R.S., c. 1 (5th supp.)

INCOME TAX ACT

1. (1) Paragraph 13(21.2)(*a*) of the *Income Tax Act* is replaced by the following:

(*a*) a person or partnership (in this subsection referred to as the "transferor") disposes at a particular time (otherwise than in a disposition described in any of paragraphs (*c*) to (*g*) of the definition "superficial loss" in section 54) of a depreciable property — other than, for the purposes of computing the exempt surplus or deficit and taxable surplus or deficit of a foreign affiliate of a taxpayer, in respect of the taxpayer, where the transferor is the affiliate or is a partnership of which the affiliate is a member, depreciable property that is, or would be, if the transferor were a foreign affiliate of the taxpayer, excluded property (within the meaning assigned by subsection 95(1)) of the transferor — of a particular prescribed class of the transferor,

(2) Clause 13(21.2)(*e*)(iii)(E) of the Act is replaced by the following:

(E) if the transferor is a corporation,

(I) for the purposes of computing the transferor's foreign accrual property income, exempt surplus or deficit, and taxable surplus or deficit, in respect of a taxpayer for a taxation year of the transferor where the transferor is a foreign affiliate of the taxpayer, at which the liquidation and dissolution of the transferor begins, unless the liquidation and dissolution is

1. a qualifying liquidation and dissolution (within the meaning assigned by subsection 88(3.1)) of the transferor, or

2. a designated liquidation and dissolution (within the meaning assigned by subsection 95(1)) of the transferor, and

(II) for any other purposes, at which the winding-up (other than a winding-up to which subsection 88(1) applies) of the transferor begins, and

(3) Subsection (1) applies to dispositions that occur after Announcement Date.

(4) Subsection (2) applies to windings-up and liquidations and dissolutions that begin after Announcement Date.

2. (1) Paragraph 14(12)(*a*) of the Act is replaced by the following:

(*a*) a corporation, trust or partnership (in this subsection referred to as the "transferor") disposes at any time in a taxation year of a particular eligible capital property — other than, for the purposes of computing the exempt surplus or deficit and taxable surplus or deficit of a foreign affiliate of a taxpayer, in respect of the taxpayer, where the transferor is the affiliate or is a partnership of which the affiliate is a member, eligible capital property that is, or would be, if the transferor were a foreign affiliate of the taxpayer, excluded property (within the meaning assigned by subsection 95(1)) of the transferor — in respect of a business of the transferor in respect of which it would, but for this subsection, be permitted a deduction under paragraph 24(1)(*a*) as a consequence of the disposition, and

(2) Paragraph 14(12)(*g*) of the Act is replaced by the following:

(*g*) if the transferor is a corporation,

(i) for the purposes of computing the transferor's foreign accrual property income, exempt surplus or deficit, and taxable surplus or deficit, in respect of a taxpayer for a taxation year of the transferor where the transferor is a foreign affiliate of the taxpayer, at which the liquidation and dissolution of the transferor begins, unless the liquidation and dissolution is

(A) a qualifying liquidation and dissolution (within the meaning assigned by subsection 88(3.1)) of the transferor, or

(B) a designated liquidation and dissolution (within the meaning assigned by subsection 95(1)) of the transferor, and

(ii) for any other purposes, at which the winding-up (other than a winding-up to which subsection 88(1) applies) of the transferor begins.

(3) Subsection (1) applies to dispositions that occur after Announcement Date.

(4) Subsection (2) applies to windings-up and liquidations and dissolutions that begin after Announcement Date.

3. (1) Paragraph 18(13)(*a*) of the Act is replaced by the following:

(*a*) a taxpayer (in this subsection and subsection (15) referred to as the "transferor") disposes of a particular property (other than, for the purposes of computing the exempt surplus or deficit and taxable surplus or deficit of a foreign affiliate of a taxpayer, in respect of the taxpayer, where the transferor is the affiliate or is a partnership of which the affiliate is a member, property that is, or would be, if the transferor were a foreign affiliate of the taxpayer, excluded property (within the meaning assigned by subsection 95(1)) of the transferor);

(2) Subparagraph 18(15)(*b*)(iv) of the Act is replaced by the following:

(iv) if the transferor is a corporation,

(A) for the purposes of computing the transferor's foreign accrual property income, exempt surplus or deficit, and taxable surplus or deficit, in respect of a taxpayer for a taxation year of the transferor where the transferor is a foreign affiliate of the taxpayer, at which the liquidation and dissolution of the transferor begins, unless the liquidation and dissolution is

(I) a qualifying liquidation and dissolution (within the meaning assigned by subsection 88(3.1)) of the transferor, or

(II) a designated liquidation and dissolution (within the meaning assigned by subsection 95(1)) of the transferor, and

(B) for any other purposes, at which the winding-up (other than a winding-up to which subsection 88(1) applies) of the transferor begins, and

(3) Subsection (1) applies to dispositions that occur after Announcement Date.

