1) Les ministères et organismes fédéraux peuvent fournir à l'Agence les services et les installations qui sont nécessaires à la réalisation de sa mission.

Usage de services et d'installations

(2) Dans l'exercice de ses attributions, l'Agence fait usage, au besoin, de ces services et installations.

Fourniture de services et d'installations

12 L'Agence peut fournir des services et des installations aux ministères et organismes fédéraux.

Comités

13 (1) Le ministre peut constituer des comités consultatifs en matière d'eau douce et en prévoir la composition, les attributions et le fonctionnement.

Rémunération

(2) Le ministre peut fixer la rémunération que les membres des comités reçoivent pour l'exercice de leurs attributions.

Indemnités

(3) Le ministre peut déterminer si les membres des comités sont indemnisés des frais de déplacement, de séjour et autres entraînés par l'exercice de leurs attributions hors de leur lieu habituel de résidence. Les indemnités sont versées conformément aux directives du Conseil du Trésor.

Dispositions transitoires

Définitions

14 Les définitions qui suivent s'appliquent aux articles 15 à 18.

ancienne agence Le secteur de l'administration publique fédérale faisant partie du ministère de l'Environnement et appelé l'Agence canadienne de l'eau. (*former agency*)

new agency means the Canada Water Agency established by section 3. (*nouvelle agence*)

nouvelle agence L'Agence canadienne de l'eau constituée par l'article 3. (*new agency*)

Position

15 (1) Nothing in this Act is to be construed as affecting the status of an employee who, immediately before the coming into force of this section, occupied a position in the former agency, except that the employee, on that coming into force, is to occupy that position in the new agency.

Postes

15 (1) La présente loi ne change rien à la situation des fonctionnaires qui occupaient un poste au sein de l'ancienne agence à la date d'entrée en vigueur du présent article, à la différence près que, à compter de cette date, ils l'occupent au sein de la nouvelle agence.

Definition of *employee*

(2) In subsection (1), ***employee*** has the same meaning as in subsection 2(1) of the *Public Service Employment Act*.

Définition de *fonctionnaire*

(2) Au paragraphe (1), ***fonctionnaire*** s'entend au sens du paragraphe 2(1) de la *Loi sur l'emploi dans la fonction publique*.

Appropriations

16 Any amount that is appropriated by an Act of Parliament, for the fiscal year in which this section comes into force, to defray the expenditures of the former agency and that is unexpended on the day on which this section comes into force is deemed to be an amount appropriated to defray the expenditures of the new agency.

Transfert de crédits

16 Les sommes affectées — et non déboursées —, pour l'exercice en cours à la date d'entrée en vigueur du présent article, par toute loi fédérale aux dépenses de l'ancienne agence sont, à cette date, réputées être affectées aux dépenses de la nouvelle agence.

Transfer of powers, duties and functions

17 Any power, duty or function that is exercisable by an officer or employee of the former agency under any Act, order, rule or regulation or under any contract, lease, licence or other document, is to be exercised by the appropriate officer or employee of the new agency.

Transfert d'attributions

17 Les attributions conférées, en vertu de toute loi, de tout règlement, de tout décret, de tout arrêté, de toute ordonnance ou de toute règle, ou au titre de tout contrat, bail, permis ou autre document, à un dirigeant ou employé de l'ancienne agence sont transférées, selon le cas, au dirigeant ou à l'employé compétent de la nouvelle agence.

Clarification

18 For greater certainty, the powers, duties and functions referred to in section 17 include those related to the administration, in whole or in part, of any contract, lease, licence or other document that relates to the activities, management or operation of the former agency.

Précision

18 Il est entendu que l'article 17 vise notamment les attributions liées à l'administration, en tout ou en partie, de tout contrat, bail, permis ou autre document qui se rapporte aux activités, à la gestion ou au fonctionnement de l'ancienne agence.

Consequential Amendments

Modifications corrélatives

R.S., c. A-1

Access to Information Act

L.R., ch. A-1

Loi sur l'accès à l'information

210 Schedule I to the *Access to Information Act* is amended by adding the following, in alphabetical order, under the heading "Other Government Institutions":

Canada Water Agency
Agence canadienne de l'eau

210 L'annexe I de la *Loi sur l'accès à l'information* est modifiée par adjonction, selon l'ordre alphabétique, sous l'intertitre « Autres institutions fédérales », de ce qui suit :

Agence canadienne de l'eau
Canada Water Agency

R.S., c. F-11

Financial Administration Act

211 Schedule I.1 to the *Financial Administration Act* is amended by adding, in alphabetical order in column I, a reference to

Canada Water Agency
Agence canadienne de l'eau

and a corresponding reference in column II to "Minister of the Environment."

212 Schedule IV to the Act is amended by adding the following in alphabetical order:

Canada Water Agency
Agence canadienne de l'eau

213 Part II of Schedule VI to the Act is amended by adding, in alphabetical order in column I, a reference to

Canada Water Agency
Agence canadienne de l'eau

and a corresponding reference in column II to "President."

R.S., c. P-21

Privacy Act

214 The schedule to the *Privacy Act* is amended by adding the following, in alphabetical order, under the heading "Other Government Institutions":

Canada Water Agency
Agence canadienne de l'eau

R.S., c. P-36

Public Service Superannuation Act

215 Part I of Schedule I to the *Public Service Superannuation Act* is amended by adding the following in alphabetical order:

Canada Water Agency
Agence canadienne de l'eau

Coming into Force

Order in council

216 The provisions of the *Canada Water Agency Act*, as enacted by section 209, and sections 210 to 215, come into force on a day or days to be fixed by order of the Governor in Council.

L.R., ch. F-11

Loi sur la gestion des finances publiques

211 L'annexe I.1 de la *Loi sur la gestion des finances publiques* est modifiée par adjonction, selon l'ordre alphabétique, dans la colonne I, de ce qui suit :

Agence canadienne de l'eau
Canada Water Agency

ainsi que de la mention « Le ministre de l'Environnement », dans la colonne II, en regard de ce secteur.

212 L'annexe IV de la même loi est modifiée par adjonction, selon l'ordre alphabétique, de ce qui suit :

Agence canadienne de l'eau
Canada Water Agency

213 La partie II de l'annexe VI de la même loi est modifiée par adjonction, selon l'ordre alphabétique, dans la colonne I, de ce qui suit :

Agence canadienne de l'eau
Canada Water Agency

ainsi que de la mention « Président », dans la colonne II, en regard de ce ministère.

L.R., ch. P-21

Loi sur la protection des renseignements personnels

214 L'annexe de la *Loi sur la protection des renseignements personnels* est modifiée par adjonction, selon l'ordre alphabétique, sous l'intertitre « Autres institutions fédérales », de ce qui suit :

Agence canadienne de l'eau
Canada Water Agency

L.R., ch. P-36

Loi sur la pension de la fonction publique

215 La partie I de l'annexe I de la *Loi sur la pension de la fonction publique* est modifiée par adjonction, selon l'ordre alphabétique, de ce qui suit :

Agence canadienne de l'eau
Canada Water Agency

Entrée en vigueur

Décret

216 Les dispositions de la *Loi sur l'Agence canadienne de l'eau*, édictée par l'article 209, et les articles 210 à 215 entrent en vigueur à la date ou aux dates fixées par décret.

DIVISION 4

1997, c. 13; 2018, c. 9, s. 2

Tobacco and Vaping Products Act

217 The *Tobacco and Vaping Products Act* is amended by adding the following after section 42:

PART V.01

Fees and Charges

Regulations by Minister

42.1 (1) The Minister may make regulations respecting fees or charges to be paid by manufacturers for the purpose of recovering the costs incurred by His Majesty in right of Canada in relation to the carrying out of the purpose of this Act, including regulations

(a) fixing the fees or charges or providing for the manner of calculating them;

(b) requiring manufacturers to submit to the Minister information for the calculation of the fees or charges and prescribing the information that manufacturers must submit as well as the form and manner in which and the time within which the information must be submitted;

(c) respecting the payment of the fees or charges, including the time and manner of payment;

(d) respecting, for the purposes of section 42.13, the information that the Minister must make available to the public, including

(i) the name of each manufacturer who is required to pay the fees or charges,

(ii) information relating to whether each manufacturer has paid the fees or charges,

(iii) information relating to whether each manufacturer has submitted the information required under this Part, and

(iv) information relating to the measures taken in respect of each manufacturer who has failed to pay the fees or charges or submit the information required under this Part; and

SECTION 4

1997, ch. 13; 2018, ch. 9, art. 2

Loi sur le tabac et les produits de vapotage

217 La *Loi sur le tabac et les produits de vapotage* est modifiée par adjonction, après l'article 42, de ce qui suit :

PARTIE V.01

Frais et redevances

Règlements ministériels

42.1 (1) Afin de recouvrer les frais exposés par Sa Majesté du chef du Canada et liés à la réalisation de l'objet de la présente loi, le ministre peut prendre des règlements concernant les frais et les redevances à payer par les fabricants, notamment des règlements :

a) fixant les frais et les redevances ou prévoyant leur mode de calcul;

b) exigeant des fabricants qu'ils transmettent au ministre des renseignements en vue du calcul des frais et des redevances et prévoyant les renseignements qu'ils doivent transmettre ainsi que les délais, la forme et les modalités à respecter à cet égard;

c) concernant le paiement des frais et des redevances, notamment en ce qui a trait aux délais et aux modalités à respecter à cet égard;

d) concernant, pour l'application de l'article 42.13, les renseignements que le ministre doit mettre à la disposition du public, notamment :

(i) le nom des fabricants assujettis aux frais ou aux redevances,

(ii) des renseignements concernant la question de savoir quels fabricants ont payé les frais et les redevances et lesquels ont omis de le faire,

(iii) des renseignements concernant la question de savoir quels fabricants ont transmis au ministre les renseignements exigés sous le régime de la présente partie et lesquels ont omis de le faire,

(iv) des renseignements concernant les mesures prises à l'égard de chacun des fabricants qui ont omis de payer les frais ou les redevances ou de

(e) prescribing anything that by this Part is to be prescribed.

e) prévoyant toute autre mesure réglementaire prévue par la présente partie.

Consultation

(2) Before making regulations, the Minister must consult with any persons or entities that the Minister considers to be interested in the matter.

Consultations

(2) Avant de prendre le règlement, le ministre consulte les personnes ou entités qu'il estime intéressées en l'occurrence.

Remission

42.11 (1) The Minister may, by order, remit all or part of any fee or charge provided for under this Part or the interest on it.

Remise

42.11 (1) Le ministre peut, par arrêté, faire remise de tout ou partie du paiement des frais ou des redevances prévus sous le régime de la présente partie ou des intérêts exigibles.

Remission may be conditional

(2) A remission may be conditional.

Remise conditionnelle

(2) Les remises peuvent être conditionnelles.

Conditional remission

(3) If a remission is conditional and the condition is not fulfilled, then the remission is cancelled and is deemed never to have been granted.

Inexécution d'une condition

(3) En cas d'inexécution d'une condition de la remise, cette remise est annulée et réputée ne jamais avoir été faite.

Documents to be kept

42.12 (1) Every manufacturer must keep, in the prescribed manner and for the prescribed time, all documents that they used in order to submit the information required under this Part to the Minister.

Conservation des documents

42.12 (1) Le fabricant conserve, durant la période et selon les modalités réglementaires, les documents utilisés en vue de transmettre au ministre les renseignements exigés sous le régime de la présente partie.

Keeping and providing documents

(2) The manufacturer must keep the documents at their place of business in Canada or at any prescribed place and must, on written request, provide them to the Minister.

Lieu de conservation et fourniture

(2) Le fabricant les conserve à son établissement au Canada ou en tout lieu réglementaire et, sur demande écrite, les fournit au ministre.

Public disclosure by Minister

42.13 The Minister must make available to the public, within the prescribed time, the information relating to the fees and charges provided for under this Part that is required by the regulations.

Communication par le ministre

42.13 Le ministre met à la disposition du public, dans les délais réglementaires, les renseignements exigés par les règlements en ce qui touche les frais et les redevances prévus sous le régime de la présente partie.

Debt to His Majesty

42.14 (1) Any fees or charges payable under this Part constitute a debt due to His Majesty in right of Canada that may be recovered in a court of competent jurisdiction.

Créances de Sa Majesté

42.14 (1) Les frais et les redevances à payer sous le régime de la présente partie constituent des créances de Sa Majesté du chef du Canada dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

Limitation period or prescription

(2) No proceedings to recover a debt due to His Majesty in right of Canada under subsection (1) may be

Prescription

(2) Le recouvrement en vertu du paragraphe (1) de toute créance de Sa Majesté du chef du Canada se prescrit par

commenced later than five years after the day on which the debt became payable.

Certificate of default

42.15 (1) Any debt that may be recovered under subsection 42.14(1) in respect of which there is a default of payment, or the part of any such debt that has not been paid, may be certified by the Minister.

Judgment

(2) On production to the Federal Court, a certificate made under subsection (1) must be registered in that Court and, when registered, has the same force and effect, and all proceedings may be taken on the certificate, as if it were a judgment obtained in that Court for a debt of the amount specified in the certificate and all reasonable costs and charges attendant in the registration of the certificate.

Prohibition on sale

42.16 (1) The Minister may, by order, prohibit the sale of a tobacco product or vaping product by a manufacturer who fails to pay the fees or charges payable under this Part or submit the information required under this Part.

Statutory Instruments Act

(2) An order made under subsection (1) is not a statutory instrument within the meaning of the *Statutory Instruments Act*.

218 The Act is amended by adding the following after section 46:

Offences related to fees and charges

46.1 Every manufacturer who contravenes subsection 42.12(1) or (2) or an order made under subsection 42.16(1) is guilty of an offence and liable on summary conviction to a fine not exceeding $50,000.

cinq ans après la date à laquelle la créance est devenue exigible.

Certificat de non-paiement

42.15 (1) Le ministre peut établir un certificat de non-paiement pour la partie impayée des créances dont le recouvrement peut être poursuivi en vertu du paragraphe 42.14(1).

Enregistrement en Cour fédérale

(2) L'enregistrement à la Cour fédérale confère au certificat la valeur d'un jugement de cette juridiction pour la somme visée et les frais afférents.

Interdiction de vendre

42.16 (1) Si le fabricant omet de payer des frais ou des redevances exigibles sous le régime de la présente partie ou de transmettre au ministre des renseignements exigés sous le régime de celle-ci, le ministre peut, par arrêté, lui interdire de vendre tout produit du tabac ou tout produit de vapotage.

Loi sur les textes réglementaires

(2) L'arrêté n'est pas un texte réglementaire au sens de la *Loi sur les textes réglementaires*.

218 La même loi est modifiée par adjonction, après l'article 46, de ce qui suit :

Infractions — frais et redevances

46.1 Le fabricant qui contrevient aux paragraphes 42.12(1) ou (2) ou à tout arrêté pris en vertu du paragraphe 42.16(1) commet une infraction et est passible, sur déclaration de culpabilité par procédure sommaire, d'une amende maximale de 50 000 $.

DIVISION 5

R.S., c. C-21; S.C. 2001, c. 9, s. 218

Canadian Payments Act

Amendments to the Act

219 (1) Paragraph (b) of the definition *central cooperative credit society* and *central* in subsection 2(1) of the English version of the *Canadian Payments Act* is replaced by the following:

SECTION 5

L.R., ch. C-21; 2001, ch. 9, art. 218

Loi canadienne sur les paiements

Modification de la loi

219 (1) L'alinéa b) de la définition de *central cooperative credit society* et *central*, au paragraphe 2(1) de la version anglaise de la *Loi canadienne sur les paiements*, est remplacé par ce qui suit :

(b) whose directors are wholly or primarily individuals elected or appointed by local cooperative credit societies; (*société coopérative de crédit centrale* ou *centrale*)

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

entity includes a corporation, trust, partnership, fund, agency and unincorporated association or organization; (*entité*)

person includes an entity; (*personne*)

220 (1) Paragraph 4(2)(a) of the Act is replaced by the following:

(a) a central, a trust company, a loan company, a local and any other person that accepts deposits transferable by order;

(b) a *clearing house*, as defined in section 2 of the *Payment Clearing and Settlement Act*, of a clearing and settlement system designated under subsection 4(1) of that Act;

(2) Subsection 4(2) of the Act is amended by striking out "and" at the end of paragraph (g), by adding "and" at the end of paragraph (h) and by adding the following after paragraph (h):

(i) a *payment service provider*, as defined in section 2 of the *Retail Payment Activities Act*, that performs *retail payment activities*, as defined in that section.

221 The portion of subsection 9(1) of the English version of the Act before paragraph (a) is replaced by the following:

Ineligibility

9 (1) No individual is eligible to be a director if they are

222 (1) Subparagraph 18(1)(k)(ii) of the Act is replaced by the following:

(ii) the remuneration of directors referred to in paragraph 8(1)(d) and of individuals referred to in subsection 21.2(7),

(b) whose directors are wholly or primarily individuals elected or appointed by local cooperative credit societies; (*société coopérative de crédit centrale* ou *centrale*)

(2) Le paragraphe 2(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

entité Vise notamment les personnes morales, les fiducies, les sociétés de personnes, les fonds, les agences et toutes associations ou organisations non dotées de la personnalité morale. (*entity*)

personne Vise notamment une entité. (*person*)

220 (1) L'alinéa 4(2)a) de la même loi est remplacé par ce qui suit :

a) une centrale, une société de fiducie, une société de prêt, une société coopérative de crédit locale et toute autre personne qui acceptent les dépôts transférables par ordre;

b) une *chambre de compensation*, au sens de l'article 2 de la *Loi sur la compensation et le règlement des paiements*, d'un système de compensation et de règlement qui, aux termes du paragraphe 4(1) de cette loi, est assujetti par désignation à la partie I de celle-ci;

(2) Le paragraphe 4(2) de la même loi est modifié par adjonction, après l'alinéa h), de ce qui suit :

i) un *fournisseur de services de paiement*, au sens de l'article 2 de la *Loi sur les activités associées aux paiements de détail*, qui exécute une *activité associée aux paiements de détail* au sens de cet article.

221 Le passage du paragraphe 9(1) de la version anglaise de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Ineligibility

9 (1) No individual is eligible to be a director if they are

222 (1) Le sous-alinéa 18(1)k)(ii) de la même loi est remplacé par ce qui suit :

(ii) la rémunération des administrateurs visés à l'alinéa 8(1)d) et des personnes physiques visées au paragraphe 21.2(7),

(2) Subparagraph 18(1)(k)(iii) of the English version of the Act is replaced by the following:

(iii) the procedures for the nomination, selection and appointment of individuals to be members of the Stakeholder Advisory Council or the Member Advisory Council.

(2) Le sous-alinéa 18(1)k)(iii) de la version anglaise de la même loi est remplacé par ce qui suit :

(iii) the procedures for the nomination, selection and appointment of individuals to be members of the Stakeholder Advisory Council or the Member Advisory Council.

223 Subsection 20(1) of the French version of the Act is replaced by the following:

Comité de nomination

20 (1) Le conseil constitue un comité de nomination chargé de désigner des candidats compétents et de proposer leur candidature à l'élection d'administrateurs.

223 Le paragraphe 20(1) de la version française de la même loi est remplacé par ce qui suit :

Comité de nomination

20 (1) Le conseil constitue un comité de nomination chargé de désigner des candidats compétents et de proposer leur candidature à l'élection d'administrateurs.

224 Section 21 of the Act is replaced by the following:

Other committees

21 The Board may, subject to the regulations, establish other committees consisting of such individuals as the Board considers appropriate.

224 L'article 21 de la même loi est remplacé par ce qui suit :

Autres comités

21 Le conseil peut, sous réserve des règlements, constituer d'autres comités composés de personnes physiques qu'il estime indiquées.

225 (1) Subsection 21.2(1) of the Act is replaced by the following:

Stakeholder Advisory Council

21.2 (1) There shall be a Stakeholder Advisory Council consisting of individuals who are independent of the Association and of its members and are appointed by the Board in consultation with the Minister.

225 (1) Le paragraphe 21.2(1) de la même loi est remplacé par ce qui suit :

Comité consultatif des intervenants

21.2 (1) Est constitué le comité consultatif des intervenants, composé de personnes physiques qui sont indépendantes de l'Association et de ses membres et qui sont nommées par le conseil en consultation avec le ministre.

(2) Subsection 21.2(5) of the Act is replaced by the following:

Representative character

(5) The Council shall be broadly representative of users and payment service providers that are not members of the Association.

(2) Le paragraphe 21.2(5) de la même loi est remplacé par ce qui suit :

Représentativité

(5) Le comité consultatif est, dans l'ensemble, représentatif des usagers et des fournisseurs de services de paiement qui ne sont pas membres de l'Association.

(3) The portion of subsection 21.2(7) of the Act before paragraph (a) is replaced by the following:

Remuneration

(7) The Association may pay the remuneration that is fixed by by-law to the following individuals:

(3) Le passage du paragraphe 21.2(7) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Rémunération

(7) L'Association peut verser la rémunération fixée par règlement administratif aux personnes physiques suivantes :

(4) Paragraph 21.2(7)(b) of the Act is replaced by the following:

(4) L'alinéa 21.2(7)b) de la même loi est remplacé par ce qui suit :

(b) any individual who represents the interests of such a member or who is represented by such a member.

b) toute personne physique qui représente les intérêts d'un tel membre ou qui est représentée par un tel membre.

226 Subsection 21.4(1) of the Act is replaced by the following:

226 Le paragraphe 21.4(1) de la même loi est remplacé par ce qui suit :

Member Advisory Council

21.4 (1) There shall be a Member Advisory Council consisting of individuals appointed by the Board.

Comité consultatif des membres

21.4 (1) Est constitué le comité consultatif des membres, composé de personnes physiques nommées par le conseil.

227 Paragraph 35(1)(b) of the English version of the Act is replaced by the following:

(b) respecting the election of directors of the Association, including the eligibility of individuals to be elected as directors, and defining *independent* for the purposes of paragraph 8(1)(d);

227 L'alinéa 35(1)b) de la version anglaise de la même loi est remplacé par ce qui suit :

(b) respecting the election of directors of the Association, including the eligibility of individuals to be elected as directors, and defining *independent* for the purposes of paragraph 8(1)(d);

228 Paragraph 40(1)(a) of the English version of the Act is replaced by the following:

(a) the conditions an entity must meet to become a participant in the designated payment system;

228 L'alinéa 40(1)a) de la version anglaise de la même loi est remplacé par ce qui suit :

(a) the conditions an entity must meet to become a participant in the designated payment system;

229 Section 49 of the Act is replaced by the following:

229 L'article 49 de la même loi est remplacé par ce qui suit :

Review

50 On the fourth anniversary of the day on which this section comes into force, the Minister shall cause to be conducted a review of this Act and its operation and cause a report on the review to be laid before each House of Parliament on any of the first 15 days on which that House is sitting after the review is completed.

Examen

50 Au quatrième anniversaire de l'entrée en vigueur du présent article, le ministre veille à ce que la présente loi et son application fassent l'objet d'un examen; il fait ensuite déposer un rapport de l'examen devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci suivant la fin de l'examen.

Coming into Force

Entrée en vigueur

Order in council

230 Sections 219 to 228 come into force on a day or days to be fixed by order of the Governor in Council.

Décret

230 Les articles 219 à 228 entrent en vigueur à la date ou aux dates fixées par décret.

DIVISION 6

Measures Related to Competition

SECTION 6

Mesures liées à la concurrence

R.S., c. C-34; R.S., c. 29 (2nd Supp.), s. 19

Competition Act

L.R., ch. C-34; L.R., ch. 19 (2e suppl.), art. 19

Loi sur la concurrence

231 Subsections 19(4) and (5) of the *Competition Act* are replaced by the following:

231 Les paragraphes 19(4) et (5) de la *Loi sur la concurrence* sont remplacés par ce qui suit :

Determination of claim to privilege

(4) A judge of a superior or county court in the province in which a record placed in custody under this section was ordered to be produced or in which it was found, or of the Federal Court, sitting *in camera*, may decide the question of solicitor-client privilege in relation to the record on application made in accordance with the rules of the court by the Commissioner or the owner of the record or the person in whose possession it was found if notice of the application has been given by the applicant to all other persons entitled to make application.

Détermination du caractère confidentiel

(4) Le juge d'une cour supérieure ou d'une cour de comté dans la province où le document placé sous garde en vertu du présent article doit être produit selon l'ordonnance rendue à son égard ou dans celle où il a été trouvé, ou encore le juge de la Cour fédérale, siégeant à huis clos, peut, en ce qui concerne ce document, trancher la question de la protection du secret professionnel liant l'avocat à son client sur demande présentée conformément aux règles de la cour par le commissaire, le propriétaire du document ou la personne qui l'avait en sa possession lorsqu'il a été trouvé, pourvu qu'un avis de la demande ait été transmis par le demandeur à toutes les personnes qui ont qualité pour présenter une telle demande.

232 Section 45.1 of the Act is replaced by the following:

Application made under section 76, 79, 90.1 or 92

45.1 No proceedings may be commenced under subsection 45(1) or (1.1) against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which an order against that person is sought by the Commissioner under section 76, 79, 90.1 or 92.

232 L'article 45.1 de la même loi est remplacé par ce qui suit :

Procédures en vertu des articles 76, 79, 90.1 ou 92

45.1 Aucune poursuite ne peut être intentée à l'endroit d'une personne en application des paragraphes 45(1) ou (1.1) si les faits au soutien de la poursuite sont les mêmes ou essentiellement les mêmes que ceux allégués au soutien de l'ordonnance que le commissaire a demandée à l'endroit de cette personne en vertu des articles 76, 79, 90.1 ou 92.

233 Subsection 52(7) of the Act is replaced by the following:

Duplication of proceedings

(7) No proceedings may be commenced under this section against a person against whom an order is, on application by the Commissioner, sought under Part VII.1 on the basis of the same or substantially the same facts as would be alleged in proceedings under this section.

233 Le paragraphe 52(7) de la même loi est remplacé par ce qui suit :

Une seule poursuite

(7) Il ne peut être intenté de poursuite en vertu du présent article contre une personne contre laquelle le commissaire a demandé une ordonnance aux termes de la partie VII.1, si les faits qui seraient allégués au soutien de la poursuite sont les mêmes ou essentiellement les mêmes que ceux qui l'ont été au soutien de la demande.

233.1 Subsection 52(1.3) of the Act is replaced by the following:

Drip pricing

(1.3) For greater certainty, the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed on a purchaser of the product referred to in subsection (1) by or under an Act of Parliament or the legislature of a province.

233.1 Le paragraphe 52(1.3) de la même loi est remplacé par ce qui suit :

Indication de prix partiel

(1.3) Il est entendu que l'indication d'un prix qui n'est pas atteignable en raison de frais obligatoires fixes qui s'y ajoutent constitue une indication fausse ou trompeuse, sauf si les frais obligatoires ne représentent que le montant imposé sous le régime d'une loi fédérale ou provinciale à l'acquéreur du produit visé au paragraphe (1).

234 (1) Section 52.01 of the Act is amended by adding the following after subsection (4):

234 (1) L'article 52.01 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :

Drip pricing

(4.1) For greater certainty, the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed on a purchaser of the product referred to in subsections (1) to (3) by or under an Act of Parliament or the legislature of a province.

(2) Subsection 52.01(8) of the Act is replaced by the following:

Application made under Part VII.1

(8) No proceedings may be commenced under this section against a person on the basis of facts that are the same or substantially the same as the facts on the basis of which an order against that person is, on application by the Commissioner, sought under Part VII.1.

235 Subsection 67(4) of the Act is replaced by the following:

Corporations — trials with or without jury

(4) Despite anything in the *Criminal Code* or in any other statute or law, the following rules apply to corporations charged with an offence under this Act:

(a) if one or more corporations are charged and no individual is charged in the same indictment, the corporation or corporations are to be tried without a jury;

(b) if one or more corporations and a single individual are charged in the same indictment, then, unless the court is satisfied that the ends of justice require otherwise, the corporation or corporations are to be tried

(i) without a jury if the individual elects or re-elects to be tried without a jury, or

(ii) with a jury if the individual elects or re-elects to be tried with a jury; and

(c) if one or more corporations and two or more individuals are charged in the same indictment, then, unless the court is satisfied that the ends of justice require otherwise, the corporation or corporations are to be tried

(i) without a jury if all the individuals elect or re-elect to be tried without a jury,

(ii) with a jury if all the individuals elect or re-elect to be tried with a jury, or

Indication de prix partiel

(4.1) Il est entendu que l'indication d'un prix qui n'est pas atteignable en raison de frais obligatoires fixes qui s'y ajoutent constitue une indication fausse ou trompeuse, sauf si les frais obligatoires ne représentent que le montant imposé sous le régime d'une loi fédérale ou provinciale à l'acquéreur du produit visé aux paragraphes (1) à (3).

(2) Le paragraphe 52.01(8) de la même loi est remplacé par ce qui suit :

Procédures en vertu de la partie VII.1

(8) Aucune poursuite ne peut être intentée à l'endroit d'une personne en application du présent article si les faits au soutien de la poursuite sont les mêmes ou essentiellement les mêmes que ceux allégués au soutien de l'ordonnance que le commissaire a demandée à l'endroit de cette personne en vertu de la partie VII.1.

235 Le paragraphe 67(4) de la même loi est remplacé par ce qui suit :

Personnes morales jugées devant jury ou sans jury

(4) Malgré le *Code criminel* ou toute autre loi, les règles ci-après s'appliquent aux personnes morales accusées d'une infraction visée à la présente loi :

a) si une ou plusieurs personnes morales — mais aucune personne physique — sont inculpées dans le même acte d'accusation, la ou les personnes morales sont jugées sans jury;

b) si une ou plusieurs personnes morales et une seule personne physique sont inculpées dans le même acte d'accusation, à moins que le tribunal ne soit convaincu que les fins de la justice exigent qu'il en soit autrement, la ou les personnes morales sont jugées :

(i) sans jury, dans le cas où la personne physique choisit, lors d'un premier ou nouveau choix, d'être jugée sans jury,

(ii) devant jury, dans le cas où la personne physique choisit, lors d'un premier ou nouveau choix, d'être jugée devant jury;

c) si une ou plusieurs personnes morales et deux ou plusieurs personnes physiques sont inculpées dans le même acte d'accusation, à moins que le tribunal ne soit convaincu que les fins de la justice exigent qu'il en soit autrement, la ou les personnes morales sont jugées :

(iii) either with or without a jury, as determined by the Attorney General of Canada for each corporation, if some but not all of the individuals elect or re-elect to be tried without a jury.

(i) sans jury, dans le cas où toutes les personnes physiques choisissent, lors d'un premier ou nouveau choix, d'être jugées sans jury,

(ii) devant jury, dans le cas où toutes les personnes physiques choisissent, lors d'un premier ou nouveau choix, d'être jugées devant jury,

(iii) devant jury ou sans jury, selon ce que décide le procureur général du Canada pour chaque personne morale, dans le cas où seules certaines des personnes physiques choisissent, lors d'un premier ou nouveau choix, d'être jugées sans jury.

236 (1) Subsection 74.01(1) of the Act is amended by striking out "or" at the end of paragraph (b) and by adding the following after that paragraph:

(b.1) makes a representation to the public in the form of a statement, warranty or guarantee of a product's benefits for protecting or restoring the environment or mitigating the environmental, social and ecological causes or effects of climate change that is not based on an adequate and proper test, the proof of which lies on the person making the representation;

(b.2) makes a representation to the public with respect to the benefits of a business or business activity for protecting or restoring the environment or mitigating the environmental and ecological causes or effects of climate change that is not based on adequate and proper substantiation in accordance with internationally recognized methodology, the proof of which lies on the person making the representation; or

236 (1) Le paragraphe 74.01(1) de la même loi est modifié par adjonction, après l'alinéa b), de ce qui suit :

b.1) ou bien, sous la forme d'une déclaration ou d'une garantie visant les avantages d'un produit pour la protection ou la restauration de l'environnement ou l'atténuation des causes ou des effets environnementaux, sociaux et écologiques des changements climatiques, des indications qui ne se fondent pas sur une épreuve suffisante et appropriée, dont la preuve incombe à la personne qui donne les indications;

b.2) ou bien des indications sur les avantages d'une entreprise ou de l'activité d'une entreprise pour la protection ou la restauration de l'environnement ou l'atténuation des causes ou des effets environnementaux et écologiques des changements climatiques si les indications ne se fondent pas sur des éléments corroboratifs suffisants et appropriés obtenus au moyen d'une méthode reconnue à l'échelle internationale, dont la preuve incombe à la personne qui donne les indications;

(1.1) Subsection 74.01(1.1) of the Act is replaced by the following:

Drip pricing

(1.1) For greater certainty, the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed on a purchaser of the product referred to in subsection (1) by or under an Act of Parliament or the legislature of a province.

(1.1) Le paragraphe 74.01(1.1) de la même loi est remplacé par ce qui suit :

Indication de prix partiel

(1.1) Il est entendu que l'indication d'un prix qui n'est pas atteignable en raison de frais obligatoires fixes qui s'y ajoutent constitue une indication fausse ou trompeuse, sauf si les frais obligatoires ne représentent que le montant imposé sous le régime d'une loi fédérale ou provinciale à l'acquéreur du produit visé au paragraphe (1).

(2) Subsection 74.01(3) of the Act is replaced by the following:

Ordinary price: supplier's own

(3) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply

(2) Le paragraphe 74.01(3) de la même loi est remplacé par ce qui suit :

Prix habituel : fournisseur particulier

(3) Est susceptible d'examen le comportement de quiconque donne, de quelque manière que ce soit, aux

or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means, makes a representation to the public as to the price at which a product or like products have been, are or will be ordinarily supplied by the person making the representation unless that person, having regard to the nature of the product and the relevant geographic market, establishes that

(a) they have sold a substantial volume of the product at that price or a higher price within a reasonable period of time before or after the making of the representation, as the case may be; or

(b) they have offered the product at that price or a higher price in good faith for a substantial period of time recently before or immediately after the making of the representation, as the case may be.

237 Section 74.011 of the Act is amended by adding the following after subsection (3):

Drip pricing

(3.1) For greater certainty, the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed on a purchaser of the product referred to in subsections (1) to (3) by or under an Act of Parliament or the legislature of a province.

Proof of deception not required

(3.2) For greater certainty, in determining whether or not the person who made the representation engaged in the reviewable conduct, it is not necessary to establish that any person was deceived or misled.

238 Section 74.09 of the Act is replaced by the following:

Definition of *court*

74.09 In sections 74.1 to 74.14 and 74.18, ***court*** means

(a) in respect of an application by the Commissioner, the Tribunal, the Federal Court or the superior court of a province; and

(b) in respect of an application made by a person granted leave under section 103.1, the Tribunal.

239 (1) The portion of subsection 74.1(1) of the Act before paragraph (a) is replaced by the following:

fins de promouvoir directement ou indirectement soit la fourniture ou l'usage d'un produit, soit des intérêts commerciaux quelconques, des indications au public relativement au prix auquel il a fourni, fournit ou fournira habituellement un produit ou des produits similaires, à moins que, compte tenu de la nature du produit et du marché géographique pertinent, il établisse :

a) soit qu'il a vendu une quantité importante du produit à ce prix ou à un prix plus élevé pendant une période raisonnable antérieure ou postérieure à la communication des indications;

b) soit qu'il a offert de bonne foi le produit à ce prix ou à un prix plus élevé pendant une période importante précédant de peu ou suivant de peu la communication des indications.

237 L'article 74.011 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :

Indication de prix partiel

(3.1) Il est entendu que l'indication d'un prix qui n'est pas atteignable en raison de frais obligatoires fixes qui s'y ajoutent constitue une indication fausse ou trompeuse, sauf si les frais obligatoires ne représentent que le montant imposé sous le régime d'une loi fédérale ou provinciale à l'acquéreur du produit visé aux paragraphes (1) à (3).

Preuve non nécessaire

(3.2) Il est entendu qu'il n'est pas nécessaire, pour déterminer si le comportement est susceptible d'examen, d'établir qu'une personne a été trompée ou induite en erreur.

238 L'article 74.09 de la même loi est remplacé par ce qui suit :

Définition de *tribunal*

74.09 Aux articles 74.1 à 74.14 et 74.18, ***tribunal*** s'entend :

a) s'agissant d'une demande du commissaire, du Tribunal, de la Cour fédérale ou de la cour supérieure d'une province;

b) s'agissant d'une demande d'une personne autorisée en vertu de l'article 103.1, du Tribunal.

239 (1) Le passage du paragraphe 74.1(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Determination of reviewable conduct and judicial order

74.1 (1) If, on application by the Commissioner or a person granted leave under section 103.1, a court determines that a person is engaging in or has engaged in reviewable conduct under this Part, the court may order the person

(2) The portion of subsection 74.1(6) of the Act before paragraph (a) is replaced by the following:

Meaning of subsequent order

(6) For the purposes of paragraph (1)(c), an order made against a person in respect of conduct that is reviewable under paragraph 74.01(1)(a), (b), (b.1) or (c), subsection 74.01(2) or (3) or section 74.011, 74.02, 74.04, 74.05 or 74.06 is a subsequent order if

(3) Paragraph 74.1(6)(c) of the Act is replaced by the following:

(c) in the case of an order in respect of conduct reviewable under paragraph 74.01(1)(a) or section 74.011, the person was previously convicted of an offence under section 52, or under paragraph 52(1)(a) as it read immediately before the coming into force of this Part; or

(4) Section 74.1 of the Act is amended by adding the following after subsection (9):

Inferences

(10) In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

240 Section 74.11 of the Act is replaced by the following:

Temporary order

74.11 (1) On application by the Commissioner or a person granted leave under section 103.1, a court may order a person who it appears to the court is engaging in conduct that is reviewable under this Part not to engage in that conduct or substantially similar reviewable conduct if it appears to the court that

(a) serious harm is likely to ensue unless the order is issued; and

Décision et ordonnance

74.1 (1) Le tribunal qui conclut, à la suite d'une demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1, qu'une personne a ou a eu un comportement susceptible d'examen visé à la présente partie peut ordonner à celle-ci :

(2) Le passage du paragraphe 74.1(6) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Sens de l'ordonnance subséquente

(6) Pour l'application de l'alinéa (1)c), l'ordonnance rendue contre une personne à l'égard d'un comportement susceptible d'examen en application des alinéas 74.01(1)a), b), b.1) ou c), des paragraphes 74.01(2) ou (3) ou des articles 74.011, 74.02, 74.04, 74.05 ou 74.06 constitue une ordonnance subséquente dans les cas suivants :

(3) L'alinéa 74.1(6)c) de la même loi est remplacé par ce qui suit :

c) dans le cas d'une ordonnance rendue à l'égard du comportement susceptible d'examen visé à l'alinéa 74.01(1)a) ou à l'article 74.011, la personne a déjà été déclarée coupable d'une infraction à l'article 52, ou à l'alinéa 52(1)a) dans sa version antérieure à l'entrée en vigueur de la présente partie;

(4) L'article 74.1 de la même loi est modifié par adjonction, après le paragraphe (9), de ce qui suit :

Application

(10) Le Tribunal saisi d'une demande présentée par une personne autorisée en vertu de l'article 103.1 ne peut tirer quelque conclusion que ce soit du fait que le commissaire a accompli un geste ou non à l'égard de l'objet de la demande.

240 L'article 74.11 de la même loi est remplacé par ce qui suit :

Ordonnance temporaire

74.11 (1) Sur demande présentée par le commissaire ou par une personne autorisée en vertu de l'article 103.1, le tribunal peut ordonner à toute personne qui, d'après lui, a un comportement susceptible d'examen visé par la présente partie de ne pas se comporter ainsi ou d'une manière essentiellement semblable s'il constate que, en l'absence de l'ordonnance, un dommage grave sera vraisemblablement causé et que, après l'évaluation comparative des inconvénients, il est préférable de rendre l'ordonnance.

(b) the balance of convenience favours issuing the order.

Temporary order — supply of a product

(1.1) On application by the Commissioner or a person granted leave under section 103.1, a court may order any person named in the application to refrain from supplying to another person a product that it appears to the court is or is likely to be used to engage in conduct that is reviewable under this Part, or to do any act or thing that it appears to the court could prevent a person from engaging in such conduct, if it appears to the court that

(a) serious harm is likely to ensue unless the order is issued; and

(b) the balance of convenience favours issuing the order.

Duration

(2) Subject to subsection (5), an order made under subsection (1) or (1.1) has effect, or may be extended on application by the Commissioner or a person granted leave under section 103.1, for any period that the court considers sufficient to meet the circumstances of the case.

Notice of application

(3) Subject to subsection (4), at least 48 hours' notice of an application referred to in subsection (1), (1.1) or (2) must be given by or on behalf of the Commissioner or the person granted leave under section 103.1 to the person in respect of whom the order or extension is sought.

Ex parte application

(4) The court may proceed *ex parte* with an application made by the Commissioner under subsection (1) or (1.1) if it is satisfied that subsection (3) cannot reasonably be complied with or that the urgency of the situation is such that service of notice in accordance with subsection (3) would not be in the public interest.

Duration of *ex parte* order

(5) An order issued *ex parte* as the result of an application made by the Commissioner under subsection (1) or (1.1) has effect for the period that is specified in it, not exceeding seven days unless, on further application made by the Commissioner on notice as provided in subsection (3), the court extends the order for any additional period that it considers necessary and sufficient.

Ordonnance temporaire — fourniture d'un produit

(1.1) Sur demande présentée par le commissaire ou par une personne autorisée en vertu de l'article 103.1, le tribunal peut également ordonner à toute personne nommément désignée dans la demande de s'abstenir de fournir à une autre personne un produit qui, d'après lui, est ou sera vraisemblablement utilisé pour l'adoption d'un comportement susceptible d'examen visé à la présente partie ou d'accomplir tout acte qu'il estime susceptible d'empêcher un tel comportement s'il constate que, en l'absence de l'ordonnance, un dommage grave sera vraisemblablement causé et que, après l'évaluation comparative des inconvénients, il est préférable de rendre l'ordonnance.

Durée d'application

(2) Sous réserve du paragraphe (5), l'ordonnance rendue en vertu des paragraphes (1) ou (1.1) a effet — ou peut être prorogée à la demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1 — pour la période que le tribunal estime suffisante pour répondre aux besoins en l'occurrence.

Préavis

(3) Sous réserve du paragraphe (4), le commissaire ou la personne autorisée en vertu de l'article 103.1, ou la personne agissant pour son compte, donne un préavis d'au moins quarante-huit heures à la personne à l'égard de laquelle est demandée l'ordonnance ou la prorogation prévue aux paragraphes (1), (1.1) ou (2).

Audition *ex parte*

(4) Le tribunal peut entendre *ex parte* la demande présentée par le commissaire en vertu des paragraphes (1) ou (1.1) s'il est convaincu que le paragraphe (3) ne peut vraisemblablement pas être observé ou que la situation est à ce point urgente que la signification du préavis aux termes du paragraphe (3) ne servirait pas l'intérêt public.

Durée d'application

(5) L'ordonnance rendue *ex parte* à la suite d'une demande présentée par le commissaire en vertu des paragraphes (1) ou (1.1) a effet pour la période d'au plus sept jours qui y est fixée, sauf si, sur demande ultérieure présentée par le commissaire après le préavis prévu au paragraphe (3), elle est prorogée pour la période supplémentaire que le tribunal estime nécessaire et suffisante.

Duty of Commissioner

(6) If an order issued under this section as the result of an application made by the Commissioner under subsection (1) or (1.1) is in effect, the Commissioner must proceed as expeditiously as possible to complete the inquiry under section 10 arising out of the conduct in respect of which the order was issued.

241 (1) Subsections 74.111(1) to (6) of the Act are replaced by the following:

Interim injunction

74.111 (1) If, on application by the Commissioner or a person granted leave under section 103.1, a court finds a strong *prima facie* case that a person is engaging in or has engaged in conduct that is reviewable under paragraph 74.01(1)(a), and the court is satisfied that the person owns or has possession or control of articles within the jurisdiction of the court and is disposing of or is likely to dispose of them by any means, and that the disposal of the articles will substantially impair the enforceability of an order made under paragraph 74.1(1)(d), the court may issue an interim injunction forbidding the person or any other person from disposing of or otherwise dealing with the articles, other than in the manner and on the terms specified in the injunction.

Statement to be included

(2) Any application for an injunction under subsection (1) must include a statement that the Commissioner or the person granted leave under section 103.1 has applied for an order under paragraph 74.1(1)(d), or that the Commissioner or the person intends to apply for an order under that paragraph if the Commissioner or the person applies for an order under paragraph 74.1(1)(a).

Duration

(3) Subject to subsection (6), the injunction has effect, or may be extended on application by the Commissioner or the person granted leave under section 103.1, for any period that the court considers sufficient to meet the circumstances of the case.

Notice of application

(4) Subject to subsection (5), at least 48 hours' notice of an application referred to in subsection (1) or (3) must be given by or on behalf of the Commissioner or the person granted leave under section 103.1 to the person in respect of whom the injunction or extension is sought.

Obligations du commissaire

(6) Lorsque l'ordonnance rendue à la suite d'une demande présentée par le commissaire en vertu des paragraphes (1) ou (1.1) a effet aux termes du présent article, le commissaire, avec toute la diligence possible, mène à terme l'enquête visée à l'article 10 à l'égard du comportement qui fait l'objet de l'ordonnance.

241 (1) Les paragraphes 74.111(1) à (6) de la même loi sont remplacés par ce qui suit :

Ordonnance d'injonction provisoire

74.111 (1) S'il constate, à la suite d'une demande présentée par le commissaire ou par une personne autorisée en vertu de l'article 103.1, l'existence d'une preuve *prima facie* convaincante établissant qu'une personne a ou a eu un comportement susceptible d'examen visé à l'alinéa 74.01(1)a) et s'il est convaincu, d'une part, que cette personne a entrepris de disposer ou disposera vraisemblablement de quelque façon que ce soit d'articles qui se trouvent dans son ressort et dont elle est propriétaire ou dont elle a la possession ou le contrôle et, d'autre part, que la disposition des articles nuira considérablement à l'exécution de l'ordonnance rendue en vertu de l'alinéa 74.1(1)d), le tribunal peut prononcer une injonction provisoire interdisant à cette personne ou à toute autre personne d'effectuer quelque opération à leur égard, notamment d'en disposer, si ce n'est de la manière et aux conditions précisées dans l'ordonnance d'injonction.

Mention à ajouter

(2) Le commissaire, ou la personne autorisée en vertu de l'article 103.1, signale, dans sa demande d'injonction, qu'il a présenté une demande d'ordonnance en vertu de l'alinéa 74.1(1)d) ou, s'il demande l'ordonnance au titre de l'alinéa 74.1(1)a), qu'il a l'intention de demander l'ordonnance au titre de l'alinéa 74.1(1)d).

Durée d'application

(3) Sous réserve du paragraphe (6), l'ordonnance d'injonction a effet — ou peut être prorogée à la demande du commissaire ou de la personne autorisée en vertu de l'article 103.1 — pour la période que le tribunal estime suffisante pour répondre aux besoins en l'occurrence.

Préavis

(4) Sous réserve du paragraphe (5), le commissaire ou la personne autorisée en vertu de l'article 103.1, ou la personne agissant pour son compte, donne un préavis d'au moins quarante-huit heures à la personne à l'égard de laquelle est demandée l'ordonnance d'injonction prévue au paragraphe (1) ou la prorogation visée au paragraphe (3).

Ex parte application

(5) The court may proceed *ex parte* with an application made by the Commissioner under subsection (1) if it is satisfied that subsection (4) cannot reasonably be complied with or that the urgency of the situation is such that service of the notice in accordance with subsection (4) might defeat the purpose of the injunction or would otherwise not be in the public interest.

Duration of *ex parte* injunction

(6) An injunction issued *ex parte* as the result of an application made by the Commissioner under subsection (1) has effect for the period that is specified in it, not exceeding seven days unless, on further application made by the Commissioner on notice as provided in subsection (4), the court extends the injunction for any additional period that it considers sufficient.

(2) Subsection 74.111(8) of the Act is replaced by the following:

Duty of Commissioner

(8) If an injunction issued under this section as the result of an application made by the Commissioner under subsection (1) is in effect, the Commissioner must proceed as expeditiously as possible to complete any inquiry under section 10 arising out of the conduct in respect of which the injunction was issued.

242 The Act is amended by adding the following after section 74.12:

Failure to comply with consent agreement

74.121 (1) If, on application by the Commissioner, the court determines that a person, without good and sufficient cause, the proof of which lies on the person, has failed to comply or is likely to fail to comply with a consent agreement registered under subsection 74.12(3), the court may

(a) prohibit the person from doing anything that, in the court's opinion, may constitute a failure to comply with the agreement;

(b) order the person to take any action that is necessary to comply with the agreement;

(c) order the person to pay, in any manner that the court specifies, an administrative monetary penalty in an amount not exceeding $10,000 for each day on which they fail to comply with the agreement, determined by the court after taking into account any evidence of the following:

(i) the person's financial position,

Audition *ex parte*

(5) Le tribunal peut entendre *ex parte* la demande présentée par le commissaire en vertu du paragraphe (1) s'il est convaincu que le paragraphe (4) ne peut vraisemblablement pas être observé ou que la situation est à ce point urgente que la signification du préavis aux termes du paragraphe (4) pourrait rendre l'ordonnance inutile ou ne servirait pas par ailleurs l'intérêt public.

Durée d'application

(6) L'ordonnance d'injonction rendue *ex parte* à la suite d'une demande présentée par le commissaire en vertu du paragraphe (1) a effet pour la période d'au plus sept jours qui y est fixée, sauf si, sur demande ultérieure présentée par le commissaire après le préavis prévu au paragraphe (4), elle est prorogée pour la période supplémentaire que le tribunal estime suffisante.

(2) Le paragraphe 74.111(8) de la même loi est remplacé par ce qui suit :

Obligation du commissaire

(8) Lorsque l'ordonnance d'injonction rendue à la suite d'une demande présentée par le commissaire en vertu du paragraphe (1) a effet, le commissaire, avec toute la diligence possible, mène à terme l'enquête visée à l'article 10 à l'égard du comportement qui fait l'objet de l'ordonnance.

242 La même loi est modifiée par adjonction, après l'article 74.12, de ce qui suit :

Omission de se conformer au consentement

74.121 (1) S'il conclut, à la suite d'une demande du commissaire, qu'une personne, sans motif valable et suffisant dont la preuve lui incombe, a omis ou omettra vraisemblablement de se conformer au consentement enregistré au titre du paragraphe 74.12(3), le tribunal peut :

a) interdire à la personne d'accomplir tout acte qui, à son avis, pourrait constituer une omission de se conformer au consentement;

b) ordonner à la personne de prendre les mesures nécessaires pour se conformer au consentement;

c) ordonner à la personne de payer, selon les modalités qu'il précise, une sanction administrative pécuniaire maximale de 10 000 $ pour chacun des jours au cours desquels elle a omis de se conformer au consentement, sanction qu'il fixe après avoir tenu compte des éléments suivants :

(i) la situation financière de la personne,

(ii) the person's history of compliance with this Act,

(iii) the duration of the period of non-compliance, and

(iv) any other relevant factor; or

(d) grant any other relief that the court considers appropriate.

(ii) le comportement antérieur de la personne en ce qui a trait au respect de la présente loi,

(iii) la durée de l'omission,

(iv) tout autre élément pertinent;

d) accorder toute autre réparation qu'il considère justifiée.

Purpose of order

(2) The terms of an order under paragraph (1)(c) are to be determined with a view to promoting conduct by the person that is in conformity with the purposes of this Act and not with a view to punishment.

But de l'ordonnance

(2) Les conditions de l'ordonnance rendue aux termes de l'alinéa (1)c) sont fixées de façon à encourager la personne à adopter un comportement compatible avec les objectifs de la présente loi et non pas à la punir.

Unpaid monetary penalty

(3) The administrative monetary penalty imposed under paragraph (1)(c) is a debt due to His Majesty in right of Canada and may be recovered as such from the person in a court of competent jurisdiction.

Sanctions administratives pécuniaires impayées

(3) Les sanctions administratives pécuniaires imposées au titre de l'alinéa (1)c) constituent des créances de Sa Majesté du chef du Canada dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

243 The Act is amended by adding the following after section 74.13:

243 La même loi est modifiée par adjonction, après l'article 74.13, de ce qui suit :

Consent agreement — parties to a private action

74.131 (1) If a person granted leave under section 103.1 makes an application to the Tribunal for an order under section 74.1 and the terms of the order are agreed to by the person in respect of whom the order is sought and consistent with the provisions of this Act, a consent agreement may be filed with the Tribunal for registration.

Consentement — parties privées

74.131 (1) Si une personne autorisée en vertu de l'article 103.1 présente une demande d'ordonnance au Tribunal en vertu de l'article 74.1, que cette personne et la personne à l'égard de laquelle l'ordonnance est demandée s'entendent sur son contenu et que l'entente est compatible avec les dispositions de la présente loi, un consentement peut être déposé auprès du Tribunal pour enregistrement.

Notice to Commissioner

(2) On filing the consent agreement with the Tribunal for registration, the parties shall serve a copy of it on the Commissioner without delay.

Signification au commissaire

(2) Les signataires du consentement en font signifier une copie sans délai au commissaire.

Publication

(3) The consent agreement must be published without delay in the *Canada Gazette*.

Publication

(3) Le consentement est publié sans délai dans la *Gazette du Canada*.

Registration

(4) The consent agreement must be registered within 30 days after its publication unless a third party makes an application to the Tribunal before then to cancel the agreement or replace it with an order of the Tribunal.

Enregistrement

(4) Le consentement est enregistré à l'expiration d'un délai de trente jours suivant sa publication, sauf si, avant l'expiration de ce délai, un tiers présente une demande au Tribunal en vue d'annuler le consentement ou de le remplacer par une ordonnance du Tribunal.

Effect of registration

(5) On registration, the consent agreement has the same force and effect, and proceedings may be taken, as if it were an order of the Tribunal.

Commissioner may intervene

(6) On application by the Commissioner, the Tribunal may vary or rescind a registered consent agreement if it finds that the agreement is not in conformity with the purposes of this Part.

Notice

(7) The Commissioner must give notice of an application under subsection (6) to the parties to the consent agreement.

Failure to comply with consent agreement

74.132 (1) If, on application by the Commissioner, the Tribunal determines that a person, without good and sufficient cause, the proof of which lies on the person, has failed to comply or is likely to fail to comply with a consent agreement registered under subsection 74.131(4), the Tribunal may

(a) prohibit the person from doing anything that, in the Tribunal's opinion, may constitute a failure to comply with the agreement;

(b) order the person to take any action that is necessary to comply with the agreement;

(c) order the person to pay, in any manner that the Tribunal specifies, an administrative monetary penalty in an amount not exceeding $10,000 for each day on which they fail to comply with the agreement, determined by the Tribunal after taking into account any evidence of the following:

(i) the person's financial position,

(ii) the person's history of compliance with this Act,

(iii) the duration of the period of non-compliance, and

(iv) any other relevant factor; or

(d) grant any other relief that the Tribunal considers appropriate.

Purpose of order

(2) The terms of an order under paragraph (1)(c) are to be determined with a view to promoting conduct by the

Effet de l'enregistrement

(5) Une fois enregistré, le consentement a la même valeur et produit les mêmes effets qu'une ordonnance du Tribunal, notamment quant à l'engagement des procédures.

Intervention du commissaire

(6) Le Tribunal peut, sur demande du commissaire, modifier ou annuler le consentement enregistré dans les cas où il conclut que celui-ci n'est pas compatible avec les objectifs de la présente partie.

Préavis

(7) Le commissaire fait parvenir aux signataires du consentement un préavis de la demande qu'il présente en vertu du paragraphe (6).

Omission de se conformer au consentement

74.132 (1) S'il conclut, à la suite d'une demande du commissaire, qu'une personne, sans motif valable et suffisant dont la preuve lui incombe, a omis ou omettra vraisemblablement de se conformer au consentement enregistré au titre du paragraphe 74.131(4), le Tribunal peut :

a) interdire à la personne d'accomplir tout acte qui, à son avis, pourrait constituer une omission de se conformer au consentement;

b) ordonner à la personne de prendre les mesures nécessaires pour se conformer au consentement;

c) ordonner à la personne de payer, selon les modalités qu'il précise, une sanction administrative pécuniaire maximale de 10 000 $ pour chacun des jours au cours desquels elle a omis de se conformer au consentement, sanction qu'il fixe après avoir tenu compte des éléments suivants :

(i) la situation financière de la personne,

(ii) le comportement antérieur de la personne en ce qui a trait au respect de la présente loi,

(iii) la durée de l'omission,

(iv) tout autre élément pertinent;

d) accorder toute autre réparation qu'il considère justifiée.

But de l'ordonnance

(2) Les conditions de l'ordonnance rendue aux termes de l'alinéa (1)c) sont fixées de façon à encourager la

person that is in conformity with the purposes of this Act and not with a view to punishment.

Unpaid monetary penalty

(3) The administrative monetary penalty imposed under paragraph (1)(c) is a debt due to His Majesty in right of Canada and may be recovered as such from the person in a court of competent jurisdiction.

Service of agreement on Commissioner

74.133 (1) If a person granted leave under section 103.1 makes an application to the Tribunal for an order under section 74.1 and the person discontinues the application by reason of having entered into an agreement with any other person, the parties to the agreement must serve a copy of it on the Commissioner within 10 days after the day on which it is entered into.

Commissioner may intervene

(2) On application by the Commissioner, the Tribunal may vary or rescind the agreement if it finds that the agreement is not in conformity with the purposes of this Part.

Notice

(3) The Commissioner must give notice of an application under subsection (2) to the parties to the agreement.

Failure to serve

74.134 (1) If, on application by the Commissioner, the Tribunal determines that a person, without good and sufficient cause, the proof of which lies on the person, has failed to serve a copy of an agreement on the Commissioner in accordance with subsection 74.133(1), the Tribunal may

(a) order the person to serve the Commissioner with a copy of the agreement;

(b) issue an interim order prohibiting any person from doing anything that, in the Tribunal's opinion, may constitute or be directed toward the implementation of the agreement;

(c) order the person to pay, in any manner that the Tribunal specifies, an administrative monetary penalty in an amount not exceeding $10,000 for each day on which they fail to serve a copy of the agreement on the Commissioner, determined by the Tribunal after taking into account any evidence of the following:

(i) the person's financial position,

(ii) the person's history of compliance with this Act,

personne à adopter un comportement compatible avec les objectifs de la présente loi et non pas à la punir.

Sanctions administratives pécuniaires impayées

(3) Les sanctions administratives pécuniaires imposées au titre de l'alinéa (1)c) constituent des créances de Sa Majesté du chef du Canada dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

Signification d'un accord au commissaire

74.133 (1) Si une personne autorisée en vertu de l'article 103.1 présente une demande d'ordonnance au Tribunal en vertu de l'article 74.1, mais s'en désiste du fait qu'elle a conclu un accord avec une autre personne, les parties à l'accord en font signifier une copie au commissaire dans les dix jours suivant la date de sa conclusion.

Intervention du commissaire

(2) Le Tribunal peut, sur demande du commissaire, modifier ou annuler l'accord dans les cas où il conclut que celui-ci est incompatible avec les objectifs de la présente partie.

Préavis

(3) Le commissaire fait parvenir aux parties à l'accord un préavis de la demande qu'il présente en vertu du paragraphe (2).

Omission de signifier un accord

74.134 (1) S'il conclut, à la suite d'une demande du commissaire, qu'une personne, sans motif valable et suffisant dont la preuve lui incombe, a omis de signifier une copie de l'accord au commissaire en application du paragraphe 74.133(1), le Tribunal peut :

a) ordonner à la personne de signifier une copie de l'accord au commissaire;

b) rendre une ordonnance provisoire interdisant à toute personne d'accomplir tout acte qui, à son avis, pourrait constituer la mise en œuvre de l'accord ou y tendre;

c) ordonner à la personne de payer, selon les modalités qu'il précise, une sanction administrative pécuniaire maximale de 10 000 $ pour chacun des jours au cours desquels elle a omis de signifier une copie de l'accord au commissaire, sanction qu'il fixe après avoir tenu compte des éléments suivants :

(i) la situation financière de la personne,

(ii) le comportement antérieur de la personne en ce qui a trait au respect de la présente loi,

(iii) the duration of the period of non-compliance, and

(iv) any other relevant factor; or

(d) grant any other relief that the Tribunal considers appropriate.

(iii) la durée de l'omission,

(iv) tout autre élément pertinent;

d) accorder toute autre réparation qu'il considère justifiée.

Purpose of order

(2) The terms of an order under paragraph (1)(c) are to be determined with a view to promoting conduct by the person that is in conformity with the purposes of this Act and not with a view to punishment.

But de l'ordonnance

(2) Les conditions de l'ordonnance rendue aux termes de l'alinéa (1)c) sont fixées de façon à encourager la personne à adopter un comportement compatible avec les objectifs de la présente loi et non pas à la punir.

Unpaid monetary penalty

(3) The administrative monetary penalty imposed under paragraph (1)(c) is a debt due to His Majesty in right of Canada and may be recovered as such from the person in a court of competent jurisdiction.

Sanctions administratives pécuniaires impayées

(3) Les sanctions administratives pécuniaires imposées au titre de l'alinéa (1)c) constituent des créances de Sa Majesté du chef du Canada dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

244 (1) Subsection 75(1) of the Act is replaced by the following:

244 (1) Le paragraphe 75(1) de la même loi est remplacé par ce qui suit :

Jurisdiction of Tribunal — cases of refusal to deal

75 (1) The Tribunal may, on application by the Commissioner or a person granted leave under section 103.1, order one or more suppliers of a product, including a means of diagnosis or repair, in a market to accept a person as a customer, or to make the means of diagnosis or repair available to a person, within a specified period and on the terms that the Tribunal considers appropriate if the Tribunal finds that

(a) the person is substantially affected in the whole or part of their business or is precluded from carrying on business due to their inability to obtain adequate supplies of the product anywhere in the market on usual trade terms;

(b) the person is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market;

(c) the person is willing and able to meet the usual trade terms of the supplier or suppliers of the product;

(d) the product is in ample supply or, in the case of a means of diagnosis or repair, can be readily supplied; and

(e) the refusal to deal is having or is likely to have an adverse effect on competition in a market.

Compétence du Tribunal dans les cas de refus de vendre

75 (1) Le Tribunal peut, sur demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1, ordonner qu'un ou plusieurs fournisseurs d'un produit, y compris un moyen de diagnostic ou de réparation, sur un marché acceptent une personne comme client, ou fournissent à une personne un moyen de diagnostic ou de réparation, dans un délai déterminé et aux conditions qu'il estime indiquées, s'il conclut, à la fois :

a) que la personne est sensiblement gênée dans tout ou partie de son entreprise ou ne peut exploiter une entreprise du fait qu'elle est incapable de se procurer le produit en quantité suffisante où que ce soit sur le marché, aux conditions de commerce normales;

b) que la personne est incapable de se procurer le produit en quantité suffisante en raison de l'insuffisance de la concurrence entre les fournisseurs de ce produit sur le marché;

c) que la personne accepte et est en mesure de respecter les conditions de commerce normales imposées par le ou les fournisseurs de ce produit;

d) que le produit est disponible en quantité amplement suffisante ou, dans le cas d'un moyen de diagnostic ou de réparation, peut être facilement fourni;

e) que le refus de vendre a ou aura vraisemblablement pour effet de nuire à la concurrence dans un marché.

Non-application

(1.1) An order made under subsection (1) does not apply in the case of an article if, within the specified time, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

(2) Section 75 of the Act is amended by adding the following after subsection (1.1):

Additional order — person granted leave

(1.2) If the Tribunal makes an order under subsection (1) as the result of an application by a person granted leave under section 103.1, it may also order any supplier in respect of whom the order applies to pay an amount, not exceeding the value of the benefit derived from the conduct that is the subject of the order, to be distributed among the applicant and any other person affected by the conduct, in any manner that the Tribunal considers appropriate.

Implementation of the order

(1.3) The Tribunal may specify in an order made under subsection (1.2) any term that it considers necessary for the order's implementation, including a term

(a) specifying how the payment is to be administered;

(b) respecting the appointment of an administrator to administer the payment and specifying the terms of administration;

(c) requiring the person against whom the order is made to pay the administrative costs related to the payment as well as the fees to be paid to an administrator;

(d) requiring that potential claimants be notified in the time and manner specified by the Tribunal;

(e) specifying the time and manner for making claims;

(f) specifying the conditions for the eligibility of claimants, including conditions relating to the return of the products to the person against whom the order is made; and

(g) providing for the manner in which, and the terms on which, any amount of the payment that remains unclaimed or undistributed is to be dealt with.

Non-application

(1.1) L'ordonnance rendue en vertu du paragraphe (1) ne s'applique pas dans le cas d'un article si, au cours du délai déterminé, les droits de douane qui lui sont applicables sont supprimés, réduits ou remis de façon à mettre la personne sur un pied d'égalité avec d'autres personnes qui sont capables de se procurer l'article en quantité suffisante au Canada.

(2) L'article 75 de la même loi est modifié par adjonction, après le paragraphe (1.1), de ce qui suit :

Ordonnance additionnelle — personne autorisée

(1.2) S'il rend une ordonnance en vertu du paragraphe (1) à la suite d'une demande présentée par une personne autorisée en vertu de l'article 103.1, le Tribunal peut également ordonner à tout fournisseur visé par l'ordonnance de payer une somme — ne pouvant excéder la valeur du bénéfice tiré du comportement visé par l'ordonnance — devant être répartie, de la manière qu'il estime indiquée, entre le demandeur et toute autre personne touchée par le comportement.

Exécution de l'ordonnance

(1.3) Le Tribunal peut, dans l'ordonnance rendue en vertu du paragraphe (1.2), préciser les conditions qu'il estime nécessaires à son exécution, notamment :

a) prévoir comment la somme à payer doit être administrée;

b) nommer un administrateur chargé d'administrer cette somme et préciser les modalités d'administration;

c) mettre à la charge de la personne contre qui l'ordonnance est rendue les frais d'administration de la somme ainsi que les honoraires de l'administrateur;

d) exiger que les réclamants éventuels soient avisés selon les modalités de forme et de temps qu'il précise;

e) préciser les modalités de forme et de temps quant à la présentation de toute réclamation;

f) établir les critères d'admissibilité des réclamants, notamment toute exigence relative au retour des produits à la personne contre qui l'ordonnance est rendue;

g) prévoir la manière dont la somme éventuellement non réclamée ou non distribuée doit être traitée et les conditions afférentes.

(3) Subsection 75(3) of the Act is replaced by the following:

Trade secrets

(2.1) Nothing in this section is to be interpreted as requiring the disclosure of any information that is a trade secret.

Definitions

(3) The following definitions apply in this section.

means of diagnosis or repair includes diagnostic, maintenance, repair and calibration information, technical updates, diagnostic software or tools and any related documentation and service parts. (*moyen de diagnostic ou de réparation*)

trade terms means terms in respect of payment, units of purchase and reasonable technical and servicing requirements. (*conditions de commerce*)

245 (1) Paragraph 76(11)(b) of the Act is replaced by the following:

(b) an order against that person has been made under section 79 or 90.1.

(2) Section 76 of the Act is amended by adding the following after subsection (11):

Additional order — person granted leave

(11.1) If the Tribunal makes an order under subsection (2) as the result of an application by a person granted leave under section 103.1, it may also order the person against whom the order is made to pay an amount, not exceeding the value of the benefit derived from the conduct that is the subject of the order, to be distributed among the applicant and any other person affected by the conduct, in any manner that the Tribunal considers appropriate.

Implementation of the order

(11.2) The Tribunal may specify in an order made under subsection (11.1) any term that it considers necessary for the order's implementation, including any term referred to in any of paragraphs 75(1.3)(a) to (g).

246 Subsection 77(3.1) of the Act is replaced by the following:

(3) Le paragraphe 75(3) de la même loi est remplacé par ce qui suit :

Secrets industriels

(2.1) Le présent article n'a pas pour effet d'exiger la communication de secrets industriels.

Définitions

(3) Les définitions qui suivent s'appliquent au présent article.

conditions de commerce Conditions relatives au paiement, aux quantités unitaires d'achat et aux exigences raisonnables d'ordre technique ou d'entretien. (*trade terms*)

moyen de diagnostic ou de réparation S'entend notamment des renseignements relatifs au diagnostic, à l'entretien, à la réparation et à l'ajustage, des mises à jour techniques, des logiciels ou outils de diagnostic et de toute documentation connexe et des pièces de rechange. (*means of diagnosis or repair*)

245 (1) L'alinéa 76(11)b) de la même loi est remplacé par ce qui suit :

b) d'une ordonnance rendue contre cette personne en vertu des articles 79 ou 90.1.

(2) L'article 76 de la même loi est modifié par adjonction, après le paragraphe (11), de ce qui suit :

Ordonnance additionnelle — personne autorisée

(11.1) S'il rend l'ordonnance prévue au paragraphe (2) à la suite d'une demande présentée par une personne autorisée en vertu de l'article 103.1, le Tribunal peut également ordonner à la personne visée par l'ordonnance de payer une somme — ne pouvant excéder la valeur du bénéfice tiré du comportement visé par l'ordonnance — devant être répartie, de la manière qu'il estime indiquée, entre le demandeur et toute autre personne touchée par le comportement.

Exécution de l'ordonnance

(11.2) Le Tribunal peut, dans l'ordonnance rendue en vertu du paragraphe (11.1), préciser les conditions qu'il estime nécessaires à son exécution, notamment tout élément prévu à l'un des alinéas 75(1.3)a) à g).

246 Le paragraphe 77(3.1) de la même loi est remplacé par ce qui suit :

Additional order — person granted leave

(3.1) If the Tribunal makes an order under subsection (2) or (3) as the result of an application by a person granted leave under section 103.1, it may also order any supplier in respect of whom the order applies to pay an amount, not exceeding the value of the benefit derived from the conduct that is the subject of the order, to be distributed among the applicant and any other person affected by the conduct, in any manner that the Tribunal considers appropriate.

Implementation of the order

(3.2) The Tribunal may specify in an order made under subsection (3.1) any term that it considers necessary for the order's implementation, including any term referred to in any of paragraphs 75(1.3)(a) to (g).

247 (1) Subsection 79(3.2) of the Act is amended by adding the following after paragraph (d):

(d.1) the amount that the person against whom the order is made is required to pay under an order made under subsection (4.1);

(2) Section 79 of the Act is amended by adding the following after subsection (4):

Additional order — person granted leave

(4.1) If, as the result of an application by a person granted leave under section 103.1, the Tribunal makes an order under subsection (1) or (2), it may also order the person against whom the order is made to pay an amount, not exceeding the value of the benefit derived from the practice that is the subject of the order, to be distributed among the applicant and any other person affected by the practice, in any manner that the Tribunal considers appropriate.

Implementation of the order

(4.2) The Tribunal may specify in an order made under subsection (4.1) any term that it considers necessary for the order's implementation, including any term referred to in any of paragraphs 75(1.3)(a) to (g).

(3) Paragraph 79(7)(b) of the Act is replaced by the following:

(b) an order against that person has been made under section 76, 90.1 or 92.

248 (1) The portion of subsection 90.1(1) of the Act before paragraph (a) is replaced by the following:

Ordonnance additionnelle — personne autorisée

(3.1) S'il rend une ordonnance en vertu des paragraphes (2) ou (3) à la suite d'une demande présentée par une personne autorisée en vertu de l'article 103.1, le Tribunal peut également ordonner à tout fournisseur visé par l'ordonnance de payer une somme — ne pouvant excéder la valeur du bénéfice tiré du comportement visé par l'ordonnance — devant être répartie, de la manière qu'il estime indiquée, entre le demandeur et toute autre personne touchée par le comportement.

Exécution de l'ordonnance

(3.2) Le Tribunal peut, dans l'ordonnance rendue en vertu du paragraphe (3.1), préciser les conditions qu'il estime nécessaires à son exécution, notamment tout élément prévu à l'un des alinéas 75(1.3)a) à g).

247 (1) Le paragraphe 79(3.2) de la même loi est modifié par adjonction, après l'alinéa d), de ce qui suit :

d.1) la somme que la personne visée par l'ordonnance est tenue de payer au titre d'une ordonnance rendue en vertu du paragraphe (4.1);

(2) L'article 79 de la même loi est modifié par adjonction, après le paragraphe (4), de ce qui suit :

Ordonnance additionnelle — personne autorisée

(4.1) Si, à la suite d'une demande présentée par une personne autorisée en vertu de l'article 103.1, il rend une ordonnance en vertu des paragraphes (1) ou (2), le Tribunal peut également ordonner à la personne visée par l'ordonnance de payer une somme — ne pouvant excéder la valeur du bénéfice tiré de la pratique visée par l'ordonnance — devant être répartie, de la manière qu'il estime indiquée, entre le demandeur et toute autre personne touchée par la pratique.

Exécution de l'ordonnance

(4.2) Le Tribunal peut, dans l'ordonnance rendue en vertu du paragraphe (4.1), préciser les conditions qu'il estime nécessaires à son exécution, notamment tout élément prévu à l'un des alinéas 75(1.3)a) à g).

(3) L'alinéa 79(7)b) de la même loi est remplacé par ce qui suit :

b) d'une ordonnance rendue contre cette personne en vertu des articles 76, 90.1 ou 92.

248 (1) Le passage du paragraphe 90.1(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Order

90.1 (1) If, on application by the Commissioner, the Tribunal finds that an agreement or arrangement or a proposed agreement or arrangement between persons of whom two or more are competitors prevents or lessens, has prevented or lessened or is likely to prevent or lessen competition substantially in a market, the Tribunal may make an order

(2) The portion of subsection 90.1(1) of the Act before paragraph (a) is replaced by the following:

Order

90.1 (1) If, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that an agreement or arrangement or a proposed agreement or arrangement between persons of whom two or more are competitors prevents or lessens, has prevented or lessened or is likely to prevent or lessen competition substantially in a market, the Tribunal may make an order

(3) Section 90.1 of the Act is amended by adding the following after subsection (1):

Additional or alternative order

(1.1) If, on an application under subsection (1), the Tribunal finds that an agreement or arrangement has had or is having the effect of preventing or lessening competition substantially in a market and that an order under subsection (1) is not likely to restore competition in that market, the Tribunal may, in addition to or in lieu of making an order under subsection (1), make an order directing any or all the persons against whom an order is sought to take actions, including the divestiture of assets or shares, that are reasonable and as are necessary to overcome the effects of the agreement or arrangement in that market.

Limitation

(1.2) In making an order under subsection (1.1), the Tribunal shall make the order in such terms as will in its opinion interfere with the rights of any person to whom the order is directed or any other person affected by it only to the extent necessary to achieve the purpose of the order.

Administrative monetary penalty

(1.3) If the Tribunal makes an order against a person under subsection (1) or (1.1), it may also order them to pay,

Ordonnance

90.1 (1) Dans le cas où, à la suite d'une demande du commissaire, il conclut qu'un accord ou un arrangement — conclu ou proposé — entre des personnes dont au moins deux sont des concurrents empêche ou diminue sensiblement la concurrence dans un marché, a eu cet effet ou aura vraisemblablement cet effet, le Tribunal peut rendre une ordonnance :

(2) Le passage du paragraphe 90.1(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Ordonnance

90.1 (1) Dans le cas où, à la suite d'une demande du commissaire ou d'une personne autorisée en vertu de l'article 103.1, il conclut qu'un accord ou un arrangement — conclu ou proposé — entre des personnes dont au moins deux sont des concurrents empêche ou diminue sensiblement la concurrence dans un marché, a eu cet effet ou aura vraisemblablement cet effet, le Tribunal peut rendre une ordonnance :

(3) L'article 90.1 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :

Ordonnance supplémentaire ou substitutive

(1.1) Dans les cas où, à la suite de la demande visée au paragraphe (1), il conclut qu'un accord ou un arrangement a eu ou a pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché et qu'une ordonnance rendue aux termes du paragraphe (1) n'aura vraisemblablement pas pour effet de rétablir la concurrence dans ce marché, le Tribunal peut, en sus ou au lieu de rendre l'ordonnance prévue au paragraphe (1), rendre une ordonnance enjoignant à l'une ou l'autre ou à l'ensemble des personnes visées par la demande d'ordonnance de prendre des mesures raisonnables et nécessaires dans le but d'enrayer les effets de l'accord ou de l'arrangement sur le marché en question et, notamment, de se départir d'éléments d'actif ou d'actions.

Restriction

(1.2) Lorsque le Tribunal rend une ordonnance en vertu du paragraphe (1.1), il le fait aux conditions qui, à son avis, ne porteront atteinte aux droits de la personne visée par cette ordonnance ou à ceux des autres personnes touchées par cette ordonnance que dans la mesure de ce qui est nécessaire à la réalisation de l'objet de l'ordonnance.

Sanction administrative pécuniaire

(1.3) S'il rend une ordonnance en vertu des paragraphes (1) ou (1.1), le Tribunal peut aussi ordonner à la

in any manner that the Tribunal specifies, an administrative monetary penalty in an amount not exceeding the greater of

(a) $10,000,000 and, for each subsequent order under either of those subsections, an amount not exceeding $15,000,000, and

(b) three times the value of the benefit derived from the agreement or arrangement, or, if that amount cannot be reasonably determined, 3% of the person's annual worldwide gross revenues.

Aggravating or mitigating factors

(1.4) In determining the amount of an administrative monetary penalty, the Tribunal shall take into account any evidence of the following:

(a) the effect on competition in the relevant market;

(b) the gross revenue from sales affected by the agreement or arrangement;

(c) any actual or anticipated profits affected by the agreement or arrangement;

(d) the financial position of the person against whom the order is made;

(e) the history of compliance with this Act by the person against whom the order is made; and

(f) any other relevant factor.

Purpose of order

(1.5) The purpose of an order made against a person under subsection (1.3) is to promote practices by that person that are in conformity with the purposes of this section and not to punish that person.

(4) Subsection 90.1(1.4) of the Act is amended by adding the following after paragraph (d):

(d.1) any amount that the person against whom the order is made is required to pay under an order made under subsection (10.1);

(5) Section 90.1 of the Act is amended by adding the following after subsection (9):

personne visée de payer, selon les modalités qu'il peut préciser, une sanction administrative pécuniaire maximale qui ne peut dépasser le plus élevé des montants suivants :

a) 10 000 000 $ et, pour toute ordonnance subséquente rendue en vertu de l'un de ces paragraphes, 15 000 000 $;

b) trois fois la valeur du bénéfice sur lequel l'accord ou l'arrangement a eu une incidence ou, si ce montant ne peut pas être déterminé raisonnablement, trois pour cent des recettes globales brutes annuelles de cette personne.

Facteurs à prendre en compte

(1.4) Pour la détermination du montant de la sanction administrative pécuniaire, le Tribunal prend en compte les éléments suivants :

a) l'effet sur la concurrence dans le marché pertinent;

b) le revenu brut provenant des ventes sur lesquelles l'accord ou l'arrangement a eu une incidence;

c) les bénéfices réels ou prévus sur lesquels l'accord ou l'arrangement a eu une incidence;

d) la situation financière de la personne visée par l'ordonnance;

e) le comportement antérieur de la personne visée par l'ordonnance en ce qui a trait au respect de la présente loi;

f) tout autre élément pertinent.

But de la sanction

(1.5) La sanction prévue au paragraphe (1.3) vise à encourager la personne à adopter des pratiques compatibles avec les objectifs du présent article et non pas à la punir.

(4) Le paragraphe 90.1(1.4) de la même loi est modifié par adjonction, après l'alinéa d), de ce qui suit :

d.1) toute somme que la personne visée par l'ordonnance est tenue de payer au titre d'une ordonnance rendue en vertu du paragraphe (10.1);

(5) L'article 90.1 de la même loi est modifié par adjonction, après le paragraphe (9), de ce qui suit :

Limitation period

(9.1) No application may be made under this section in respect of an agreement or arrangement that has been terminated for more than three years.

Unpaid monetary penalty

(9.2) The administrative monetary penalty imposed on a person under subsection (1.3) is a debt due to His Majesty in right of Canada and may be recovered as such from that person in a court of competent jurisdiction.

(6) Paragraph 90.1(10)(b) of the Act is replaced by the following:

(b) an order against that person has been made under section 76, 79 or 92.

(7) Section 90.1 of the Act is amended by adding the following after subsection (10):

Additional order — person granted leave

(10.1) If the Tribunal makes an order under subsection (1) as the result of an application by a person granted leave under section 103.1, it may also order the person against whom the order is made to pay an amount, not exceeding the value of the benefit derived from the conduct that is the subject of the order, to be distributed among the applicant and any other person affected by the conduct, in any manner that the Tribunal considers appropriate.

Implementation of the order

(10.2) The Tribunal may specify in an order made under subsection (10.1) any term that it considers necessary for the order's implementation, including any term referred to in any of paragraphs 75(1.3)(a) to (g).

Inferences

(10.3) In considering an application by a person granted leave under section 103.1, the Tribunal may not draw any inference from the fact that the Commissioner has or has not taken any action in respect of the matter raised by the application.

249 (1) Paragraphs 92(1)(b) and (c) of the Act are replaced by the following:

(b) among the sources from which a trade, industry or profession obtains a product, including labour,

(c) among the outlets through which a trade, industry or profession disposes of a product, including labour, or

Prescription

(9.1) Aucune demande ne peut être présentée en vertu du présent article à l'égard d'un accord ou d'un arrangement si celui-ci a pris fin depuis plus de trois ans.

Sanctions administratives pécuniaires impayées

(9.2) Les sanctions administratives pécuniaires imposées au titre du paragraphe (1.3) constituent des créances de Sa Majesté du chef du Canada dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

(6) L'alinéa 90.1(10)b) de la même loi est remplacé par ce qui suit :

b) d'une ordonnance rendue contre cette personne en vertu des articles 76, 79 ou 92.

(7) L'article 90.1 de la même loi est modifié par adjonction, après le paragraphe (10), de ce qui suit :

Ordonnance additionnelle — personne autorisée

(10.1) S'il rend une ordonnance en vertu du paragraphe (1) à la suite d'une demande présentée par une personne autorisée en vertu de l'article 103.1, le Tribunal peut également ordonner à toute personne visée par l'ordonnance de payer une somme — ne pouvant excéder la valeur du bénéfice tiré du comportement visé par l'ordonnance — devant être répartie, de la manière qu'il estime indiquée, entre le demandeur et toute autre personne touchée par le comportement.

Exécution de l'ordonnance

(10.2) Le Tribunal peut, dans l'ordonnance rendue en vertu du paragraphe (10.1), préciser les conditions qu'il estime nécessaires à son exécution, notamment tout élément prévu à l'un des alinéas 75(1.3)a) à g).

Application

(10.3) Le Tribunal saisi d'une demande présentée par une personne autorisée en vertu de l'article 103.1 ne peut tirer quelque conclusion que ce soit du fait que le commissaire a accompli un geste ou non à l'égard de l'objet de la demande.

249 (1) Les alinéas 92(1)b) et c) de la même loi sont remplacés par ce qui suit :

b) entre les sources d'approvisionnement auprès desquelles un commerce, une industrie ou une profession se procure un produit, notamment du personnel;

(1.1) The portion of paragraph 92(1)(e) of the Act before subparagraph (i) is replaced by the following:

(e) in the case of a completed merger, in order to restore competition to the level that would have prevailed but for the merger, order any party to the merger or any other person

(1.2) The portion of paragraph 92(1)(f) of the Act before subparagraph (i) is replaced by the following:

(f) in the case of a proposed merger, in order to preserve the level of competition that would prevail but for the merger, make an order directed against any party to the proposed merger or any other person

(1.3) Clause 92(1)(f)(iii)(A) of the Act is replaced by the following:

(A) prohibiting the person against whom the order is directed, should the merger or part thereof be completed, from doing any act or thing the prohibition of which the Tribunal determines to be necessary to ensure that the merger or part thereof does not prevent or lessen competition, or

(2) Subsection 92(2) of the Act is replaced by the following:

Evidence

(2) For the purpose of this section, if the Tribunal finds, on a balance of probabilities, that a merger or proposed merger results or is likely to result in a significant increase in concentration or market share, the Tribunal shall also find that the merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially, unless the contrary is proved on a balance of probabilities by the parties to the merger or proposed merger.

Significant increase in concentration or market share

(3) A merger or proposed merger results or is likely to result in a significant increase in concentration or market share if, in any relevant market, as a result of the merger or proposed merger,

c) entre les débouchés par l'intermédiaire desquels un commerce, une industrie ou une profession écoule un produit, notamment du personnel;

(1.1) Le passage de l'alinéa 92(1)e) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :

e) dans le cas d'un fusionnement réalisé, afin de rétablir la concurrence au niveau qui aurait existé sans le fusionnement, rendre une ordonnance enjoignant à toute personne, que celle-ci soit partie au fusionnement ou non :

(1.2) Le passage de l'alinéa 92(1)f) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :

f) dans le cas d'un fusionnement proposé, afin de préserver le niveau de concurrence qui existerait sans le fusionnement, rendre, contre toute personne, que celle-ci soit partie au fusionnement proposé ou non, une ordonnance enjoignant :

(1.3) La division 92(1)f)(iii)(A) de la même loi est remplacée par ce qui suit :

(A) à la personne qui fait l'objet de l'ordonnance, de s'abstenir, si le fusionnement était éventuellement complété en tout ou en partie, de faire quoi que ce soit dont l'interdiction est, selon ce que conclut le Tribunal, nécessaire pour que le fusionnement, même partiel, n'empêche ni ne diminue la concurrence,

(2) Le paragraphe 92(2) de la même loi est remplacé par ce qui suit :

Preuve

(2) Pour l'application du présent article, lorsque le Tribunal conclut, selon la prépondérance des probabilités, qu'un fusionnement réalisé ou proposé entraîne ou entraînera vraisemblablement une augmentation importante de la concentration ou de la part du marché, il conclut également que le fusionnement réalisé ou proposé empêche ou diminue sensiblement la concurrence, ou aura vraisemblablement cet effet, sauf preuve contraire, selon la prépondérance des probabilités, par les parties au fusionnement réalisé ou proposé.

Augmentation importante — concentration ou part du marché

(3) Le fusionnement réalisé ou proposé entraîne ou entraînera vraisemblablement une augmentation importante de la concentration ou de la part du marché si, dans

(a) the concentration index increases or is likely to increase by more than 100; and

(b) either

(i) the concentration index is or is likely to be more than 1,800, or

(ii) the market share of the parties to the merger or proposed merger is or is likely to be more than 30%.

Definition of *concentration index*

(4) In subsection (3), ***concentration index*** means, in any relevant market, the sum of the squares of the market shares of the suppliers or customers.

Regulations — different values

(5) The Governor in Council may by regulation prescribe different values than those provided in subsection (3).

250 (1) Paragraph 93(g.1) of the Act is replaced by the following:

(g.1) network effects within a market;

(2) Section 93 of the Act is amended by striking out "and" at the end of paragraph (g.3) and by adding the following after that paragraph:

(g.4) the change in concentration or market share that the merger or proposed merger has brought about or is likely to bring about;

(g.5) any likelihood that the merger or proposed merger will or would result in express or tacit coordination between competitors in a market; and

251 Section 97 of the Act is replaced by the following:

Limitation period

97 No application may be made under section 92,

(a) in respect of a merger that was the subject of a request for a certificate under section 102 or a notification under section 114, more than one year after the merger has been substantially completed; or

(b) in respect of any other merger, more than three years after the merger has been substantially completed.