(4) Subsection (2) applies to windings-up and liquidations and dissolutions that begin after Announcement Date.

4. (1) Subsection 20(13) of the Act is replaced by the following:

Deductions under subdivision i

(13) In computing the income for a taxation year of a taxpayer resident in Canada, there may be deducted such amounts as are provided by subdivision i.

(2) Subsection (1) applies to taxation years that end after 1994.

5. (1) Subsection 39(2) of the Act is replaced by the following:

Foreign currency dispositions by an individual

(1.1) If, because of any fluctuation after 1971 in the value of one or more currencies other than Canadian currency relative to Canadian currency, an individual (other than a trust) has made one or more particular gains or sustained one or more particular losses in a taxation year from dispositions of currency other than Canadian currency and the particular gains or losses would, in the absence of this subsection, be capital gains or losses described under subsection (1)

(*a*) subsection (1) does not apply to any of the particular gains or losses;

(*b*) the amount determined by the following formula is deemed to be a capital gain of the individual for the year from the disposition of currency other than Canadian currency:

$$A - (B + C)$$

where

A is the total of all the particular gains made by the individual in the year,

B is the total of all the particular losses sustained by the individual in the year, and

C is $200; and

(*c*) the amount determined by the following formula is deemed to be a capital loss of the individual for the year from the disposition of currency other than Canadian currency:

$$D - (E + F)$$

where

D is the total of all the particular losses sustained by the individual in the year,

E is the total of all the particular gains made by the individual in the year, and

F is $200.

Capital gains and losses from foreign currency debt

(2) If, because of any fluctuation after 1971 in the value of a currency other than Canadian currency relative to Canadian currency, a taxpayer has made a gain or sustained a loss in a taxation year in respect of a foreign currency debt owing by the taxpayer

(*a*) the amount of the gain (to the extent of the amount of that gain that would not, if section 3 were read in the manner described in paragraph (1)(*a*), be included in computing the taxpayer's income for the year or any other taxation year), if any, is deemed to be a capital gain of the taxpayer for the year from the disposition of currency other than Canadian currency; and

(*b*) the amount of the loss (to the extent of the amount of that loss that would not, if section 3 were read in the manner described in paragraph (1)(*a*), be deductible in computing the taxpayer's income for the year or any other taxation year), if any, is deemed to be a capital loss of the taxpayer for the year from the disposition of currency other than Canadian currency.

(2) Subsection (1) applies

(*a*) in determining the capital gain or loss of a foreign affiliate of a taxpayer, in respect of taxation years of the foreign affiliate that end after Announcement Date; and

(*b*) in any other case, in respect of gains made and losses sustained in taxation years that begin after Announcement Date.

6. (1) Paragraph 40(2)(*e.1*) of the Act is replaced by the following:

(*e.1*) a particular taxpayer's loss, if any, from the disposition at any time to a particular person or partnership of an obligation — other than, for the purposes of computing the exempt surplus or deficit and taxable surplus or deficit of the particular taxpayer in respect of another taxpayer, where the particular taxpayer or, if the particular taxpayer is a partnership, a member of the particular taxpayer is a foreign affiliate of the other taxpayer, an obligation that is, or would be, if the particular taxpayer were a foreign affiliate of the other taxpayer, excluded property (within the meaning assigned by subsection 95(1)) of the particular taxpayer — that was, immediately after that time, payable by another person or partnership to the particular person or partnership is nil where the particular taxpayer, the particular person or partnership and the other person or partnership are related to each other at that time or would be related to each other at that time if paragraph 80(2)(*j*) applied for the purpose of this paragraph;

(2) The portion of paragraph 40(2)(*e.2*) of the Act before the formula is replaced by the following:

(*e.2*) subject to paragraph (*e.3*), a taxpayer's loss on the settlement or extinguishment of a particular commercial obligation (in this paragraph having the meaning assigned by subsection 80(1)) issued by a person or partnership and payable to the taxpayer is deemed to be the amount determined by the following formula if any part of the consideration given by the person or partnership for the settlement or extinguishment of the particular obligation consists of one or more other commercial obligations issued by the person or partnership to the taxpayer:

(3) Subsection 40(2) of the Act is amended by adding the following after paragraph (*e.2*):

(*e.3*) paragraph (*e.2*) does not apply, for the purposes of computing the exempt surplus or deficit and taxable surplus or deficit of the taxpayer in respect of another taxpayer, where the taxpayer or, if the taxpayer is a partnership, a member of the taxpayer is a foreign affiliate of the other taxpayer, to the particular commercial obligation if the particular commercial obligation is, or would be, if the taxpayer were a foreign affiliate of the other

taxpayer, excluded property (within the meaning assigned by subsection 95(1)) of the taxpayer;

(4) The portion of paragraph 40(2)(*g*) of the Act before subparagraph (i) is replaced by the following:

(*g*) a taxpayer's loss, if any, from the disposition of a property (other than, for the purposes of computing the exempt surplus or deficit, hybrid surplus or deficit, and taxable surplus or deficit of the taxpayer in respect of another taxpayer, where the taxpayer or, if the taxpayer is a partnership, a member of the taxpayer is a foreign affiliate of the other taxpayer, a property that is, or would be, if the taxpayer were a foreign affiliate of the other taxpayer, excluded property (within the meaning assigned by subsection 95(1)) of the taxpayer), to the extent that it is

(5) Paragraphs 40(3)(*c*) to (*e*) of the Act are replaced by the following:

(*c*) subject to paragraph 93(1)(*b*), the amount of the excess is deemed to be a gain of the taxpayer for the year from a disposition at that time of the property,

(*d*) for the purposes of section 93, the property is deemed to have been disposed of by the taxpayer at that time, and

(*e*) for the purposes of section 110.6, the property is deemed to have been disposed of by the taxpayer in the year.

(6) Paragraph 40(3.3)(*a*) of the Act is replaced by the following:

(*a*) a corporation, trust or partnership (in this subsection and subsection (3.4) referred to as the "transferor") disposes of a particular capital property — other than depreciable property of a prescribed class and other than, for the purposes of computing the exempt surplus or deficit, hybrid surplus or deficit, and taxable surplus or deficit of a foreign affiliate of a taxpayer, in respect of the taxpayer, where the transferor is the affiliate or is a partnership of which the affiliate is a member, property that is, or would be, if the transferor were a foreign affiliate of the taxpayer, excluded property (within the meaning assigned by subsection 95(1)) of the transferor — otherwise than in a disposition described in any of paragraphs (*c*) to (*g*) of the definition "superficial loss" in section 54;

(7) Subparagraph 40(3.4)(*b*)(v) of the Act is replaced by the following:

(v) if the transferor is a corporation,

(A) for the purposes of computing the transferor's foreign accrual property income, exempt surplus or deficit, hybrid surplus or deficit, and taxable surplus or deficit, in respect of a taxpayer for a taxation year of the transferor where the transferor is a foreign affiliate of the taxpayer, at which the liquidation and dissolution of the transferor begins, unless the liquidation and dissolution is

(I) a qualifying liquidation and dissolution (within the meaning assigned by subsection 88(3.1)) of the transferor, or

(II) a designated liquidation and dissolution (within the meaning assigned by subsection 95(1)) of the transferor, and

(B) for any other purposes, at which the winding-up (other than a winding-up to which subsection 88(1) applies) of the transferor begins,

(8) Paragraph 40(3.5)(*c*) of the Act is replaced by the following:

(*c*) if subsections (3.3) and (3.4) apply to the disposition by a transferor of a share of the capital stock of a particular corporation and after the disposition

(i) the particular corporation is merged or combined with one or more other corporations, otherwise than in a transaction in respect of which paragraph (*b*) applies to the share, then the corporation formed on the merger or combination is deemed to own the share while the corporation so formed is affiliated with the transferor,

(ii) the particular corporation is wound up in a winding-up to which subsection 88(1) applies, then the parent (within the meaning assigned by subsection 88(1)) is deemed to own the share while the parent is affiliated with the transferor, or