252 Paragraph 98(b) of the Act is replaced by the following:

tout marché pertinent, en raison du fusionnement réalisé ou proposé, à la fois :

a) l'indice de concentration augmente ou augmentera vraisemblablement de plus de 100;

b) l'indice de concentration est ou sera vraisemblablement supérieur à 1 800, ou la part du marché des parties au fusionnement réalisé ou proposé est ou sera vraisemblablement supérieure à 30 %.

Définition de *indice de concentration*

(4) Au paragraphe (3), ***indice de concentration*** correspond, dans tout marché pertinent, à la somme des carrés des parts du marché des fournisseurs ou des clients.

Règlements — valeurs différentes

(5) Le gouverneur en conseil peut, par règlement, établir des valeurs différentes de celles que prévoit le paragraphe (3).

250 (1) L'alinéa 93g.1) de la même loi est remplacé par ce qui suit :

g.1) les effets de réseau dans un marché;

(2) L'article 93 de la même loi est modifié par adjonction, après l'alinéa g.3), de ce qui suit :

g.4) la variation de la concentration ou des parts de marché entraînée ou vraisemblablement entraînée par le fusionnement réalisé ou proposé;

g.5) la possibilité que le fusionnement réalisé ou proposé entraîne ou puisse entraîner une coordination expresse ou tacite entre les concurrents dans un marché;

251 L'article 97 de la même loi est remplacé par ce qui suit :

Prescription

97 Aucune demande ne peut être présentée au titre de l'article 92 à l'égard d'un fusionnement visé par la demande de certificat prévue à l'article 102 ou par l'avis donné en vertu de l'article 114 qui est en substance réalisé depuis plus d'un an, ni à l'égard de tout autre fusionnement qui est en substance réalisé depuis plus de trois ans.

252 L'alinéa 98b) de la même loi est remplacé par ce qui suit :

(b) an order against that person has been made under section 79 or 90.1.

253 Section 100 of the Act is amended by adding the following after subsection (3):

Effect of application for interim order

(3.1) If an application for an interim order is made under subsection (1) in respect of a proposed merger, the merger shall not be completed until the application has been disposed of by the Tribunal.

254 (1) Subsections 103.1(1) and (2) of the Act are replaced by the following:

Leave to make application under section 74.1, 75, 76, 77, 79 or 90.1

103.1 (1) Any person may apply to the Tribunal for leave to make an application under section 74.1, 75, 76, 77, 79 or 90.1. The application for leave must be accompanied by an affidavit setting out the facts in support of the person's application under that section.

Notice

(2) The applicant must serve a copy of the application for leave on the Commissioner and any person against whom the order is sought under section 74.1, 75, 76, 77, 79 or 90.1, as the case may be.

(2) Paragraph 103.1(3)(b) of the Act is replaced by the following:

(b) was the subject of an inquiry that has been discontinued because of a settlement between the Commissioner and the person against whom the order is sought under section 74.1, 75, 76, 77, 79 or 90.1, as the case may be.

(3) Subsection 103.1(4) of the Act is replaced by the following:

Application discontinued

(4) The Tribunal is not to consider an application for leave respecting a matter described in paragraph (3)(a) or (b) or a matter that is the subject of an application already submitted to the Tribunal by the Commissioner under section 74.1, 75, 76, 77, 79 or 90.1.

(4) Subsection 103.1(7) of the Act is replaced by the following:

b) d'une ordonnance rendue contre cette personne en vertu des articles 79 ou 90.1.

253 L'article 100 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :

Effet d'une demande d'ordonnance provisoire

(3.1) Lorsqu'une demande d'ordonnance provisoire est présentée au titre du paragraphe (1) à l'égard d'un fusionnement proposé, le fusionnement ne peut être réalisé tant que le Tribunal n'a pas statué sur la demande.

254 (1) Les paragraphes 103.1(1) et (2) de la même loi sont remplacés par ce qui suit :

Permission de présenter une demande : articles 74.1, 75, 76, 77, 79 ou 90.1

103.1 (1) Toute personne peut demander au Tribunal la permission de présenter une demande en vertu des articles 74.1, 75, 76, 77, 79 ou 90.1. La demande doit être accompagnée d'une déclaration sous serment faisant état des faits sur lesquels elle se fonde.

Signification

(2) L'auteur de la demande en fait signifier une copie au commissaire et à chaque personne à l'égard de laquelle une ordonnance pourrait être rendue en vertu des articles 74.1, 75, 76, 77, 79 ou 90.1, selon le cas.

(2) L'alinéa 103.1(3)b) de la même loi est remplacé par ce qui suit :

b) soit ont fait l'objet d'une telle enquête qui a été discontinuée à la suite d'une entente intervenue entre le commissaire et la personne à l'égard de laquelle une ordonnance pourrait être rendue en vertu des articles 74.1, 75, 76, 77, 79 ou 90.1, selon le cas.

(3) Le paragraphe 103.1(4) de la même loi est remplacé par ce qui suit :

Rejet

(4) Le Tribunal ne peut être saisi d'une demande portant sur des questions visées aux alinéas (3)a) ou b) ou portant sur une question qui fait l'objet d'une demande que lui a présentée le commissaire en vertu des articles 74.1, 75, 76, 77, 79 ou 90.1.

(4) Le paragraphe 103.1(7) de la même loi est remplacé par ce qui suit :

Granting leave — section 74.1

(6.1) The Tribunal may grant leave to make an application under section 74.1 if it is satisfied that it is in the public interest to do so.

Granting leave — sections 75, 77, 79 or 90.1

(7) The Tribunal may grant leave to make an application under section 75, 77, 79 or 90.1 if it has reason to believe that the applicant is directly and substantially affected in the whole or part of the applicant's business by any conduct referred to in one of those sections that could be subject to an order under that section or if it is satisfied that it is in the public interest to do so.

(5) Section 103.1 of the Act is amended by adding the following after subsection (7.1):

Granting leave — section 90.1

(7.2) The Tribunal is not to consider an application for leave in respect of an application under section 90.1 that relates to an agreement or arrangement for which a certificate issued under subsection 124.3(1) is valid and registered.

(6) Subsection 103.1(8) of the English version of the Act is replaced by the following:

Time and conditions for making application

(8) The Tribunal may set the time within which and the conditions subject to which an application under section 74.1, 75, 76, 77, 79 or 90.1 must be made. The application must be made no more than one year after the practice or conduct that is the subject of the application has ceased.

(7) Subsection 103.1(10) of the Act is replaced by the following:

Limitation

(10) The Commissioner may not make an application for an order under section 74.1, 75, 76, 77, 79 or 90.1 on the basis of the same or substantially the same facts as are alleged in a matter for which the Tribunal has granted leave under subsection (6.1), (7) or (7.1), if the person granted leave has already applied to the Tribunal under one of those sections.

255 Section 103.2 of the Act is replaced by the following

Octroi de la demande : article 74.1

(6.1) Le Tribunal peut faire droit à une demande de permission de présenter une demande en vertu de l'article 74.1 s'il est convaincu que cela servirait l'intérêt public.

Octroi de la demande : articles 75, 77, 79 ou 90.1

(7) Le Tribunal peut faire droit à une demande de permission de présenter une demande en vertu des articles 75, 77, 79 ou 90.1 s'il a des raisons de croire que l'auteur de la demande est directement et sensiblement gêné dans tout ou partie de son entreprise en raison de l'existence de l'un ou l'autre des comportements qui pourraient faire l'objet d'une ordonnance en vertu de l'un de ces articles ou s'il est convaincu que cela servirait l'intérêt public.

(5) L'article 103.1 de la même loi est modifié par adjonction, après le paragraphe (7.1), de ce qui suit :

Rejet de la demande : article 90.1

(7.2) Le Tribunal ne peut être saisi d'une demande de permission de présenter, en vertu de l'article 90.1, une demande qui concerne un accord ou un arrangement faisant l'objet d'un certificat délivré en vertu du paragraphe 124.3(1) qui est valide et enregistré.

(6) Le paragraphe 103.1(8) de la version anglaise de la même loi est remplacé par ce qui suit :

Time and conditions for making application

(8) The Tribunal may set the time within which and the conditions subject to which an application under section 74.1, 75, 76, 77, 79 or 90.1 must be made. The application must be made no more than one year after the practice or conduct that is the subject of the application has ceased.

(7) Le paragraphe 103.1(10) de la même loi est remplacé par ce qui suit :

Limite applicable au commissaire

(10) Le commissaire ne peut, en vertu des articles 74.1, 75, 76, 77, 79 ou 90.1, présenter une demande fondée sur des faits qui seraient les mêmes ou essentiellement les mêmes que ceux qui ont été allégués dans la demande de permission accordée en vertu des paragraphes (6.1), (7) ou (7.1) si la personne à laquelle la permission a été accordée a déposé une demande en vertu de l'un de ces articles.

255 L'article 103.2 de la même loi est remplacé par ce qui suit :

Intervention by Commissioner

103.2 If a person granted leave under subsection 103.1(6.1), (7) or (7.1) makes an application under section 74.1, 75, 76, 77, 79 or 90.1, the Commissioner may intervene in the proceedings.

Intervention du commissaire

103.2 Le commissaire est autorisé à intervenir devant le Tribunal dans les cas où une personne autorisée en vertu des paragraphes 103.1(6.1), (7) ou (7.1) présente une demande en vertu des articles 74.1, 75, 76, 77, 79 ou 90.1.

256 (1) Subsection 104(1) of the Act is replaced by the following:

256 (1) Le paragraphe 104(1) de la même loi est remplacé par ce qui suit :

Interim order

104 (1) If an application has been made for an order under this Part, other than an interim order under section 100 or 103.3, the Tribunal, on application by the Commissioner or a person who has made an application under section 75, 76, 77, 79 or 90.1, may issue any interim order that it considers appropriate, having regard to the principles ordinarily considered by superior courts when granting interlocutory or injunctive relief.

Ordonnance provisoire

104 (1) Lorsqu'une demande d'ordonnance a été faite en application de la présente partie, sauf en ce qui concerne les ordonnances provisoires en vertu des articles 100 ou 103.3, le Tribunal peut, à la demande du commissaire ou d'une personne qui a présenté une demande en vertu des articles 75, 76, 77, 79 ou 90.1, rendre toute ordonnance provisoire qu'il considère justifiée conformément aux principes normalement pris en considération par les cours supérieures en matières interlocutoires et d'injonction.

(2) Section 104 of the Act is amended by adding the following after subsection (1):

(2) L'article 104 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :

Effect of application for interim order

(1.1) If an application for an interim order is made under subsection (1) in respect of a proposed merger, the merger shall not be completed until the application has been disposed of by the Tribunal.

Effet d'une demande d'ordonnance provisoire

(1.1) Lorsqu'une demande d'ordonnance provisoire est présentée au titre du paragraphe (1) à l'égard d'un fusionnement proposé, le fusionnement ne peut être réalisé tant que le Tribunal n'a pas statué sur la demande.

257 Subsection 106.1(1) of the Act is replaced by the following:

257 Le paragraphe 106.1(1) de la même loi est remplacé par ce qui suit :

Consent agreement — parties to a private action

106.1 (1) If a person granted leave under section 103.1 makes an application to the Tribunal for an order under section 75, 76, 77, 79 or 90.1 and the terms of the order are agreed to by the person in respect of whom the order is sought and consistent with the provisions of this Act, a consent agreement may be filed with the Tribunal for registration.

Consentement — parties privées

106.1 (1) Lorsqu'une personne autorisée en vertu de l'article 103.1 présente une demande d'ordonnance au Tribunal en vertu des articles 75, 76, 77, 79 ou 90.1, que cette personne et la personne à l'égard de laquelle l'ordonnance est demandée s'entendent sur son contenu et que l'entente est compatible avec les dispositions de la présente loi, un consentement peut être déposé auprès du Tribunal pour enregistrement.

258 The Act is amended by adding the following after section 106.1:

258 La même loi est modifiée par adjonction, après l'article 106.1, de ce qui suit :

Failure to comply with consent agreement

106.2 (1) If, on application by the Commissioner, the Tribunal determines that a person, without good and sufficient cause, the proof of which lies on the person, has failed to comply or is likely to fail to comply with a consent agreement registered under subsection 105(3) or 106.1(4), the Tribunal may

Omission de se conformer au consentement

106.2 (1) S'il conclut, à la suite d'une demande du commissaire, qu'une personne, sans motif valable et suffisant dont la preuve lui incombe, a omis ou omettra vraisemblablement de se conformer au consentement enregistré au titre des paragraphes 105(3) ou 106.1(4), le Tribunal peut :

(a) prohibit the person from doing anything that, in the Tribunal's opinion, may constitute a failure to comply with the agreement;

(b) order the person to take any action that is necessary to comply with the agreement;

(c) order the person to pay, in any manner that the Tribunal specifies, an administrative monetary penalty in an amount not exceeding $10,000 for each day on which they fail to comply with the agreement, determined by the Tribunal after taking into account any evidence of the following:

(i) the person's financial position,

(ii) the person's history of compliance with this Act,

(iii) the duration of the period of non-compliance, and

(iv) any other relevant factor; or

(d) grant any other relief that the Tribunal considers appropriate.

a) interdire à la personne d'accomplir tout acte qui, à son avis, pourrait constituer une omission de se conformer au consentement;

b) ordonner à la personne de prendre les mesures nécessaires pour se conformer au consentement;

c) ordonner à la personne de payer, selon les modalités qu'il précise, une sanction administrative pécuniaire maximale de 10 000 $ pour chacun des jours au cours desquels elle a omis de se conformer au consentement, sanction qu'il fixe après avoir tenu compte des éléments suivants :

(i) la situation financière de la personne,

(ii) le comportement antérieur de la personne en ce qui a trait au respect de la présente loi,

(iii) la durée de l'omission,

(iv) tout autre élément pertinent;

d) accorder toute autre réparation qu'il considère justifiée.

Purpose of order

(2) The terms of an order under paragraph (1)(c) are to be determined with a view to promoting conduct by the person that is in conformity with the purposes of this Act and not with a view to punishment.

But de l'ordonnance

(2) Les conditions de l'ordonnance rendue aux termes de l'alinéa (1)c) sont fixées de façon à encourager la personne à adopter un comportement compatible avec les objectifs de la présente loi et non pas à la punir.

Unpaid monetary penalty

(3) The administrative monetary penalty imposed under paragraph (1)(c) is a debt due to His Majesty in right of Canada and may be recovered as such from the person in a court of competent jurisdiction.

Sanctions administratives pécuniaires impayées

(3) Les sanctions administratives pécuniaires imposées au titre de l'alinéa (1)c) constituent des créances de Sa Majesté du chef du Canada dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

259 The Act is amended by adding the following after section 106.2:

259 La même loi est modifiée par adjonction, après l'article 106.2, de ce qui suit :

Service of agreement on Commissioner

106.3 (1) If a person granted leave under section 103.1 makes an application to the Tribunal for an order under section 75, 76, 77, 79 or 90.1 and the person discontinues the application by reason of having entered into an agreement with any other person, the parties to the agreement must serve a copy of it on the Commissioner within 10 days after the day on which it was entered into.

Signification d'un accord au commissaire

106.3 (1) Si une personne autorisée en vertu de l'article 103.1 présente une demande d'ordonnance au Tribunal en vertu des articles 75, 76, 77, 79 ou 90.1, mais s'en désiste du fait qu'elle a conclu un accord avec une autre personne, les parties à l'accord en font signifier une copie au commissaire dans les dix jours suivant la date de sa conclusion.

Commissioner may intervene

(2) On application by the Commissioner, the Tribunal may vary or rescind the agreement if it finds that the agreement has or is likely to have anti-competitive effects.

Intervention du commissaire

(2) Le Tribunal peut, sur demande du commissaire, modifier ou annuler l'accord dans les cas où il conclut qu'il a ou aurait vraisemblablement des effets anti-concurrentiels.

Notice

(3) The Commissioner must give notice of an application under subsection (2) to the parties to the agreement.

Failure to serve

106.4 (1) If, on application by the Commissioner, the Tribunal determines that a person, without good and sufficient cause, the proof of which lies on the person, has failed to serve a copy of an agreement on the Commissioner in accordance with subsection 106.3(1), the Tribunal may

(a) order the person to serve the Commissioner with a copy of the agreement;

(b) issue an interim order prohibiting any person from doing anything that, in the Tribunal's opinion, may constitute or be directed toward the implementation of the agreement;

(c) order the person to pay, in any manner that the Tribunal specifies, an administrative monetary penalty in an amount not exceeding $10,000 for each day on which they fail to serve a copy of the agreement on the Commissioner, determined by the Tribunal after taking into account any evidence of the following:

(i) the person's financial position,

(ii) the person's history of compliance with this Act,

(iii) the duration of the period of non-compliance, and

(iv) any other relevant factor; or

(d) grant any other relief that the Tribunal considers appropriate.

Purpose of order

(2) The terms of an order under paragraph (1)(c) are to be determined with a view to promoting conduct by the person that is in conformity with the purposes of this Act and not with a view to punishment.

Unpaid monetary penalty

(3) The administrative monetary penalty imposed under paragraph (1)(c) is a debt due to His Majesty in right of Canada and may be recovered as such from the person in a court of competent jurisdiction.

260 The Act is amended by adding the following after section 107:

Préavis

(3) Le commissaire fait parvenir aux parties à l'accord un préavis de la demande qu'il présente en vertu du paragraphe (2).

Omission de signifier un accord

106.4 (1) S'il conclut, à la suite d'une demande du commissaire, qu'une personne, sans motif valable et suffisant dont la preuve lui incombe, a omis de signifier une copie d'un accord au commissaire en application du paragraphe 106.3(1), le Tribunal peut :

a) ordonner à la personne de signifier une copie de l'accord au commissaire;

b) rendre une ordonnance provisoire interdisant à toute personne d'accomplir tout acte qui, à son avis, pourrait constituer la mise en œuvre de l'accord ou y tendre;

c) ordonner à la personne de payer, selon les modalités qu'il précise, une sanction administrative pécuniaire maximale de 10 000 $ pour chacun des jours au cours desquels elle a omis de signifier une copie de l'accord au commissaire, sanction qu'il fixe après avoir tenu compte des éléments suivants :

(i) la situation financière de la personne,

(ii) le comportement antérieur de la personne en ce qui a trait au respect de la présente loi,

(iii) la durée de l'omission,

(iv) tout autre élément pertinent;

d) accorder toute autre réparation qu'il considère justifiée.

But de l'ordonnance

(2) Les conditions de l'ordonnance rendue aux termes de l'alinéa (1)c) sont fixées de façon à encourager la personne à adopter un comportement compatible avec les objectifs de la présente loi et non pas à la punir.

Sanctions administratives pécuniaires impayées

(3) Les sanctions administratives pécuniaires imposées au titre de l'alinéa (1)c) constituent des créances de Sa Majesté du chef du Canada dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

260 La même loi est modifiée par adjonction, après l'article 107, de ce qui suit :

PART VIII.1

Matters Reviewable by a Court

Definitions

Definitions

107.1 The following definitions apply in this Part:

court means the Federal Court or the superior court of a province. (*tribunal*)

reprisal action means an action taken by a person to penalize, punish, discipline, harass or disadvantage another person because of that person's communications with the Commissioner or because that person has cooperated, testified or assisted, or has expressed an intention to cooperate, testify or assist in an investigation or proceeding under this Act. (*représailles*)

Reprisal Action

Prohibition orders

107.2 If, following an application by the Commissioner or a person directly and substantially affected by an alleged reprisal action, a court concludes that a person is engaging, has engaged or is likely to engage in a reprisal action, it may make an order prohibiting the person from engaging in that action.

Administrative Monetary Penalties

107.3 If the court makes an order against a person under section 107.2 on the basis that the person is engaging in or has engaged in a reprisal action, it may also order them to pay an administrative monetary penalty, in any manner that the court specifies, in an amount not exceeding

(a) in the case of an individual, $750,000 and for each subsequent order, $1,000,000; or

(b) in the case of a corporation, $10,000,000 and for each subsequent order, $15,000,000.

Purpose of order

107.4 The terms of an order made against a person under section 107.3 are to be determined with a view to

PARTIE VIII.1

Affaires qu'un tribunal peut examiner

Définitions

Définitions

107.1 Les définitions qui suivent s'appliquent à la présente partie.

représailles Toutes mesures prises par une personne pour pénaliser, punir, discipliner, harceler ou désavantager une autre personne en raison des communications de celle-ci avec le commissaire ou parce que celle-ci a coopéré, témoigné ou autrement aidé, ou a exprimé son intention de coopérer, de témoigner ou d'aider autrement une enquête ou une procédure en vertu de la présente loi. (*reprisal action*)

tribunal La Cour fédérale ou la cour supérieure d'une province. (*court*)

Représailles

Interdictions

107.2 Dans le cas où, à la suite d'une demande du commissaire ou d'une personne qui allègue avoir été directement et sensiblement touchée par des représailles, il conclut qu'une personne se livre ou s'est livrée à des représailles, ou risque vraisemblablement de s'y livrer, le tribunal peut rendre une ordonnance interdisant à cette personne de se livrer à une telle activité.

Sanction administrative pécuniaire

107.3 S'il rend une ordonnance en vertu de l'article 107.2, le tribunal peut aussi ordonner à la personne qui se livre ou qui s'est livrée à des représailles de payer, selon les modalités que le tribunal peut préciser, une sanction administrative pécuniaire maximale :

a) dans le cas d'une personne physique, de 750 000 $ pour la première ordonnance et de 1 000 000 $ pour toute ordonnance subséquente;

b) dans le cas d'une personne morale, de 10 000 000 $ pour la première ordonnance et de 15 000 000 $ pour toute ordonnance subséquente.

But de l'ordonnance

107.4 Les conditions de l'ordonnance rendue en vertu de l'article 107.3 sont fixées de façon à encourager la

promoting conduct by that person that is in conformity with the purposes of this Act and not with a view to punishment.

Aggravating or mitigating factors

107.5 Any evidence of the following shall be taken into account in determining the amount of an administrative monetary penalty under section 107.3:

(a) the frequency and duration of the conduct;

(b) the vulnerability of the class of persons likely to be adversely affected by the conduct;

(c) the financial position of the person against whom the order is made;

(d) the history of compliance with this Act by the person against whom the order is made; and

(e) any other relevant factor.

Unpaid monetary penalty

107.6 The administrative monetary penalty imposed under section 107.3 is a debt due to His Majesty in right of Canada and may be recovered as such from that person in a court of competent jurisdiction.

261 (1) Subsection 110(2) of the Act is replaced by the following:

Acquisition of assets

(2) Subject to sections 111 and 113, this Part applies in respect of a proposed acquisition of any of the assets in Canada and, if any, outside Canada, of an operating business if the aggregate value of the assets in Canada, determined as of the time and in the manner that is prescribed, or the gross revenues from sales in, from or into Canada generated from all the assets proposed to be acquired, determined for the annual period and in the manner that is prescribed, would exceed the amount determined under subsection (7) or (8), as the case may be.

(2) Subparagraph 110(3)(a)(ii) of the Act is replaced by the following:

(ii) the gross revenues from sales in, from or into Canada, determined for the annual period and in the manner that is prescribed, generated from all the assets that are owned by the corporation or by

personne visée à adopter un comportement compatible avec les objectifs de la présente loi et non pas à la punir.

Circonstances aggravantes ou atténuantes

107.5 Pour la détermination du montant de la sanction administrative pécuniaire prévue à l'article 107.3, il est tenu compte des éléments suivants :

a) la fréquence et la durée du comportement;

b) la vulnérabilité des catégories de personnes susceptibles de souffrir du comportement;

c) la situation financière de la personne visée par l'ordonnance;

d) le comportement antérieur de la personne visée par l'ordonnance en ce qui a trait au respect de la présente loi;

e) tout autre élément pertinent.

Sanctions administratives pécuniaires impayées

107.6 Les sanctions administratives pécuniaires imposées au titre de l'article 107.3 constituent des créances de Sa Majesté du chef du Canada, dont le recouvrement peut être poursuivi à ce titre devant tout tribunal compétent.

261 (1) Le paragraphe 110(2) de la même loi est remplacé par ce qui suit :

Acquisition d'éléments d'actif

(2) Sous réserve des articles 111 et 113, la présente partie s'applique à l'égard de l'acquisition proposée d'éléments d'actif au Canada et, le cas échéant, à l'extérieur du Canada, d'une entreprise en exploitation si la valeur totale des éléments d'actif au Canada, déterminée selon les modalités réglementaires de forme et de temps, ou si le revenu brut provenant de ventes, au Canada, en direction du Canada ou en provenance du Canada, et réalisé à partir de tous les éléments d'actif dont l'acquisition est proposée, déterminé selon les modalités réglementaires quant à la période annuelle pour laquelle ce revenu est évalué et quant à son mode d'évaluation, dépasse la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas.

(2) Le sous-alinéa 110(3)a)(ii) de la même loi est remplacé par ce qui suit :

(ii) soit le revenu brut provenant de ventes, au Canada, en direction du Canada ou en provenance du Canada, et réalisé à partir de tous les éléments d'actif qui sont la propriété de la personne morale

entities controlled by that corporation would exceed the amount determined under subsection (7) or (8), as the case may be; and

ou d'entités que contrôle cette personne morale, déterminé selon les modalités réglementaires quant à la période annuelle pour laquelle ce revenu est évalué et quant à son mode d'évaluation, dépasse la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas;

(3) Section 110 of the Act is amended by adding the following after subsection (3):

(3) L'article 110 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :

Acquisition of assets and shares

(3.1) If a proposed transaction would be completed through an acquisition of assets referred to in subsection (2) and shares referred to in subsection (3),

(a) the value of the assets calculated under subsection (2) and the value of the assets calculated under subparagraph (3)(a)(i) are to be aggregated for the purpose of determining if those assets exceed in aggregate value the amount determined under subsection (8); and

(b) the gross revenues calculated under subsection (2) and the gross revenues calculated under subparagraph (3)(a)(ii) are to be aggregated for the purpose of determining if those gross revenues exceed in aggregate value the amount determined under subsection (8).

Acquisition d'éléments d'actif et d'actions

(3.1) Si une transaction proposée se réalisait dans le cadre de l'acquisition d'éléments d'actifs visés au paragraphe (2) et d'actions visées au paragraphe (3) :

a) la valeur totale des éléments d'actif calculée au titre du paragraphe (2) et celle calculée au titre du sous-alinéa (3)a)(i) sont additionnées afin de déterminer si la valeur totale ainsi obtenue dépasse la somme obtenue par application du paragraphe (8);

b) le revenu brut calculé au titre du paragraphe (2) et celui calculé au titre du sous-alinéa (3)a)(ii) sont additionnés afin de déterminer si la valeur totale du revenu brut ainsi obtenue dépasse la somme obtenue par application du paragraphe (8).

(4) Paragraph 110(4)(b) of the Act is replaced by the following:

(b) the gross revenues from sales in, from or into Canada, determined for the annual period and in the manner that is prescribed, generated from all the assets that would be owned by the continuing entity that would result from the amalgamation or by entities controlled by the continuing entity would exceed the amount determined under subsection (7) or (8), as the case may be.

(4) L'alinéa 110(4)b) de la même loi est remplacé par ce qui suit :

b) le revenu brut provenant de ventes, au Canada, en direction du Canada ou en provenance du Canada, et réalisé à partir de tous les éléments d'actif dont seraient propriétaires l'entité devant résulter de la fusion ou les entités qu'elle contrôle, déterminé selon les modalités réglementaires quant à la période annuelle pour laquelle ce revenu est évalué et quant à son mode d'évaluation, dépasse la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas.

(5) The portion of subsection 110(5) of the Act before paragraph (a) is replaced by the following:

(5) Le passage du paragraphe 110(5) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Combination

(5) Subject to sections 112 and 113, this Part applies in respect of a proposed combination of two or more persons to carry on business otherwise than through a corporation if one or more of those persons, or one or more of their affiliates, proposes to contribute to the combination assets that form all or part of an operating business carried on by those persons or affiliates, and if

Associations d'intérêts

(5) Sous réserve des articles 112 et 113, la présente partie s'applique à l'égard de l'association d'intérêts proposée entre plusieurs personnes dans le but d'exercer une entreprise autrement que par l'intermédiaire d'une personne morale dans les cas où au moins une de ces personnes ou de leurs affiliées propose de fournir à l'association d'intérêts des éléments d'actif constituant tout ou partie d'une entreprise en exploitation exploitée par ces personnes ou affiliées, et si :

(6) Paragraph 110(5)(b) of the Act is replaced by the following:

(b) the gross revenues from sales in, from or into Canada, determined for the annual period and in the manner that is prescribed, generated from all the assets that are the subject matter of the combination would exceed the amount determined under subsection (7) or (8), as the case may be.

(6) L'alinéa 110(5)b) de la même loi est remplacé par ce qui suit :

b) le revenu brut provenant de ventes, au Canada, en direction du Canada ou en provenance du Canada, et réalisé à partir de tous les éléments d'actif qui font l'objet de l'association d'intérêts, établi selon les modalités réglementaires quant à la période annuelle pour laquelle ce revenu est évalué et quant à son mode d'évaluation, dépasse la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas.

(7) Subparagraph 110(6)(a)(ii) of the Act is replaced by the following:

(ii) the gross revenues from sales in, from or into Canada, determined for the annual period and in the manner that is prescribed, generated from all the assets that are the subject matter of the combination would exceed the amount determined under subsection (7) or (8), as the case may be; and

(7) Le sous-alinéa 110(6)a)(ii) de la même loi est remplacé par ce qui suit :

(ii) soit le revenu brut provenant de ventes au Canada, en direction du Canada ou en provenance du Canada, et réalisé à partir de tous les éléments d'actif qui font l'objet de l'association d'intérêts, établi selon les modalités réglementaires quant à la période annuelle pour laquelle ce revenu est évalué et quant à son mode d'évaluation, dépasserait la somme prévue au paragraphe (7) ou celle obtenue par application du paragraphe (8), selon le cas;

262 Paragraph 113(c) of the Act is replaced by the following:

(c) a transaction in respect of which the Commissioner or a person authorized by the Commissioner has waived, during the year preceding the day on which the transaction was completed, the obligation under this Part to notify the Commissioner and supply information because substantially similar information was previously supplied in relation to a request for a certificate under section 102; and

262 L'alinéa 113c) de la même loi est remplacé par ce qui suit :

c) une transaction à l'égard de laquelle le commissaire ou son délégué a, au cours de l'année précédant la date de réalisation de la transaction, renoncé à l'avis et à la fourniture de renseignements prévus par la présente partie parce que des renseignements essentiellement semblables ont été fournis antérieurement relativement à la demande de certificat prévue à l'article 102;

263 The portion of subsection 123.1(1) of the Act before paragraph (a) is replaced by the following:

Failure to comply

123.1 (1) If, on application by the Commissioner, the court determines that a person, without good and sufficient cause, the proof of which lies on the person, has completed or is likely to complete a proposed transaction before the end of the applicable period referred to in section 123 or without having given the notice or information required under subsection 114(1), the court may

263 Le passage du paragraphe 123.1(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Défaut de respecter des exigences

123.1 (1) S'il conclut, à la suite d'une demande du commissaire, qu'une personne, sans motif valable et suffisant dont la preuve lui incombe, a réalisé ou réalisera vraisemblablement une transaction proposée avant l'expiration du délai applicable prévu à l'article 123 ou sans avoir donné l'avis ou fourni les renseignements exigés en vertu du paragraphe 114(1), le tribunal peut :

264 Subsection 124.2(3) of the Act is replaced by the following:

264 Le paragraphe 124.2(3) de la même loi est remplacé par ce qui suit :

Reference by agreement of parties to a private action

(3) A person granted leave under section 103.1 and the person against whom an order is sought under section 74.1, 75, 76, 77, 79 or 90.1 may by agreement refer to the Tribunal for determination any question of law, or mixed law and fact, in relation to the application or interpretation of Part VII.1 or VIII, if the Tribunal grants them leave. They must send a notice of their application for leave to the Commissioner, who may intervene in the proceedings.

265 The Act is amended by adding the following after section 124.2:

Agreements and Arrangements Related to Protecting the Environment

Certificate

124.3 (1) If the Commissioner is satisfied by a party or parties that propose to enter into an agreement or arrangement that it is for the purpose of protecting the environment and that it is not likely to prevent or lessen competition substantially in a market, they may issue a certificate that they are so satisfied.

Duty of Commissioner

(2) The Commissioner must consider any request for a certificate under this section as soon as practicable.

Duty of party or parties

(3) The party or parties seeking a certificate must, on request, provide to the Commissioner any information related to the agreement or arrangement.

Content of certificate

(4) The Commissioner must specify in the certificate the names of the parties to the agreement or arrangement as well as a description of the agreement or arrangement's content.

Terms

(5) The Commissioner may specify in the certificate any terms that the Commissioner considers appropriate.

Period of validity

(6) The Commissioner must specify in the certificate its period of validity, which is not to exceed 10 years, and on request of the parties may extend that period for one or more additional periods not exceeding 10 years.

Renvois par des parties privées

(3) La personne autorisée en vertu de l'article 103.1 et la personne visée par la demande qu'elle présente en vertu des articles 74.1, 75, 76, 77, 79 ou 90.1 peuvent, d'un commun accord, mais avec la permission du Tribunal, soumettre au Tribunal toute question de droit ou toute question mixte de droit et de fait liée à l'application ou l'interprétation des parties VII.1 ou VIII. Elles font parvenir un avis de leur demande de renvoi au commissaire, celui-ci étant alors autorisé à intervenir dans les procédures.

265 La même loi est modifiée par adjonction, après l'article 124.2, de ce qui suit :

Accords et arrangements relatifs à la protection de l'environnement

Certificat

124.3 (1) S'il est convaincu par une ou plusieurs parties qui se proposent de conclure un accord ou un arrangement que celui-ci a pour but de protéger l'environnement et n'aura vraisemblablement pas pour effet d'empêcher ou de diminuer sensiblement la concurrence dans un marché, le commissaire peut délivrer un certificat attestant cette conviction.

Obligation du commissaire

(2) Il examine la demande de certificat dans les meilleurs délais.

Obligation des parties

(3) La ou les parties à l'accord ou à l'arrangement fournissent au commissaire, sur demande, tout renseignement relatif à l'accord ou à l'arrangement.

Contenu du certificat

(4) Le commissaire précise dans le certificat le nom des parties à l'accord ou à l'arrangement et y inclut une description du contenu de celui-ci.

Conditions

(5) Il peut préciser, dans le certificat, les conditions qu'il estime indiquées.

Période de validité

(6) Il précise, dans le certificat, la période de validité de celui-ci, laquelle ne peut excéder dix ans, et peut, sur demande des parties, proroger celle-ci pour une ou plusieurs périodes supplémentaires ne pouvant excéder dix ans.

Registration

124.4 The Commissioner must file a certificate issued under subsection 124.3(1) with the Tribunal for immediate registration.

Non-application of sections 45, 46, 47, 49 and 90.1

124.5 Sections 45, 46, 47, 49 and 90.1 do not apply in respect of an agreement or arrangement that is the subject of a certificate issued under subsection 124.3(1) that is valid and registered.

Notice of termination

124.6 (1) The parties to an agreement or arrangement that is the subject of a valid certificate issued under subsection 124.3(1) must, within 15 days of the day on which they terminate the agreement or arrangement, give notice of the termination to the Commissioner and the Tribunal.

Rescission of certificate

(2) The Tribunal must, without delay after receiving the notice, rescind the certificate.

Rescission or variation of certificate

124.7 The Tribunal may rescind or vary a certificate issued under subsection 124.3(1) if, on application by the Commissioner, the parties to the agreement or arrangement that is the subject of the certificate or a person directly and substantially affected in the whole or part of their business by the agreement or arrangement, the Tribunal finds that

(a) the parties have terminated the agreement or arrangement without giving notice of the termination in accordance with subsection 124.6(1);

(b) the parties have agreed, with the Commissioner's consent, to vary the agreement or arrangement;

(c) the agreement or arrangement is not being implemented in accordance with the description of it in the certificate;

(d) the parties have failed to comply with the terms specified in the certificate; or

(e) the agreement or arrangement prevents or lessens, or is likely to prevent or lessen, competition substantially in a market.

Dépôt et enregistrement

124.4 Le commissaire dépose le certificat délivré en vertu du paragraphe 124.3(1) auprès du Tribunal qui est tenu de l'enregistrer immédiatement.

Non-application des articles 45, 46, 47, 49 et 90.1

124.5 Les articles 45, 46, 47, 49 et 90.1 ne s'appliquent pas à l'accord ou à l'arrangement qui fait l'objet d'un certificat délivré en vertu du paragraphe 124.3(1) qui est valide et enregistré.

Avis de fin de l'accord ou de l'arrangement

124.6 (1) Les parties qui mettent fin à un accord ou à un arrangement qui fait l'objet d'un certificat valide délivré en vertu du paragraphe 124.3(1) en avisent le commissaire et le Tribunal dans les quinze jours suivant la date de la fin de l'accord ou de l'arrangement.

Annulation du certificat

(2) Sur réception de l'avis, le Tribunal annule le certificat sans délai.

Annulation ou modification du certificat

124.7 Le Tribunal peut annuler ou modifier un certificat délivré en vertu du paragraphe 124.3(1) si, sur demande du commissaire, des parties à l'accord ou à l'arrangement qui fait l'objet du certificat ou d'une personne qui est directement et sensiblement gênée dans tout ou partie de son entreprise en raison de l'existence de l'accord ou de l'arrangement, il conclut que, selon le cas :

a) les parties ont mis fin à l'accord ou à l'arrangement sans donner l'avis conformément au paragraphe 124.6(1);

b) les parties ont convenu, avec le consentement du commissaire, de modifier l'accord ou l'arrangement;

c) l'accord ou l'arrangement n'est pas mis en œuvre conformément à la description de celui-ci dans le certificat;

d) les parties ne se conforment pas aux conditions précisées dans le certificat;

e) l'accord ou l'arrangement empêche ou diminue sensiblement la concurrence dans un marché, ou aura vraisemblablement cet effet.

R.S., c. 19 (2nd Supp.)

Competition Tribunal Act

266 Subsection 8.1(3) of the *Competition Tribunal Act* is replaced by the following:

No award against the Crown

(3) Despite any other Act of Parliament, the Tribunal shall not award costs against His Majesty in right of Canada unless it is satisfied

(a) that an award is necessary to maintain confidence in the administration of justice; or

(b) that the absence of an award would have a substantial adverse effect on the other party's ability to carry on business.

L.R., ch. 19 (2e suppl.)

Loi sur le Tribunal de la concurrence

266 Le paragraphe 8.1(3) de la *Loi sur le Tribunal de la concurrence* est remplacé par ce qui suit :

Aucuns frais à la charge de la Couronne

(3) Malgré toute autre loi fédérale, le Tribunal ne peut ordonner à Sa Majesté du chef du Canada de payer des frais, sauf s'il est convaincu :

a) soit que l'ordonnance est nécessaire pour ne pas miner la confiance du public envers l'administration de la justice;

b) soit que l'absence d'ordonnance aurait un effet négatif important sur la capacité de l'autre partie d'exploiter son entreprise.

Transitional Provisions

Subsection 67(4) of the *Competition Act*

267 Subsection 67(4) of the *Competition Act*, as enacted by section 235, applies only in respect of corporations that are charged with an offence under that Act on or after the day on which this Act receives royal assent.

Subsection 92(2) of the *Competition Act*

268 Subsection 92(2) of the *Competition Act*, as that subsection read before the day on which subsection 249(2) comes into force, continues to apply after that day in respect of a proposed transaction that was the subject of a notification provided under section 114 of that Act before that day or to a merger that is substantially completed before that day.

Subsection 8.1(3) of the *Competition Tribunal Act*

269 Subsection 8.1(3) of the *Competition Tribunal Act*, as that subsection read before the day on which section 266 comes into force, continues to apply after that day in respect of any proceeding referred to in subsection 8.1(1) of that Act that commenced before that day.

Dispositions transitoires

Paragraphe 67(4) de la *Loi sur la concurrence*

267 Le paragraphe 67(4) de la *Loi sur la concurrence*, édicté par l'article 235, ne s'applique qu'aux personnes morales accusées d'une infraction visée à cette loi à la date de sanction de la présente loi ou après cette date.

Paragraphe 92(2) de la *Loi sur la concurrence*

268 Le paragraphe 92(2) de la *Loi sur la concurrence*, dans sa version antérieure à la date d'entrée en vigueur du paragraphe 249(2), continue de s'appliquer après cette date à l'égard des transactions proposées pour lesquelles l'avis visé à l'article 114 de cette loi a été donné avant cette date, ainsi qu'à l'égard des fusionnements en substance réalisés avant cette date.

Paragraphe 8.1(3) de la *Loi sur le Tribunal de la concurrence*

269 Le paragraphe 8.1(3) de la *Loi sur le Tribunal de la concurrence*, dans sa version antérieure à la date d'entrée en vigueur de l'article 266, continue de s'appliquer après cette date à l'égard des procédures visées au paragraphe 8.1(1) de cette loi commencées avant cette date.

2010, c. 23

Consequential Amendment to An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage ...

270 Paragraph 20(3)(d) of the *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* is replaced by the following:

(d) the person's history with respect to any previous undertaking entered into under subsection 21(1) and any previous consent agreement signed under subsection 74.12(1) or 74.131(1) of the *Competition Act* that relates to acts or omissions that constitute conduct that is reviewable under section 74.011 of that Act;

Coordinating Amendment

Bill C-56

271 If Bill C-56, introduced in the 1st session of the 44th Parliament and entitled the *Affordable Housing and Groceries Act* (in this section referred to as the "other Act"), receives royal assent, then, on the first day on which both subsection 8(1) of the other Act and subsection 248(3) of this Act are in force,

(a) subsection 90.1(1.1) of the *Competition Act*, as enacted by subsection 8(1) of the other Act, is renumbered as subsection 90.1(1.01) and is repositioned accordingly if required; and

(b) subsection 90.1(11) of the *Competition Act* is replaced by the following:

Definition of *competitor*

(11) In subsections (1) and (1.01), ***competitor*** includes a person who it is reasonable to believe would be likely to compete with respect to a product in the absence of the agreement or arrangement.

2010, ch. 23

Modification corrélative à la Loi visant à promouvoir l'efficacité et la capacité d'adaptation de l'économie canadienne par la réglementation de certaines pratiques qui découragent...

270 L'alinéa 20(3)d) de la *Loi visant à promouvoir l'efficacité et la capacité d'adaptation de l'économie canadienne par la réglementation de certaines pratiques qui découragent l'exercice des activités commerciales par voie électronique et modifiant la Loi sur le Conseil de la radiodiffusion et des télécommunications canadiennes, la Loi sur la concurrence, la Loi sur la protection des renseignements personnels et les documents électroniques et la Loi sur les télécommunications* est remplacé par ce qui suit :

d) ses antécédents au regard des engagements contractés en vertu du paragraphe 21(1) et des consentements signés en vertu des paragraphes 74.12(1) ou 74.131(1) de la *Loi sur la concurrence* concernant des actes ou omissions qui constituent des comportements susceptibles d'examen visés à l'article 74.011 de cette loi;

Disposition de coordination

Projet de loi C-56

271 En cas de sanction du projet de loi C-56, déposé au cours de la 1re session de la 44e législature et intitulé *Loi sur le logement et l'épicerie à prix abordable* (appelé « autre loi » au présent article), dès le premier jour où le paragraphe 8(1) de l'autre loi et le paragraphe 248(3) de la présente loi sont tous deux en vigueur :

a) le paragraphe 90.1(1.1) de la *Loi sur la concurrence*, édicté par le paragraphe 8(1) de l'autre loi, devient le paragraphe 90.1(1.01) et, au besoin, est déplacé en conséquence;

b) le paragraphe 90.1(11) de la *Loi sur la concurrence* est remplacé par ce qui suit :

Définition de *concurrent*

(11) Aux paragraphes (1) et (1.01), ***concurrent*** s'entend notamment de toute personne qui, en toute raison, ferait vraisemblablement concurrence à une autre personne à l'égard d'un produit en l'absence de l'accord ou de l'arrangement.

Coming into Force

First anniversary of royal assent

272 Section 238, subsections 239(1) and (4), sections 240, 241 and 243, subsections 244(2) and 245(2), section 246, subsections 247(1) and (2) and 248(2), (4) and (7), sections 254 and 255, subsection 256(1) and sections 257, 259, 264 and 270 come into force on the first anniversary of the day on which this Act receives royal assent.

Entrée en vigueur

Premier anniversaire de la sanction

272 L'article 238, les paragraphes 239(1) et (4), les articles 240, 241 et 243, les paragraphes 244(2) et 245(2), l'article 246, les paragraphes 247(1) et (2) et 248(2), (4) et (7), les articles 254 et 255, le paragraphe 256(1) et les articles 257, 259, 264 et 270 entrent en vigueur au premier anniversaire de la sanction de la présente loi.

DIVISION 7

Public Post-Secondary Educational Institutions

SECTION 7

Établissements publics d'enseignement postsecondaire

R.S., c. B-3; 1992, c. 27, s. 2

Bankruptcy and Insolvency Act

273 The definition *corporation* in section 2 of the *Bankruptcy and Insolvency Act* is replaced by the following:

corporation means a company or legal person that is incorporated by or under an Act of Parliament or of the legislature of a province, an incorporated company, wherever incorporated, that is authorized to carry on business in Canada or has an office or property in Canada or an income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, insurance companies, trust companies, loan companies or prescribed public post-secondary educational institutions; (*personne morale*)

L.R., ch. B-3; 1992, ch. 27, art. 2

Loi sur la faillite et l'insolvabilité

273 La définition de *personne morale*, à l'article 2 de la *Loi sur la faillite et l'insolvabilité*, est remplacée par ce qui suit :

personne morale Personne morale qui est autorisée à exercer des activités au Canada ou qui y a un établissement ou y possède des biens, ainsi que toute fiducie de revenu. Sont toutefois exclues les banques, banques étrangères autorisées au sens de l'article 2 de la *Loi sur les banques*, compagnies d'assurance, sociétés de fiducie ou sociétés de prêt constituées en personnes morales ou établissements publics d'enseignement postsecondaire prescrits. (*corporation*)

R.S., c. C-36

Companies' Creditors Arrangement Act

274 The definition *company* in subsection 2(1) of the *Companies' Creditors Arrangement Act* is replaced by the following:

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies, companies to which the *Trust and Loan*

L.R., ch. C-36

Loi sur les arrangements avec les créanciers des compagnies

274 La définition de *compagnie*, au paragraphe 2(1) de la *Loi sur les arrangements avec les créanciers des compagnies*, est remplacée par ce qui suit :

compagnie Toute personne morale constituée par une loi fédérale ou provinciale ou sous son régime et toute personne morale qui possède un actif ou exerce des activités au Canada, quel que soit l'endroit où elle a été constituée, ainsi que toute fiducie de revenu. La présente définition exclut les banques, les banques étrangères autorisées au sens de l'article 2 de la *Loi sur les banques*, les compagnies de télégraphe, les compagnies d'assurances, les sociétés auxquelles s'applique la *Loi sur les sociétés de fiducie et de prêt* et les établissements publics

Companies Act applies and prescribed public post-secondary educational institutions; (*compagnie*)

d'enseignement postsecondaire prévus par règlement. (*company*)

Transitional Provisions

Bankruptcy and Insolvency Act

275 The definition *corporation* in section 2 of the *Bankruptcy and Insolvency Act*, as enacted by section 273, applies only in respect of proceedings that are commenced under that Act on or after the day on which that section 273 comes into force.

Companies' Creditors Arrangement Act

276 The definition *company* in subsection 2(1) of the *Companies' Creditors Arrangement Act*, as enacted by section 274, applies only in respect of proceedings that are commenced under that Act on or after the day on which that section 274 comes into force.

Coming into Force

Second anniversary or order in council

277 Sections 273 and 274 come into force on the second anniversary of the day on which this Act receives royal assent or on an earlier day to be fixed by order of the Governor in Council.

Dispositions transitoires

Loi sur la faillite et l'insolvabilité

275 La définition de *personne morale*, à l'article 2 de la *Loi sur la faillite et l'insolvabilité*, édictée par l'article 273, ne s'applique qu'à l'égard des procédures intentées sous le régime de cette loi à la date d'entrée en vigueur de cet article 273 ou après cette date.

Loi sur les arrangements avec les créanciers des compagnies

276 La définition de *compagnie*, au paragraphe 2(1) de la *Loi sur les arrangements avec les créanciers des compagnies*, édictée par l'article 274, ne s'applique qu'à l'égard des procédures intentées sous le régime de cette loi à la date d'entrée en vigueur de cet article 274 ou après cette date.

Entrée en vigueur

Deuxième anniversaire ou décret

277 Les articles 273 et 274 entrent en vigueur au deuxième anniversaire de la sanction de la présente loi ou, si elle est antérieure, à la date fixée par décret.

DIVISION 8

Money Laundering, Terrorist Financing, Sanctions Evasion and Other Measures

SUBDIVISION A

2000, c. 17; 2001, c. 41, s. 48

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

Amendments to the Act

278 (1) The definition *Minister* in subsection 2(1) of the *Proceeds of Crime (Money Laundering)*

SECTION 8

Recyclage des produits de la criminalité, financement des activités terroristes, contournement de sanctions et autres mesures

SOUS-SECTION A

2000, ch. 17; 2001, ch. 41, art. 48

Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes

Modification de la loi

278 (1) La définition de *ministre*, au paragraphe 2(1) de la *Loi sur le recyclage des produits de la*

***and Terrorist Financing Act* is replaced by the following:**

Minister means, in relation to sections 24.1 to 39 and 39.13 to 39.39, the Minister of Public Safety and Emergency Preparedness and, in relation to any other provision of this Act, the Minister of Finance. (*ministre*)

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

sanctions evasion offence means an offence arising from the contravention of a restriction or prohibition established by an order or a regulation made under the *United Nations Act*, the *Special Economic Measures Act* or the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*. (*infraction de contournement de sanctions*)

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

acquirer means an entity that connects a private automated banking machine to a *payment card network*, as defined in section 3 of the *Payment Card Networks Act*, to facilitate transactions. (*acquéreur*)

private automated banking machine means any automated banking machine that is not owned or operated by a *bank* as defined in section 2 of the *Bank Act*, by an association regulated by the *Cooperative Credit Associations Act* or by a cooperative credit society, a savings and credit union or a caisse populaire regulated by a provincial Act. (*guichet automatique privé*)

279 (1) Paragraph 5(h) of the Act is amended by striking out "or" at the end of subparagraph (iv) and by adding the following after that subparagraph:

(iv.1) in relation to a private automated banking machine, acquirer services, or

(2) Paragraph 5(h.1) of the Act is amended by striking out "or" at the end of subparagraph (iv) and by adding the following after that subparagraph:

(iv.1) in relation to a private automated banking machine, acquirer services, or

280 Section 7 of the Act is amended by striking out "or" at the end of paragraph (a), by adding

***criminalité et le financement des activités terroristes*, est remplacée par ce qui suit :**

ministre Le ministre de la Sécurité publique et de la Protection civile pour l'application des articles 24.1 à 39 et 39.13 à 39.39, et le ministre des Finances pour l'application des autres dispositions de la présente loi. (*Minister*)

(2) Le paragraphe 2(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

infraction de contournement de sanctions S'entend de la contravention à toute restriction ou toute interdiction prévue par un décret ou un règlement pris en vertu de la *Loi sur les Nations Unies*, de la *Loi sur les mesures économiques spéciales* ou de la *Loi sur la justice pour les victimes de dirigeants étrangers corrompus (loi de Sergueï Magnitski)*. (*sanctions evasion offence*)

(3) Le paragraphe 2(1) de la même loi est modifié par adjonction, selon l'ordre alphabétique, de ce qui suit :

acquéreur Entité qui connecte un guichet automatique privé à un *réseau de cartes de paiement*, au sens de l'article 3 de la *Loi sur les réseaux de cartes de paiement*, pour faciliter les transactions. (*acquirer*)

guichet automatique privé Guichet automatique qui n'est ni détenu ni exploité par une *banque*, au sens de l'article 2 de la *Loi sur les banques*, une association régie par la *Loi sur les associations coopératives de crédit* ou une coopérative de crédit, une caisse d'épargne et de crédit ou une caisse populaire régie par une loi provinciale. (*private automated banking machine*)

279 (1) L'alinéa 5h) de la même loi est modifié par adjonction, après le sous-alinéa (iv), de ce qui suit :

(iv.1) relativement à un guichet automatique privé, tout service d'un acquéreur,

(2) L'alinéa 5h.1) de la même loi est modifié par adjonction, après le sous-alinéa (iv), de ce qui suit :

(iv.1) relativement à un guichet automatique privé, tout service d'un acquéreur,

280 L'article 7 de la même loi est modifié par adjonction, après l'alinéa b), de ce qui suit :

"or" at the end of paragraph (b) and by adding the following after paragraph (b):

(c) the transaction is related to the commission or the attempted commission of a sanctions evasion offence.

281 Paragraph 9.5(a) of the Act is replaced by the following:

(a) include with the transfer any prescribed information and, as the case may be,

(i) the name, address and account number of the holder of the account from which the funds for the transfer are withdrawn, or

(ii) the name, address and reference number of the person or entity that requested the transfer;

282 Section 10 of the Act is replaced by the following:

Immunity

10 No criminal or civil proceedings lie against a person or an entity for making a report in good faith under section 7, 7.1 or 9, or for providing the Centre with information about suspicions of money laundering, of the financing of terrorist activities or of sanctions evasion.

283 Subsection 11.42(4) of the Act is amended by striking out "or" at the end of paragraph (b), by adding "or" at the end of paragraph (c) and by adding the following after paragraph (c):

(d) there is a risk that a foreign state, a foreign entity or a person or entity referred to in section 5 may be facilitating sanctions evasion and, as a result, the Minister is of the opinion that there could be an adverse impact on the integrity of the Canadian financial system or a reputational risk to that system.

284 Subsection 11.49(3) of the Act is amended by striking out "or" at the end of paragraph (a), by adding "or" at the end of paragraph (b) and by adding the following after paragraph (b):

(c) if the risk of sanctions evasion being facilitated by or in that foreign state or by means of that foreign entity or entity referred to in paragraph 5(e.1) is significant and, as a result, the Minister is of the opinion that there could be an adverse impact on the integrity of the Canadian financial system or a reputational risk to that system.

285 The Act is amended by adding the following after section 39:

c) d'une infraction de contournement de sanctions.

281 L'alinéa 9.5a) de la même loi est remplacé par ce qui suit :

a) d'inclure avec le télévirement tout renseignement prévu par règlement et, selon le cas :

(i) les nom, adresse et numéro de compte du titulaire du compte duquel les fonds sont prélevés,

(ii) les nom, adresse et numéro de référence de la personne ou de l'entité qui demande le télévirement;

282 L'article 10 de la même loi est remplacé par ce qui suit :

Immunité

10 Nul ne peut être poursuivi pour avoir fait de bonne foi une déclaration au titre des articles 7, 7.1 ou 9 ou pour avoir fourni au Centre des renseignements qui se rapportent à des soupçons de recyclage des produits de la criminalité, de financement des activités terroristes ou de contournement de sanctions.

283 Le paragraphe 11.42(4) de la même loi est modifié par adjonction, après l'alinéa c), de ce qui suit :

d) le fait qu'un État étranger, qu'une entité étrangère ou qu'une personne ou entité visée à l'article 5 risque de faciliter le contournement de sanctions, ce qui, de l'avis du ministre, pourrait porter atteinte à l'intégrité ou poser un risque d'atteinte à la réputation du système financier canadien.

284 Le paragraphe 11.49(3) de la même loi est modifié par adjonction, après l'alinéa b), de ce qui suit :

c) le fait que le risque que le contournement de sanctions soit facilité dans l'État étranger ou par celui-ci, ou par l'entremise de l'entité étrangère ou de l'entité visée à l'alinéa 5e.1) est élevé, ce qui, selon le ministre, pourrait porter atteinte à l'intégrité ou poser un risque d'atteinte à la réputation du système financier canadien.

285 La même loi est modifiée par adjonction, après l'article 39, de ce qui suit :

PART 2.1

Reporting of Goods

Interpretation

Definitions

39.01 The following definitions apply in this Part.

goods has the same meaning as in subsection 2(1) of the *Customs Act*. (*marchandises*)

officer has the same meaning as in subsection 2(1) of the *Customs Act*. (*agent*)

Reporting

Reporting

39.02 (1) Every person or entity referred to in subsection (3) that reports the importation or exportation of goods under section 12 or 95 of the *Customs Act* shall declare to an officer, in accordance with the regulations,

(a) whether the goods are *proceeds of crime* as defined in subsection 462.3(1) of the *Criminal Code* or are goods relating to money laundering, to the financing of terrorist activities or to sanctions evasion; and

(b) that the goods are actually being imported or exported, as the case may be.

Limitation

(2) A person or entity is not required to make a declaration under subsection (1) if the prescribed conditions are met in respect of the person, entity, importation or exportation, and if the person or entity satisfies an officer that those conditions have been met.

Who must report

(3) Goods shall be declared under subsection (1)

(a) in the case of goods in the actual possession of a person arriving in or departing from Canada, or that form part of their baggage if they and their baggage are being carried on board the same conveyance, by that person or, in prescribed circumstances, by the person in charge of the conveyance;

(b) in the case of goods imported into Canada by courier or as mail, by the exporter of the goods or, on

PARTIE 2.1

Déclaration des marchandises

Interprétation

Définitions

39.01 Les définitions qui suivent s'appliquent à la présente partie.

agent S'entend au sens de *agent* ou *agent des douanes* du paragraphe 2(1) de la *Loi sur les douanes*. (*officer*)

marchandises S'entend au sens du paragraphe 2(1) de la *Loi sur les douanes*. (*goods*)

Déclaration

Déclaration

39.02 (1) Les personnes ou entités visées au paragraphe (3) qui déclarent l'importation ou l'exportation de marchandises en application des articles 12 ou 95 de la *Loi sur les douanes* sont tenues de déclarer à l'agent, conformément aux règlements :

a) s'il s'agit ou non de *produits de la criminalité* au sens du paragraphe 462.3(1) du *Code criminel* ou de marchandises liées au recyclage des produits de la criminalité, au financement des activités terroristes ou au contournement de sanctions;

b) que les marchandises sont effectivement importées ou exportées, selon le cas.

Exception

(2) Une personne ou une entité n'est pas tenue de faire une déclaration au titre du paragraphe (1) si les conditions réglementaires sont réunies à l'égard de la personne, de l'entité, de l'importation ou de l'exportation et si la personne ou l'entité convainc un agent de ce fait.

Déclarant

(3) Le déclarant est, selon le cas :

a) la personne ayant en sa possession effective ou parmi ses bagages les marchandises se trouvant à bord du moyen de transport par lequel elle arrive au Canada ou quitte le pays ou la personne qui, dans les circonstances réglementaires, est responsable du moyen de transport;

b) s'agissant de marchandises importées par messager ou par courrier, l'exportateur étranger ou, sur

receiving notice under subsection 39.03(2), by the importer;

(c) in the case of goods exported from Canada by courier or as mail, by the exporter of the goods;

(d) in the case of goods, other than those referred to in paragraph (a) or imported or exported as mail, that are on board a conveyance arriving in or departing from Canada, by the person in charge of the conveyance; and

(e) in any other case, by the person or entity on whose behalf the goods are imported or exported.

réception de l'avis visé au paragraphe 39.03(2), l'importateur;

c) l'exportateur des marchandises exportées par messager ou par courrier;

d) le responsable du moyen de transport arrivé au Canada ou qui a quitté le pays et à bord duquel se trouvent des marchandises autres que celles visées à l'alinéa a) ou importées ou exportées par courrier;

e) dans les autres cas, la personne ou l'entité pour le compte de laquelle les marchandises sont importées ou exportées.

Payment for goods

(4) A declaration referred to in subsection (1) must be made in respect of any financial transaction purporting to pay for goods being imported or exported in respect of which such declaration is required under that subsection.

Paiement pour marchandises

(4) La déclaration visée au paragraphe (1) doit être faite relativement à toute opération financière censée payer pour des marchandises importées ou exportées à l'égard desquelles une telle déclaration doit être faite en application de ce paragraphe.

Duty to answer

(5) Every person or entity referred to in subsection (3) that reports the importation or exportation of goods shall answer any questions asked by an officer in the exercise of their powers and the performance of their duties and functions under this Part.

Obligation de répondre

(5) Toute personne ou entité mentionnée au paragraphe (3) qui déclare l'importation ou l'exportation de marchandises répond aux questions que l'agent lui pose dans l'exercice des attributions que lui confère la présente partie.

Records

(6) Any person or entity that imports or exports goods or that causes or arranges for goods to be imported or exported — for sale or for any industrial, occupational, commercial, institutional or other like use, or any other use that may be prescribed — or that produces, supplies, distributes or consumes those goods for such a purpose shall keep at the person or entity's place of business in Canada, or at any other place that the Minister may designate, any records in respect of the goods in any manner and for any period of time that may be prescribed. The person or entity shall, if an officer so requests, make the records available to the officer, within the time specified by the officer, and answer any questions asked by the officer in respect of them.

Documents

(6) Toute personne ou entité qui importe, exporte, fait importer ou exporter ou prend des mesures pour importer ou exporter des marchandises en vue de leur vente ou d'usages industriels, professionnels, commerciaux ou collectifs, ou à d'autres fins analogues ou prévues par règlement, ou qui produit, fournit, distribue ou consomme ces marchandises à ces fins est tenue de conserver en son établissement au Canada ou en un autre lieu désigné par le ministre, selon les modalités et pendant le délai réglementaires, les documents réglementaires relatifs aux marchandises et de communiquer ces documents à l'agent, à sa demande et dans le délai qu'il précise, et de répondre aux questions qu'il lui pose à leur sujet.

Customs Act

(7) Subsection 40(2) and sections 42 and 43 of the *Customs Act* apply, with any modifications that the circumstances require, to a person or entity that is required to keep records under subsection (6).

Loi sur les douanes

(7) Le paragraphe 40(2) et les articles 42 et 43 de la *Loi sur les douanes* s'appliquent, avec les adaptations nécessaires, à la personne ou à l'entité tenue de conserver des documents au titre du paragraphe (6).

Obligation to provide accurate information

(8) Any information provided to an officer in the administration or enforcement of this Part shall be true, accurate and complete.

Retention

Temporary retention

39.03 (1) Subject to subsections (2) to (5), if a person or an entity indicates to an officer that they have goods to declare under section 39.02 but the declaration has not yet been completed, the officer may, after giving notice in the prescribed manner to the person or entity, retain the goods for the prescribed period.

Importation or exportation by courier or as mail

(2) In the case of goods imported or exported by courier or as mail, the officer shall, within the prescribed period, give the notice to the exporter if the exporter's address is known, or, if the exporter's address is not known, to the importer.

Limitation

(3) Goods may no longer be retained under subsection (1) if the officer is satisfied that the goods have been the subject of a declaration under section 39.02.

Content of notice

(4) The notice referred to in subsection (1) must state

(a) the period for which the goods may be retained;

(b) that if, within that period, the goods are declared under section 39.02, they may no longer be retained; and

(c) that goods retained at the end of that period are forfeited to His Majesty in right of Canada at that time.

Forfeiture

(5) Goods that are retained by an officer under subsection (1) are forfeited to His Majesty in right of Canada at the end of the period referred to in that subsection.

Searches

Search of person

39.04 (1) If an officer suspects on reasonable grounds that they have secreted on or about their person goods that have not been declared in accordance with section

Obligation de fournir des renseignements exacts

(8) Les renseignements fournis à un agent pour l'application et l'exécution de la présente partie doivent être véridiques, exacts et complets.

Rétention

Rétention temporaire

39.03 (1) Sous réserve des paragraphes (2) à (5), si la personne ou l'entité indique à l'agent qu'elle a des marchandises à déclarer en application de l'article 39.02 mais que la déclaration n'a pas encore été faite, l'agent peut, moyennant avis à la personne ou à l'entité selon les modalités réglementaires, retenir les marchandises pour la période réglementaire.

Importation ou exportation par messager ou par courrier

(2) Dans le cas où les marchandises sont importées ou exportées par messager ou par courrier, l'avis est donné, dans le délai réglementaire, à l'exportateur si son adresse est connue ou, dans le cas contraire, à l'importateur.

Restriction

(3) Les marchandises ne peuvent plus être retenues en vertu du paragraphe (1) si l'agent constate qu'elles ont été déclarées conformément à l'article 39.02.

Contenu de l'avis

(4) L'avis doit contenir les éléments suivants :

a) la période de rétention;

b) la mention qu'il est mis fin à la rétention des marchandises si, pendant cette période, elles sont déclarées conformément à l'article 39.02;

c) la mention qu'à la fin de cette période, les marchandises retenues seront confisquées au profit de Sa Majesté du chef du Canada.

Confiscation

(5) Les marchandises retenues en vertu du paragraphe (1) sont confisquées au profit de Sa Majesté du chef du Canada à l'expiration de la période visée à ce paragraphe.

Fouilles et perquisitions

Fouille de personnes

39.04 (1) S'il la soupçonne, pour des motifs raisonnables, de dissimuler sur elle ou près d'elle des marchandises qui n'ont pas été déclarées conformément à l'article

39.02 or that are *proceeds of crime* as defined in subsection 462.3(1) of the *Criminal Code* or are goods relating to money laundering, to the financing of terrorist activities or to sanctions evasion, the officer may search

(a) any person who has arrived in Canada, within a reasonable time after their arrival in Canada;

(b) any person who is about to leave Canada, at any time before their departure; or

(c) any person who has had access to an area designated for use by persons about to leave Canada and who leaves the area but does not leave Canada, within a reasonable time after they leave the area.

Person taken before senior officer

(2) An officer who is about to search a person under this section shall, on the person's request, without delay take the person before the senior officer at the place where the search is to take place.

Discharge or search

(3) A senior officer before whom a person is taken under subsection (2) shall, if the senior officer believes there are no reasonable grounds for suspicion under subsection (1), discharge the person or, if the senior officer believes otherwise, direct that the person be searched.

Search by same sex

(4) No person shall be searched under this section by a person who is not of the same sex, and if there is no officer of the same sex at the place where the search is to take place, an officer may authorize any suitable person of the same sex to perform the search.

Customs Act

39.05 Paragraphs 99(1)(a) to (c.1), (e) and (f), subsection 99(4) and paragraph 99.1(2)(b) of the *Customs Act* apply, with any modifications that the circumstances require, to goods that must be declared under section 39.02.

Seizures

Seizure and forfeiture

39.06 (1) If an officer has reasonable grounds to believe that goods are *proceeds of crime* as defined in subsection 462.3(1) of the *Criminal Code* or are related to money laundering, the financing of terrorist activities or sanctions evasion, the officer may seize as forfeit the goods.

39.02, qui sont des *produits de la criminalité* au sens du paragraphe 462.3(1) du *Code criminel* ou qui sont liées au recyclage des produits de la criminalité, au financement des activités terroristes ou au contournement de sanctions, l'agent peut fouiller :

a) toute personne entrée au Canada, dans un délai justifiable suivant son arrivée;

b) toute personne sur le point de sortir du Canada, à tout moment avant son départ;

c) toute personne qui a eu accès à une zone réservée aux personnes sur le point de sortir du Canada et qui quitte cette zone sans sortir du Canada, dans un délai justifiable après son départ de cette zone.

Conduite devant l'agent principal

(2) Sur demande de la personne qu'il entend fouiller en vertu du présent article, l'agent la conduit aussitôt devant l'agent principal du lieu de la fouille.

Latitude de l'agent principal

(3) L'agent principal, selon qu'il estime qu'il y a ou non des motifs raisonnables pour procéder à la fouille, fait fouiller ou relâcher la personne conduite devant lui en application du paragraphe (2).

Identité de sexe

(4) L'agent ne peut fouiller une personne de sexe opposé. Faute de collègue du même sexe que celle-ci sur le lieu de la fouille, il peut autoriser toute personne de ce sexe présentant les qualités voulues à y procéder.

Loi sur les douanes

39.05 Les alinéas 99(1)a) à c.1), e) et f), le paragraphe 99(4) et l'alinéa 99.1(2)b) de la *Loi sur les douanes* s'appliquent, avec les adaptations nécessaires, relativement aux marchandises qui doivent être déclarées conformément à l'article 39.02.

Saisie

Saisie et confiscation

39.06 (1) S'il a des motifs raisonnables de croire que les marchandises sont des *produits de la criminalité* au sens du paragraphe 462.3(1) du *Code criminel* ou qu'elles sont liées au recyclage des produits de la criminalité, au financement des activités terroristes ou au contournement de sanctions, l'agent peut les saisir à titre de confiscation.

Notice of seizure

(2) An officer who seizes goods under subsection (1) shall

(a) if the goods were not imported or exported as mail, give the person from whom they were seized written notice of the seizure and the right to review and appeal set out in sections 39.14 and 39.21;

(b) if the goods were imported or exported as mail and the address of the exporter is known, give the exporter written notice of the seizure and the right to review and appeal set out in sections 39.14 and 39.21; and

(c) take the measures that are reasonable in the circumstances to give notice of the seizure to any person or entity that the officer believes on reasonable grounds is entitled to make an application under section 39.23 in respect of the goods.

Avis de la saisie

(2) L'agent qui procède à la saisie-confiscation :

a) donne au saisi, dans le cas où les marchandises sont importées ou exportées autrement que par courrier, un avis écrit de la saisie et du droit de révision et d'appel établi aux articles 39.14 et 39.21;

b) donne à l'exportateur, dans le cas où les marchandises sont importées ou exportées par courrier et son adresse est connue, un avis écrit de la saisie et du droit de révision et d'appel établi aux articles 39.14 et 39.21;

c) prend les mesures convenables, eu égard aux circonstances, pour aviser de la saisie toute personne ou entité dont il croit, pour des motifs raisonnables, qu'elle est recevable à présenter, à l'égard des marchandises saisies, la requête visée à l'article 39.23.

Service of notice

(3) The service of a notice under paragraph (2)(b) is sufficient if it is sent by registered mail addressed to the exporter.

Signification de l'avis

(3) Il suffit, pour que l'avis visé à l'alinéa (2)b) soit considéré comme signifié, qu'il soit envoyé en recommandé à l'exportateur.

Power to call in aid

39.07 An officer may call on other persons to assist the officer in exercising any power of search, seizure or retention that the officer is authorized under this Part to exercise, and any person so called on is authorized to exercise that power.

Main-forte

39.07 L'agent peut requérir main-forte pour se faire assister dans l'exercice des pouvoirs de fouille, de rétention ou de saisie que lui confère la présente partie. Toute personne ainsi requise est autorisée à exercer ces pouvoirs.

Recording of reasons for decision

39.08 If an officer decides to exercise powers under subsection 39.06(1), the officer shall record in writing reasons for the decision.

Enregistrement des motifs

39.08 L'agent qui décide d'exercer les pouvoirs conférés par le paragraphe 39.06(1) est tenu de consigner par écrit les motifs à l'appui de sa décision.

Report to President

39.09 If the goods have been seized under section 39.06, the officer who seized them shall without delay report the circumstances of the seizure to the President.

Rapport au président

39.09 L'agent qui a saisi les marchandises en vertu de l'article 39.06 fait aussitôt un rapport au président sur les circonstances de la saisie.

Transfer to the Minister of Public Works and Government Services

Remise au ministre des Travaux publics et des Services gouvernementaux

Forfeiture under subsection 39.03(5)

39.1 (1) An officer who retains goods forfeited under subsection 39.03(5) shall send the goods to the Minister of Public Works and Government Services.

Confiscation aux termes du paragraphe 39.03(5)

39.1 (1) En cas de confiscation aux termes du paragraphe 39.03(5) des marchandises retenues, l'agent les remet au ministre des Travaux publics et des Services gouvernementaux.

Seizure

(2) An officer who seizes goods shall send the goods to the Minister of Public Works and Government Services.

Forfeiture

Time of forfeiture

39.11 Subject to sections 39.14 to 39.22, goods seized under subsection 39.06(1) are forfeited to His Majesty in right of Canada from the time of the contravention in respect of which they were seized, and no act or proceeding after the forfeiture is necessary to effect the forfeiture.

Review and Appeal

Review of forfeiture

39.12 The forfeiture of goods seized under this Part is final and is not subject to review and is not to be set aside or otherwise dealt with, except to the extent and in the manner provided by sections 39.13 and 39.14.

Corrective measures

39.13 The Minister, or any officer delegated by the President for the purposes of this section, may, within 90 days after a seizure made under subsection 39.06(1), cancel the seizure if the Minister is satisfied that there was no contravention.

Request for Minister's decision

39.14 A person or entity from which goods were seized under subsection 39.06(1), or the lawful owner of the goods, may, within 90 days after the date of the seizure, request a decision of the Minister as to whether the goods are *proceeds of crime* as defined in subsection 462.3(1) of the *Criminal Code* or are related to money laundering, to the financing of terrorist activities or to sanctions evasion by giving notice to the Minister in writing or by any other means satisfactory to the Minister.

Extension of time by Minister

39.15 (1) If no request is made under section 39.14 within the period provided in that section, the person, entity or lawful owner referred to in that section may apply to the Minister in writing or by any other means satisfactory to the Minister for an extension of the time for making the request.

Saisie

(2) En cas de saisie des marchandises, l'agent les remet au ministre des Travaux publics et des Services gouvernementaux.

Confiscation

Moment de la confiscation

39.11 Sous réserve des articles 39.14 à 39.22, les marchandises saisies en vertu du paragraphe 39.06(1) sont confisquées au profit de Sa Majesté du chef du Canada à compter de la contravention qui a motivé la saisie. La confiscation produit dès lors son plein effet et n'est assujettie à aucune autre formalité.

Révision et appel

Révision de la saisie-confiscation

39.12 La saisie-confiscation de marchandises effectuée en vertu de la présente partie est définitive et n'est susceptible de révision, de rejet ou de toute autre forme d'intervention que dans la mesure et selon les modalités prévues aux articles 39.13 et 39.14.

Mesures de redressement

39.13 Le ministre ou l'agent que le président délègue pour l'application du présent article peut, dans les quatre-vingt-dix jours suivant la saisie effectuée en vertu du paragraphe 39.06(1) si le ministre est convaincu qu'aucune contravention n'a eu lieu, annuler la saisie.

Demande de révision par le ministre

39.14 La personne ou l'entité entre les mains de qui ont été saisies des marchandises en vertu du paragraphe 39.06(1) ou leur propriétaire légitime peut, dans les quatre-vingt-dix jours suivant la saisie, demander par écrit au ministre ou de toute autre manière que celui-ci juge indiquée de décider si les marchandises sont ou non des *produits de la criminalité* au sens du paragraphe 462.3(1) du *Code criminel* ou si elles sont ou non liées au recyclage des produits de la criminalité, au financement des activités terroristes ou au contournement de sanctions.

Prorogation du délai par le ministre

39.15 (1) La personne, l'entité ou le propriétaire légitime visé à l'article 39.14 qui n'a pas présenté la demande de révision visée à cet article dans le délai qui y est prévu peut demander au ministre, par écrit ou de toute autre manière que celui-ci juge indiquée, de proroger ce délai.

Content

(2) An application shall set out the reasons why the request was not made on time.

Burden of proof

(3) The burden of proof that an application has been made under subsection (1) lies on the person, entity or lawful owner claiming to have made it.

Notice of decision

(4) The Minister shall, without delay after making a decision in respect of an application, notify the applicant in writing of the decision.

Conditions for granting application

(5) The application is not to be granted unless

(a) it is made within one year after the end of the period provided in section 39.14; and

(b) the applicant demonstrates that

(i) within the period provided in section 39.14, they were unable to act or to instruct another person to act in their name or had a *bona fide* intention to request a decision,

(ii) it would be just and equitable to grant the application, and

(iii) the application was made as soon as circumstances permitted.

Extension of time by Federal Court

39.16 (1) The person, entity or lawful owner referred to in section 39.14 may apply to the Federal Court to have their application under section 39.15 granted

(a) within the period of 90 days after the Minister dismisses that application, if it is dismissed; or

(b) after 90 days have expired after that application was made, if the Minister has not notified the person, entity or lawful owner of a decision made in respect of it.

Application process

(2) The application shall be made by filing in the Federal Court a copy of the application made under section 39.15, and any notice given in respect of it. The applicant shall notify the Minister that they have filed the application immediately after having filed it.

Contenu

(2) La demande de prorogation énonce les raisons pour lesquelles la demande de révision n'a pas été présentée dans le délai prévu.

Fardeau de la preuve

(3) Il incombe à la personne, à l'entité ou au propriétaire légitime qui affirme avoir présenté la demande de prorogation visée au paragraphe (1) de prouver qu'il l'a présentée.

Décision du ministre

(4) Dès qu'il a rendu sa décision, le ministre en avise par écrit l'auteur de la demande.

Conditions d'acceptation de la demande

(5) Il n'est fait droit à la demande de prorogation que si les conditions ci-après sont réunies :

a) la demande est présentée dans l'année suivant l'expiration du délai prévu à l'article 39.14;

b) l'auteur de la demande établit ce qui suit :

(i) au cours du délai prévu à l'article 39.14, il n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou il avait véritablement l'intention de demander qu'une décision soit rendue,

(ii) il serait juste et équitable de faire droit à la demande,

(iii) la demande a été présentée dès que possible.

Prorogation du délai par la Cour fédérale

39.16 (1) La personne, l'entité ou le propriétaire légitime qui a présenté une demande de prorogation en vertu de l'article 39.15 peut, dans le délai ci-après, demander à la Cour fédérale d'y faire droit :

a) soit dans les quatre-vingt-dix jours suivant le rejet de la demande par le ministre;

b) soit à l'expiration d'un délai de quatre-vingt-dix jours suivant la présentation de la demande, si le ministre ne l'a pas avisé de sa décision.

Modalités

(2) La demande se fait par dépôt auprès de la Cour fédérale d'une copie de la demande de prorogation présentée en vertu de l'article 39.15 et de tout avis donné à son égard. L'auteur de la demande avise immédiatement le ministre du dépôt.

Powers of the Court

(3) The Court may grant or dismiss the application and, if it grants the application, may impose any terms that it considers just or order that the request made under section 39.14 be deemed to have been made on the date the order was made.

Conditions for granting application

(4) The application is not to be granted unless

(a) the application under section 39.15 was made within one year after the end of the period provided in section 39.14; and

(b) the applicant demonstrates that

(i) within the period provided in section 39.14, they were unable to act or to instruct another person to act in their name or had a *bona fide* intention to request a decision,

(ii) it would be just and equitable to grant the application, and

(iii) the application was made as soon as circumstances permitted.

Notice of President

39.17 (1) If a request for a decision is a made under section 39.14, the President shall without delay serve on the person, entity or lawful owner who requested it written notice of the circumstances of the seizure in respect of which the decision is requested.

Evidence

(2) The person, entity or lawful owner may, within 30 days after the notice is served, furnish any evidence in the matter that they desire to furnish.

Decision of Minister

39.18 (1) Within 90 days after the expiry of the period referred to in subsection 39.17(2), the Minister shall decide whether the goods are *proceeds of crime* as defined in subsection 462.3(1) of the *Criminal Code* or are related to money laundering, to the financing of terrorist activities or to sanctions evasion.

Deferral of decision

(2) If charges are laid with respect to a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence in respect of the goods seized, the Minister may defer making a decision but shall make it in

Pouvoirs de la Cour

(3) La Cour peut rejeter la demande ou y faire droit. Dans ce dernier cas, elle peut imposer les conditions qu'elle estime justes ou ordonner que la demande de révision présentée en vertu de l'article 39.14 soit réputée avoir été présentée à la date de l'ordonnance.

Conditions d'acceptation de la demande

(4) Il n'est fait droit à la demande que si les conditions suivantes sont réunies :

a) la demande de prorogation a été présentée en vertu de l'article 39.15 dans l'année suivant l'expiration du délai prévu à l'article 39.14;

b) l'auteur de la demande établit ce qui suit :

(i) au cours du délai prévu à l'article 39.14, il n'a pu ni agir ni mandater quelqu'un pour agir en son nom, ou il avait véritablement l'intention de demander qu'une décision soit rendue,

(ii) il serait juste et équitable de faire droit à la demande,

(iii) la demande a été présentée dès que possible.

Signification du président

39.17 (1) Le président signifie sans délai par écrit à la personne, à l'entité ou au propriétaire légitime qui a présenté la demande de révision visée à l'article 39.14 un avis exposant les circonstances de la saisie à l'origine de la demande.

Moyens de preuve

(2) Le demandeur dispose de trente jours à compter de la signification de l'avis pour produire tous moyens de preuve à l'appui de ses prétentions.

Décision du ministre

39.18 (1) Dans les quatre-vingt-dix jours qui suivent l'expiration du délai mentionné au paragraphe 39.17(2), le ministre décide si les marchandises sont ou non des *produits de la criminalité* au sens du paragraphe 462.3(1) du *Code criminel* ou si elles sont ou non liées au recyclage des produits de la criminalité, au financement des activités terroristes ou au contournement de sanctions.

Report de la décision

(2) Dans le cas où des poursuites pour infraction de recyclage des produits de la criminalité, pour infraction de financement des activités terroristes ou pour infraction de contournement de sanctions ont été intentées

any case no later than 30 days after the conclusion of all court proceedings in respect of those charges.

relativement aux marchandises saisies, le ministre peut reporter la décision, mais celle-ci doit être prise dans les trente jours suivant l'issue des poursuites.

Notice of decision

(3) The Minister shall, without delay after making a decision, serve on the person, entity or lawful owner who requested it a written notice of the decision together with the reasons for it.

Avis de la décision

(3) Le ministre signifie sans délai par écrit à la personne, à l'entité ou au propriétaire légitime qui a fait la demande de révision un avis de la décision, motifs à l'appui.

Return of goods

39.19 If the Minister decides that the goods are not *proceeds of crime* as defined in subsection 462.3(1) of the *Criminal Code* and are not related to money laundering, to the financing of terrorist activities or to sanctions evasion, the Minister of Public Works and Government Services shall, on being informed of the Minister's decision, return the goods or an amount of money equal to their value at the time of the seizure, as the case may be.

Restitution des marchandises

39.19 Si le ministre décide que les marchandises ne sont ni des *produits de la criminalité* au sens du paragraphe 462.3(1) du *Code criminel* ni liées au recyclage des produits de la criminalité, au financement des activités terroristes ou au contournement de sanctions, le ministre des Travaux publics et des Services gouvernementaux, dès qu'il est informé de la décision du ministre, restitue les marchandises ou la valeur de celles-ci au moment de la saisie, selon le cas.

Confirmation of forfeiture

39.2 If the Minister decides that the goods are *proceeds of crime* as defined in subsection 462.3(1) of the *Criminal Code* or are related to money laundering, to the financing of terrorist activities or to sanctions evasion, the Minister may, subject to the terms and conditions that the Minister may determine, subject to any order made under section 39.24 or 39.25, confirm that the goods are forfeited to His Majesty in right of Canada.

Confiscation des marchandises

39.2 S'il décide que les marchandises sont des *produits de la criminalité* au sens du paragraphe 462.3(1) du *Code criminel* ou qu'elles sont liées au recyclage des produits de la criminalité, au financement des activités terroristes ou au contournement de sanctions, le ministre peut, aux conditions qu'il fixe, confirmer la confiscation des marchandises au profit de Sa Majesté du chef du Canada, sous réserve de toute ordonnance rendue en application des articles 39.24 ou 39.25.

Appeal to Federal Court

39.21 (1) A person, entity or lawful owner who makes a request under section 39.14 for a decision of the Minister may, within 90 days after being notified of the decision, appeal the decision by way of an action in the Federal Court in which they are the plaintiff and the Minister is the defendant.

Cour fédérale

39.21 (1) La personne, l'entité ou le propriétaire légitime qui a demandé, en vertu de l'article 39.14, que soit rendue une décision peut, dans les quatre-vingt-dix jours suivant la communication de cette décision, en appeler par voie d'action à la Cour fédérale à titre de demandeur, le ministre étant le défendeur.

Ordinary action

(2) The *Federal Courts Act* and the rules made under that Act that apply to ordinary actions apply to actions instituted under subsection (1) except as varied by special rules made in respect of such actions.

Action ordinaire

(2) La *Loi sur les Cours fédérales* et les règles établies en vertu de cette loi applicables aux actions ordinaires s'appliquent aux actions intentées en vertu du paragraphe (1), avec les adaptations nécessaires occasionnées par les règles propres à ces actions.

Delivery after final order

(3) The Minister of Public Works and Government Services shall give effect to the decision of the Court on being informed of it.

Restitution au requérant

(3) Le ministre des Travaux publics et des Services gouvernementaux, dès qu'il en est informé, prend les mesures nécessaires pour donner effet à la décision de la Cour.

Limit on amount paid

(4) If the goods were sold or otherwise disposed of under the *Seized Property Management Act*, the total amount that can be paid under subsection (3) shall not exceed the proceeds of the sale or disposition, if any, less any costs incurred by His Majesty in right of Canada in respect of the goods.

Limitation du montant versé

(4) En cas de vente ou autre forme de disposition des marchandises en vertu de la *Loi sur l'administration des biens saisis*, le montant de toute somme qui peut être versée en vertu du paragraphe (3) ne peut être supérieur au produit éventuel de la vente ou de la disposition, duquel sont soustraits les frais afférents exposés par Sa Majesté du chef du Canada; à défaut de produit de la disposition, aucun paiement n'est effectué.

Service of notices

39.22 The service of the President's notice under section 39.17 or the notice of the Minister's decision under section 39.18 is sufficient if it is sent by registered mail addressed to the person or entity on which it is to be served at their latest known address.

Signification des avis

39.22 Il suffit, pour que les avis visés aux articles 39.17 et 39.18 soient considérés comme respectivement signifiés par le président ou le ministre, qu'il en soit fait envoi en recommandé à la dernière adresse connue du destinataire.

Third Party Claims

Revendication des tiers

Interest as owner

39.23 (1) If goods have been seized as forfeit under this Part, any person or entity, other than the person or entity in whose possession the goods were when seized, that claims in respect of the goods an interest as owner or, in Quebec, a right as owner or trustee may, within 90 days after the seizure, apply by notice in writing to the court for an order under section 39.24.

Droits de propriété

39.23 (1) En cas de saisie-confiscation effectuée en vertu de la présente partie, toute personne ou entité, autre que le saisi, qui revendique sur les marchandises un intérêt en qualité de propriétaire ou, au Québec, un droit en qualité de propriétaire ou de fiduciaire peut, dans les quatre-vingt-dix jours suivant la saisie, requérir par avis écrit le tribunal de rendre l'ordonnance visée à l'article 39.24.

Date of hearing

(2) A judge of the court to which an application is made under this section shall fix a day, not less than 30 days after the date of the filing of the application, for the hearing.

Date de l'audition

(2) Le juge du tribunal saisi conformément au présent article fixe à une date postérieure d'au moins trente jours à celle de la requête l'audition de celle-ci.

Notice to President

(3) The applicant shall serve notice of the application and of the hearing on the President, or an officer delegated by the President for the purpose of this section, not later than 15 days after a day is fixed under subsection (2) for the hearing of the application.

Signification au président

(3) Dans les quinze jours suivant la date ainsi fixée, le requérant signifie au président, ou à l'agent que celui-ci délègue pour l'application du présent article, un avis de la requête et de l'audition.

Service of notice

(4) The service of a notice under subsection (3) is sufficient if it is sent by registered mail addressed to the President.

Signification de l'avis

(4) Il suffit, pour que l'avis prévu au paragraphe (3) soit considéré comme signifié, qu'il soit envoyé en recommandé au président.