(iii) the particular corporation is liquidated and dissolved, the liquidation and dissolution is a qualifying liquidation and dissolution (within the meaning assigned by subsection 88(3.1)) of the corporation or a designated liquidation and dissolution (within the meaning assigned by subsection 95(1)) of the corporation, and the transferor is a foreign affiliate of a taxpayer, then for the purposes of computing the transferor's foreign accrual property income, exempt surplus or deficit, hybrid surplus or deficit, and taxable surplus or deficit, in respect of the taxpayer for a taxation year of the transferor, the taxpayer referred to in subsection 88(3.1) or the particular shareholder referred to in the definition "designated liquidation and dissolution" in subsection 95(1), as the case may be, is deemed to own the share while the taxpayer or particular shareholder is affiliated with the transferor; and

(9) The portion of subsection 40(3.6) of the Act before paragraph (*a*) is replaced by the following:

Loss on shares

(3.6) If at any time a taxpayer disposes, to a corporation that is affiliated with the taxpayer immediately after the disposition, of a share of a class of the capital stock of the corporation (other than a share that is a distress preferred share (within the meaning assigned by subsection 80(1)) and other than, for the purposes of computing the exempt surplus or deficit, hybrid surplus or deficit, and taxable surplus or deficit of the taxpayer in respect of another taxpayer, where the taxpayer or, if the taxpayer is a partnership, a member of the taxpayer is a foreign affiliate of the other taxpayer, a property that is, or would be, if the taxpayer were a foreign affiliate of the other taxpayer, excluded property (within the meaning assigned by subsection 95(1)) of the taxpayer),

(10) Subsections (1), (4), (6) and (9) apply in respect of dispositions that occur after Announcement Date.

(11) Subsections (2) and (3) apply in respect of settlements and extinguishments that occur after Announcement Date.

(12) Subsection (5) applies after Announcement Date.

(13) Subsection (7) applies in respect of windings-up and liquidations and dissolutions that begin after Announcement Date.

(14) Subsection (8) applies in respect of mergers or combinations that occur, and windings-up and liquidations and dissolutions that begin, after Announcement Date.

7. (1) Paragraph 53(2)(*b*) of the Act is replaced by the following:

(*b*) where the property is a share of the capital stock of a non-resident corporation,

(i) if the corporation is a foreign affiliate of the taxpayer,

(A) any amount required under paragraph 80.1(4)(*d*) or section 92 to be deducted in computing the adjusted cost base to the taxpayer of the share, and

(B) any amount received by the taxpayer after 1971 and on or before Announcement Date on a reduction of the paid-up capital of the corporation in respect of the share, or

(ii) in any other case, any amount received by the taxpayer after 1971 and before that time on a reduction of the paid-up capital of the corporation in respect of the share;

(2) Subsection (1) applies after Announcement Date.

8. (1) Paragraph 55(5)(*d*) of the Act is replaced by the following:

(*d*) the income earned or realized by a corporation (referred to in this paragraph as the "affiliate") for a period ending at a time when the affiliate was a foreign affiliate of another corporation is deemed to be the lesser of

(i) the amount that would, if the *Income Tax Regulations* were read without reference to their subsection 5905(5.6), be the tax-free surplus balance (within the meaning of their subsection 5905(5.5)) of the affiliate in respect of the other corporation at that time, and

(ii) the fair market value at that time of all the issued and outstanding shares of the capital stock of the affiliate;

(2) Subsection (1) applies in respect of a dividend received after Announcement Date by a corporation resident in Canada, except where the dividend is received as part of a series of transactions or events that includes a disposition of the shares in respect of which the dividend is received that

(*a*) is made to a person or partnership that, at the time of the disposition, deals at arm's length with the corporation; and

(*b*) occurs under an agreement in writing entered into before Announcement Date.