Definition of *court*

(5) In this section and sections 39.24 and 39.25, ***court*** means

(a) in the Province of Ontario, the Superior Court of Justice;

Définition de *tribunal*

(5) Au présent article et aux articles 39.24 et 39.25, ***tribunal*** s'entend :

a) dans la province d'Ontario, de la Cour supérieure de justice;

(b) in the Province of Quebec, the Superior Court;

(c) in the Provinces of Nova Scotia, British Columbia, Prince Edward Island and Newfoundland and Labrador, in Yukon and in the Northwest Territories, the Supreme Court;

(d) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of King's Bench; and

(e) in Nunavut, the Nunavut Court of Justice.

b) dans la province de Québec, de la Cour supérieure;

c) dans les provinces de la Nouvelle-Écosse, de la Colombie-Britannique, de l'Île-du-Prince-Édouard et de Terre-Neuve-et-Labrador, au Yukon et dans les Territoires du Nord-Ouest, de la Cour suprême;

d) dans les provinces du Nouveau-Brunswick, du Manitoba, de la Saskatchewan et de l'Alberta, de la Cour du Banc du Roi;

e) dans le Nunavut, de la Cour de justice du Nunavut.

Order

39.24 On the hearing of an application made under subsection 39.23(1), the applicant is entitled to an order declaring that their interest or right is not affected by the seizure and declaring the nature and extent of their interest or right at the time of the contravention that resulted in the seizure if the court is satisfied

(a) that the applicant acquired the interest or right in good faith before the contravention;

(b) that the applicant is innocent of any complicity in the contravention and of any collusion in relation to it; and

(c) that the applicant exercised all reasonable care to ensure that any person permitted to obtain possession of the goods seized would declare them in accordance with section 39.02.

Ordonnance

39.24 Après l'audition de la requête visée au paragraphe 39.23(1), le requérant est en droit d'obtenir une ordonnance disposant que la saisie ne porte pas atteinte à son droit ou à ses intérêts et précisant la nature et l'étendue de l'un comme des autres au moment de la contravention qui a entraîné la saisie si le tribunal constate qu'il remplit les conditions suivantes :

a) il a acquis son droit ou ses intérêts de bonne foi avant la contravention;

b) il est innocent de toute complicité relativement à la contravention ou de toute collusion à l'égard de celle-ci;

c) il a pris des précautions suffisantes concernant toute personne admise à la possession des marchandises saisies pour que celles-ci soient déclarées conformément à l'article 39.02.

Appeal

39.25 (1) A person or entity that makes an application under section 39.23 or His Majesty in right of Canada may appeal to the court of appeal from an order made under section 39.24 and the appeal shall be asserted, heard and decided according to the ordinary procedure governing appeals to the court of appeal from orders or judgments of a court.

Appel

39.25 (1) L'ordonnance visée à l'article 39.24 est susceptible d'appel, de la part du requérant ou de Sa Majesté du chef du Canada, à la cour d'appel. Le cas échéant, l'affaire est entendue et jugée selon la procédure ordinaire régissant les appels interjetés devant cette juridiction contre les ordonnances ou décisions du tribunal.

Definition of *court of appeal*

(2) In this section, ***court of appeal*** means, in the province in which an order referred to in subsection (1) is made, the court of appeal for that province as defined in section 2 of the *Criminal Code*.

Définition de *cour d'appel*

(2) Au présent article, ***cour d'appel*** s'entend au sens de l'article 2 du *Code criminel* relativement à la province où est rendue l'ordonnance visée au paragraphe (1).

Delivery after final order

39.26 (1) The Minister of Public Works and Government Services shall, after the forfeiture of goods has become final and on being informed by the President that a person or entity has obtained a final order under section

Restitution au requérant

39.26 (1) Le ministre des Travaux publics et des Services gouvernementaux, une fois la confiscation devenue définitive et dès qu'il a été informé par le président que la personne ou l'entité a, en vertu des articles 39.24 ou 39.25, obtenu une ordonnance définitive au sujet des

39.24 or 39.25 in respect of the goods, give to the person or entity

(a) the goods; or

(b) an amount calculated on the basis of the interest of the applicant in the goods at the time of the contravention in respect of which they were seized, as declared in the order.

Limit on amount paid

(2) The total amount paid under paragraph (1)(b) shall, if the goods were sold or otherwise disposed of under the *Seized Property Management Act*, not exceed the proceeds of the sale or disposition, if any, less any costs incurred by His Majesty in right of Canada in respect of the goods.

Disclosure and Use of Information

Prohibition

39.27 (1) Subject to this section and subsection 12(1) of the *Privacy Act*, no official shall disclose the following:

(a) information set out in a declaration made under section 39.02, whether or not it is completed;

(b) any other information obtained for the purposes of this Part; or

(c) information prepared from information referred to in paragraph (a) or (b).

Use of information

(2) An officer may use information referred to in subsection (1) if the officer has reasonable grounds to suspect that the information is relevant to determining whether a person is a person described in sections 34 to 42 of the *Immigration and Refugee Protection Act* or is relevant to an offence under any of sections 91, 117 to 119, 126 or 127 of that Act.

Disclosure of relevant information

(3) If an officer has reasonable grounds to suspect that information referred to in subsection (1) would be relevant to investigating or prosecuting a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, the officer may disclose the information to

marchandises saisies, fait remettre à cette personne ou entité :

a) soit les marchandises;

b) soit une somme dont le montant est basé sur la valeur de son droit sur les marchandises au moment de la contravention qui a entraîné la saisie, telle qu'elle est fixée dans l'ordonnance.

Limitation du montant versé

(2) En cas de vente ou autre forme de disposition des marchandises en vertu de la *Loi sur l'administration des biens saisis*, le montant de la somme versée en vertu de l'alinéa (1)b) ne peut être supérieur au produit éventuel de la vente ou de la disposition, duquel sont soustraits les frais afférents exposés par Sa Majesté du chef du Canada; à défaut de produit de la disposition, aucun paiement n'est effectué.

Communication et utilisation de renseignements

Interdiction

39.27 (1) Sous réserve des autres dispositions du présent article et du paragraphe 12(1) de la *Loi sur la protection des renseignements personnels*, il est interdit au fonctionnaire de communiquer les renseignements :

a) contenus dans une déclaration faite au titre de l'article 39.02, qu'elle soit complétée ou non;

b) obtenus pour l'application de la présente partie;

c) préparés à partir de renseignements visés aux alinéas a) ou b).

Utilisation des renseignements

(2) L'agent peut utiliser les renseignements visés au paragraphe (1) s'il a des motifs raisonnables de soupçonner qu'ils seraient utiles afin d'établir si une personne est visée par les articles 34 à 42 de la *Loi sur l'immigration et la protection des réfugiés* ou qu'ils se rapportent à toute infraction prévue à l'un des articles 91, 117 à 119, 126 et 127 de cette loi.

Communication : renseignements utiles

(3) S'il a des motifs raisonnables de soupçonner qu'ils seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, l'agent peut communiquer les renseignements visés au paragraphe (1) :

(a) the appropriate police force;

(b) the Canada Revenue Agency, if the officer also has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence of obtaining or attempting to obtain a rebate, refund or credit to which a person or entity is not entitled, or of evading or attempting to evade paying taxes or duties imposed under an Act of Parliament administered by the Minister of National Revenue;

(c) the Agence du revenu du Québec, if the officer also has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence of obtaining or attempting to obtain a rebate, refund or credit to which a person or entity is not entitled, or of evading or attempting to evade paying taxes imposed under an Act of Parliament or of the legislature of Quebec administered by the Minister of Revenue of Quebec;

(d) the Canada Revenue Agency, if the officer also has reasonable grounds to suspect that the information is relevant to determining

(i) whether a *registered charity*, as defined in subsection 248(1) of the *Income Tax Act*, has ceased to comply with the requirements of that Act for its registration as such,

(ii) whether a person or entity that the officer has reasonable grounds to suspect has applied to be a *registered charity*, as defined in subsection 248(1) of the *Income Tax Act*, is eligible to be registered as such, or

(iii) whether a person or entity that the officer has reasonable grounds to suspect may apply to be a *registered charity*, as defined in subsection 248(1) of the *Income Tax Act*,

(A) has made or will make available any resources, directly or indirectly, to a *listed entity* as defined in subsection 83.01(1) of the *Criminal Code*,

(B) has made available any resources, directly or indirectly, to an *entity* as defined in subsection 83.01(1) of the *Criminal Code* that was at that time, and continues to be, engaged in *terrorist activities* as defined in that subsection or activities in support of them, or

(C) has made or will make available any resources, directly or indirectly, to an *entity* as defined in subsection 83.01(1) of the *Criminal Code*

a) aux forces policières compétentes;

b) à l'Agence du revenu du Canada, si en outre il a des motifs raisonnables de soupçonner que les renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction, consommée ou non, relative à l'obtention illicite d'un remboursement ou d'un crédit ou à l'évasion fiscale, y compris le non-paiement de droits, définie par une loi fédérale dont l'application relève du ministre du Revenu national;

c) à l'Agence du revenu du Québec, si en outre il a des motifs raisonnables de soupçonner que les renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction, consommée ou non, relative à l'obtention illicite d'un remboursement ou d'un crédit ou à l'évasion fiscale, définie par une loi fédérale ou de la législature du Québec dont l'application relève du ministre du Revenu du Québec;

d) à l'Agence du revenu du Canada, si en outre il a des motifs raisonnables de soupçonner que les renseignements sont utiles :

(i) pour établir si un *organisme de bienfaisance enregistré* au sens du paragraphe 248(1) de la *Loi de l'impôt sur le revenu* a cessé de se conformer aux exigences de cette loi relatives à son enregistrement comme tel,

(ii) pour établir l'admissibilité au statut d'*organisme de bienfaisance enregistré* au sens de ce paragraphe 248(1) de toute personne ou entité qu'il soupçonne, pour des motifs raisonnables, d'avoir fait une demande d'enregistrement à cet effet,

(iii) pour établir qu'une personne ou une entité qu'il soupçonne, pour des motifs raisonnables, de pouvoir faire une demande d'enregistrement comme *organisme de bienfaisance enregistré* au sens de ce paragraphe 248(1), selon le cas :

(A) a mis ou mettra, directement ou indirectement, des ressources à la disposition d'une *entité inscrite* au sens du paragraphe 83.01(1) du *Code criminel*,

(B) a mis, directement ou indirectement, des ressources à la disposition d'une *entité* au sens de ce paragraphe 83.01(1), qui se livrait à ce moment et se livre encore à des *activités terroristes* au sens de ce paragraphe ou à des activités visant à les appuyer,

(C) a mis ou mettra, directement ou indirectement, des ressources à la disposition d'une

that engages or will engage in *terrorist activities* as defined in that subsection or activities in support of them;

(e) the Communications Security Establishment, if the officer also determines that the information is relevant to the foreign intelligence aspect of the Communications Security Establishment's mandate, referred to in section 16 of the *Communications Security Establishment Act*;

(f) the Competition Bureau, if the officer also has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence under the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* or the *Textile Labelling Act* or an attempt to commit such an offence;

(g) an agency or body that administers the securities legislation of a province, if the officer also has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence under that legislation;

(h) the Minister of Foreign Affairs or a Minister designated under subsection 6(2) of the *Special Economic Measures Act*, if the officer also determines that the information is relevant to the making, administration or enforcement of an order or regulation referred to in subsection 4(1) of that Act;

(i) the Minister of Foreign Affairs or a Minister designated under subsection 2.1(2) of the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*, if the officer also determines that the information is relevant to the making, administration or enforcement of an order or regulation referred to in subsection 4(1) of that Act;

(j) the Department of the Environment, if the officer also has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence under an Act administered by the Minister of the Environment or an attempt to commit such an offence; and

(k) the Department of Fisheries and Oceans, if the officer also has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence under an Act administered by the Minister of Fisheries and Oceans or an attempt to commit such an offence.

entité, au sens de ce paragraphe 83.01(1), qui se livre ou se livrera à des *activités terroristes* au sens de ce paragraphe ou à des activités visant à les appuyer;

e) au Centre de la sécurité des télécommunications, si en outre il estime que les renseignements concernent le volet de son mandat, visé à l'article 16 de la *Loi sur le Centre de la sécurité des télécommunications*, touchant le renseignement étranger;

f) au Bureau de la concurrence, si en outre il a des motifs raisonnables de soupçonner que les renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction, consommée ou non, prévue par la *Loi sur la concurrence*, la *Loi sur l'emballage et l'étiquetage des produits de consommation*, la *Loi sur l'étiquetage des textiles* ou la *Loi sur le poinçonnage des métaux précieux*;

g) à un organisme chargé de l'application de la législation en valeurs mobilières d'une province, si en outre il a des motifs raisonnables de soupçonner que les renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction à cette législation;

h) au ministre des Affaires étrangères ou à tout ministre désigné en vertu du paragraphe 6(2) de la *Loi sur les mesures économiques spéciales*, si en outre il estime que les renseignements sont utiles à la prise, à l'exécution ou au contrôle d'application d'un décret ou d'un règlement visé au paragraphe 4(1) de cette loi;

i) au ministre des Affaires étrangères ou à tout ministre désigné en vertu du paragraphe 2.1(2) de la *Loi sur la justice pour les victimes de dirigeants étrangers corrompus (loi de Sergueï Magnitski)*, si en outre il estime que les renseignements sont utiles à la prise, à l'exécution ou au contrôle d'application d'un décret ou d'un règlement visé au paragraphe 4(1) de cette loi;

j) au ministère de l'Environnement, si en outre il a des motifs raisonnables de soupçonner que les renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction, consommée ou non, prévue par une loi fédérale dont l'application relève du ministre de l'Environnement;

k) au ministère des Pêches et des Océans, si en outre il a des motifs raisonnables de soupçonner que les renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction, consommée ou non, prévue par une loi fédérale dont l'application relève du ministre des Pêches et des Océans.

Disclosure — threats to security of Canada

(4) If an officer has reasonable grounds to suspect that information referred to in subsection (1) would be relevant to threats to the security of Canada, the officer may disclose the information to

(a) the Canadian Security Intelligence Service;

(b) the appropriate police force, if the officer also has reasonable grounds to suspect that the information is relevant to investigating or prosecuting an offence under Canadian law that the officer has reasonable grounds to suspect arises out of conduct constituting such a threat;

(c) the Department of National Defence and the Canadian Forces, if the officer also has reasonable grounds to suspect that the information is relevant to the conduct of the Department's or the Canadian Forces' investigative activities related to such a threat; and

(d) the Office of the Superintendent of Financial Institutions, if the officer also has reasonable grounds to suspect that the information is relevant to the exercise of the powers or the performance of the duties and functions of the Superintendent under the *Office of the Superintendent of Financial Institutions Act*.

Communication : menaces envers la sécurité du Canada

(4) S'il a des motifs raisonnables de soupçonner qu'ils se rapporteraient à des menaces envers la sécurité du Canada, l'agent peut communiquer les renseignements visés au paragraphe (1) :

a) au Service canadien du renseignement de sécurité;

b) aux forces policières compétentes, si en outre il a des motifs raisonnables de soupçonner que les renseignements sont utiles aux fins d'enquête ou de poursuite relativement à une infraction en droit canadien dont il a des motifs de soupçonner qu'elle se rapporte à des activités constituant une menace envers la sécurité du Canada;

c) au ministère de la Défense nationale et aux Forces canadiennes, si en outre il a des motifs raisonnables de soupçonner que les renseignements se rapportent à la conduite d'activités d'enquête du ministère ou des Forces liées à une menace envers la sécurité du Canada;

d) au Bureau du surintendant des institutions financières, si en outre il a des motifs raisonnables de soupçonner que les renseignements sont utiles à l'exercice des attributions conférées au surintendant sous le régime de la *Loi sur le Bureau du surintendant des institutions financières*.

Disclosure of information to Centre

(5) An officer may disclose to the Centre information referred to in subsection (1) if the officer has reasonable grounds to suspect that it would be of assistance to the Centre in the detection, prevention or deterrence of money laundering, of the financing of terrorist activities or of sanctions evasion.

Communication au Centre

(5) L'agent peut communiquer au Centre les renseignements visés au paragraphe (1) s'il a des motifs raisonnables de soupçonner qu'ils seraient utiles pour la détection, la prévention ou la dissuasion en matière de recyclage des produits de la criminalité, de financement des activités terroristes ou de contournement de sanctions.

Recording of reasons for decision

(6) If an officer decides to disclose information under subsection (3), (4) or (5), the officer shall record in writing the reasons for the decision.

Enregistrement des motifs

(6) L'agent qui décide de communiquer des renseignements en vertu des paragraphes (3), (4) ou (5) est tenu de consigner par écrit les motifs à l'appui de sa décision.

Powers, duties and functions

(7) An official may disclose information referred to in subsection (1) for the purpose of exercising powers or performing duties and functions under this Part.

Attributions

(7) Le fonctionnaire peut communiquer les renseignements visés au paragraphe (1) dans l'exercice des attributions qui lui sont conférées sous le régime de la présente partie.

Immunity from compulsory processes

(8) Subject to section 36 of the *Access to Information Act* and sections 34 and 37 of the *Privacy Act*, an official is required to comply with a subpoena, an order for

Non-contraignabilité

(8) Sous réserve de l'article 36 de la *Loi sur l'accès à l'information* et des articles 34 et 37 de la *Loi sur la protection des renseignements personnels*, le fonctionnaire ne peut être contraint par citation, assignation, sommation,

production of documents, a summons or any other compulsory process only if it is issued in the course of

(a) criminal proceedings under an Act of Parliament that have been commenced by the laying of an information or the preferring of an indictment; or

(b) any legal proceedings that relate to the administration or enforcement of this Part.

ordonnance ou autre acte de procédure obligatoire à comparaître ou à produire des documents, sauf s'ils sont délivrés ou rendus dans le cadre :

a) de poursuites criminelles intentées en vertu d'une loi fédérale, à l'égard desquelles une dénonciation ou une mise en accusation a été déposée;

b) de toute procédure judiciaire concernant l'administration ou l'application de la présente partie.

Definition of *official*

(9) In this section and section 39.28, ***official*** means a person who obtained or who has or had access to information referred to in subsection (1) in the course of exercising powers or performing duties and functions under this Part.

Définition de *fonctionnaire*

(9) Au présent article et à l'article 39.28, ***fonctionnaire*** s'entend de toute personne qui a obtenu des renseignements visés au paragraphe (1) ou y a ou a eu accès dans l'exercice des attributions qui lui sont conférées sous le régime de la présente partie.

Use of information

39.28 No official shall use information referred to in subsection 39.27(1) for any purpose other than exercising powers or performing duties and functions under this Part or for the purposes of the *Special Economic Measures Act*, the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*, the *Customs Act* or any other law relating to customs.

Utilisation des renseignements

39.28 Le fonctionnaire ne peut utiliser les renseignements visés au paragraphe 39.27(1) que dans la mesure où il en a besoin dans l'exercice des attributions qui lui sont conférées sous le régime de la présente partie ou pour l'application de la *Loi sur la justice pour les victimes de dirigeants étrangers corrompus (loi de Sergueï Magnitski)*, de la *Loi sur les mesures économiques spéciales*, de la *Loi sur les douanes* et de tout autre texte législatif concernant les douanes.

Feedback, research and public education

39.29 (1) The Canada Border Services Agency may

(a) inform persons and entities that have provided a declaration under section 39.02 about measures that have been taken with respect to those declarations;

(b) conduct research into trends and developments in the area of money laundering, the financing of terrorist activities, sanctions evasion and the financing of threats to the security of Canada relating to the importation and exportation of goods and into improved ways of detecting, preventing and deterring money laundering, the financing of terrorist activities, sanctions evasion and the financing of threats to the security of Canada; and

(c) undertake measures to inform the public, any persons and entities referred to in section 39.02, any authorities engaged in the investigation and prosecution of money laundering offences, terrorist activity financing offences and sanctions evasion offences and any others with respect to

(i) their obligations under this Part,

Rétroaction, recherche et sensibilisation

39.29 (1) L'Agence des services frontaliers du Canada peut :

a) informer des mesures prises les personnes ou entités qui ont fait une déclaration au titre de l'article 39.02;

b) faire des recherches sur les tendances et les développements en matière de recyclage des produits de la criminalité, de financement des activités terroristes, de financement des menaces envers la sécurité du Canada ou de contournement de sanctions liés à l'importation ou à l'exportation de marchandises et sur les meilleurs moyens de détection, de prévention et de dissuasion à l'égard de ces activités criminelles;

c) prendre des mesures visant à sensibiliser le public, les personnes et les entités visées à l'article 39.02, les autorités chargées de procéder aux enquêtes et aux poursuites relatives aux infractions de recyclage des produits de la criminalité, aux infractions de financement des activités terroristes et aux infractions de contournement de sanctions et tout intéressé, au sujet :

(ii) the nature and extent of money laundering inside and outside Canada relating to the importation and exportation of goods,

(iii) the nature and extent of the financing of terrorist activities inside and outside Canada relating to the importation and exportation of goods,

(iv) the nature and extent of the financing, inside and outside Canada, of threats to the security of Canada relating to the importation and exportation of goods,

(v) the nature and extent of sanctions evasion inside and outside Canada relating to the importation and exportation of goods, and

(vi) measures that have been or might be taken to detect, prevent and deter money laundering — as well as the financing of terrorist activities, sanctions evasion and the financing of threats to the security of Canada — inside or outside Canada, and the effectiveness of those measures.

Limitation

(2) The Canada Border Services Agency shall not disclose under subsection (1) any information that would directly or indirectly identify any of the following persons or entities:

(a) a person who provided a report or information to the Canada Border Services Agency;

(b) a Canadian citizen or a *permanent resident* as defined in subsection 2(1) of the *Immigration and Refugee Protection Act* about whom a report or information was provided;

(c) a person in Canada or an entity that has a place of business in Canada about whom a report or information was provided.

(i) des obligations prévues par la présente partie,

(ii) de la nature et de la portée du recyclage des produits de la criminalité, au Canada et à l'étranger, lié à l'importation ou à l'exportation de marchandises,

(iii) de la nature et de la portée du financement des activités terroristes, au Canada et à l'étranger, lié à l'importation ou à l'exportation de marchandises,

(iv) de la nature et de la portée du financement, au Canada et à l'étranger, des menaces envers la sécurité du Canada lié à l'importation ou à l'exportation de marchandises,

(v) de la nature et de la portée du contournement de sanctions, au Canada et à l'étranger, lié à l'importation ou à l'exportation de marchandises,

(vi) des mesures de détection, de prévention et de dissuasion qui ont été ou peuvent être prises, ainsi que de leur efficacité.

Restrictions

(2) Toutefois, l'Agence des services frontaliers du Canada ne peut divulguer aucun renseignement visé au paragraphe (1) qui permettrait d'identifier, même indirectement, les personnes et entités suivantes :

a) la personne qui a fait une déclaration ou communiqué des renseignements à l'Agence des services frontaliers du Canada;

b) tout citoyen canadien ou un *résident permanent*, au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés*, à l'égard de qui une déclaration a été faite ou des renseignements ont été communiqués;

c) toute personne se trouvant au Canada ou toute entité qui a un établissement au Canada à l'égard de qui une déclaration a été faite ou des renseignements ont été communiqués.

Agreements for Exchange of Information

Agreements with foreign states

39.3 The Minister, with the consent of the Minister designated for the purposes of section 42, may enter into an agreement or arrangement in writing with the government of a foreign state, or an institution or agency of that state, that has reporting requirements similar to those set out in this Part, whereby

Accords de réciprocité

Accord avec des États étrangers

39.3 Le ministre, avec le consentement du ministre chargé de l'application de l'article 42, peut conclure, avec le gouvernement d'un État étranger — ou un organisme de celui-ci — qui exige des déclarations similaires à celles que prévoit la présente partie, un accord écrit stipulant que :

(a) information set out in a declaration made under section 39.02, and any other related information, in respect of goods imported into Canada from that state will be provided to a department, institution or agency of that state that has powers and duties similar to those of the Canada Border Services Agency in respect of the reporting of goods; and

(b) information contained in reports, and any other related information, in respect of goods imported into that state from Canada will be provided to the Canada Border Services Agency.

a) les renseignements figurant dans les déclarations faites au titre de l'article 39.02, et tout autre renseignement connexe, à l'égard des marchandises importées de cet État au Canada sont communiqués à un ministère ou organisme de cet État dont les attributions sont similaires à celles de l'Agence des services frontaliers du Canada en matière de déclarations à l'égard des marchandises importées;

b) les renseignements figurant dans les déclarations, et tout autre renseignement connexe, à l'égard des marchandises importées dans cet État du Canada sont communiqués à l'Agence des services frontaliers du Canada.

Agreements with foreign states

39.31 The Minister, with the consent of the Minister designated for the purpose of section 42, may enter into an agreement or arrangement in writing with the government of a foreign state, or an institution or agency of that state, that has powers and duties similar to those of the Canada Border Services Agency, whereby the Canada Border Services Agency may, if it has reasonable grounds to believe that information collected under this Part would be relevant to investigating or prosecuting a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, provide that information to that government, institution or agency.

Accord avec des États étrangers

39.31 Le ministre, avec le consentement du ministre chargé de l'application de l'article 42, peut conclure, avec le gouvernement d'un État étranger ou un organisme de celui-ci dont les attributions sont similaires à celles de l'Agence des services frontaliers du Canada, un accord écrit stipulant que celle-ci peut fournir à ce gouvernement ou à cet organisme les renseignements recueillis sous le régime de la présente partie, si elle a des motifs raisonnables de croire que ces renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions.

Delegation

Minister's duties

39.32 (1) The Minister may authorize an officer or a class of officers to exercise powers or perform duties of the Minister, including any judicial or quasi-judicial powers or duties of the Minister, under this Part.

President's duties

(2) The President may authorize an officer or a class of officers to exercise powers or perform duties of the President under this Part.

Délégation

Pouvoirs et fonction du ministre

39.32 (1) Le ministre peut autoriser un agent ou une catégorie d'agents à exercer les pouvoirs et fonctions, y compris les pouvoirs et fonctions judiciaires ou quasi judiciaires, qui lui sont conférés en vertu de la présente partie.

Pouvoirs et fonctions du président

(2) Le président peut autoriser un agent ou une catégorie d'agents à exercer les pouvoirs et fonctions qui lui sont conférés en vertu de la présente partie.

Forms

Declaration

39.33 The Minister may include on any form a declaration, to be signed by the person completing the form, declaring that the information given by that person on the form is true, accurate and complete.

Formulaires

Déclaration

39.33 Le ministre peut inclure sur tout formulaire une déclaration à signer par l'intéressé, où celui-ci atteste la véracité, l'exactitude et l'intégralité des renseignements qu'il a donnés.

Electronic Administration and Enforcement

Electronic administration and enforcement

39.34 (1) This Part may be administered and enforced using electronic means. Any person on whom powers, duties or functions are conferred under this Part may exercise any of those powers or perform any of those duties or functions using the electronic means made available or specified by the Minister.

Authorization

(2) Any person who has been authorized to exercise any power or perform any duty or function conferred on a person referred to in subsection (1) under this Part may do so using the electronic means that are made available or specified by the Minister.

Provision of information

39.35 For the purposes of sections 39.36 to 39.38, providing information includes providing a signature and serving, filing or otherwise providing a record or document.

Conditions for electronic version

39.36 A requirement under this Part to provide information — in any form or manner or by any means — is satisfied by providing the electronic version of the information if

(a) the electronic version is provided by the electronic means, including an electronic system, that are made available or specified by the Minister, if any; and

(b) any prescribed requirements with respect to electronic communications or electronic means have been met.

Deemed timing of receipt

39.37 Any information provided by electronic means, including an electronic system, in accordance with section 39.34 or 39.36, is deemed to be received

(a) if the regulations provide for a day, on that day;

(b) if the regulations provide for a day and time, on that day and at that time; or

Exécution et contrôle d'application par des moyens électroniques

Exécution et contrôle d'application par des moyens électroniques

39.34 (1) L'exécution et le contrôle d'application de la présente partie peuvent être assurés par des moyens électroniques. De même, toute personne à qui des attributions sont conférées sous le régime de la présente partie peut, dans l'exercice de ces attributions, utiliser les moyens électroniques que le ministre met à sa disposition ou précise.

Autorisation

(2) Les personnes autorisées à exercer les attributions conférées à une personne visée au paragraphe (1) sous le régime de la présente partie peuvent, lorsqu'elles les exercent, utiliser les moyens électroniques que le ministre met à leur disposition ou précise.

Fourniture de renseignements

39.35 Pour l'application des articles 39.36 à 39.38, la fourniture de renseignements vise également la fourniture d'une signature ou d'un document ou la signification ou la production d'un document.

Conditions : version électronique

39.36 Lorsque la présente partie exige que des renseignements soient fournis — selon des modalités ou par tout moyen — la fourniture d'une version électronique de ceux-ci satisfait à l'exigence si les conditions suivantes sont réunies :

a) la version électronique est fournie par le moyen électronique, notamment un système électronique, que le ministre met à disposition ou précise, le cas échéant;

b) les exigences réglementaires visant les communications par voie électronique ou les moyens électroniques ont été remplies.

Réception réputée

39.37 Les renseignements fournis par des moyens électroniques, notamment un système électronique, conformément aux articles 39.34 ou 39.36, sont réputés reçus à la date — et, le cas échéant, à l'heure — prévue par règlement ou, à défaut, à la date et à l'heure où ils ont été envoyés.

(c) if the regulations do not provide for a day or a day and a time, on the day and at the time that the information is sent.

Regulations

39.38 (1) The Governor in Council may, on the recommendation of the Minister, make regulations in respect of electronic communications and electronic means, including electronic systems, or any other technology to be used in the administration or enforcement of this Part, including regulations respecting

(a) the provision of information for any purpose under this Part in electronic or other form;

(b) the payment of amounts under this Part by electronic instructions; and

(c) the manner in which and the extent to which any provision of this Part, or its regulations, applies to the electronic communications or electronic means, including electronic systems, and adapting any such provision for the purpose of applying it.

Classes

(2) Regulations made for the purpose of section 39.36 may establish classes and distinguish among those classes.

Administrative Monetary Penalties

Regulations

39.39 (1) The Governor in Council may make regulations establishing an administrative monetary penalties scheme for the purpose of promoting compliance with this Part, including regulations

(a) designating as a violation the contravention of a specified provision of this Part;

(b) classifying each violation or series of violations;

(c) respecting the penalties that may be imposed for a violation, including in relation to

(i) the amount, or range of amounts, of the penalties that may be imposed on persons or entities or classes of persons or entities,

(ii) the factors to be taken into account in imposing a penalty,

Règlements

39.38 (1) Sur recommandation du ministre, le gouverneur en conseil peut prendre des règlements portant sur les communications par voie électronique et les moyens électroniques, y compris tout système électronique, ou tout autre moyen technique devant servir à l'exécution ou au contrôle d'application de la présente partie, notamment des règlements concernant :

a) la fourniture de renseignements à toute fin prévue par la présente partie, sous forme électronique ou autre;

b) le versement de sommes, sous le régime de la présente partie, selon les instructions données par voie électronique;

c) les modalités et l'étendue de l'application des dispositions de la présente partie ou de ses règlements aux communications par voie électronique et aux moyens électroniques, notamment aux systèmes électroniques, et l'adaptation de ces dispositions à cette fin.

Catégories

(2) Les règlements pris pour l'application de l'article 39.36 peuvent prévoir des catégories et les traiter différemment.

Sanctions administratives pécuniaires

Règlement

39.39 (1) Le gouverneur en conseil peut prendre des règlements établissant un régime de sanctions administratives pécuniaires qui vise à favoriser le respect de la présente partie, notamment des règlements :

a) désignant comme violation la contravention à telle ou telle disposition de la présente partie;

b) classifiant les violations ou séries de violations;

c) concernant la sanction à imposer, notamment en ce qui a trait à ce qui suit :

(i) le montant de la sanction à imposer, ou le barème de sanctions à appliquer, en fonction des personnes ou entités ou des catégories de personnes ou d'entités,

(iii) the payment of penalties that have been imposed, and

(iv) the recovery, as a debt, of unpaid penalties and any additional penalty to be paid in respect of those unpaid penalties;

(d) respecting the powers, duties and functions of the Canada Border Services Agency and of any person or class of persons who may exercise powers or perform duties or functions with respect to the scheme, including the designation of such persons or classes of persons by the President of the Agency;

(e) respecting the proceedings in respect of a violation, including in relation to

(i) commencing the proceedings,

(ii) the defences that may be available in respect of a violation, and

(iii) the circumstances in which the proceedings may be brought to an end; and

(f) respecting reviews or appeals of any orders or decisions in the proceedings.

(ii) les critères à prendre en compte pour la détermination de la sanction,

(iii) le paiement de la sanction imposée,

(iv) le recouvrement, à titre de créance, de toute sanction impayée et l'imposition de toute sanction additionnelle à en cas de défaut de paiement;

d) concernant les attributions de l'Agence des services frontaliers du Canada et les personnes, individuellement ou par catégorie, qui peuvent exercer des attributions relativement au régime, notamment la désignation de telles personnes ou catégories de personnes par le président;

e) concernant les procédures en violation, notamment en ce qui a trait à ce qui suit :

(i) l'introduction de la procédure,

(ii) les défenses pouvant être invoquées à l'égard de la violation,

(iii) les circonstances pouvant mettre fin à la procédure;

f) concernant la révision ou l'appel des ordonnances ou des décisions dans le cadre de la procédure.

Violation or offence

(2) If an act or omission may be proceeded with as a violation or as an offence, proceeding with it in one manner precludes proceeding with it in the other.

Cumul interdit

(2) S'agissant d'un acte ou d'une omission qualifiable à la fois de violation et d'infraction, la procédure en violation et la procédure pénale s'excluent l'une l'autre.

286 (1) Paragraph 40(b) of the Act is replaced by the following:

(b) collects, analyses, assesses and discloses information in order to assist in the detection, prevention and deterrence of money laundering, of the financing of terrorist activities and of sanctions evasion, and in order to assist the Minister in carrying out the Minister's powers and duties under Part 1.1;

286 (1) L'alinéa 40b) de la même loi est remplacé par ce qui suit :

b) recueille, analyse, évalue et communique des renseignements utiles pour la détection, la prévention et la dissuasion en matière de recyclage des produits de la criminalité, de financement des activités terroristes ou de contournement de sanctions ainsi que des renseignements susceptibles d'aider le ministre à exercer les attributions que lui confère la partie 1.1;

(2) Paragraph 40(d) of the Act is replaced by the following:

(d) operates to enhance public awareness and understanding of matters related to money laundering, the financing of terrorist activities and sanctions evasion; and

(2) L'alinéa 40d) de la même loi est remplacé par ce qui suit :

d) sensibilise le public aux questions liées au recyclage des produits de la criminalité, au financement des activités terroristes et au contournement de sanctions;

287 (1) Paragraph 54(1)(a) of the Act is replaced by the following:

287 (1) L'alinéa 54(1)a) de la même loi est remplacé par ce qui suit :

(a) shall receive reports made under section 7, 7.1, 9, 12 or 20, or in accordance with a directive issued under Part 1.1, incomplete reports sent under subsection 14(5), reports referred to in section 9.1, information provided to the Centre by any agency of another country that has powers and duties similar to those of the Centre, information provided to the Centre by law enforcement agencies or government institutions or agencies, and other information voluntarily provided to the Centre about suspicions of money laundering, of the financing of terrorist activities or of sanctions evasion;

(2) The portion of paragraph 54(1)(b) of the Act before subparagraph (i) is replaced by the following:

(b) may collect information that the Centre considers relevant to money laundering activities, the financing of terrorist activities and activities relating to sanctions evasion that

(3) Subsection 54(2) of the Act is replaced by the following:

Destruction of certain information

(2) The Centre shall destroy any information contained in a document, whether in written form or in any other form, that it receives that purports to be a report made under section 7, 7.1, 9 or 12, made in accordance with a directive issued under Part 1.1, sent under subsection 14(5) or referred to in section 9.1, and that it determines, in the normal course of its activities, relates to a financial transaction or circumstance that is not required to be reported to the Centre under this Act, and shall destroy any information voluntarily provided to the Centre by the public that it determines, in the normal course of its activities, is not about suspicions of money laundering, of the financing of terrorist activities or of sanctions evasion. The Centre shall destroy the information within a reasonable time after the determination is made.

288 (1) Paragraph 55(1)(d) of the Act is replaced by the following:

(d) information voluntarily provided to the Centre about suspicions of money laundering, of the financing of terrorist activities or of sanctions evasion;

(2) The portion of subsection 55(3) of the Act before paragraph (a) is replaced by the following:

a) recueille les rapports ou déclarations faits conformément aux articles 7, 7.1, 9, 12 ou 20 ou à toute directive donnée au titre de la partie 1.1 et les déclarations incomplètes qui lui sont transmises conformément au paragraphe 14(5), les rapports visés à l'article 9.1, les renseignements qui lui sont fournis soit par des organismes étrangers ayant des attributions semblables aux siennes, soit par des organismes chargés de l'application de la loi ou autres autorités publiques, ainsi que tout renseignement qui lui est transmis volontairement et qui se rapporte à des soupçons de recyclage des produits de la criminalité, de financement des activités terroristes ou de contournement de sanctions;

(2) Le passage de l'alinéa 54(1)b) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :

b) peut recueillir tout renseignement qu'il croit se rapporter à des activités de recyclage des produits de la criminalité, au financement des activités terroristes ou à des activités de contournement de sanctions et qui est :

(3) Le paragraphe 54(2) de la même loi est remplacé par ce qui suit :

Destruction de certains renseignements

(2) Le Centre détruit dans un délai raisonnable les renseignements qu'il a reçus qui se trouvent dans un document — quel qu'en soit la forme ou le support — et qui sont présentés comme un rapport ou une déclaration visé aux articles 7, 7.1, 9 ou 12, une directive donnée au titre de la partie 1.1, une déclaration incomplète transmise conformément au paragraphe 14(5) ou un rapport visé à l'article 9.1 lorsqu'il conclut, dans le cours normal de ses activités, que ces renseignements se rapportent à une opération financière ou à un cas dont la présente loi n'exige pas qu'ils lui soient communiqués dans un rapport ou une déclaration ou, si ces renseignements lui sont fournis volontairement par le public, qu'ils ne se rapportent pas à des soupçons de recyclage des produits de la criminalité, de financement des activités terroristes ou de contournement de sanctions.

288 (1) L'alinéa 55(1)d) de la même loi est remplacé par ce qui suit :

d) se rapportant à des soupçons de recyclage des produits de la criminalité, de financement des activités terroristes ou de contournement de sanctions qui lui sont transmis volontairement;

(2) Le passage du paragraphe 55(3) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Disclosure of designated information

(3) If the Centre, on the basis of its analysis and assessment under paragraph 54(1)(c), has reasonable grounds to suspect that designated information would be relevant to investigating or prosecuting a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, the Centre shall disclose the information to

(3) Clause 55(3)(c)(iii)(C) of the French version of the Act is replaced by the following:

> **(C)** a mis ou mettra, directement ou indirectement, des ressources à la disposition d'une *entité*, au sens de ce paragraphe 83.01(1), qui se livre ou se livrera à des *activités terroristes* au sens de ce paragraphe ou à des activités visant à les appuyer;

(4) Subsection 55(3) of the Act is amended by striking out "and" at the end of paragraph (h) and by adding the following after paragraph (i):

> **(j)** the Department of the Environment, if the Centre also has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence under an Act administered by the Minister of the Environment or an attempt to commit such an offence; and
>
> **(k)** the Department of Fisheries and Oceans, if the Centre also has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence under an Act an Act administered by the Minister of Fisheries and Oceans or an attempt to commit such an offence.

(5) Subsection 55(6.1) of the Act is replaced by the following:

Publication

(6.1) After a person has been determined by a court to be guilty of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or has been determined by a foreign court to be guilty of an offence that is substantially similar to any of those offences, whether on acceptance of a plea of guilty or on a finding of guilt, the Centre may, if it has disclosed designated information under subsection (3) with respect to the investigation or prosecution of the offence, make public the fact that it made such a disclosure.

Communication de renseignements désignés

(3) S'il a des motifs raisonnables de soupçonner, à la lumière de l'analyse et de l'appréciation faite en application de l'alinéa 54(1)c), qu'ils seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, le Centre communique les renseignements désignés :

(3) La division 55(3)c)(iii)(C) de la version française de la même loi est remplacée par ce qui suit :

> **(C)** a mis ou mettra, directement ou indirectement, des ressources à la disposition d'une *entité*, au sens de ce paragraphe 83.01(1), qui se livre ou se livrera à des *activités terroristes* au sens de ce paragraphe ou à des activités visant à les appuyer;

(4) Le paragraphe 55(3) de la même loi est modifié par adjonction, après l'alinéa i), de ce qui suit :

> **j)** au ministère de l'Environnement, si en outre il a des motifs raisonnables de soupçonner que les renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction, consommée ou non, prévue par une loi fédérale dont l'application relève du ministre de l'Environnement;
>
> **k)** au ministère des Pêches et des Océans, si en outre il a des motifs raisonnables de soupçonner que les renseignements seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction, consommée ou non, prévue par une loi fédérale dont l'application relève du ministre des Pêches et des Océans.

(5) Le paragraphe 55(6.1) de la même loi est remplacé par ce qui suit :

Publication

(6.1) Lorsqu'un tribunal déclare qu'une personne est coupable d'une infraction de recyclage des produits de la criminalité, d'une infraction de financement des activités terroristes ou d'une infraction de contournement de sanctions ou qu'un tribunal étranger déclare qu'une personne est coupable d'une infraction essentiellement similaire, soit par acceptation de son plaidoyer de culpabilité soit par une déclaration de culpabilité, si le Centre a communiqué des renseignements désignés visés au paragraphe (3) se rapportant à l'enquête ou à la poursuite de cette infraction, il peut rendre ce fait public.

(6) The portion of subsection 55(7) of the Act before paragraph (a.1) is replaced by the following:

Definition of *designated information*

(7) For the purposes of subsection (3), ***designated information*** means, in respect of a report made under section 7.1 or of a financial transaction, an attempted financial transaction or an importation or exportation of currency or monetary instruments, as the case may be,

(a) the name of any person or entity that is identified in the report or that is involved in the transaction, attempted transaction, importation or exportation or of any person or entity acting on their behalf;

(6) Le passage du paragraphe 55(7) de la même loi précédant l'alinéa a.1) est remplacé par ce qui suit :

Définition de *renseignements désignés*

(7) Pour l'application du paragraphe (3), ***renseignements désignés*** s'entend, relativement à une déclaration visée à l'article 7.1 ou à toute opération financière effectuée ou tentée ou à l'importation ou à l'exportation d'espèces ou d'effets, selon le cas, des renseignements suivants :

a) le nom de toute personne ou entité précisé dans la déclaration ou de toute personne ou entité qui participe à l'opération financière effectuée ou tentée ou à l'importation ou à l'exportation, ou de toute personne ou entité agissant pour leur compte;

(7) Paragraph 55(7)(n) of the Act is replaced by the following:

(n) indicators of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence related to the transaction, attempted transaction, importation or exportation;

(7) L'alinéa 55(7)n) de la même loi est remplacé par ce qui suit :

n) les indices de toute infraction de recyclage des produits de la criminalité, infraction de financement des activités terroristes ou infraction de contournement de sanctions entachant l'opération financière effectuée ou tentée, l'importation ou l'exportation;

(8) Paragraph 55(7)(q) of the Act is replaced by the following:

(q) information about the transaction, attempted transaction, importation or exportation, received by the Centre from an institution or agency under an agreement or arrangement referred to in section 56, that constitutes the institution's or agency's reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or an offence that is substantially similar to any of those offences;

(8) L'alinéa 55(7)q) de la même loi est remplacé par ce qui suit :

q) les renseignements relatifs à l'opération financière effectuée ou tentée, à l'importation ou à l'exportation qui sont reçus par le Centre par l'entremise d'un organisme en vertu d'un accord visé à l'article 56 et sur lesquels reposent les motifs raisonnables de cet organisme de soupçonner qu'ils seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, ou à une infraction essentiellement similaire;

(9) Subsection 55(7) of the Act is amended by striking out "and" at the end of paragraph (s), by adding "and" at the end of paragraph (t) and by adding the following after paragraph (t):

(u) any other information set out in a report made under section 7.1.

(9) Le paragraphe 55(7) de la même loi est modifié par adjonction, après l'alinéa t), de ce qui suit :

u) tout autre renseignement contenu dans une déclaration visée à l'article 7.1.

289 (1) The portion of subsection 55.1(3) of the Act before paragraph (a.1) is replaced by the following:

289 (1) Le passage du paragraphe 55.1(3) de la même loi précédant l'alinéa a.1) est remplacé par ce qui suit :

Definition of *designated information*

(3) For the purposes of subsection (1), ***designated information*** means, in respect of a report made under section 7.1, a financial transaction, an attempted financial transaction or an importation or exportation of currency or monetary instruments, as the case may be,

(a) the name of any person or entity that is identified in the report or that is involved in the transaction, attempted transaction, importation or exportation or of any person or entity acting on their behalf;

(2) Paragraph 55.1(3)(n) of the Act is replaced by the following:

(n) indicators of a money laundering offence, a terrorist activity financing offence, a sanctions evasion offence or a threat to the security of Canada related to the transaction, attempted transaction, importation or exportation;

(3) Paragraph 55.1(3)(q) of the Act is replaced by the following:

(q) information about the transaction, attempted transaction, importation or exportation, received by the Centre from an institution or agency under an agreement or arrangement referred to in section 56, that constitutes the institution's or agency's reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or an offence that is substantially similar to any of those offences;

(4) Subsection 55.1(3) of the Act is amended by striking out "and" at the end of paragraph (s), by adding "and" at the end of paragraph (t) and by adding the following after paragraph (t):

(u) any other information set out in a report made under section 7.1.

290 (1) Subsections 56(1) and (2) of the Act are replaced by the following:

Agreements and arrangements

56 (1) The Minister may enter into an agreement or arrangement, in writing, with the government of a foreign state or an international organization regarding the exchange, between the Centre and any institution or agency of that state or organization that has powers and duties

Définition de *renseignements désignés*

(3) Pour l'application du paragraphe (1), ***renseignements désignés*** s'entend, relativement à toute déclaration visée à l'article 7.1, à toute opération financière effectuée ou tentée ou à l'importation ou à l'exportation d'espèces ou d'effets, selon le cas, des renseignements suivants :

a) le nom de toute personne ou entité précisé dans la déclaration ou de toute personne ou entité qui participe à l'opération financière effectuée ou tentée ou à l'importation ou à l'exportation, ou de toute personne ou entité agissant pour son compte;

(2) L'alinéa 55.1(3)n) de la même loi est remplacé par ce qui suit :

n) les indices de toute infraction de recyclage des produits de la criminalité, infraction de financement des activités terroristes, infraction de contournement de sanctions ou de menaces envers la sécurité du Canada entachant l'opération financière effectuée ou tentée, l'importation ou l'exportation;

(3) L'alinéa 55.1(3)q) de la même loi est remplacé par ce qui suit :

q) les renseignements relatifs à l'opération financière effectuée ou tentée, à l'importation ou à l'exportation qui sont reçus par le Centre par l'entremise d'un organisme en vertu d'un accord visé à l'article 56 et sur lesquels reposent les motifs raisonnables de cet organisme de soupçonner qu'ils seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, ou à une infraction essentiellement similaire;

(4) Le paragraphe 55.1(3) de la même loi est modifié par adjonction, après l'alinéa t), de ce qui suit :

u) tout autre renseignement contenu dans une déclaration visée à l'article 7.1.

290 (1) Les paragraphes 56(1) et (2) de la même loi sont remplacés par ce qui suit :

Accord de collaboration

56 (1) Le ministre peut conclure par écrit un accord avec le gouvernement d'un État étranger ou une organisation internationale concernant l'échange, entre le Centre et un organisme — relevant de cet État étranger ou de cette organisation internationale — ayant des

similar to those of the Centre, of information that the Centre, institution or agency has reasonable grounds to suspect would be relevant to investigating or prosecuting a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or an offence that is substantially similar to any of those offences.

attributions similaires à celles du Centre, de renseignements dont le Centre ou l'organisme a des motifs raisonnables de soupçonner qu'ils seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, ou à une infraction essentiellement similaire.

Agreements and arrangements — Centre

(2) The Centre may, with the approval of the Minister, enter into an agreement or arrangement, in writing, with an institution or agency of a foreign state that has powers and duties similar to those of the Centre, regarding the exchange, between the Centre and the institution or agency, of information that the Centre, institution or agency has reasonable grounds to suspect would be relevant to investigating or prosecuting a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or an offence that is substantially similar to any of those offences.

Accord de collaboration — Centre

(2) Le Centre peut, avec l'approbation du ministre, conclure par écrit, avec un organisme d'un État étranger ayant des attributions similaires à celles du Centre, un accord concernant l'échange de renseignements dont le Centre ou l'organisme a des motifs raisonnables de soupçonner qu'ils seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, ou à une infraction essentiellement similaire.

(2) Paragraph 56(3)(a) of the Act is replaced by the following:

(a) restrict the use of information to purposes relevant to investigating or prosecuting a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or an offence that is substantially similar to any of those offences; and

(2) L'alinéa 56(3)a) de la même loi est remplacé par ce qui suit :

a) précisent les fins auxquelles les renseignements peuvent être utilisés, lesquelles doivent être utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, ou à une infraction essentiellement similaire;

291 (1) Paragraph 56.1(1)(a) of the Act is replaced by the following:

(a) the Centre has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or an offence that is substantially similar to any of those offences; and

291 (1) L'alinéa 56.1(1)a) de la même loi est remplacé par ce qui suit :

a) d'une part, il a des motifs raisonnables de soupçonner que les renseignements désignés seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, ou à une infraction essentiellement similaire;

(2) Paragraph 56.1(2)(a) of the Act is replaced by the following:

(a) the Centre has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or an offence that is substantially similar to any of those offences; and

(2) L'alinéa 56.1(2)a) de la même loi est remplacé par ce qui suit :

a) d'une part, il a des motifs raisonnables de soupçonner que les renseignements désignés seraient utiles aux fins d'enquête ou de poursuite relativement à une infraction de recyclage des produits de la criminalité, à une infraction de financement des activités terroristes ou à une infraction de contournement de sanctions, ou à une infraction essentiellement similaire;

(3) Subsection 56.1(4.1) of the Act is replaced by the following:

Publication

(4.1) After a person has been determined by a court to be guilty of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, or has been determined by a foreign court to be guilty of an offence that is substantially similar to any of those offences, whether on acceptance of a plea of guilty or on a finding of guilt, the Centre may, if it has disclosed designated information under subsection (1) or (2) with respect to the investigation or prosecution of the offence, make public the fact that it made such a disclosure.

(4) The portion of subsection 56.1(5) of the Act before paragraph (a.1) is replaced by the following:

Definition of *designated information*

(5) For the purposes of this section, ***designated information*** means, in respect of a report made under section 7.1 or of a financial transaction, an attempted financial transaction or an importation or exportation of currency or monetary instruments, as the case may be

(a) the name of any person or entity that is identified in the report or that is involved in the transaction, attempted transaction, importation or exportation or of any person or entity acting on their behalf;

(5) Paragraph 56.1(5)(n) of the Act is replaced by the following:

(n) indicators of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence related to the transaction, attempted transaction, importation or exportation;

(6) Subsection 56.1(5) of the Act is amended by striking out "and" at the end of paragraph (r), by adding "and" at the end of paragraph (s) and by adding the following after paragraph (s):

(t) any other information set out in a report made under section 7.1.

292 (1) Paragraph 58(1)(b) of the Act is replaced by the following:

(b) conduct research into trends and developments in the area of money laundering, the financing of

(3) Le paragraphe 56.1(4.1) de la même loi est remplacé par ce qui suit :

Publication

(4.1) Lorsqu'un tribunal déclare qu'une personne est coupable d'une infraction de recyclage des produits de la criminalité, d'une infraction de financement des activités terroristes ou d'une infraction de contournement de sanctions ou qu'un tribunal étranger déclare qu'une personne est coupable d'une infraction essentiellement similaire, soit par acceptation de son plaidoyer de culpabilité soit par une déclaration de culpabilité, si le Centre a communiqué des renseignements désignés visés aux paragraphes (1) ou (2) se rapportant à l'enquête ou à la poursuite de cette infraction, il peut rendre ce fait public.

(4) Le passage du paragraphe 56.1(5) de la même loi précédant l'alinéa a.1) est remplacé par ce qui suit :

Définition de *renseignements désignés*

(5) Pour l'application du présent article, ***renseignements désignés*** s'entend, relativement à une déclaration visée à l'article 7.1 ou à toute opération financière effectuée ou tentée ou à l'importation ou à l'exportation d'espèces ou d'effets, selon le cas, des renseignements suivants :

a) le nom de toute personne ou entité précisé dans la déclaration ou de toute personne ou entité qui participe à l'opération financière effectuée ou tentée ou à l'importation ou à l'exportation, ou de toute personne ou entité agissant pour leur compte;

(5) L'alinéa 56.1(5)n) de la même loi est remplacé par ce qui suit :

n) les indices de toute infraction de recyclage des produits de la criminalité, infraction de financement des activités terroristes ou infraction de contournement de sanctions entachant l'opération financière effectuée ou tentée, l'importation ou l'exportation;

(6) Le paragraphe 56.1(5) de la même loi est modifié par adjonction, après l'alinéa s), de ce qui suit :

t) tout autre renseignement contenu dans une déclaration visée à l'article 7.1.

292 (1) L'alinéa 58(1)b) de la même loi est remplacé par ce qui suit :

b) faire des recherches sur les tendances et les développements en matière de recyclage des produits de la

terrorist activities, sanctions evasion and the financing of threats to the security of Canada and into improved ways of detecting, preventing and deterring money laundering, the financing of terrorist activities, sanctions evasion and the financing of threats to the security of Canada; and

criminalité, de financement des activités terroristes, de contournement de sanctions et de financement des menaces envers la sécurité du Canada et sur les meilleurs moyens de détection, de prévention et de dissuasion à l'égard de ces activités criminelles;

(2) The portion of paragraph 58(1)(c) of the Act before subparagraph (i) is replaced by the following:

(c) undertake measures to inform the public, persons and entities referred to in section 5, authorities engaged in the investigation and prosecution of money laundering offences, terrorist activity financing offences and sanctions evasion offences, and others, with respect to

(2) Le passage de l'alinéa 58(1)c) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :

c) prendre des mesures visant à sensibiliser le public, les personnes et les entités visées à l'article 5, les autorités chargées de procéder aux enquêtes et aux poursuites relatives aux infractions de recyclage des produits de la criminalité, aux infractions de financement des activités terroristes et aux infractions de contournement de sanctions et tout intéressé, au sujet :

(3) Paragraph 58(1)(c) of the Act is amended by striking out "and" at the end of subparagraph (ii.2) and by adding the following after that subparagraph:

(ii.3) the nature and extent of sanctions evasion inside and outside Canada, and

(3) L'alinéa 58(1)c) de la même loi est modifié par adjonction, après le sous-alinéa (ii.2), de ce qui suit :

(ii.3) de la nature et de la portée du contournement de sanctions au Canada et à l'étranger,

(4) Subsection 58(2) of the Act is replaced by the following:

Limitation

(2) The Centre shall not disclose under subsection (1) any information that would directly or indirectly identify any of the following persons or entities:

(a) a person who provided a report or information to the Centre;

(b) a Canadian citizen or a *permanent resident* as defined in subsection 2(1) of the *Immigration and Refugee Protection Act* about whom a report or information was provided;

(c) a person in Canada or an entity that has a place of business in Canada about whom a report or information was provided.

(4) Le paragraphe 58(2) de la même loi est remplacé par ce qui suit :

Restrictions

(2) Toutefois, le Centre ne peut divulguer aucun renseignement visé au paragraphe (1) qui permettrait d'identifier, même indirectement, les personnes et entités suivantes :

a) la personne qui a fait une déclaration ou communiqué des renseignements au Centre;

b) un citoyen canadien ou un *résident permanent*, au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés*, à l'égard de qui une déclaration a été faite ou des renseignements ont été communiqués;

c) une personne se trouvant au Canada ou une entité qui a un établissement au Canada à l'égard de qui une déclaration a été faite ou des renseignements ont été communiqués.

293 Subsection 59(1) of the Act is replaced by the following:

Immunity from compulsory processes

59 (1) Subject to section 36 of the *Access to Information Act* and sections 34 and 37 of the *Privacy Act*, the Centre,

293 Le paragraphe 59(1) de la même loi est remplacé par ce qui suit :

Non-contraignabilité

59 (1) Sous réserve de l'article 36 de la *Loi sur l'accès à l'information* et des articles 34 et 37 de la *Loi sur la*

and any person who has obtained or who has or had access to any information or documents in the course of exercising powers or performing duties and functions under this Act, other than Parts 2 and 2.1, is required to comply with a subpoena, a summons, an order for production of documents, or any other compulsory process only if it is issued in the course of court proceedings in respect of a money laundering offence, a terrorist activity financing offence, a sanctions evasion offence or an offence under this Act in respect of which an information has been laid or an indictment preferred or, in the case of an order for production of documents, if it is issued under section 60, 60.1 or 60.3.

protection des renseignements personnels, le Centre, ainsi que toute personne qui a obtenu un renseignement ou document, ou y a ou a eu accès dans le cadre de l'exercice des attributions qui lui sont conférées sous le régime de la présente loi, à l'exception des parties 2 et 2.1, ne peut être contraint, que ce soit par citation, assignation, sommation, ordonnance ou autre acte obligatoire, à comparaître ou à produire un tel document, sauf dans le cadre de poursuites intentées pour infraction de recyclage des produits de la criminalité, infraction de financement des activités terroristes, infraction de contournement de sanctions ou infraction à la présente loi à l'égard desquelles une dénonciation ou une mise en accusation a été déposée ou dans le cadre d'une ordonnance de production de documents rendue en vertu des articles 60, 60.1 ou 60.3.

294 (1) Subsection 60(2) of the Act is replaced by the following:

Purpose of application

(2) The Attorney General may, for the purposes of an investigation in respect of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence, make an application under subsection (3) for an order for disclosure of information.

294 (1) Le paragraphe 60(2) de la même loi est remplacé par ce qui suit :

Fins de l'ordonnance

(2) Le procureur général peut demander une ordonnance de communication dans le cadre d'une enquête sur une infraction de recyclage des produits de la criminalité, une infraction de financement des activités terroristes ou une infraction de contournement de sanctions.

(2) Paragraph 60(3)(d) of the Act is replaced by the following:

(d) the facts relied on to justify the belief, on reasonable grounds, that the person or entity referred to in paragraph (b) has committed or benefited from the commission of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence and that the information or documents referred to in paragraph (c) are likely to be of substantial value, whether alone or together with other material, to an investigation in respect of any of those offences;

(2) L'alinéa 60(3)d) de la même loi est remplacé par ce qui suit :

d) les faits sur lesquels reposent les motifs raisonnables de croire que la personne ou entité mentionnée à l'alinéa b) a commis une infraction de recyclage des produits de la criminalité, une infraction de financement des activités terroristes ou une infraction de contournement de sanctions ou en a bénéficié, et que les renseignements ou documents demandés ont vraisemblablement une valeur importante, en soi ou avec d'autres éléments, pour l'enquête mentionnée dans la demande;

(3) Paragraph 60(8)(a) of the Act is replaced by the following:

(a) the Director is prohibited from disclosing the information or document by any bilateral or international treaty, convention or other agreement to which the Government of Canada is a signatory respecting the sharing of information related to a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence or an offence that is substantially similar to any of those offences;

(3) L'alinéa 60(8)a) de la même loi est remplacé par ce qui suit :

a) soit qu'un accord bilatéral ou international en matière de partage de renseignements relatifs aux infractions de recyclage des produits de la criminalité, aux infractions de financement des activités terroristes ou aux infractions de contournement de sanctions, ou à des infractions essentiellement similaires, que le gouvernement du Canada a signé, interdit au directeur de les communiquer;

295 Paragraph 60.1(7)(a) of the Act is replaced by the following:

295 L'alinéa 60.1(7)a) de la même loi est remplacé par ce qui suit :

(a) the Director is prohibited from disclosing the information or document by any bilateral or international treaty, convention or other agreement to which the Government of Canada is a signatory respecting the sharing of information related to a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence or an offence that is substantially similar to any of those offences;

a) soit qu'un accord bilatéral ou international en matière de partage de renseignements relatifs aux infractions de recyclage des produits de la criminalité, aux infractions de financement des activités terroristes ou aux infractions de contournement de sanctions, ou à des infractions essentiellement similaires, que le gouvernement du Canada a signé, interdit au directeur de les communiquer;

296 Paragraph 73(1)(k) of the Act is replaced by the following:

(k) respecting the reports referred to in section 12(1) and the declarations referred to in section 39.02; and

296 L'alinéa 73(1)k) de la même loi est remplacé par ce qui suit :

k) régir les déclarations visées au paragraphe 12(1) et à l'article 39.02;

297 The portion of subsection 74(1) of the Act before paragraph (a) is replaced by the following:

General offences

74 (1) Every person or entity that knowingly contravenes any of sections 6, 6.1 and 9.1 to 9.31, subsection 9.4(2), sections 9.5 to 9.7, 11.1, 11.43, 11.44 and 11.6, subsections 12(1) and (4) and 36(1), section 37, subsections 39.02(1), (4), (5) and (8) and 39.27(1), section 39.28, subsections 55(1) and (2), section 57 and subsections 62(2), 63.1(2) and 64(3) or the regulations is guilty of an offence and liable

297 Le passage du paragraphe 74(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Infractions générales

74 (1) Toute personne ou entité qui contrevient sciemment à l'un ou l'autre des articles 6, 6.1 et 9.1 à 9.31, du paragraphe 9.4(2), des articles 9.5 à 9.7, 11.1, 11.43, 11.44 et 11.6, des paragraphes 12(1) et (4) et 36(1), de l'article 37, des paragraphes 39.02(1), (4), (5) et (8) et 39.27(1), de l'article 39.28, des paragraphes 55(1) et (2), de l'article 57 et des paragraphes 62(2), 63.1(2) et 64(3) ou aux règlements commet une infraction passible, sur déclaration de culpabilité :

298 Paragraph 77.3(2)(a) of the Act is replaced by the following:

(a) cause a person or entity referred to in section 5 to be in receipt of cash or virtual currency or involve the initiation of an international electronic funds transfer or the making of a disbursement, in any of the following transactions:

(i) the redemption of chips, tokens or plaques,

(ii) a front cash withdrawal,

(iii) a safekeeping withdrawal,

(iv) an advance on any form of credit, including an advance by a marker or a counter cheque,

(v) a payment on a bet, including a slot jackpot,

(vi) a payment to a client of funds received for credit to that client or another client,

(vii) the cashing of a cheque or the redemption of another negotiable instrument,

298 L'alinéa 77.3(2)a) de la même loi est remplacé par ce qui suit :

a) impliquent que la personne ou l'entité visée à l'article 5 reçoive des sommes en espèces ou en monnaie virtuelle, qu'un télévirement international soit amorcé ou qu'un déboursement soit effectué au cours de l'une ou l'autre des opérations suivantes :

(i) le rachat de jetons ou de plaques,

(ii) le retrait d'une somme initiale,

(iii) le retrait d'une somme confiée à la garde d'un casino,

(iv) l'octroi d'une avance sur toute forme de crédit, notamment par reconnaissance de dette ou par chèque au porteur,

(v) le paiement de paris, notamment la cagnotte de machines à sous,

(vi) le paiement à un client de fonds préalablement reçus en vue de l'octroi de crédit à celui-ci ou à un autre client,

(viii) a reimbursement to a client of travel or entertainment expenses;

(vii) l'encaissement d'un chèque ou le rachat d'un autre titre négociable,

(viii) le remboursement à un client de frais de déplacement ou de représentation;

2023, c. 26

Budget Implementation Act, 2023, No. 1

299 Section 181 of the *Budget Implementation Act, 2023, No. 1* is amended by replacing the paragraph 7.1(1)(b) that it enacts with the following:

(b) an order or regulation made under the *United Nations Act*;

300 Subsection 204(2) of the Act is amended by replacing the subsection 81(2) that it enacts with the following:

Time limitation — eight years

(2) Proceedings under paragraph 77.3(3)(a) or 77.4(a) may be instituted within, but not after, eight years after the time when the subject-matter of the proceedings arose.

Consequential Amendments

R.S., c. 1 (2nd Supp.)

Customs Act

301 (1) Paragraph 107(3)(a) of the *Customs Act* is replaced by the following:

(a) for the purposes of administering or enforcing this Act, the *Customs Tariff*, the *Excise Act, 2001*, the *Special Imports Measures Act* or Part 2 or 2.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* or for any purpose set out in subsection (4), (5) or (7);

(2) The portion of paragraph 107(4)(b) of the Act before subparagraph (i) is replaced by the following:

(b) will be used solely in or to prepare for any legal proceedings relating to the administration or enforcement of an international agreement relating to trade, this Act, the *Customs Tariff*, the *Special Import Measures Act*, any other Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty or Part 2 or 2.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, before

2023, ch. 26

Loi nº 1 d'exécution du budget de 2023

299 L'article 181 de la *Loi nº 1 d'exécution du budget de 2023* est remplacé par remplacement de l'alinéa 7.1(1)b) qui y est édicté par ce qui suit :

b) d'un décret ou d'un règlement pris en vertu de la *Loi sur les Nations Unies*;

300 Le paragraphe 204(2) de la même loi est modifié par remplacement du paragraphe 81(2) qui y est édicté par ce qui suit :

Prescription : huit ans

(2) Les poursuites fondées sur les alinéas 77.3(3)a) ou 77.4a) se prescrivent par huit ans à compter du fait en cause.

Modifications corrélatives

L.R., ch. 1 (2e suppl.)

Loi sur les douanes

301 (1) L'alinéa 107(3)a) de la *Loi sur les douanes* est remplacé par ce qui suit :

a) pour l'application ou l'exécution de la présente loi, du *Tarif des douanes*, de la *Loi de 2001 sur l'accise*, de la *Loi sur les mesures spéciales d'importation* ou des parties 2 ou 2.1 de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes* ou à toute autre fin mentionnée aux paragraphes (4), (5) ou (7);

(2) Le passage de l'alinéa 107(4)b) de la même loi précédant le sous-alinéa (i) est remplacé par ce qui suit :

b) le renseignement sera utilisé uniquement pour les besoins d'une instance judiciaire engagée devant les institutions ci-après, relativement à l'application ou à l'exécution d'un accord commercial international, de la présente loi, du *Tarif des douanes*, de la *Loi sur les mesures spéciales d'importation* ou de toute autre loi fédérale ou d'une province prescrivant l'imposition ou le prélèvement d'une taxe ou de droits, ou des parties 2 ou 2.1 de la *Loi sur le recyclage des produits de la*

(3) Paragraph 107(4)(c) of the Act is replaced by the following:

(c) may reasonably be regarded as necessary solely for a purpose relating to the administration or enforcement of this Act, the *Customs Tariff*, the *Excise Act*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Export and Import Permits Act*, the *Immigration and Refugee Protection Act*, the *Special Import Measures Act* or Part 2 or 2.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* by an official of the Agency;

(4) Paragraph 107(4)(f) of the Act is replaced by the following:

(f) will be used solely for a purpose relating to the supervision, evaluation or discipline of a specified person by His Majesty in right of Canada in respect of a period during which the person was employed or engaged by, or occupied a position of responsibility in the service of, His Majesty in right of Canada to administer or enforce this Act, the *Customs Tariff*, the *Special Import Measures Act* or Part 2 or 2.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to the extent that the information is relevant for that purpose;

(3) L'alinéa 107(4)c) de la même loi est remplacé par ce qui suit :

c) le renseignement peut raisonnablement être considéré comme nécessaire uniquement à l'application ou à l'exécution de la présente loi, du *Tarif des douanes*, de la *Loi sur l'accise*, de la *Loi de 2001 sur l'accise*, de la *Loi sur la taxe d'accise*, de la *Loi sur les licences d'exportation et d'importation*, de la *Loi sur l'immigration et la protection des réfugiés*, de la *Loi sur les mesures spéciales d'importation* ou des parties 2 ou 2.1 de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes* par un fonctionnaire de l'Agence;

(4) L'alinéa 107(4)f) de la même loi est remplacé par ce qui suit :

f) le renseignement ne sera utilisé qu'à une fin liée à la surveillance ou à l'évaluation d'une personne déterminée, ou à des mesures disciplinaires prises à son endroit, par Sa Majesté du chef du Canada relativement à une période au cours de laquelle cette personne était soit employée par Sa Majesté du chef du Canada, soit engagée par elle ou occupait une fonction de responsabilité à son service, pour l'application ou l'exécution de la présente loi, du *Tarif des douanes*, de la *Loi sur les mesures spéciales d'importation* ou des parties 2 ou 2.1 de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes*, dans la mesure où le renseignement se rapporte à cette fin;

1993, c. 37

Seized Property Management Act

302 (1) Paragraph 4(1)(b.1) of the *Seized Property Management Act* is replaced by the following:

(b.1) forfeited under subsection 14(5) or 39.03(5), seized under subsection 18(1) or 39.06(1) or paid under subsection 18(2) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;

(2) Paragraph 4(1)(b.3) of the Act is replaced by the following:

(b.3) if the Minister agrees to be responsible for its custody and management, forfeited under any Act of Parliament, other than under subsection 14(5) or 39.03(5) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* or subparagraph

1993, ch. 37

Loi sur l'administration des biens saisis

302 (1) L'alinéa 4(1)b.1) de la *Loi sur l'administration des biens saisis* est remplacé par ce qui suit :

b.1) les biens confisqués, saisis ou payés respectivement aux termes des paragraphes 14(5) ou 39.03(5), 18(1) ou 39.06(1) ou 18(2) de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes*;

(2) L'alinéa 4(1)b.3) de la même loi est remplacé par ce qui suit :

b.3) si le ministre accepte d'être responsable de leur garde et de leur administration, les biens soit confisqués en vertu d'une loi fédérale, à l'exception de ceux confisqués au titre des paragraphes 14(5) ou 39.03(5) de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes* ou du

715.34(1)(e)(i) of the *Criminal Code* or forfeited under any Act of the legislature of a province; or

sous-alinéa 715.34(1)e)(i) du *Code criminel*, soit confisqués en vertu d'une loi provinciale;

SOR/2001-317; SOR/2002-185, s. 1

Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations

303 Section 9 of the *Proceeds of Crime (Money Laundering) Suspicious Transaction Reporting Regulations* is replaced by the following:

9 (1) Subject to section 11, a report made under section 7 of the Act concerning a financial transaction or attempted financial transaction in respect of which there are reasonable grounds to suspect that the transaction or attempted transaction is related to the commission of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence shall contain the information set out in Schedule 1.

(2) The person or entity shall send the report to the Centre as soon as practicable after they have taken measures that enable them to establish that there are reasonable grounds to suspect that the transaction or attempted transaction is related to the commission of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence.

304 Item 1 of Part G of Schedule 1 to the Regulations is replaced by the following:

1*	Detailed description of grounds to suspect that transaction or attempted transaction is related to the commission or attempted commission of a money laundering offence, a terrorist activity financing offence or a sanctions evasion offence	

DORS/2001-317; DORS/2002-185, art. 1

Règlement sur la déclaration des opérations douteuses — recyclage des produits de la criminalité et financement des activités terroristes

303 L'article 9 du *Règlement sur la déclaration des opérations douteuses — recyclage des produits de la criminalité et financement des activités terroristes* est remplacé par ce qui suit :

9 (1) Sous réserve de l'article 11, la déclaration faite en application de l'article 7 de la Loi relativement à une opération ou tentative d'opération financière à l'égard de laquelle il y a des motifs raisonnables de soupçonner qu'elle est liée à la perpétration d'une infraction de recyclage des produits de la criminalité, d'une infraction de financement des activités terroristes ou d'une infraction de contournement de sanctions doit contenir les renseignements figurant à l'annexe 1.

(2) La déclaration est transmise au Centre aussitôt que possible après que la personne ou entité a pris les mesures qui lui ont permis d'établir qu'il existe des motifs raisonnables de soupçonner que l'opération ou la tentative d'opération est liée à la perpétration d'une infraction de recyclage des produits de la criminalité, d'une infraction de financement des activités terroristes ou d'une infraction de contournement de sanctions.

304 L'article 1 de la partie G de l'annexe 1 du même règlement est remplacé par ce qui suit :

1*	Un énoncé détaillé des motifs de soupçonner que l'opération ou la tentative d'opération est liée à la perpétration ou à la tentative de perpétration d'une infraction de recyclage des produits de la criminalité, d'une infraction de financement des activités terroristes ou d'une infraction de contournement de sanctions	

Coordinating Amendments

2023, c. 26

305 (1) In subsections (2) and (3), *other Act* means the *Budget Implementation Act, 2023, No. 1*.

(2) If section 181 of the other Act comes into force before section 299 of this Act, then

(a) that section 299 is deemed never to have come into force and is repealed; and

Dispositions de coordination

2023, ch. 26

305 (1) Aux paragraphes (2) et (3), *autre loi* s'entend de la *Loi nº 1 d'exécution du budget de 2023*.

(2) Si l'article 181 de l'autre loi entre en vigueur avant l'article 299 de la présente loi :

a) cet article 299 est réputé ne pas être entré en vigueur et est abrogé;

(b) paragraph 7.1(1)(b) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* is replaced by the following:

(b) an order or regulation made under the *United Nations Act*;

(3) If section 181 of the other Act comes into force on the same day as section 299 of this Act, then that section 299 is deemed to have come into force before that section 181.

Coming into Force

Order in council

306 (1) Subsection 278(1) and sections 285, 296, 297, 301 and 302 come into force on a day to be fixed by order of the Governor in Council.

Order in council

(2) Subsection 278(3) and section 279 come into force on a day to be fixed by order of the Governor in Council.

60 days after royal assent

(3) Sections 280, 303 and 304 come into force on the 60th day after the day on which this Act receives royal assent.

SUBDIVISION B

R.S., c. C-46

Criminal Code

Amendments to the Act

307 Subsection 83.13(11) of the *Criminal Code* is replaced by the following:

Procedure

(11) Subsection 462.32(4), sections 462.34 to 462.35 and 462.4, subsection 487(3) and section 488 apply, with any modifications that the circumstances require, to a warrant issued under paragraph (1)(a). Any peace officer who executes the warrant must have authority to act as a peace officer in the place where it is executed.

308 Section 462.31 of the Act is amended by adding the following after subsection (1):

b) l'alinéa 7.1(1)b) de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes* est remplacé par ce qui suit :

b) d'un décret ou d'un règlement pris en vertu de la *Loi sur les Nations Unies*;

(3) Si l'entrée en vigueur de l'article 181 de l'autre loi et celle de l'article 299 de la présente loi sont concomitantes, cet article 299 est réputé être entré en vigueur avant cet article 181.

Entrée en vigueur

Décret

306 (1) Le paragraphe 278(1) et les articles 285, 296, 297, 301 et 302 entrent en vigueur à la date fixée par décret.

Décret

(2) Le paragraphe 278(3) et l'article 279 entrent en vigueur à la date fixée par décret.

Soixante jours après la sanction

(3) Les articles 280, 303 et 304 entrent en vigueur le soixantième jour suivant la date de sanction de la présente loi.

SOUS-SECTION B

L.R., ch. C-46

Code criminel

Modification de la loi

307 Le paragraphe 83.13(11) du *Code criminel* est remplacé par ce qui suit :

Dispositions applicables

(11) Le paragraphe 462.32(4), les articles 462.34 à 462.35 et 462.4, le paragraphe 487(3) et l'article 488 s'appliquent, avec les adaptations nécessaires, au mandat délivré en vertu de l'alinéa (1)a). Tout agent de la paix qui exécute le mandat doit être habilité à agir à ce titre dans le lieu où celui-ci est exécuté.

308 L'article 462.31 de la même loi est modifié par adjonction, après le paragraphe (1), de ce qui suit :

Prosecution

(1.1) Subject to subsection (1.3), in a prosecution for an offence under subsection (1), it is not necessary for the prosecutor to prove that the accused knew, believed they knew or was reckless as to the specific nature of the designated offence.

Inference

(1.2) Subject to subsection (1.3), the court may infer that an accused had the knowledge or belief or demonstrated the recklessness referred to in subsection (1) if it is satisfied, given the circumstances of the offence, that the manner in which the accused dealt with the property or its proceeds is markedly unusual or the accused's dealings are inconsistent with lawful activities typical of the sector in which they take place, including business activities.

Exception

(1.3) Subsections (1.1) and (1.2) do not apply in cases where the accused is also charged with the designated offence.

309 (1) Subsection 462.32(1) of the Act is replaced by the following:

Special search warrant

462.32 (1) Subject to subsection (3), if a judge, on application of the Attorney General, is satisfied by information on oath in Form 1 that there are reasonable grounds to believe that there is in any building, receptacle or place any property that is proceeds of crime, the judge may issue a warrant authorizing a person named in the warrant or a peace officer to

(a) search the building, receptacle or place for that property; and

(b) seize that property and any other property that that person or peace officer believes, on reasonable grounds, is proceeds of crime.

(2) Section 462.32 of the Act is amended by adding the following after subsection (2):

Conditions

(2.01) A warrant issued under subsection (1) may be subject to any reasonable conditions that the judge thinks fit.

Poursuite

(1.1) Sous réserve du paragraphe (1.3), dans une poursuite pour l'infraction prévue au paragraphe (1), le poursuivant n'a pas à établir que l'accusé connaissait ou croyait connaître la nature exacte de l'infraction désignée, ou ne s'en souciait pas.

Déduction

(1.2) Sous réserve du paragraphe (1.3), le tribunal peut déduire que l'accusé avait la connaissance ou la croyance visée au paragraphe (1) ou a fait preuve de l'insouciance visée à ce paragraphe s'il est convaincu, compte tenu des circonstances de l'infraction, que la manière dont l'accusé a effectué l'opération à l'égard des biens ou de leurs produits est nettement inhabituelle ou que l'opération est incompatible avec les activités légitimes typiques du domaine dans lequel elles sont exercées, notamment en matière commerciale.

Exception

(1.3) Les paragraphes (1.1) et (1.2) ne s'appliquent pas lorsque l'accusé est aussi inculpé de l'infraction désignée.

309 (1) Le paragraphe 462.32(1) de la même loi est remplacé par ce qui suit :

Mandat spécial

462.32 (1) Sous réserve du paragraphe (3) et à la demande du procureur général, le juge qui est convaincu, à la lumière des renseignements qui lui sont présentés sous serment selon la formule 1, qu'il existe des motifs raisonnables de croire que se trouvent dans un bâtiment, contenant ou lieu des biens qui constituent des produits de la criminalité peut décerner un mandat autorisant la personne qui y est nommée ou un agent de la paix :

a) d'une part, à perquisitionner dans le bâtiment, contenant ou lieu;

b) d'autre part, à saisir les biens en question ainsi que tout autre bien dont cette personne ou l'agent de la paix a des motifs raisonnables de croire qu'il constitue des produits de la criminalité.

(2) L'article 462.32 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :

Conditions

(2.01) Le mandat décerné en vertu du paragraphe (1) peut être assorti des conditions raisonnables que le juge estime indiquées.

(3) Subsection 462.32(6) of the Act is repealed.

(3) Le paragraphe 462.32(6) de la même loi est abrogé.

310 (1) The portion of subsection 462.321(1) of the Act before paragraph (a) is replaced by the following:

Special warrant — digital assets

462.321 (1) If, on an application of the Attorney General, a judge is satisfied by information on oath in Form 1, varied to suit the case, that there are reasonable grounds to believe that any digital assets, including virtual currency, are proceeds of crime, the judge may issue a warrant authorizing a person named in the warrant or a peace officer to

310 (1) Le passage du paragraphe 462.321(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Mandat spécial : actifs numériques

462.321 (1) À la demande du procureur général, le juge qui est convaincu, à la lumière des renseignements qui lui sont présentés sous serment selon la formule 1 — ajustée selon les circonstances —, qu'il existe des motifs raisonnables de croire que des actifs numériques, notamment de la monnaie virtuelle, constituent des produits de la criminalité peut décerner un mandat autorisant la personne qui y est nommée ou un agent de la paix :

(2) Paragraph 462.321(1)(b) of the Act is replaced by the following:

(b) seize — including by taking control of the right to access — the digital assets, as well as any other digital assets found during that search that the person or peace officer believes, on reasonable grounds, are proceeds of crime.

(2) L'alinéa 462.321(1)b) de la même loi est remplacé par ce qui suit :

b) d'autre part, à saisir, notamment en prenant le contrôle des droits d'accès, les actifs numériques trouvés au cours de la recherche de même que tout autre actif numérique trouvé ainsi dont cette personne ou l'agent a des motifs raisonnables de croire qu'il constitue des produits de la criminalité.

(3) Subsection 462.321(2) of the Act is replaced by the following:

Conditions

(2) A warrant issued under subsection (1) may be subject to any reasonable conditions that the judge thinks fit.

(3) Le paragraphe 462.321(2) de la même loi est remplacé par ce qui suit :

Conditions

(2) Le mandat décerné en vertu du paragraphe (1) peut être assorti des conditions raisonnables que le juge estime indiquées.

(4) Section 462.321 of the Act is amended by adding the following after subsection (3):

Execution in Canada

(3.1) A warrant issued under subsection (1) may be executed at any place in Canada. Any peace officer who executes the warrant must have authority to act as a peace officer in the place where it is executed.

(4) L'article 462.321 de la même loi est modifié par adjonction, après le paragraphe (3), de ce qui suit :

Exécution au Canada

(3.1) Le mandat décerné en vertu du paragraphe (1) peut être exécuté en tout lieu au Canada. Tout agent de la paix qui exécute le mandat doit être habilité à agir à ce titre dans le lieu où celui-ci est exécuté.

(5) Subsection 462.321(7) of the Act is repealed.

(5) Le paragraphe 462.321(7) de la même loi est abrogé.

311 (1) Paragraph 462.33(2)(c) of the Act is replaced by the following:

(c) the grounds for the belief that the property is proceeds of crime;

311 (1) L'alinéa 462.33(2)c) de la même loi est remplacé par ce qui suit :

c) exposé des motifs de croire que le bien visé constitue des produits de la criminalité;

(2) Subsection 462.33(3) of the Act is replaced by the following:

(2) Le paragraphe 462.33(3) de la même loi est remplacé par ce qui suit :

Restraint order

(3) A judge who hears an application for a restraint order made under subsection (1) may, if the judge is satisfied that there are reasonable grounds to believe that there exists any property that is proceeds of crime, make an order prohibiting any person from disposing of, or otherwise dealing with any interest in, the property specified in the order otherwise than in the manner that may be specified in the order.

(3) Subsection 462.33(7) of the Act is repealed.

312 (1) Paragraph 487.018(1)(a) of the Act is replaced by the following:

(a) the account number of a person named in the order or the name of a person whose account number is specified in the order, as well as, in the case of digital assets, including virtual currency, the name and account number of a person whose identifier associated with digital assets is specified in the order;

(2) The portion of subsection 487.018(2) of the Act before paragraph (b) is replaced by the following:

Identification of person

(2) For the purpose of confirming the identity of a person who is named or whose account number or identifier associated with digital assets is specified in the order, the order may also require the institution, person or entity to prepare and produce a document setting out the following data that is in their possession or control:

(a) the date of birth of a person who is named or whose account number or identifier associated with digital assets is specified in the order;

313 Form 1 of Part XXVIII of the Act is amended by replacing the references after the heading "FORM 1" with the following:

(Sections 320.29, 462.32, 462.321 and 487)

Consequential Amendments

1993, c. 37

Seized Property Management Act

314 Paragraph 13(3)(b) of the *Seized Property Management Act* is repealed.

315 Section 16 of the Act is replaced by the following:

Ordonnance de blocage

(3) Le juge saisi de la demande peut rendre une ordonnance de blocage s'il est convaincu qu'il existe des motifs raisonnables de croire qu'existent des biens qui constituent des produits de la criminalité; l'ordonnance prévoit qu'il est interdit à toute personne de se départir des biens mentionnés dans l'ordonnance ou d'effectuer des opérations sur les droits qu'elle détient sur ceux-ci, sauf dans la mesure où l'ordonnance le prévoit.

(3) Le paragraphe 462.33(7) de la même loi est abrogé.

312 (1) L'alinéa 487.018(1)a) de la même loi est remplacé par ce qui suit :

a) le numéro de compte de la personne nommée dans l'ordonnance ou le nom de celle dont le numéro de compte y est mentionné ainsi que, dans le cas d'actifs numériques, notamment de monnaie virtuelle, le nom et le numéro de compte de la personne dont l'identifiant associé aux actifs numériques y est mentionné;

(2) Le passage du paragraphe 487.018(2) de la même loi précédant l'alinéa b) est remplacé par ce qui suit :

Identification d'une personne

(2) Afin que l'identité de la personne qui y est nommée ou de celle dont le numéro de compte ou l'identifiant associé aux actifs numériques y est mentionné puisse être confirmée, l'ordonnance peut aussi exiger que l'institution financière, la personne ou l'entité établisse et communique un document énonçant les données ci-après qui sont en sa possession ou à sa disposition :

a) la date de naissance de la personne qui y est nommée ou dont le numéro de compte ou l'identifiant associé aux actifs numériques y est mentionné;

313 Les renvois qui suivent le titre « FORMULE 1 », à la formule 1 de la partie XXVIII de la même loi, sont remplacés par ce qui suit :

(articles 320.29, 462.32, 462.321 et 487)

Modifications corrélatives

1993, ch. 37

Loi sur l'administration des biens saisis

314 L'alinéa 13(3)b) de la *Loi sur l'administration des biens saisis* est abrogé.

315 L'article 16 de la même loi est remplacé par ce qui suit :

Credit of excess to account

16 At the prescribed times, all amounts credited to the Proceeds Account that are not shared under sections 10 and 11, less the amounts that are reserved for future losses and for ongoing expenses, shall be credited to the prescribed account in the accounts of Canada.

Attribution des sommes non partagées

16 Aux moments fixés par règlement, les sommes portées au crédit du compte des biens saisis qui n'ont pas été partagées conformément aux articles 10 et 11, desquelles sont soustraites les sommes réservées aux pertes anticipées et aux dépenses de fonctionnement, sont portées au crédit du compte du Canada désigné par règlement.

SOR/95-76

Forfeited Property Sharing Regulations

316 Subparagraph 5(b)(ii) of the *Forfeited Property Sharing Regulations* is repealed.

DORS/95-76

Règlement sur le partage du produit de l'aliénation des biens confisqués

316 Le sous-alinéa 5b)(ii) du *Règlement sur le partage du produit de l'aliénation des biens confisqués* est abrogé.

Coming into Force

90 days after royal assent

317 This Subdivision comes into force on the 90th day after the day on which this Act receives royal assent.

Entrée en vigueur

Quatre-vingt-dix jours après la sanction

317 La présente sous-section entre en vigueur le quatre-vingt-dixième jour suivant la date de sanction de la présente loi.

DIVISION 9

SECTION 9

R.S., c. F-8; 1995, c. 17, s. 45

Federal-Provincial Fiscal Arrangements Act

L.R., ch. F-8; 1995, ch. 17, art. 45

Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces

Amendment to the Act

318 Section 42 of the *Federal-Provincial Fiscal Arrangements Act* is replaced by the following:

Modification de la loi

318 L'article 42 de la *Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces* est remplacé par ce qui suit :

Payments under Parts I, I.1, II and V.1

42 The Minister shall publish the following information on a Government of Canada website as soon as feasible after the payment of an amount under Part I, I.1, II or V.1:

(a) the amount;

(b) the name of the province to which the payment was made; and

(c) the date of the payment.