9. (1) Subsection 85.1(4) of the Act is replaced by the following:

Exception

(4) Subsection (3) does not apply in respect of a disposition at any time by a taxpayer of a share of the capital stock of a particular foreign affiliate of the taxpayer to another foreign affiliate of the taxpayer if

(*a*) both

(i) all or substantially all of the property of the particular affiliate was, immediately before that time, excluded property (within the meaning assigned by subsection 95(1)) of the particular affiliate, and

(ii) the disposition is part of a transaction or event or a series of transactions or events for the purpose of disposing of the share to a person or partnership that, immediately after the transaction, event or series, was a person or partnership (other than a foreign affiliate of the taxpayer in respect of which the taxpayer has a qualifying interest (within the meaning assigned by paragraph 95(2)(*m*)) at the time of the transaction or event or throughout the series, as the case may be) with whom the taxpayer was dealing at arm's length; or

(*b*) the adjusted cost base to the taxpayer of the share at that time is greater than the amount that would, in the absence of subsection (3), be the taxpayer's proceeds of disposition of the share in respect of the disposition.

(2) Subsection (1) applies in respect of dispositions that occur after Announcement Date.

10. (1) Subparagraph 87(2)(*u*)(ii) of the Act is replaced by the following:

(ii) for the purposes of subsections 93(2.01), (2.11), (2.21) and (2.31), any exempt dividend received by the predecessor corporation on any such share is deemed to be an exempt dividend received by the new corporation on the share;

(2) Subsection (1) applies when subsection 93(2.01) of the Act, as enacted by subsection 14(3), applies except that, when that subsection 93(2.01) applies but subsection 93(2.11) of the Act, as enacted by subsection 14(3), does not apply, subparagraph 87(2)(*u*)(ii) of the Act, as enacted by subsection (1), is to be read as follows:

(ii) for the purposes of subsection 93(2.01), any exempt dividend received by the predecessor corporation on any such share is deemed to be an exempt dividend received by the new corporation on the share;

11. (1) Subsection 88(3) of the Act is replaced by the following:

Liquidation and dissolution of foreign affiliate

(3) Notwithstanding subsection 69(5), if at any time a taxpayer receives a property (referred to in this subsection as the "distributed property") from a foreign affiliate (referred to in this subsection as the "disposing affiliate") of the taxpayer on a liquidation and dissolution of the disposing affiliate and the distributed property is received in respect of shares of the capital stock of the disposing affiliate that are disposed of on the liquidation and dissolution,

(*a*) subject to subsections (3.3) and (3.5), the distributed property is deemed to have been disposed of at that time by the disposing affiliate to the taxpayer for proceeds of disposition equal to the relevant cost base (within the meaning assigned by subsection 95(4)) to the disposing affiliate of the distributed property in respect of the taxpayer, immediately before that time, if

(i) the liquidation and dissolution is a qualifying liquidation and dissolution of the disposing affiliate, or

(ii) the distributed property is a share of the capital stock of another foreign affiliate of the taxpayer that was, immediately before that time, excluded property (within the meaning assigned by subsection 95(1)) of the disposing affiliate;

(*b*) if paragraph (*a*) does not apply to the distributed property, the distributed property is deemed to have been disposed of at that time by the disposing affiliate to the taxpayer for proceeds of disposition equal to the distributed property's fair market value at that time;

(*c*) the distributed property is deemed to have been acquired, at that time, by the taxpayer at a cost equal to the amount determined under paragraph (*a*) or (*b*) to be the disposing affiliate's proceeds of disposition of the distributed property;

(*d*) each share (referred to in paragraph (*e*) and subsections (3.3) and (3.4) as a "disposed share") of a class of the capital stock of the disposing affiliate that is disposed of by the taxpayer on the liquidation and dissolution is deemed to be disposed of for proceeds of disposition equal to the amount determined by the formula

A/B

where

A is the total of all amounts each of which is the net distribution amount in respect of a distribution of distributed property made, at any time, in respect of the class, and

B is the total number of issued and outstanding shares of the class that are owned by the taxpayer during the liquidation and dissolution; and

(*e*) if the liquidation and dissolution is a qualifying liquidation and dissolution of the disposing affiliate, any loss of the taxpayer in respect of the disposition of a disposed share is deemed to be nil.