Versements de sommes : parties I, I.1, II et V.1

42 Dès que possible après le versement de toute somme sous le régime des parties I, I.1, II ou V.1, le ministre publie les renseignements ci-après sur un site Internet du gouvernement du Canada :

a) le montant du versement;

b) le nom de la province à laquelle le versement a été fait;

c) la date du versement.

Coming into Force

June 22, 2023

319 Section 318 is deemed to have come into force on June 22, 2023.

DIVISION 10

1999, c. 34

Public Sector Pension Investment Board Act

320 (1) Subsection 6(1) of the *Public Sector Pension Investment Board Act* is replaced by the following:

Board of directors

6 (1) The Board shall be managed by a board of 13 directors, including the Chairperson.

(2) Subsection 6(2) of the Act is amended by adding the following after paragraph (g):

(g.1) a person who is a member of an advisory committee established under section 41 of the *Public Service Superannuation Act*, section 49.1 of the *Canadian Forces Superannuation Act* or section 25.1 of the *Royal Canadian Mounted Police Superannuation Act*;

321 Section 9 of the Act is amended by adding the following after subsection (2):

Recommendations for certain directors

(3) For two of the directors, the Minister's recommendation under subsection (1) shall be made from among the candidates who are included on the list in accordance with subsection 10(6).

322 Section 10 of the Act is amended by adding the following after subsection (5):

Inclusion of certain candidates

(6) When including a candidate who the Minister may recommend under subsection 9(3) on a list of qualified candidates for proposed appointment as directors, the nominating committee shall consult the portion of the National Joint Council of the Public Service that represents employees and shall have regard to any factors for

Entrée en vigueur

22 juin 2023

319 L'article 318 est réputé être entré en vigueur le 22 juin 2023.

SECTION 10

1999, ch. 34

Loi sur l'Office d'investissement des régimes de pensions du secteur public

320 (1) Le paragraphe 6(1) de la *Loi sur l'Office d'investissement des régimes de pensions du secteur public* est remplacé par ce qui suit :

Conseil d'administration

6 (1) Le conseil d'administration de l'Office se compose de treize administrateurs, dont le président.

(2) Le paragraphe 6(2) de la même loi est modifié par adjonction, après l'alinéa g), de ce qui suit :

g.1) qui est membre d'un comité consultatif constitué au titre de l'article 41 de la *Loi sur la pension de la fonction publique*, de l'article 49.1 de la *Loi sur la pension de retraite des Forces canadiennes* ou de l'article 25.1 de la *Loi sur la pension de retraite de la Gendarmerie royale du Canada*;

321 L'article 9 de la même loi est modifié par adjonction, après le paragraphe (2), de ce qui suit :

Recommandation concernant certains administrateurs

(3) En ce qui concerne deux des administrateurs, le ministre ne peut recommander que des candidats qui sont choisis conformément au paragraphe 10(6) pour figurer sur la liste.

322 L'article 10 de la même loi est modifié par adjonction, après le paragraphe (5), de ce qui suit :

Choix des candidats

(6) Lorsque, dans le cadre de l'établissement de la liste, il choisit des candidats pouvant être recommandés par le ministre conformément au paragraphe 9(3), le comité consulte les représentants des salariés au sein du Conseil national mixte de la fonction publique et tient compte de tout facteur que ceux-ci lui fournissent.

consideration provided by that portion of the National Joint Council.

DIVISION 11

Department of Housing, Infrastructure and Communities Act

Enactment of Act

Enactment

323 The *Department of Housing, Infrastructure and Communities Act* is enacted as follows:

An Act to establish the Department of Housing, Infrastructure and Communities

Preamble

Whereas public infrastructure and housing are essential for communities to be complete, inclusive and environmentally sustainable;

Whereas these types of communities foster a stronger national economy in which the people of Canada can prosper and thrive;

Whereas advancing public infrastructure and housing outcomes is best achieved through cooperation between governments as well as the meaningful involvement of local communities;

Whereas effective support for infrastructure plays a key role in improving housing outcomes;

And whereas promoting the use of innovative financial tools helps attract investment from the private sector and institutional investors in public infrastructure projects;

Now, therefore, His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

Short title

1 This Act may be cited as the *Department of Housing, Infrastructure and Communities Act*.

SECTION 11

Loi sur le ministère du Logement, de l'Infrastructure et des Collectivités

Édiction de la loi

Édiction

323 Est édictée la *Loi sur le ministère du Logement, de l'Infrastructure et des Collectivités*, dont le texte suit :

Loi sur le ministère du Logement, de l'Infrastructure et des Collectivités

Préambule

Attendu :

que les infrastructures publiques et le logement revêtent un caractère essentiel pour que les collectivités soient complètes, englobantes et durables du point de vue de l'environnement;

que de telles collectivités renforcent l'économie nationale, ce qui permet à la population du Canada de prospérer et de s'épanouir;

que la meilleure façon d'améliorer la situation en matière d'infrastructure publique et de logement est de faire en sorte que les gouvernements collaborent entre eux tout en assurant une participation significative des collectivités locales;

que le soutien efficace des infrastructures joue un rôle clé dans l'amélioration de la situation en matière de logement;

qu'une approche qui préconise des véhicules financiers innovateurs permet d'attirer les investissements du secteur privé et des investisseurs institutionnels dans les projets d'infrastructures publiques,

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

Titre abrégé

Titre abrégé

1 *Loi sur le ministère du Logement, de l'Infrastructure et des Collectivités*.

Definition

Definition of *Department*

2 In this Act, ***Department*** means the department established under section 3.

Department of Housing, Infrastructure and Communities

Department established

3 A department of the Government of Canada, called the Department of Housing, Infrastructure and Communities, is established and is to be presided over by the Minister of Infrastructure and Communities.

Deputy Minister

4 The Governor in Council may appoint a Deputy Minister of Housing, Infrastructure and Communities to hold office during pleasure and to be the deputy head of the Department.

Minister of Infrastructure and Communities

Minister of Infrastructure and Communities

5 The Minister of Infrastructure and Communities, appointed by commission under the Great Seal, holds office during pleasure and has the management and direction of the Department.

Powers, duties and functions

6 (1) The powers, duties and functions of the Minister of Infrastructure and Communities extend to and include all matters relating to public infrastructure over which Parliament has jurisdiction and that are not by law assigned to any other department, board or agency of the Government of Canada.

Particulars

(2) Without restricting the generality of subsection (1), the Minister of Infrastructure and Communities' duties and functions include supporting and promoting infrastructure projects and initiatives that are in the public interest in order to foster the prosperity, inclusivity and environmental sustainability of communities.

Définition

Définition de *ministère*

2 Dans la présente loi, ***ministère*** s'entend du ministère constitué par l'article 3.

Ministère du Logement, de l'Infrastructure et des Collectivités

Constitution

3 Est constitué le ministère du Logement, de l'Infrastructure et des Collectivités, placé sous l'autorité du ministre de l'Infrastructure et des Collectivités.

Sous-ministre

4 Le gouverneur en conseil peut nommer, à titre amovible, un sous-ministre du Logement, de l'Infrastructure et des Collectivités; celui-ci est l'administrateur général du ministère.

Ministre de l'Infrastructure et des Collectivités

Ministre de l'Infrastructure et des Collectivités

5 Le ministre de l'Infrastructure et des Collectivités, nommé par commission sous le grand sceau, occupe sa charge à titre amovible et assure la direction et la gestion du ministère.

Attributions

6 (1) Les attributions du ministre de l'Infrastructure et des Collectivités s'étendent d'une façon générale à tous les domaines de compétence du Parlement ayant trait à l'infrastructure publique non attribués de droit à d'autres ministères ou organismes fédéraux.

Précisions

(2) Le ministre de l'Infrastructure et des Collectivités est notamment chargé de soutenir des projets et initiatives en infrastructure qui sont dans l'intérêt du public et de promouvoir de tels projets et initiatives afin de favoriser la prospérité des collectivités, leur caractère englobant et leur durabilité du point de vue de l'environnement.

Minister of Housing

Appointment

7 A Minister of Housing may be appointed by commission under the Great Seal to hold office during pleasure.

Powers, duties and functions

8 (1) The powers, duties and functions of the Minister of Housing extend to and include all matters relating to housing and the reduction and prevention of homelessness over which Parliament has jurisdiction and that are not by law assigned to any other Minister, department, board or agency of the Government of Canada.

Particulars

(2) Without restricting the generality of subsection (1), the Minister of Housing's duties and functions include advancing national housing priorities and reducing and preventing homelessness to foster the prosperity, inclusivity and environmental sustainability of communities.

Use of departmental services and facilities

9 The Minister of Housing is to make use of the Department services and facilities and may authorize employees of the Department to exercise any power or perform any duty or function of the Minister of Housing.

Provisions Applicable to Both Ministers

No Minister appointed

10 If no Minister is appointed under section 7,

(a) the Minister of Infrastructure and Communities is to exercise the powers and perform the duties and functions of the Minister of Housing; and

(b) every reference to the Minister of Housing in any Act of Parliament or in any order, regulation or other instrument made under an Act of Parliament is to be read as a reference to the Minister of Infrastructure and Communities, unless the context otherwise requires.

General duties and powers

11 The Minister of Infrastructure and Communities or the Minister of Housing, as the case may be, may, in exercising their powers and performing their duties and functions,

(a) establish, recommend, coordinate and implement initiatives, programs and projects;

Ministre du Logement

Nomination

7 Il peut être nommé à titre amovible, par commission sous le grand sceau, un ministre du Logement.

Attributions

8 (1) Les attributions du ministre du Logement s'étendent d'une façon générale à tous les domaines de compétence du Parlement ayant trait au logement et à la lutte contre l'itinérance non attribués de droit à d'autres ministres, ministères ou organismes fédéraux.

Précisions

(2) Le ministre du Logement est notamment chargé d'avancer les objectifs nationaux en matière de logement et de lutte contre l'itinérance afin de favoriser la prospérité des collectivités, leur caractère englobant et leur durabilité du point de vue de l'environnement.

Utilisation des services et installations du ministère

9 Le ministre du Logement fait usage des services et installations du ministère et peut autoriser les fonctionnaires du ministère à exercer ses attributions.

Dispositions communes

Absence de nomination

10 Si aucune nomination n'est faite au titre de l'article 7 :

a) le ministre de l'Infrastructure et des Collectivités exerce les attributions du ministre du Logement;

b) la mention du ministre du Logement dans les lois fédérales ainsi que dans leurs textes d'application vaut mention, sauf indication contraire du contexte, du ministre de l'Infrastructure et des Collectivités.

Exercice des attributions

11 Dans l'exercice de ses attributions, le ministre de l'Infrastructure et des Collectivités ou le ministre du Logement, selon le cas, peut :

a) concevoir, recommander, coordonner et mettre en œuvre des initiatives, des programmes et des projets;

(b) make grants and contributions;

(c) collaborate or enter into agreements or other arrangements with other federal, provincial or territorial departments, boards and agencies, local governments, Indigenous bodies or any institution or person;

(d) undertake, coordinate and promote research activities; and

(e) subject to the *Statistics Act*, collect, analyze, interpret, publish or distribute information.

b) accorder des subventions et verser des contributions;

c) collaborer avec d'autres ministères ou organismes fédéraux, provinciaux ou territoriaux ainsi qu'avec toute administration locale, organisation autochtone, institution ou personne ou conclure des accords ou autres arrangements avec ceux-ci;

d) entreprendre, coordonner ou promouvoir des activités de recherche;

e) sous réserve de la *Loi sur la statistique*, recueillir, analyser, interpréter, publier ou diffuser tout renseignement.

Committees

12 (1) The Minister of Infrastructure and Communities or the Minister of Housing, as the case may be, may establish advisory and other committees and provide for their membership, duties, functions and operation.

Remuneration

(2) The Minister of Infrastructure and Communities or the Minister of Housing, as the case may be, may fix the remuneration that members of a committee are to be paid for the performance of their duties and functions.

Travel, living and other expenses

(3) Members of a committee are entitled to be reimbursed, in accordance with Treasury Board directives, for the travel, living and other expenses incurred for the performance of their duties and functions while absent from their ordinary place of residence.

Comités

12 (1) Le ministre de l'Infrastructure et des Collectivités ou le ministre du Logement, selon le cas, peut constituer des comités consultatifs ou autres, et en prévoir la composition, les attributions et le fonctionnement.

Rémunération

(2) Le ministre de l'Infrastructure et des Collectivités ou le ministre du Logement, selon le cas, peut fixer la rémunération que les membres des comités reçoivent pour l'exercice de leurs attributions.

Indemnités

(3) Ils sont indemnisés des frais de déplacement, de séjour et autres entraînés par l'exercice de leurs attributions hors de leur lieu de résidence habituel, conformément aux directives du Conseil du Trésor.

Transitional Provisions

Deputy Minister

324 (1) Any person who, immediately before the day on which this section comes into force, holds the office of Deputy Head of Infrastructure and Communities, styled as Deputy Minister of Infrastructure and Communities, is deemed, as of that day, to have been appointed as the Deputy Minister referred to in section 4 of the *Department of Housing, Infrastructure and Communities Act*, as enacted by section 323.

Persons who occupy a position

(2) Nothing in the *Department of Housing, Infrastructure and Communities Act* is to be construed as affecting the status of any person who, immediately before the day on which this section comes into force, occupies or is assigned to a

Dispositions transitoires

Sous-ministre

324 (1) La personne occupant, à la date d'entrée en vigueur du présent article, la charge d'administrateur général de l'Infrastructure et des Collectivités portant le titre de sous-ministre de l'Infrastructure et des Collectivités est, à compter de cette date, réputée avoir été nommée sous-ministre en vertu de l'article 4 de la *Loi sur le ministère du Logement, de l'Infrastructure et des Collectivités*, édictée par l'article 323.

Titulaires d'un poste

(2) La *Loi sur le ministère du Logement, de l'Infrastructure et des Collectivités* ne change rien à la situation des personnes qui, à la date d'entrée en vigueur du présent article, occupent un poste — ou y sont affectées — au sein du Bureau de

position in the Office of Infrastructure of Canada, except that, as of that day, the person occupies or is assigned to their position in the Department of Housing, Infrastructure and Communities.

l'infrastructure du Canada, à la différence près que, à compter de cette date, elles occupent leur poste — ou y sont affectées — au sein du ministère du Logement, de l'Infrastructure et des Collectivités.

Transfer of appropriations

325 Any amount that is appropriated by an Act of Parliament for the fiscal year in which this section comes into force to defray the expenditures of the public service of Canada within the Office of Infrastructure of Canada and that is unexpended on the day on which this section comes into force is deemed to be an amount appropriated to defray the expenditures of the public service of Canada within the Department of Housing, Infrastructure and Communities.

Transfert de crédits

325 Les sommes affectées — et non déboursées —, pour l'exercice en cours à la date d'entrée en vigueur du présent article, par toute loi de crédits, aux dépenses de l'administration publique fédérale à l'égard du Bureau de l'infrastructure du Canada sont, à compter de cette date, réputées être affectées aux dépenses de l'administration publique fédérale à l'égard du ministère du Logement, de l'Infrastructure et des Collectivités.

References

326 On the day on which this section comes into force, every reference to the Office of Infrastructure of Canada in any agreement, contract, instrument or act or other document is to be read as a reference to the Department of Housing, Infrastructure and Communities, unless the context requires otherwise.

Mentions

326 Sauf indication contraire du contexte, à la date d'entrée en vigueur du présent article, dans les accords, contrats, actes ou autres documents, la mention du Bureau de l'infrastructure du Canada vaut mention du ministère du Logement, de l'Infrastructure et des Collectivités.

Consequential Amendments

Modifications corrélatives

R.S., c. A-1

Access to Information Act

L.R., ch. A-1

Loi sur l'accès à l'information

327 Schedule I to the *Access to Information Act* is amended by adding the following in alphabetical order under the heading "Departments and Ministries of State":

Department of Housing, Infrastructure and Communities
Ministère du Logement, de l'Infrastructure et des Collectivités

327 L'annexe I de la *Loi sur l'accès à l'information* est modifiée par adjonction, selon l'ordre alphabétique, sous l'intertitre « Ministères et départements d'État », de ce qui suit :

Ministère du Logement, de l'Infrastructure et des Collectivités
Department of Housing, Infrastructure and Communities

328 Schedule I to the Act is amended by striking out the following under the heading "Other Government Institutions":

Office of Infrastructure of Canada
Bureau de l'infrastructure du Canada

328 L'annexe I de la même loi est modifiée par suppression, sous l'intertitre « Autres institutions fédérales », de ce qui suit :

Bureau de l'infrastructure du Canada
Office of Infrastructure of Canada

R.S., c. F-11

Financial Administration Act

L.R., ch. F-11

Loi sur la gestion des finances publiques

329 Schedule I to the *Financial Administration Act* is amended by adding the following in alphabetical order:

329 L'annexe I de la *Loi sur la gestion des finances publiques* est modifiée par adjonction, selon l'ordre alphabétique, de ce qui suit :

Department of Housing, Infrastructure and Communities
Ministère du Logement, de l'Infrastructure et des Collectivités

330 Schedule I.1 to the Act is amended by striking out, in column I, the reference to

Office of Infrastructure of Canada
Bureau de l'infrastructure du Canada

and the corresponding reference in column II to "Minister of Infrastructure and Communities".

331 Schedule IV to the Act is amended by striking out the following:

Office of Infrastructure of Canada
Bureau de l'infrastructure du Canada

332 Part I of Schedule VI to the Act is amended by adding the following in alphabetical order:

Department of Housing, Infrastructure and Communities
Ministère du Logement, de l'Infrastructure et des Collectivités

333 Part II of Schedule VI to the Act is amended by striking out, in column I, the reference to

Office of Infrastructure of Canada
Bureau de l'infrastructure du Canada

and the corresponding reference in column II to "Deputy Head".

R.S., c. P-21

Privacy Act

334 The schedule to the *Privacy Act* is amended by adding the following in alphabetical order under the heading "Departments and Ministries of State":

Department of Housing, Infrastructure and Communities
Ministère du Logement, de l'Infrastructure et des Collectivités

335 The schedule to the Act is amended by striking out the following under the heading "Other Government Institutions":

Office of Infrastructure of Canada
Bureau de l'infrastructure du Canada

Ministère du Logement, de l'Infrastructure et des Collectivités
Department of Housing, Infrastructure and Communities

330 L'annexe I.1 de la même loi est modifiée par suppression, dans la colonne I, de ce qui suit :

Bureau de l'infrastructure du Canada
Office of Infrastructure of Canada

ainsi que de la mention « Le ministre de l'Infrastructure et des Collectivités » dans la colonne II, en regard de ce secteur.

331 L'annexe IV de la même loi est modifiée par suppression de ce qui suit :

Bureau de l'infrastructure du Canada
Office of Infrastructure of Canada

332 La partie I de l'annexe VI de la même loi est modifiée par adjonction, selon l'ordre alphabétique, de ce qui suit :

Ministère du Logement, de l'Infrastructure et des Collectivités
Department of Housing, Infrastructure and Communities

333 La partie II de l'annexe VI de la même loi est modifiée par suppression, dans la colonne I, de ce qui suit :

Bureau de l'infrastructure du Canada
Office of Infrastructure of Canada

ainsi que de la mention « Administrateur général » dans la colonne II, en regard de ce ministère.

L.R., ch. P-21

Loi sur la protection des renseignements personnels

334 L'annexe de la *Loi sur la protection des renseignements personnels* est modifiée par adjonction, selon l'ordre alphabétique, sous l'intertitre « Ministères et départements d'État », de ce qui suit :

Ministère du Logement, de l'Infrastructure et des Collectivités
Department of Housing, Infrastructure and Communities

335 L'annexe de la même loi est modifiée par suppression, sous l'intertitre « Autres institutions fédérales », de ce qui suit :

Bureau de l'infrastructure du Canada
Office of Infrastructure of Canada

R.S., c. S-3

Salaries Act

336 Subsection 4.1(3) of the *Salaries Act* is amended by adding the following after paragraph (z.25):

(z.26) the Minister of Housing;

L.R., ch. S-3

Loi sur les traitements

336 Le paragraphe 4.1(3) de la *Loi sur les traitements* est modifié par adjonction, après l'alinéa z.25), de ce qui suit :

z.26) le ministre du Logement;

1991, c. 30

Public Sector Compensation Act

337 Schedule I to the *Public Sector Compensation Act* is amended by adding the following in alphabetical order under the heading "Departments":

Department of Housing, Infrastructure and Communities
Ministère du Logement, de l'Infrastructure et des Collectivités

1991, ch. 30

Loi sur la rémunération du secteur public

337 L'annexe I de la *Loi sur la rémunération du secteur public* est modifiée par adjonction, selon l'ordre alphabétique, sous l'intertitre « Ministères », de ce qui suit :

Ministère du Logement, de l'Infrastructure et des Collectivités
Department of Housing, Infrastructure and Communities

2011, c. 24

Keeping Canada's Economy and Jobs Growing Act

338 Subsection 161(1) of the *Keeping Canada's Economy and Jobs Growing Act* is replaced by the following:

Maximum payment

161 (1) There may be paid out of the Consolidated Revenue Fund for each fiscal year beginning on or after April 1, 2014, on the requisition of the Minister of Infrastructure and Communities or of the Minister of Indigenous Services, in accordance with terms and conditions approved by the Treasury Board, a sum of not more than the amount determined in accordance with subsection (2) to provinces, territories, municipalities, municipal associations, provincial, territorial and municipal entities and First Nations for the purpose of municipal, regional and First Nations infrastructure.

2011, ch. 24

Loi sur le soutien de la croissance de l'économie et de l'emploi au Canada

338 Le paragraphe 161(1) de la *Loi sur le soutien de la croissance de l'économie et de l'emploi au Canada* est remplacé par ce qui suit :

Paiement maximal

161 (1) À la demande du ministre de l'Infrastructure et des Collectivités ou du ministre des Services aux Autochtones et aux conditions approuvées par le Conseil du Trésor, il peut être payé sur le Trésor aux provinces, territoires, municipalités et associations municipales, aux organismes provinciaux, territoriaux et municipaux et aux premières nations, pour l'exercice commençant le 1er avril 2014 et chacun des exercices suivants, une somme n'excédant pas celle déterminée conformément au paragraphe (2) pour les infrastructures des municipalités, des régions et des Premières Nations.

2019, c. 29

National Housing Strategy Act

339 Section 12 of the *National Housing Strategy Act* is replaced by the following:

Administrative support

12 The Minister is to provide the National Housing Council with any administrative services and facilities

2019, ch. 29

Loi sur la stratégie nationale sur le logement

339 L'article 12 de la *Loi sur la stratégie nationale sur le logement* est remplacé par ce qui suit :

Soutien administratif

12 Le ministre fournit au Conseil national du logement les services administratifs et installations dont il a besoin pour exercer ses fonctions.

that are necessary to assist the Council in performing its duties and functions.

Repeal

Repeal

340 The *Canada Strategic Infrastructure Fund Act*, section 47 of chapter 9 of the Statutes of Canada, 2002, is repealed.

Coming into Force

Second anniversary or order in council

341 (1) Section 339 comes into force on the second anniversary of the day on which this Act receives royal assent or on an earlier day to be fixed by order of the Governor in Council.

Order in council

(2) Section 340 comes into force on a day to be fixed by order of the Governor in Council.

Abrogation

Abrogation

340 La *Loi sur le Fonds canadien sur l'infrastructure stratégique*, article 47 du chapitre 9 des Lois du Canada (2002), est abrogée.

Entrée en vigueur

Deuxième anniversaire ou décret

341 (1) L'article 339 entre en vigueur au deuxième anniversaire de la sanction de la présente loi ou, si elle est antérieure, à la date fixée par décret.

Décret

(2) L'article 340 entre en vigueur à la date fixée par décret.

DIVISION 12

Measures Related to Placement or Arrival of Children

1996, c. 23

Employment Insurance Act

Amendments to the Act

342 (1) Section 10 of the *Employment Insurance Act* is amended by adding the following after subsection (11):

Extension of benefit period — placement or arrival delayed

(11.1) If the placement or arrival of the child or children referred to in subsection 22.1(1) is delayed, the benefit period is extended by the number of weeks during which the placement or arrival is delayed.

(2) Paragraph 10(13.01)(c) of the Act is replaced by the following:

(c) benefits were not paid for any reason mentioned in paragraph 12(3)(a), (a.1), (c), (d), (e) or (f).

SECTION 12

Mesures relatives au placement ou à l'arrivée d'enfants

1996, ch. 23

Loi sur l'assurance-emploi

Modification de la loi

342 (1) L'article 10 de la *Loi sur l'assurance-emploi* est modifié par adjonction, après le paragraphe (11), de ce qui suit :

Prolongation de la période de prestations : retard du placement ou de l'arrivée

(11.1) Si le placement ou l'arrivée de l'enfant ou des enfants visés au paragraphe 22.1(1) est retardé, la période de prestations est prolongée du nombre de semaines que dure le retard.

(2) Le paragraphe 10(13.01) de la même loi est remplacé par ce qui suit :

Prolongation de la période de prestations : raison mentionnée à l'alinéa 12(3)b)

(13.01) Si, au cours de la période de prestations d'un prestataire, aucune prestation régulière ni aucune prestation pour les raisons mentionnées aux alinéas 12(3)a), a.1), c), d), e) ou f) ne lui a été versée et que des

prestations lui ont été versées pour la raison mentionnée à l'alinéa 12(3)b) alors que le nombre maximal de semaines applicable est prévu au sous-alinéa 12(3)b)(ii), la période de prestations est prolongée de vingt-six semaines pour que ce nombre maximal soit atteint.

343 (1) Subsection 12(3) of the Act is amended by adding the following after paragraph (a):

(a.1) because the claimant is carrying out the responsibilities described in subsection 22.1(1) is 15;

343 (1) Le paragraphe 12(3) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :

a.1) dans le cas où le prestataire s'acquitte de toute obligation visée au paragraphe 22.1(1), quinze semaines;

(2) Subsection 12(4) of the Act is amended by striking out "and" at the end of paragraph (a) and by adding the following after that paragraph:

(a.1) for carrying out the responsibilities described in subsection 22.1(1) in relation to the placement of one or more children for the purpose of adoption as a result of a single placement or the arrival of one or more new-born children as a result of a single pregnancy is 15; and

(2) Le paragraphe 12(4) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :

a.1) dans le cas où le prestataire s'acquitte de toute obligation visée au paragraphe 22.1(1) relativement au placement d'un ou de plusieurs enfants en vue de leur adoption ou à l'arrivée d'un ou de plusieurs nouveaunés d'une même grossesse, pendant plus de quinze semaines;

344 Subsection 18(2) of the Act is replaced by the following:

Exception

(2) A claimant to whom benefits are payable under any of sections 22.1 to 23.3 is not disentitled under paragraph (1)(b) for failing to prove that they would have been available for work were it not for the illness, injury or quarantine.

344 Le paragraphe 18(2) de la même loi est remplacé par ce qui suit :

Exception

(2) Le prestataire à qui des prestations doivent être payées au titre de l'un des articles 22.1 à 23.3 n'est pas inadmissible au titre de l'alinéa (1)b) parce qu'il ne peut prouver qu'il aurait été disponible pour travailler n'eût été la maladie, la blessure ou la mise en quarantaine.

345 The Act is amended by adding the following after section 22:

Benefit for responsibilities related to child's placement or arrival

22.1 (1) Despite section 18, but subject to this section, benefits are payable to a major attachment claimant for carrying out responsibilities related to

(a) the placement with the claimant of one or more children for the purpose of adoption under the laws governing adoption in the province in which the claimant resides; or

(b) the arrival of one or more new-born children of the claimant into the claimant's care, in the case where the person who will be giving or gave birth to the child or children is not, or is not intended to be, a parent of the child or children.

345 La même loi est modifiée par adjonction, après l'article 22, de ce qui suit :

Prestations : obligations relatives au placement ou à l'arrivée d'un enfant

22.1 (1) Malgré l'article 18, mais sous réserve des autres dispositions du présent article, des prestations doivent être payées au prestataire de la première catégorie qui s'acquitte de toute obligation se rapportant :

a) soit au placement chez lui d'un ou de plusieurs enfants en vue de leur adoption en conformité avec les lois régissant l'adoption dans la province où il réside;

b) soit à l'arrivée chez lui de son ou de ses nouveaunés, dans le cas où la personne qui leur donnera naissance ou qui leur a donné naissance n'est pas — ou n'est pas censée être — l'un des parents.

Weeks for which benefits may be paid

(2) Subject to section 12, benefits under this section are payable for each week of unemployment in the period

(a) that begins the earlier of

(i) five weeks before the week in which the placement of the child or children with the claimant for the purpose of adoption is expected or the new-born child or children of the claimant are expected to arrive into the claimant's care, and

(ii) the week in which the child or children are actually placed with the claimant for the purpose of adoption or the new-born child or children of the claimant actually arrive into the claimant's care; and

(b) that ends 17 weeks after the week in which the child or children are actually placed with the claimant for the purpose of adoption or the new-born child or children of the claimant actually arrive into the claimant's care.

Limitation — delay of placement or arrival

(3) If the placement or arrival of the child or children referred to in subsection (1) is delayed, the period referred to in subsection (2) must not, subject to any extension under subsection (4), exceed 52 weeks after the week in which the placement or arrival was expected.

Extension of period — children in hospital

(4) If the child or children referred to in subsection (1) are hospitalized during the period that begins the week referred to in subparagraph (2)(a)(ii) and that ends 17 weeks after that week, the period referred to in subsection (2) is extended by the number of weeks during which the child or children are hospitalized.

Limitation — children in hospital

(5) The extended period shall end no later than 52 weeks after the week referred to in subparagraph (2)(a)(ii).

Limitation

(6) If benefits are payable to a claimant for the reasons set out in this section and any allowances, money or other benefits are payable to the claimant for the same reasons under a provincial law, the benefits payable to the claimant under this Act are to be reduced or eliminated as prescribed.

Semaines pour lesquelles des prestations peuvent être payées

(2) Sous réserve de l'article 12, les prestations prévues au présent article doivent être payées pour chaque semaine de chômage comprise dans la période qui :

a) commence :

(i) soit cinq semaines avant la semaine au cours de laquelle est prévu le placement du ou des enfants chez le prestataire en vue de leur adoption ou l'arrivée chez le prestataire de son ou de ses nouveau-nés,

(ii) soit, si elle est antérieure, la semaine au cours de laquelle le ou les enfants sont réellement placés chez le prestataire en vue de leur adoption ou celle au cours de laquelle son ou ses nouveau-nés sont réellement arrivés chez le prestataire;

b) se termine dix-sept semaines après la semaine au cours de laquelle le ou les enfants sont réellement placés chez le prestataire en vue de leur adoption ou celle au cours de laquelle son ou ses nouveau-nés sont réellement arrivés chez le prestataire.

Restriction : retard dans le placement ou l'arrivée

(3) Si le placement ou l'arrivée de l'enfant ou des enfants visés au paragraphe (1) est retardé, la période prévue au paragraphe (2) ne peut, sous réserve de toute prolongation au titre du paragraphe (4), excéder les cinquante-deux semaines qui suivent la semaine au cours de laquelle le placement ou l'arrivée était prévu.

Prolongation de la période en cas d'hospitalisation des enfants

(4) Si l'enfant ou les enfants visés au paragraphe (1) sont hospitalisés au cours de la période commençant la semaine visée au sous-alinéa (2)a)(ii) et se terminant dix-sept semaines plus tard, la période prévue au paragraphe (2) est prolongée du nombre de semaines que dure l'hospitalisation.

Restriction : hospitalisation des enfants

(5) La période prolongée au titre du paragraphe (4) ne peut excéder les cinquante-deux semaines qui suivent la semaine visée au sous-alinéa (2)a)(ii).

Restriction

(6) Si des prestations doivent être payées à un prestataire pour les raisons visées au présent article et que des allocations, des prestations ou d'autres sommes doivent lui être payées en vertu d'une loi provinciale pour les mêmes raisons, les prestations à payer au titre de la

Application of section 18

(7) For the purposes of section 13, the provisions of section 18 do not apply to the week that immediately precedes the period described in subsection (2).

Division of weeks of benefits

(8) If two major attachment claimants each make a claim for benefits under this section — or if one major attachment claimant makes a claim for benefits under this section and an individual makes a claim for benefits under section 152.041 — in respect of the same child or children, the weeks of benefits payable under this section, under section 152.041 or under both those sections may be divided between them up to a maximum of 15. If they cannot agree, the weeks of benefits are to be divided in accordance with the prescribed rules.

Maximum number of weeks that can be divided

(9) For greater certainty, if, in respect of the same child or children, a major attachment claimant makes a claim for benefits under this section and an individual makes a claim for benefits under section 152.041, the total number of weeks of benefits payable under this section and section 152.041 that may be divided between them may not exceed 15.

Deferral of waiting period

(10) A major attachment claimant who makes a claim for benefits under this section may have their waiting period deferred until they make another claim for benefits in the same benefit period, otherwise than under this section, if

(a) the claimant has already made a claim for benefits under this section in respect of the same child or children and has served the waiting period;

(b) another major attachment claimant has made a claim for benefits under this section in respect of the same child or children and that other claimant has served or is serving their waiting period;

(c) another major attachment claimant is making a claim for benefits under this section in respect of the same child or children at the same time as the claimant and that other claimant elects to serve the waiting period; or

présente loi sont réduites ou supprimées de la manière prévue par règlement.

Application de l'article 18

(7) Pour l'application de l'article 13, l'article 18 ne s'applique pas à la semaine qui précède la période visée au paragraphe (2).

Partage des semaines de prestations

(8) Si deux prestataires de la première catégorie présentent chacun une demande de prestations au titre du présent article — ou si un prestataire de la première catégorie présente une telle demande et qu'un particulier présente une demande de prestations au titre de l'article 152.041 — relativement au même enfant ou aux mêmes enfants, les semaines de prestations qui doivent être payées au titre du présent article, de l'article 152.041 ou de ces deux articles peuvent être partagées entre eux, jusqu'à concurrence de quinze semaines. S'ils n'arrivent pas à s'entendre, le partage des semaines de prestations doit être effectué conformément aux règles prévues par règlement.

Nombre maximal de semaines pouvant être partagées

(9) Il est entendu que, dans le cas où un prestataire de la première catégorie présente une demande de prestations au titre du présent article et où un particulier présente une demande de prestations au titre de l'article 152.041 relativement au même enfant ou aux mêmes enfants, le nombre total de semaines de prestations qui doivent être payées au titre du présent article et de l'article 152.041 qui peuvent être partagées entre eux ne peut dépasser quinze semaines.

Report du délai de carence

(10) Le prestataire de la première catégorie qui présente une demande de prestations au titre du présent article peut faire reporter l'obligation de purger son délai de carence à toute autre demande de prestations éventuellement présentée au cours de la même période de prestations et ne visant pas des prestations prévues au présent article si, selon le cas :

a) il a déjà présenté une demande de prestations au titre du présent article relativement au même enfant ou aux mêmes enfants et a purgé son délai de carence;

b) un autre prestataire de la première catégorie a présenté une telle demande relativement au même enfant ou aux mêmes enfants et est en train de purger ou a déjà purgé son délai de carence;

c) un autre prestataire de la première catégorie présente une telle demande relativement au même enfant

(d) the claimant or another major attachment claimant meets the prescribed requirements.

Exception

(11) If a major attachment claimant makes a claim under this section and an individual makes a claim under section 152.041 in respect of the same child or children and one of them has served or elected to serve their waiting period, then

(a) if the major attachment claimant is not the one who served or elected to serve the waiting period, that claimant is not required to serve a waiting period; or

(b) if the individual is not the one who served or elected to serve the waiting period, that claimant may have their waiting period deferred in accordance with section 152.041.

346 (1) Paragraph 23(3.21)(c) of the Act is replaced by the following:

(c) benefits were not paid for any reason mentioned in paragraph 12(3)(a), (a.1), (c), (d), (e) or (f).

(2) The portion of subsection 23(5) of the Act before paragraph (d) is replaced by the following:

Deferral of waiting period

(5) A major attachment claimant who makes a claim for benefits under this section may have their waiting period deferred until they make another claim for benefits in the same benefit period, otherwise than under this section or section 22 or 22.1, if

(a) the claimant has already made a claim for benefits under this section or section 22 or 22.1 in respect of the same child or children and has served the waiting period;

ou aux mêmes enfants au même moment que lui et choisit de purger son délai de carence;

d) lui-même ou un autre prestataire de la première catégorie répond aux exigences prévues par règlement.

Exception

(11) Si un prestataire de la première catégorie présente une demande de prestations au titre du présent article et qu'un particulier présente une demande de prestations au titre de l'article 152.041 relativement au même enfant ou aux mêmes enfants et que l'un d'eux a purgé son délai de carence ou a choisi de le purger, les règles suivantes s'appliquent :

a) dans le cas où le prestataire de la première catégorie ne l'a pas purgé ou n'a pas choisi de le purger, il n'est pas tenu de le faire;

b) dans le cas où le particulier ne l'a pas purgé ou n'a pas choisi de le purger, il peut faire reporter cette obligation en conformité avec l'article 152.041.

346 (1) Le paragraphe 23(3.21) de la même loi est remplacé par ce qui suit :

Prolongation de la période : raison mentionnée à l'alinéa 12(3)b)

(3.21) Si, au cours de la période de prestations d'un prestataire, aucune prestation régulière ni aucune prestation pour les raisons mentionnées aux alinéas 12(3)a), a.1), c), d), e) ou f) ne lui a été versée et que des prestations lui ont été versées pour la raison mentionnée à l'alinéa 12(3)b) alors que le nombre maximal de semaines applicable est prévu au sous-alinéa 12(3)b)(ii), la période prévue au paragraphe (2) est prolongée de vingt-six semaines pour que ce nombre maximal soit atteint.

(2) Le passage du paragraphe 23(5) de la même loi précédant l'alinéa d) est remplacé par ce qui suit :

Report du délai de carence

(5) Le prestataire de la première catégorie qui présente une demande de prestations au titre du présent article peut faire reporter l'obligation de purger son délai de carence à toute autre demande de prestations éventuellement présentée au cours de la même période de prestations et ne visant pas des prestations prévues au présent article ou aux articles 22 ou 22.1 si, selon le cas :

a) il a déjà présenté une demande de prestations au titre du présent article ou des articles 22 ou 22.1 relativement au même enfant ou aux mêmes enfants et a purgé son délai de carence;

(b) another major attachment claimant has made a claim for benefits under this section or section 22 or 22.1 in respect of the same child or children and that other claimant has served or is serving their waiting period;

(c) another major attachment claimant is making a claim for benefits under this section or section 22 or 22.1 in respect of the same child or children at the same time as the claimant and that other claimant elects to serve the waiting period; or

(3) The portion of subsection 23(6) of the Act before paragraph (a) is replaced by the following:

Exception

(6) If a major attachment claimant makes a claim under this section or section 22 or 22.1 and an individual makes a claim under section 152.04, 152.041 or 152.05 in respect of the same child or children and one of them has served or elected to serve their waiting period, then

(4) Paragraph 23(6)(b) of the Act is replaced by the following:

(b) if the individual is not the one who served or elected to serve the waiting period, that claimant may have their waiting period deferred in accordance with section 152.041 or 152.05, as the case may be.

347 Paragraph 54(f.7) of the Act is replaced by the following:

(f.7) prescribing rules for the purposes of subsections 22.1(8), 23(4), 23.1(9), 23.2(8), 23.3(6), 152.041(8), 152.05(12), 152.06(7), 152.061(8) and 152.062(6);

348 (1) Paragraph 69(1)(a) of the Act is replaced by the following:

(a) the payment of any allowances, money or other benefits because of illness, injury, quarantine, pregnancy, responsibilities related to a child's placement or arrival, child care, compassionate care, a child's critical illness or an adult's critical illness under a plan that covers insured persons employed by the employer, other than one established under a provincial law,

b) un autre prestataire de la première catégorie a présenté une telle demande relativement au même enfant ou aux mêmes enfants et est en train de purger ou a déjà purgé son délai de carence;

c) un autre prestataire de la première catégorie présente une telle demande relativement au même enfant ou aux mêmes enfants au même moment que lui et choisit de purger son délai de carence;

(3) Le passage du paragraphe 23(6) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Exception

(6) Si un prestataire de la première catégorie présente une demande de prestations au titre du présent article ou des articles 22 ou 22.1 et qu'un particulier présente une demande de prestations au titre des articles 152.04, 152.041 ou 152.05 relativement au même enfant ou aux mêmes enfants et que l'un d'eux a purgé son délai de carence ou a choisi de le purger, les règles suivantes s'appliquent :

(4) L'alinéa 23(6)b) de la même loi est remplacé par ce qui suit :

b) dans le cas où le particulier ne l'a pas purgé ou n'a pas choisi de le purger, il peut faire reporter cette obligation en conformité avec les articles 152.041 ou 152.05, selon le cas.

347 L'alinéa 54f.7) de la même loi est remplacé par ce qui suit :

f.7) prévoyant les règles relatives au partage des semaines de prestations pour l'application des paragraphes 22.1(8), 23(4), 23.1(9), 23.2(8), 23.3(6), 152.041(8), 152.05(12), 152.06(7), 152.061(8) et 152.062(6);

348 (1) Le paragraphe 69(1) de la même loi est remplacé par ce qui suit :

Réduction de la cotisation patronale : régimes d'assurance-salaire

69 (1) La Commission prend, avec l'agrément du gouverneur en conseil, des règlements prévoyant un mode de réduction de la cotisation patronale lorsque le paiement d'allocations, de prestations ou d'autres sommes en cas de maladie, de blessure, de mise en quarantaine, de grossesse, d'obligations relatives au placement ou à l'arrivée d'un enfant ou de soins à donner aux enfants ou aux membres de la famille ou en cas de maladie grave d'un

would have the effect of reducing the special benefits payable to the insured persons; and

enfant ou d'un adulte en vertu d'un régime autre qu'un régime établi en vertu d'une loi provinciale, qui couvre des assurés exerçant un emploi au service d'un employeur, aurait pour effet de réduire les prestations spéciales qui doivent être payées à ces assurés si ces assurés exerçant un emploi au service de l'employeur obtiennent une fraction de la réduction de la cotisation patronale égale à cinq douzièmes au moins de cette réduction.

(2) Subsection 69(2) of the Act is replaced by the following:

Provincial plans

(2) The Commission shall, with the approval of the Governor in Council, make regulations to provide a system for reducing the employer's and employee's premiums, the premiums under Part VII.1 or all those premiums, when the payment of any allowances, money or other benefits because of illness, injury, quarantine, pregnancy, responsibilities related to a child's placement or arrival, child care, compassionate care, a child's critical illness or an adult's critical illness under a provincial law to insured persons or to self-employed persons, as the case may be, would have the effect of reducing or eliminating the special benefits payable to those insured persons or the benefits payable to those self-employed persons.

(2) Le paragraphe 69(2) de la même loi est remplacé par ce qui suit :

Régimes provinciaux

(2) La Commission prend, avec l'agrément du gouverneur en conseil, des règlements prévoyant un mode de réduction des cotisations patronale et ouvrière, des cotisations prévues par la partie VII.1 ou de toutes ces cotisations lorsque le paiement d'allocations, de prestations ou d'autres sommes à des assurés ou des travailleurs indépendants en vertu d'une loi provinciale en cas de maladie, de blessure, de mise en quarantaine, de grossesse, d'obligations relatives au placement ou à l'arrivée d'un enfant ou de soins à donner aux enfants ou aux membres de la famille ou en cas de maladie grave d'un enfant ou d'un adulte aurait pour effet de réduire ou de supprimer les prestations spéciales auxquelles ces assurés auraient droit ou les prestations auxquelles ces travailleurs indépendants auraient droit.

349 Subsection 152.03(1.1) of the Act is replaced by the following:

Exception

(1.1) A self-employed person to whom benefits are payable under any of sections 152.041 to 152.062 is entitled to benefits under subsection (1) even though the person did not cease to work as a self-employed person because of a prescribed illness, injury or quarantine and would not be working even without the illness, injury or quarantine.

349 Le paragraphe 152.03(1.1) de la même loi est remplacé par ce qui suit :

Exception

(1.1) Le travailleur indépendant à qui des prestations doivent être payées au titre de l'un des articles 152.041 à 152.062 est admissible aux prestations visées au paragraphe (1) même s'il n'a pas cessé de travailler à ce titre par suite d'une maladie, d'une blessure ou d'une mise en quarantaine prévues par règlement et n'aurait pas travaillé même en l'absence de maladie, de blessure ou de mise en quarantaine.

350 The Act is amended by adding the following after section 152.04:

Benefit for responsibilities related to child's placement or arrival

152.041 (1) Subject to this Part, benefits are payable to a self-employed person for carrying out responsibilities related to

(a) the placement with the self-employed person of one or more children for the purpose of adoption under the laws governing adoption in the province in which the person resides; or

350 La même loi est modifiée par adjonction, après l'article 152.04, de ce qui suit :

Prestations : obligations relatives au placement ou à l'arrivée d'un enfant

152.041 (1) Sous réserve de la présente partie, des prestations doivent être payées au travailleur indépendant qui s'acquitte de toute obligation se rapportant :

a) soit au placement chez lui d'un ou de plusieurs enfants en vue de leur adoption en conformité avec les lois régissant l'adoption dans la province où il réside;

(b) the arrival of one or more new-born children of the self-employed person into the self-employed person's care, in the case where the person who will be giving or gave birth to the child or children is not, or is not intended to be, a parent of the child or children.

Weeks for which benefits may be paid

(2) Subject to section 152.14, benefits under this section are payable for each week of unemployment in the period

(a) that begins the earlier of

(i) five weeks before the week in which the placement of the child or children with the self-employed person for the purpose of adoption is expected or the new-born child or children of the self-employed person are expected to arrive into the self-employed person's care, and

(ii) the week in which the child or children are actually placed with the self-employed person for the purpose of adoption or the new-born child or children of the self-employed person actually arrive into the self-employed person's care; and

(b) that ends 17 weeks after the week in which the child or children are actually placed with the self-employed person for the purpose of adoption or the new-born child or children of the self-employed person actually arrive into the self-employed person's care.

Limitation — delay of placement or arrival

(3) If the placement or arrival of the child or children referred to in subsection (1) is delayed, the period referred to in subsection (2) must not, subject to any extension under subsection (4), exceed 52 weeks after the week in which the placement or arrival was expected.

Extension of period — children in hospital

(4) If the child or children referred to in subsection (1) are hospitalized during the period that begins the week referred to in subparagraph (2)(a)(ii) and that ends 17 weeks after that week, the period referred to in subsection (2) is extended by the number of weeks during which the child or children are hospitalized.

Limitation — children in hospital

(5) The extended period shall end no later than 52 weeks after the week referred to in subparagraph (2)(a)(ii).

b) soit à l'arrivée chez lui de son ou de ses nouveau-nés, dans le cas où la personne qui leur donnera naissance ou qui leur a donné naissance n'est pas — ou n'est pas censée être — l'un des parents.

Semaines pour lesquelles des prestations peuvent être payées

(2) Sous réserve de l'article 152.14, les prestations prévues au présent article doivent être payées pour chaque semaine de chômage comprise dans la période qui :

a) commence :

(i) soit cinq semaines avant la semaine au cours de laquelle est prévu le placement du ou des enfants chez le travailleur indépendant en vue de leur adoption ou l'arrivée chez le travailleur indépendant de son ou de ses nouveau-nés,

(ii) soit, si elle est antérieure, la semaine au cours de laquelle le ou les enfants sont réellement placés chez le travailleur indépendant en vue de leur adoption ou celle au cours de laquelle son ou ses nouveau-nés sont réellement arrivés chez le travailleur indépendant;

b) se termine dix-sept semaines après la semaine au cours de laquelle le ou les enfants sont réellement placés chez le travailleur indépendant en vue de leur adoption ou celle au cours de laquelle son ou ses nouveau-nés sont réellement arrivés chez le travailleur indépendant.

Restriction : retard dans le placement ou l'arrivée

(3) Si le placement ou l'arrivée de l'enfant ou des enfants visés au paragraphe (1) est retardé, la période prévue au paragraphe (2) ne peut, sous réserve de toute prolongation au titre du paragraphe (4), excéder les cinquante-deux semaines qui suivent la semaine au cours de laquelle le placement ou l'arrivée était prévu.

Prolongation de la période en cas d'hospitalisation des enfants

(4) Si l'enfant ou les enfants visés au paragraphe (1) sont hospitalisés au cours de la période commençant la semaine visée au sous-alinéa (2)a)(ii) et se terminant dix-sept semaines plus tard, la période prévue au paragraphe (2) est prolongée du nombre de semaines que dure l'hospitalisation.

Restriction : hospitalisation des enfants

(5) La période prolongée au titre du paragraphe (4) ne peut excéder les cinquante-deux semaines qui suivent la semaine visée au sous-alinéa (2)a)(ii).

Limitation

(6) If benefits are payable to a self-employed person for the reasons set out in this section and any allowances, money or other benefits are payable to the self-employed person for the same reasons under a provincial law, the benefits payable to the self-employed person under this Part are to be reduced or eliminated as prescribed.

Presumption

(7) With regard to serving the waiting period under section 152.15, the week that immediately precedes the period described in subsection (2) is deemed to be a week that is included in that period.

Division of weeks of benefits

(8) If two self-employed persons each make a claim for benefits under this section — or if one self-employed person makes a claim for benefits under this section and another person makes a claim for benefits under section 22.1 — in respect of the same child or children, the weeks of benefits payable under this section, under section 22.1 or under both those sections may be divided between them up to a maximum of 15. If they cannot agree, the weeks of benefits are to be divided in accordance with the prescribed rules.

Maximum number of weeks that can be divided

(9) For greater certainty, if, in respect of the same child or children, a self-employed person makes a claim for benefits under this section and another person makes a claim for benefits under section 22.1, the total number of weeks of benefits payable under this section and section 22.1 that may be divided between them may not exceed 15.

Deferral of waiting period

(10) A self-employed person who makes a claim for benefits under this section may have their waiting period deferred until they make another claim for benefits in the same benefit period, otherwise than under this section, if

(a) the self-employed person has already made a claim for benefits under this section in respect of the same child or children and has served the waiting period;

(b) another self-employed person has made a claim for benefits under this section in respect of the same child or children and that other self-employed person has served or is serving their waiting period;

Restriction

(6) Si des prestations doivent être payées à un travailleur indépendant pour les raisons visées au présent article et que des allocations, des prestations ou d'autres sommes doivent lui être payées au titre d'une loi provinciale pour les mêmes raisons, les prestations à payer au titre de la présente partie sont réduites ou supprimées de la manière prévue par règlement.

Présomption

(7) Relativement à l'obligation de purger le délai de carence prévu à l'article 152.15, la semaine qui précède la période visée au paragraphe (2) est réputée être une semaine comprise dans cette période.

Partage des semaines de prestations

(8) Si deux travailleurs indépendants présentent chacun une demande de prestations au titre du présent article — ou si un travailleur indépendant présente une telle demande et qu'une autre personne présente une demande de prestations au titre de l'article 22.1 — relativement au même enfant ou aux mêmes enfants, les semaines de prestations qui doivent être payées au titre du présent article, de l'article 22.1 ou de ces deux articles peuvent être partagées entre eux, jusqu'à concurrence de quinze semaines. S'ils n'arrivent pas à s'entendre, le partage des semaines de prestations doit être effectué conformément aux règles prévues par règlement.

Nombre maximal de semaines pouvant être partagées

(9) Il est entendu que, dans le cas où un travailleur indépendant présente une demande de prestations au titre du présent article et où une autre personne présente une demande de prestations au titre de l'article 22.1 relativement au même enfant ou aux mêmes enfants, le nombre total de semaines de prestations qui doivent être payées au titre du présent article et de l'article 22.1 qui peuvent être partagées entre eux ne peut dépasser quinze semaines.

Report du délai de carence

(10) Le travailleur indépendant qui présente une demande de prestations au titre du présent article peut faire reporter l'obligation de purger son délai de carence à toute autre demande de prestations éventuellement présentée au cours de la même période de prestations et ne visant pas des prestations prévues au présent article si, selon le cas :

a) il a déjà présenté une demande de prestations au titre du présent article relativement au même enfant ou aux mêmes enfants et a purgé son délai de carence;

(c) another self-employed person is making a claim for benefits under this section in respect of the same child or children at the same time as the self-employed person and that other self-employed person elects to serve the waiting period; or

(d) the self-employed person or another self-employed person meets the prescribed requirements.

b) un autre travailleur indépendant a présenté une telle demande relativement au même enfant ou aux mêmes enfants et est en train de purger ou a déjà purgé son délai de carence;

c) un autre travailleur indépendant présente une telle demande relativement au même enfant ou aux mêmes enfants au même moment que lui et choisit de purger son délai de carence;

d) lui-même ou un autre travailleur indépendant répond aux exigences prévues par règlement.

Exception

(11) If a self-employed person makes a claim under this section and an another person makes a claim under section 22.1 in respect of the same child or children and one of them has served or elected to serve their waiting period, then

(a) if the self-employed person is not the one who served or elected to serve the waiting period, the self-employed person is not required to serve a waiting period; or

(b) if the person making the claim under section 22.1 is not the one who served or elected to serve the waiting period, the person may have their waiting period deferred in accordance with section 22.1.

Exception

(11) Si un travailleur indépendant présente une demande de prestations au titre du présent article et qu'une autre personne présente une demande de prestations au titre de l'article 22.1 relativement au même enfant ou aux mêmes enfants et que l'un d'eux a purgé son délai de carence ou a choisi de le purger, les règles suivantes s'appliquent :

a) dans le cas où le travailleur indépendant ne l'a pas purgé ou n'a pas choisi de le purger, il n'est pas tenu de le faire;

b) dans le cas où la personne qui présente une demande de prestations au titre de l'article 22.1 ne l'a pas purgé ou n'a pas choisi de le purger, elle peut faire reporter cette obligation en conformité avec l'article 22.1.

351 (1) Subsection 152.05(5.1) of the Act is replaced by the following:

351 (1) Le paragraphe 152.05(5.1) de la même loi est remplacé par ce qui suit :

Extension of period — reason mentioned in paragraph 152.14(1)(b)

(5.1) If, during a self-employed person's benefit period, benefits were not paid for any reason mentioned in paragraph 152.14(1)(a), (a.1), (c), (d), (e) or (f) and benefits were paid to the person for the reason mentioned in paragraph 152.14(1)(b) in the case where the applicable maximum number of weeks is established under subparagraph 152.14(1)(b)(ii), the period referred to in subsection (2) is extended by 26 weeks so that benefits may be paid up to that maximum number of weeks.

Prolongation de la période : raison mentionnée à l'alinéa 152.14(1)b)

(5.1) Si, au cours de la période de prestations d'un travailleur indépendant, aucune prestation pour les raisons mentionnées aux alinéas 152.14(1)a), a.1), c), d), e) ou f) ne lui a été versée et que des prestations lui ont été versées pour la raison mentionnée à l'alinéa 152.14(1)b) alors que le nombre maximal de semaines applicable est prévu au sous-alinéa 152.14(1)b)(ii), la période prévue au paragraphe (2) est prolongée de vingt-six semaines pour que ce nombre maximal soit atteint.

(2) The portion of subsection 152.05(14) of the Act before paragraph (d) is replaced by the following:

(2) Le passage du paragraphe 152.05(14) de la même loi précédant l'alinéa d) est remplacé par ce qui suit :

Deferral of waiting period

(14) A self-employed person who makes a claim for benefits under this section may have their waiting period deferred until they make another claim for benefits in the

Report du délai de carence

(14) Le travailleur indépendant qui présente une demande de prestations au titre du présent article peut faire reporter l'obligation de purger son délai de carence à toute autre demande de prestations éventuellement

same benefit period, otherwise than under this section or section 152.04 or 152.041, if

(a) the self-employed person has already made a claim for benefits under this section or section 152.04 or 152.041 in respect of the same child or children and has served the waiting period;

(b) another self-employed person has made a claim for benefits under this section or section 152.04 or 152.041 in respect of the same child or children and that other self-employed person has served or is serving their waiting period;

(c) another self-employed person is making a claim for benefits under this section or section 152.04 or 152.041 in respect of the same child or children at the same time as the self-employed person and that other self-employed person elects to serve the waiting period; or

(3) The portion of subsection 152.05(15) of the Act before paragraph (a) is replaced by the following:

Exception

(15) If a self-employed person makes a claim under this section or section 152.04 or 152.041 and another person makes a claim under section 22, 22.1 or 23 in respect of the same child or children and one of them has served or elected to serve their waiting period, then

(4) Paragraph 152.05(15)(b) of the Act is replaced by the following:

(b) if the person making the claim under section 22, 22.1 or 23 is not the one who served or elected to serve the waiting period, the person may have their waiting period deferred in accordance with section 22.1 or 23, as the case may be.

352 Subsection 152.09(2) of the Act is amended by adding the following after paragraph (a):

(a.1) carrying out the responsibilities described in subsection 152.041(1);

353 (1) Section 152.11 of the Act is amended by adding the following after subsection (12):

présentée au cours de la même période de prestations et ne visant pas des prestations prévues au présent article ou aux articles 152.04 ou 152.041 si, selon le cas :

a) il a déjà présenté une demande de prestations au titre du présent article ou des articles 152.04 ou 152.041 relativement au même enfant ou aux mêmes enfants et a purgé son délai de carence;

b) un autre travailleur indépendant a présenté une telle demande relativement au même enfant ou aux mêmes enfants et est en train de purger ou a déjà purgé son délai de carence;

c) un autre travailleur indépendant présente une telle demande relativement au même enfant ou aux mêmes enfants au même moment que lui et choisit de purger son délai de carence;

(3) Le passage du paragraphe 152.05(15) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Exception

(15) Si un travailleur indépendant présente une demande de prestations au titre du présent article ou des articles 152.04 ou 152.041 et qu'une autre personne présente une demande de prestations au titre des articles 22, 22.1 ou 23 relativement au même enfant ou aux mêmes enfants et que l'un d'eux a purgé son délai de carence ou a choisi de le purger, les règles suivantes s'appliquent :

(4) L'alinéa 152.05(15)b) de la même loi est remplacé par ce qui suit :

b) dans le cas où la personne qui présente une demande de prestations au titre des articles 22, 22.1 ou 23 ne l'a pas purgé ou n'a pas choisi de le purger, elle peut faire reporter cette obligation en conformité avec les articles 22.1 ou 23, selon le cas.

352 Le paragraphe 152.09(2) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :

a.1) obligations visées au paragraphe 152.041(1);

353 (1) L'article 152.11 de la même loi est modifié par adjonction, après le paragraphe (12), de ce qui suit :

Extension of benefit period — placement or arrival delayed

(12.1) If the placement or arrival of the child or children referred to in subsection 152.041(1) is delayed, the benefit period is extended by the number of weeks during which the placement or arrival is delayed.

(2) Subsection 152.11(14.1) of the Act is replaced by the following:

Extension of benefit period — reason mentioned in paragraph 152.14(1)(b)

(14.1) If, during a self-employed person's benefit period, benefits were not paid for any reason mentioned in paragraph 152.14(1)(a), (a.1), (c), (d), (e) or (f), and benefits were paid to the person for the reason mentioned in paragraph 152.14(1)(b) in the case where the applicable maximum number of weeks is established under subparagraph 152.14(1)(b)(ii), the benefit period is extended by 26 weeks so that benefits may be paid up to that maximum number of weeks.

354 (1) Subsection 152.14(1) of the Act is amended by adding the following after paragraph (a):

(a.1) because the self-employed person is carrying out the responsibilities described in subsection 152.041(1) is 15;

(2) Subsection 152.14(2) of the Act is amended by striking out "and" at the end of paragraph (a) and by replacing paragraph (a) with the following:

(a.1) for carrying out the responsibilities described in subsection 152.041(1) in relation to the placement of one or more children for the purpose of adoption as a result of a single placement or the arrival of one or more new-born children as a result of a single pregnancy is 15; and

Transitional Provision

Benefit for responsibilities related to child's placement or arrival

355 The *Employment Insurance Act*, as it read immediately before the day on which sections 345 and 350 come into force, continues to apply to a claimant for the purpose of paying benefits under that Act in respect of a child or children who have, before that day,

(a) been placed with the claimant for the purpose of adoption under the laws governing

Prolongation de la période de prestations : retard du placement ou de l'arrivée

(12.1) Si le placement ou l'arrivée de l'enfant ou des enfants visés au paragraphe 152.041(1) est retardé, la période de prestations est prolongée du nombre de semaines que dure le retard.

(2) Le paragraphe 152.11(14.1) de la même loi est remplacé par ce qui suit :

Prolongation de la période de prestations : raison mentionnée à l'alinéa 152.14(1)b)

(14.1) Si, au cours de la période de prestations d'un travailleur indépendant, aucune prestation pour les raisons mentionnées aux alinéas 152.14(1)a), a.1), c), d), e) ou f) ne lui a été versée et que des prestations lui ont été versées pour la raison mentionnée à l'alinéa 152.14(1)b) alors que le nombre maximal de semaines applicable est prévu au sous-alinéa 152.14(1)b)(ii), la période de prestations est prolongée de vingt-six semaines pour que ce nombre maximal soit atteint.

354 (1) Le paragraphe 152.14(1) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :

a.1) dans le cas où le travailleur indépendant s'acquitte de toute obligation visée au paragraphe 152.041(1), quinze semaines;

(2) Le paragraphe 152.14(2) de la même loi est modifié par adjonction, après l'alinéa a), de ce qui suit :

a.1) dans le cas où le travailleur indépendant s'acquitte de toute obligation visée au paragraphe 152.041(1) relativement au placement d'un ou de plusieurs enfants en vue de leur adoption ou à l'arrivée d'un ou de plusieurs nouveau-nés d'une même grossesse, quinze semaines;

Disposition transitoire

Prestations : obligations relatives au placement ou à l'arrivée d'un enfant

355 La *Loi sur l'assurance-emploi*, dans sa version antérieure à la date d'entrée en vigueur des articles 345 et 350, continue de s'appliquer au prestataire en ce qui concerne le versement des prestations visées par cette loi relativement à l'enfant ou aux enfants qui, avant cette date, ont été placés chez le prestataire en vue de leur adoption en conformité avec les lois régissant l'adoption dans la province où il réside ou sont arrivés chez le prestataire.

adoption in the province in which the claimant resides; or

(b) arrived into the care of the claimant.

R.S., c. L-2

Canada Labour Code

Amendments to the Act

356 Subsection 187.1(2) of the *Canada Labour Code* is replaced by the following:

Application of section 209.1

(2) If an employee interrupts a vacation to take leave under any of sections 205.1, 206 to 206.1 and 206.3 to 206.9 and resumes the vacation immediately at the end of that leave, section 209.1 applies to them as if they did not resume the vacation before returning to work.

357 The Act is amended by adding the following after section 206:

Leave for Placement of Child

Definitions

206.01 (1) The following definitions apply in this section.

placement means

(a) the placement of a child into the actual care of an employee for the purposes of adoption under the laws governing adoption in the province in which the employee resides;

(b) the arrival of a new-born child of an employee into the employee's actual care, in the case where the person who gave birth to the child is not, or is not intended to be, a parent of the child; or

(c) any other case prescribed by regulation. (*placement*)

week means the period between midnight on Saturday and midnight on the immediately following Saturday. (*semaine*)

Entitlement to leave

(2) Subject to subsections (7) and (8), every employee is entitled to and shall be granted a leave of absence from employment of up to 16 weeks for carrying out responsibilities related to a placement.

L.R., ch. L-2

Code canadien du travail

Modification de la loi

356 Le paragraphe 187.1(2) du *Code canadien du travail* est remplacé par ce qui suit :

Application de l'article 209.1

(2) Si l'employé a interrompu son congé annuel afin de prendre congé au titre de l'un des articles 205.1, 206 à 206.1 ou 206.3 à 206.9 et a repris son congé annuel immédiatement après la fin de ce congé, l'article 209.1 s'applique à lui comme s'il n'avait pas repris son congé annuel avant son retour au travail.

357 La même loi est modifiée par adjonction, après l'article 206, de ce qui suit :

Congé pour placement d'un enfant

Définitions

206.01 (1) Les définitions qui suivent s'appliquent au présent article.

placement

a) Soit le placement d'un enfant chez l'employé en vue de son adoption en conformité avec les lois régissant l'adoption dans la province où l'employé réside;

b) soit l'arrivée chez l'employé de son nouveau-né, dans le cas où la personne qui a donné naissance au nouveau-né n'est pas — ou n'est pas censée être — l'un des parents;

c) soit tout autre cas prévu par règlement. (*placement*)

semaine Période commençant à zéro heure le dimanche et se terminant à vingt-quatre heures le samedi suivant. (*week*)

Modalités d'attribution

(2) Sous réserve des paragraphes (7) et (8), a droit à un congé d'au plus seize semaines l'employé qui s'acquitte d'obligations relatives à un placement.

Period when leave may be taken

(3) The leave of absence may only be taken during the period

(a) beginning no earlier than six weeks before the week of the estimated date of the placement or, if the actual date of the placement is earlier than the estimated date, no earlier than the week of that actual date; and

(b) ending no later than 17 weeks following the week of the actual date of that placement.

Delayed placement

(4) If the placement is delayed, the period referred to in subsection (3) must not, subject to any extension under subsection (5), end later than 52 weeks following the week of the estimated date referred to in paragraph (3)(a).

Extension of period — child in hospital

(5) If, after placement, the child is hospitalized during the period referred to in subsection (3), the period is extended by the number of weeks during which the child is hospitalized.

Restriction

(6) An extension under subsection (5) must not result in the period referred to in subsection (3) ending later than 52 weeks following the week of the actual date of the placement.

Aggregate leave — employees

(7) The aggregate amount of leave that may be taken by more than one employee under this section in respect of the same placement must not exceed 16 weeks.

If placement will not occur

(8) If, during a leave of absence under this section, the employee is informed that the placement will not occur, the leave may continue until the end of the week after the week in which the employee is so informed.

358 The Act is amended by adding the following after section 206.2:

Aggregate leave — leave for placement of child and parental leave

206.21 The aggregate amount of leave that may be taken by more than one employee under sections 206.01 and 206.1 in respect of the same child shall not exceed 85 weeks, but the aggregate amount of leave that may be

Période de congé

(3) Le droit au congé ne peut être exercé qu'au cours de la période qui :

a) commence au plus tôt six semaines avant la semaine au cours de laquelle le placement de l'enfant est prévu ou, si elle est antérieure, la semaine au cours de laquelle le placement de l'enfant a eu lieu;

b) se termine au plus tard dix-sept semaines après la semaine au cours de laquelle le placement de l'enfant a eu lieu.

Placement retardé

(4) Si le placement est retardé, la période prévue au paragraphe (3) ne peut, sous réserve de toute prolongation au titre du paragraphe (5), excéder les cinquante-deux semaines qui suivent la semaine visée à l'alinéa (3)a) au cours de laquelle le placement était prévu.

Prolongation de la période : hospitalisation

(5) Si, après son placement, l'enfant est hospitalisé au cours de la période prévue au paragraphe (3), celle-ci est prolongée du nombre de semaines que dure l'hospitalisation.

Restriction

(6) Aucune prolongation au titre du paragraphe (5) ne peut avoir pour effet de prolonger la période prévue au paragraphe (3) au-delà des cinquante-deux semaines qui suivent la semaine au cours de laquelle le placement de l'enfant a eu lieu.

Durée maximale du congé : employés

(7) La durée maximale de l'ensemble des congés que peuvent prendre plusieurs employés au titre du présent article à l'occasion du même placement est de seize semaines.

Placement n'ayant pas lieu

(8) Si l'employé en congé au titre du présent article est informé que le placement n'aura pas lieu, le congé peut se poursuivre jusqu'à la fin de la semaine qui suit celle où l'employé est informé de ce fait.

358 La même loi est modifiée par adjonction, après l'article 206.2, de ce qui suit :

Cumul des congés : congé parental et congé pour placement d'un enfant

206.21 La durée maximale de l'ensemble des congés que peuvent prendre plusieurs employés en vertu des articles 206.01 et 206.1 à l'égard d'un même enfant est de quatre-vingt-cinq semaines, étant entendu que la durée

taken by one employee under those sections in respect of the same child shall not exceed 77 weeks.

maximale du congé que peut prendre un employé au titre de ces dispositions à l'égard d'un même enfant est de soixante-dix-sept semaines.

359 (1) The portion of subsection 207(1) of the Act before paragraph (a) is replaced by the following:

359 (1) Le passage du paragraphe 207(1) de la même loi précédant l'alinéa a) est remplacé par ce qui suit :

Notification to employer

207 (1) Every employee who intends to take a leave of absence from employment under any of sections 206 to 206.1 shall

Préavis à l'employeur

207 (1) L'employé qui entend prendre l'un des congés prévus aux articles 206 à 206.1 :

(2) Subsection 207(2) of the English version of the Act is replaced by the following:

(2) Le paragraphe 207(2) de la version anglaise de la même loi est remplacé par ce qui suit :

Change in length of leave

(2) Every employee who intends to take or who is on a leave of absence from employment under any of sections 206 to 206.1 shall provide the employer with notice in writing of at least four weeks of any change in the length of leave intended to be taken, unless there is a valid reason why that notice cannot be given, in which case the employee shall provide the employer with notice in writing as soon as possible.

Change in length of leave

(2) Every employee who intends to take or who is on a leave of absence from employment under any of sections 206 to 206.1 shall provide the employer with notice in writing of at least four weeks of any change in the length of leave intended to be taken, unless there is a valid reason why that notice cannot be given, in which case the employee shall provide the employer with notice in writing as soon as possible.

360 Section 207.01 of the Act is replaced by the following:

360 L'article 207.01 de la même loi est remplacé par ce qui suit :

Minimum periods of leave

207.01 Subject to the regulations, a leave of absence under any of sections 206.01 and 206.3 to 206.5 may only be taken in one or more periods of not less than one week's duration.

Durée minimale d'une période

207.01 Sous réserve des règlements, le droit au congé visé à l'un des articles 206.01 et 206.3 à 206.5 peut être exercé en une ou plusieurs périodes d'une durée minimale d'une semaine chacune.

361 Subsection 207.02(1) of the Act is replaced by the following:

361 Le paragraphe 207.02(1) de la même loi est remplacé par ce qui suit :

Interruption

207.02 (1) An employee may interrupt a leave of absence referred to in any of sections 206.01 and 206.3 to 206.5 in order to be absent due to a reason referred to in subsection 239(1) or 239.1(1).

Interruption

207.02 (1) L'employé peut interrompre l'un des congés prévus aux articles 206.01 et 206.3 à 206.5 afin de s'absenter pour l'une des raisons mentionnées aux paragraphes 239(1) ou 239.1(1).

362 (1) Subsection 207.2(1) of the Act is replaced by the following:

362 (1) Le paragraphe 207.2(1) de la même loi est remplacé par ce qui suit :

Notification to employer — interruption for child's hospitalization

207.2 (1) An employee who intends to interrupt their maternity or parental leave or their leave for the placement of a child in order to return to work as a result of the hospitalization of their child shall provide the employer with a notice in writing of the interruption as soon as possible.

Préavis à l'employeur — interruption pour l'hospitalisation de l'enfant

207.2 (1) L'employé qui entend interrompre son congé de maternité, son congé pour placement d'un enfant ou son congé parental en raison de l'hospitalisation de son enfant pour retourner au travail en informe dès que possible l'employeur par un préavis écrit.

(2) Subsection 207.2(3) of the Act is replaced by the following:

Refusal

(3) If the employer refuses the interruption or does not advise the employee within the week referred to in subsection (2), the leave under any of sections 206 to 206.1 is extended by the number of weeks during which the child is hospitalized. The aggregate amounts of leave referred to in subsections 206.01(7) and 206.1(3) and sections 206.2 and 206.21 are extended by the same number of weeks.

(3) Subsection 207.2(5) of the Act is replaced by the following:

End of interruption

(5) An employee who intends to return to their leave after the interruption shall, as soon as possible, advise the employer in writing of the date on which the leave is to resume.

363 (1) Paragraph 209.4(a.2) of the Act is replaced by the following:

(a.2) prescribing the maximum number of periods of leave of absence that an employee may take under any of sections 206.01 and 206.3 to 206.5;

(2) Section 209.4 of the Act is amended by adding the following after paragraph (c):

(c.1) prescribing cases for the purposes of paragraph (c) of the definition *placement* in subsection 206.01(1);

(c.2) defining, for the purposes of section 206.01, any word or expression that is used but not defined in that section;

Transitional Provisions

Definition of *Act*

364 (1) In this section, *Act* means the *Canada Labour Code*.

Interruption of parental leave

(2) An employee who, on the day on which section 357 comes into force, is on parental leave under section 206.1 of the Act and is eligible for leave for the placement of a child under section 206.01 of the Act may interrupt their parental leave to take leave for the placement of a child. Their parental leave resumes immediately after the interruption ends.

(2) Le paragraphe 207.2(3) de la même loi est remplacé par ce qui suit :

Refus

(3) Si l'employeur refuse que l'employé interrompe son congé ou qu'il ne l'avise pas dans le délai prévu au paragraphe (2), le congé prévu à l'un des articles 206 à 206.1 est prolongé du nombre de semaines que dure l'hospitalisation. La durée maximale de l'ensemble des congés prévue aux paragraphes 206.01(7) ou 206.1(3) ou aux articles 206.2 ou 206.21 est prolongée du même nombre de semaines.

(3) Le paragraphe 207.2(5) de la même loi est remplacé par ce qui suit :

Fin de l'interruption

(5) L'employé qui entend poursuivre son congé à la suite de l'interruption en informe dès que possible l'employeur par un préavis écrit précisant la date à laquelle le congé se poursuivra.

363 (1) L'alinéa 209.4a.2) de la même loi est remplacé par ce qui suit :

a.2) préciser le nombre maximal de périodes de congé que peut prendre un employé en vertu de l'article 206.01 ou de l'un des articles 206.3 à 206.5;

(2) L'article 209.4 de la même loi est modifié par adjonction, après l'alinéa c), de ce qui suit :

c.1) préciser les cas pour l'application de l'alinéa c) de la définition de *placement* au paragraphe 206.01(1);

c.2) définir, pour l'application de l'article 206.01, tout terme qui y est utilisé mais qui n'y est pas défini;

Dispositions transitoires

Définition de *Loi*

364 (1) Au présent article, *Loi* s'entend du *Code canadien du travail*.

Interruption du congé parental

(2) L'employé qui, à la date d'entrée en vigueur de l'article 357, est en congé parental au titre de l'article 206.1 de la Loi et est admissible au congé pour placement d'un enfant au titre de l'article 206.01 de la Loi peut interrompre son congé parental afin de prendre le congé pour placement d'un enfant. Le congé parental se poursuit dès la fin de l'interruption.

Notice of interruption

(3) Section 207.1 of the Act applies, with any necessary modifications, with respect to an interruption under subsection (2).

Words and expressions

(4) Words and expressions used in this section have the same meaning as in the Act.

Coming into Force

Order in council

365 This Division comes into force on a day to be fixed by order of the Governor in Council.

Avis : interruption

(3) L'article 207.1 de la Loi s'applique, avec les adaptations nécessaires, à l'interruption visée au paragraphe (2).

Terminologie

(4) Les termes employés au présent article s'entendent au sens de la Loi.

Entrée en vigueur

Décret

365 La présente section entre en vigueur à la date fixée par décret.

HEALTH AND SAFETY CODE - HSC

DIVISION 25.5. CALIFORNIA GLOBAL WARMING SOLUTIONS ACT OF 2006 [38500 - 38599.11] *(Division 25.5 added by Stats. 2006, Ch. 488, Sec. 1.)*

PART 2. MANDATORY GREENHOUSE GAS EMISSIONS REPORTING [38530 - 38535] *(Part 2 added by Stats. 2006, Ch. 488, Sec. 1.)*

38530. (a) On or before January 1, 2008, the state board shall adopt regulations to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with this program.

(b) The regulations shall do all of the following:

(1) Require the monitoring and annual reporting of greenhouse gas emissions from greenhouse gas emission sources beginning with the sources or categories of sources that contribute the most to statewide emissions.

(2) Account for greenhouse gas emissions from all electricity consumed in the state, including transmission and distribution line losses from electricity generated within the state or imported from outside the state. This requirement applies to all retail sellers of electricity, including load-serving entities as defined in subdivision (k) of Section 380 of the Public Utilities Code and local publicly owned electric utilities as defined in Section 224.3 of the Public Utilities Code.

(3) Where appropriate and to the maximum extent feasible, incorporate the standards and protocols developed by the California Climate Action Registry, established pursuant to former Chapter 6 (commencing with Section 42800) of Part 4 of Division 26, as added by Section 1 of Chapter 1018 of the Statutes of 2000. Entities that voluntarily participated in the California Climate Action Registry prior to December 31, 2006, and have developed a greenhouse gas emission reporting program, shall not be required to significantly alter their reporting or verification program except as necessary to ensure that reporting is complete and verifiable for the purposes of compliance with this division as determined by the state board.

(4) Ensure rigorous and consistent accounting of emissions, and provide reporting tools and formats to ensure collection of necessary data.

(5) Ensure that greenhouse gas emission sources maintain comprehensive records of all reported greenhouse gas emissions.

(c) The state board shall do both of the following:

(1) Periodically review and update its emission reporting requirements, as necessary.

(2) Review existing and proposed international, federal, and state greenhouse gas emission reporting programs and make reasonable efforts to promote consistency among the programs established pursuant to this part and other programs, and to streamline reporting requirements on greenhouse gas emission sources.

(Amended by Stats. 2017, Ch. 561, Sec. 116. (AB 1516) Effective January 1, 2018.)

European Commission - Press release

Commission simplifies rules on sustainability and EU investments, delivering over €6 billion in administrative relief

Brussels, 26 February 2025

The European Commission has adopted a new package of proposals to simplify EU rules, boost competitiveness, and unlock additional investment capacity. This is a major step forward in creating a more favourable business environment to help EU companies grow, innovate, and create quality jobs.

By bringing our competitiveness and climate goals together, we are creating the conditions for EU businesses to thrive, attract investment, achieve our shared goals – such as the European Green Deal objectives – and unlock our full economic potential.

The Commission has a clear target to deliver an unprecedented simplification effort, by achieving at least 25% reduction in administrative burdens, and at least 35% for SMEs until the end of this mandate. These first 'Omnibus' packages, bringing together proposals in a number of related legislative fields, cover a far-reaching simplification in the fields of sustainable finance reporting, sustainability due diligence, EU Taxonomy, carbon border adjustment mechanism, and European investment programmes.

These proposals will reduce complexity of EU requirements for all businesses, notably SMEs and small mid-caps, focus our regulatory framework on the largest companies which are likely to have a bigger impact on the climate and the environment, while still enabling companies to access sustainable finance for their clean transition.

If adopted and implemented as set out today, the proposals are conservatively estimated to bring total **savings in annual administrative costs of around €6.3 billion** and to **mobilise additional public and private investment capacity of €50 billion** to support policy priorities.

President Ursula **von der Leyen** said: "*Simplification promised, simplification delivered! We are presenting our first proposal for far-reaching simplification. EU companies will benefit from streamlined rules on sustainable finance reporting, sustainability due diligence and taxonomy. This will make life easier for our businesses while ensuring we stay firmly on course toward our decarbonisation goals. And more simplification is on the way*".

Making sustainability reporting more accessible and efficient

Specifically, **the main changes in the area of sustainability reporting** (CSRD and EU Taxonomy) will:

- Remove around 80% of companies from the scope of CSRD, focusing the sustainability reporting obligations on the largest companies which are more likely to have the biggest impacts on people and the environment;
- Ensure that sustainability reporting requirements on large companies do not burden smaller companies in their value chains;
- Postpone by two years (until 2028) the reporting requirements for companies currently in the scope of CSRD and which are required to report as of 2026 or 2027.
- Reduce the burden of the EU Taxonomy reporting obligations and limit it to the largest companies (corresponding to the scope of the CSDDD), while keeping the possibility to report voluntarily for the other large companies within the future scope of the CSRD. This is expected to deliver significant cost savings for smaller companies, while allowing businesses that wish to access sustainable finance to continue that reporting.

- Introduce the option of reporting on activities that are partially aligned with the EU Taxonomy, fostering a gradual environmental transition of activities over time, in line with the aim to scale up transition finance to help companies on their path towards sustainability.
- Introduce a financial materiality threshold for the Taxonomy reporting and reduce the reporting templates by around 70%.
- Introduce simplifications to the most complex "Do no Significant harm" (DNSH) criteria for pollution prevention and control related to the use and presence of chemicals that apply horizontally to all economic sectors under the EU Taxonomy – as a first step in revising and simplifying all such DNSH criteria.
- Adjust, among others, the main Taxonomy-based key performance indicator for banks, the Green Asset Ratio (GAR). Banks will be able to exclude from the denominator of the GAR exposures that relate to undertakings which are outside the future scope of the CSRD (i.e. companies with less than 1000 employees and €50m turnover).

Simplifying due diligence to support responsible business practices

The **main changes in the area of sustainability due diligence** will:

- Simplify sustainability due diligence requirements so that companies in scope avoid unnecessary complexities and costs, e.g. by focusing systematic due diligence requirements on direct business partners; and by reducing the frequency of periodic assessments and monitoring of their partners from annual to 5 years, with ad hoc assessments where necessary.
- Reduce burdens and trickle-down effects for SMEs and and small mid-caps by limiting the amount of information that may be requested as part of the value chain mapping by large companies;
- Further increase the harmonisation of due diligence requirements to ensure a level playing field across the EU;
- Remove the EU civil liability conditions while preserving victims' right to full compensation for damage caused by non-compliance, and protecting companies against over-compensation, under the civil liability regimes of Member States; and
- Give companies more time to prepare to comply with the new requirements by postponing the application of the sustainability due diligence requirements for the largest companies by one year (to 26 July 2028), while advancing the adoption of the guidelines by one year (to July 2026).

Simplifying the carbon border adjustment mechanism (CBAM) for a fairer trade

The **main changes on CBAM will**:

- **Exempt small importers** from CBAM obligations, mostly SMEs and individuals. These are importers who import small quantities of CBAM goods, representing very small quantities of embedded emissions entering the Union from third countries. This works by introducing a new CBAM cumulative annual threshold of 50 tonnes per importer, thus eliminating CBAM obligations for approximately 182,000 or 90% of importers, mostly SMEs, while still covering over 99% emissions in scope.
- **Simplify the rules for companies that remain in CBAM scope**: on authorisation of CBAM declarants, as well as the rules related to CBAM obligations, including the calculation of embedded emissions and reporting requirements.
- **Make CBAM more effective** in the long term, by strengthening the rules to avoid circumvention and abuse.
- This simplification precedes a future extension of CBAM to other ETS sectors, downstream goods, followed by **new legislative proposal** on the scope extension of CBAM in early 2026.

Unlocking investment opportunities

The Commission is also proposing a series of amendments to simplify and optimise the use of several investment programs including InvestEU, EFSI, and legacy financial instruments.

InvestEU, the EU's largest risk-sharing instrument to support priority investments within the Union, plays a key role in addressing financial barriers and driving the investments needed for competitiveness, research and innovation, decarbonisation, environmental sustainability and skills. Currently, close to 45 % of its operations are supporting climate objectives.

The proposed changes:

- **Increase the EU's investment capacity** through the use of returns from past investments, as well as optimised use of funds still available under the legacy instruments, thus allowing for more funding to be made available to businesses. This is expected to mobilise around **€50 billion** in additional public and private investments. The increased InvestEU capacity will be mainly used to finance more innovative activities in support of priority policies, such as the Competitiveness Compass and the Clean Industrial Deal.
- **Make it easier for Member States to contribute** to the programme and support their own businesses and mobilise private investments.
- **Simplify administrative requirements** for our implementing partners, financial intermediaries and final recipients, notably SMEs. The simplification measures proposed are expected to generate **€350 million in cost savings**.

Next steps

The legislative proposals will now be submitted to the European Parliament and the Council for their consideration and adoption. The changes on the CSRD, CSDDD, and CBAM will enter into force once the co-legislators have reached an agreement on the proposals and after publication in the EU Official Journal. In line with the Communication on simplification and implementation published on 11 January 2024, the Commission invites the co-legislators to treat this omnibus package with priority, in particular the proposal postponing certain disclosure requirements under the CSRD and the transposition deadline under CSDDD, as they aim to address key concerns identified by stakeholders.

The draft Delegated Act amending the current delegated acts under the Taxonomy Regulation will be adopted after public feedback and will apply at the end of the scrutiny period by the European Parliament and the Council.

For More Information

- Get a detailed breakdown of the key simplifications and their impact on the Commission's Q&A.
- Read the full Commission proposals (Omnibus 1 | Omnibus 2) to understand the legal changes introduced.
- Explore the Commission Staff Working Documents (1 and 2) for a detailed analysis of the rationale and expected impact of the simplification measures.
- A Call for Evidence has been open on the Taxonomy Delegated Acts

IP/25/614

Quote(s):

"Simplification promised, simplification delivered! We are presenting our first proposal for far-reaching simplification. EU companies will benefit from streamlined rules on sustainable finance reporting, sustainability due diligence and taxonomy. This will make life easier for our businesses while ensuring we stay firmly on course toward our decarbonisation goals. And more simplification is on the way."
Ursula von der Leyen, President of the European Commission - 26/02/2025

"We are taking concrete steps to cut red tape and make EU rules more accessible and effective for citizens and businesses. Today's package is the first step of our far-reaching simplification efforts across all sectors of legislation. We can show that Europe is not only an incredible market to invest, produce, sell and consume but also a simple market. This proposal delivers real simplifications —less administrative burden, easier access to funding, and clearer, more predictable rules. We keep our objectives but change the way to better achieve them."
Stéphane Séjourné, Executive Vice-President for Prosperity and Industrial Strategy - 26/02/2025

"Implementation and Simplification: 'The world is changing before our eyes. The European Union needs a strong economy to defend its values and achieve its goals at home and around the world. Reducing unnecessarily complex EU rules is a vital part of our plan to make Europe more competitive. This simplification agenda is not about deregulation. It is about achieving our goals in a smarter and less burdensome way, so that our companies, and especially our SMEs, can focus on growth, jobs, innovation, and helping us secure the green and digital transitions. Today we take an important first step in that direction."
Valdis Dombrovskis, Commissioner for Economy and Productivity; Implementation and Simplification - 26/02/2025

"We are defining a path towards a more growth-friendly, more usable and proportionate EU sustainable finance rules. By facilitating a more conducive business environment, we can drive growth and EU's competitiveness, attract investments, and continue to deliver on our Green Deal objectives. It's about striking the right balance between reducing excessive administrative burden and keeping our longer-term goals in focus, because I firmly believe that sustainability is a key competitive advantage."
Maria Luís Albuquerque, Commissioner for Financial Services and the Savings and Investments Union - 26/02/2025

"We are significantly simplifying compliance for large companies, while upholding the core objective of the CSDDD to prevent companies from indirectly contributing to exploitative business practices, harming human rights, the climate, or the environment through their value chains. We also ensure smaller business partners are not burdened by excessive information requests. By striking this balance, we hold companies accountable for their actions and at the same time we promote more transparent and responsible business operations globally."
Michael McGrath, Commissioner for Democracy, Justice, the Rule of Law and Consumer Protection - 26/02/2025

"Today, we're making it simpler to do business in Europe. By simplifying the Carbon Border Adjustment Mechanism (CBAM), we're empowering companies to reduce their carbon footprint without compromising their competitive edge. While exempting around 90% of companies from CBAM reporting, we still ensure the capture of over 99% of emissions. This marks the first step in a broader CBAM review."
Wopke Hoekstra, Commissioner for Climate, Net Zero and Clean Growth - 26/02/2025

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