Qualifying liquidation and dissolution

(3.1) For the purposes of subsections (3), (3.3) and (3.5), a "qualifying liquidation and dissolution" of a foreign affiliate (referred to in this subsection as the "disposing affiliate") of a taxpayer means a liquidation and dissolution of the disposing affiliate in respect of which the taxpayer elects in accordance with prescribed rules and

(*a*) the taxpayer owns not less than 90% of the issued and outstanding shares of each class of the capital stock of the disposing affiliate throughout the liquidation and dissolution; or

(*b*) both

(i) the percentage determined by the following formula is greater than or equal to 90%:

A/B

where

A is the amount, if any, by which

(A) the total of all amounts each of which is the fair market value, at the time at which it is distributed, of a property that is distributed by the disposing affiliate to the taxpayer in the course of the liquidation and dissolution in respect of shares of the capital stock of the disposing affiliate

exceeds

(B) the total of all amounts each of which is an amount owing (other than an unpaid dividend) by, or an obligation of, the disposing affiliate that was assumed or cancelled by the taxpayer in consideration for a property referred to in clause (A), and

B is the amount, if any, by which

(A) the total of all amounts each of which is the fair market value, at the time at which it is distributed, of a property that is distributed by the disposing affiliate to a shareholder of the disposing affiliate in the course of the liquidation and dissolution in respect of shares of the capital stock of the disposing affiliate

exceeds

(B) the total of all amounts each of which is an amount owing (other than an unpaid dividend) by, or an obligation of, the disposing affiliate that was assumed or cancelled by a shareholder of the disposing affiliate in consideration for a property referred to in clause (A), and

(ii) at the time of each distribution of property by the disposing affiliate in the course of the liquidation and dissolution in respect of shares of the capital stock of the disposing affiliate, the taxpayer holds shares of that capital stock that would, if an annual general meeting of the shareholders of the disposing affiliate were held at that time, entitle it to 90% or more of the votes that could be cast under all circumstances at the meeting.

Net distribution amount

(3.2) For the purposes of the description of A in paragraph (3)(*d*), "net distribution amount" in respect of a distribution of distributed property means the amount determined by the formula

$$A - B$$

where

A is the cost to the taxpayer of the distributed property as determined under paragraph (3)(*c*), and

B is the total of all amounts each of which is an amount owing (other than an unpaid dividend) by, or an obligation of, the disposing affiliate that was assumed or cancelled by the taxpayer in consideration for the distribution of the distributed property.

Suppression election

(3.3) For the purposes of paragraph (3)(*a*), if the liquidation and dissolution is a qualifying liquidation and dissolution of the disposing affiliate and the taxpayer would, in the absence of this subsection and, for greater certainty, after taking into account any election under subsection 93(1), realize a capital gain (the amount of which is referred to in subsection (3.4) as the "capital gain amount") from the disposition of a disposed share, the taxpayer may elect, in accordance with prescribed rules, that distributed property that was, immediately before the disposition, capital property of the disposing affiliate be deemed to have been disposed of by the disposing affiliate to the taxpayer for proceeds of disposition equal to the

amount claimed (referred to in subsection (3.4) as the "claimed amount") by the taxpayer in the election.

Conditions for subsection (3.3) election

(3.4) An election under subsection (3.3) in respect of distributed property disposed of in the course of the liquidation and dissolution is not valid unless

(*a*) the claimed amount in respect of each distributed property does not exceed the amount that would, in the absence of subsection (3.3), be determined under paragraph (3)(*a*) in respect of the distributed property; and

(*b*) the amount determined by the following formula does not exceed the total of all amounts each of which is the capital gain amount in respect of a disposed share:

A – B

where

A is the total of all amounts that would, in the absence of subsection (3.3), be determined under paragraph (3)(*a*) to be the proceeds of disposition of a distributed property in respect of which an election under subsection (3.3) is made by the taxpayer, and

B is the total of all amounts each of which is the claimed amount in respect of a distributed property referred to in the description of A.

Taxable Canadian property

(3.5) For the purposes of paragraph (3)(*a*), the distributed property is deemed to have been disposed of by the disposing affiliate to the taxpayer for proceeds of disposition equal to the adjusted cost base of the distributed property to the disposing affiliate immediately before the time of its disposition, if

(*a*) the liquidation and dissolution is a qualifying liquidation and dissolution of the disposing affiliate;

(*b*) the distributed property is, at the time of its disposition, taxable Canadian property (other than treaty-protected property) of the disposing affiliate that is a share of the capital stock of a corporation resident in Canada; and

(*c*) the taxpayer and the disposing affiliate have jointly elected in accordance with prescribed rules.

(2) Subsection (1) applies in respect of liquidations and dissolutions of foreign affiliates of a taxpayer that begin after February 27, 2004. However, if the taxpayer elects in writing under this subsection in respect of all of its foreign affiliates and files the election with the Minister of National Revenue on or before the day that is the later of the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to and the day that is one year after the day on which this Act is assented to,

(*a*) subsection 88(3) of the Act, as enacted by subsection (1), also applies to property received by the taxpayer after February 27, 2004 and before Announcement Date on a redemption, acquisition or cancellation of shares of the capital stock of, on a payment of a dividend by, or on a reduction of the paid-up capital of, a foreign affiliate of the taxpayer; and

(*b*) in respect of property described in paragraph (*a*) and property received by the taxpayer on a liquidation and dissolution of a foreign affiliate of the taxpayer that began after February 27, 2004 and before Announcement Date,

(i) subsection 88(3) of the Act, as enacted by subsection (1), is to be read as follows:

(3) Notwithstanding subsection 69(5), if at any time a taxpayer receives a property (referred to in this subsection as the "distributed property") from a foreign affiliate (referred to in this subsection as the "disposing affiliate") of the taxpayer, on a liquidation and dissolution of the disposing affiliate, on a redemption, acquisition or cancellation of shares of the capital stock of the disposing affiliate, on a payment of a dividend by the disposing affiliate, or on a reduction of the paid-up capital of the disposing affiliate,

(*a*) subject to subsections (3.3) and (3.5), the distributed property is deemed to have been disposed of at that time by the disposing affiliate to the taxpayer for proceeds of disposition equal to the relevant cost base (within the meaning assigned by subsection 95(4)) to the disposing affiliate of the distributed property in respect of the taxpayer, immediately before that time, if the distributed property

(i) was received on a liquidation and dissolution of the disposing affiliate that is a qualifying liquidation and dissolution of the disposing affiliate, or

(ii) was a share of the capital stock of another foreign affiliate of the taxpayer that was, immediately before that time, excluded property (within the meaning assigned by subsection 95(1)) of the disposing affiliate;

(*b*) if paragraph (*a*) does not apply to the distributed property, the distributed property is deemed to have been disposed of at that time by the disposing affiliate to the taxpayer for proceeds of disposition equal to the distributed property's fair market value at that time;

(*c*) the distributed property is deemed to have been acquired, at that time, by the taxpayer at a cost equal to the amount determined under paragraph (*a*) or (*b*) to be the disposing affiliate's proceeds of disposition of the distributed property;

(*d*) if the taxpayer disposed of shares of the capital stock of the disposing affiliate on a liquidation and dissolution of the disposing affiliate (each such share being referred to in paragraph (*f*) and subsections (3.3) and (3.4) as a "disposed share") or on a redemption, acquisition or cancellation of shares of the capital stock of the disposing affiliate, the taxpayer's proceeds of disposition of the shares are deemed to be the amount determined by the formula

A – B

where

A is the total of all amounts each of which is the cost to the taxpayer of a distributed property, as determined under paragraph (*c*), and

B is the total of all amounts each of which is an amount owing (other than an unpaid dividend) by, or an obligation of, the disposing affiliate that was assumed or cancelled

by the taxpayer because of the liquidation and dissolution or the redemption, acquisition or cancellation;

(*e*) if the taxpayer received the distributed property as a dividend or a reduction of paid-up capital, the amount of the dividend paid by the disposing affiliate or the amount of the reduction of the paid-up capital of the disposing affiliate, as the case may be, is deemed to be the amount determined by the formula

C – D

where

C is the total of all amounts each of which is the cost to the taxpayer of a distributed property, as determined under paragraph (*c*), and

D is the total of all amounts each of which is an amount owing (other than an unpaid dividend) by, or an obligation of, the disposing affiliate that was assumed or cancelled by the taxpayer because of the payment of the dividend or the reduction of paid-up capital; and

(*f*) if the distributed property was received on a liquidation and dissolution of the disposing affiliate that is a qualifying liquidation and dissolution of the disposing affiliate, any loss of the taxpayer in respect of the disposition of a disposed share is deemed to be nil.

(ii) section 88 of the Act is to be read without reference to its subsection (3.2), as enacted by subsection (1).

12. (1) Section 90 of the Act is replaced by the following:

Dividends received from non-resident corporation

90. (1) In computing the income for a taxation year of a taxpayer resident in Canada, there is to be included any amount received by the taxpayer at any time in the year as, on account or in lieu of payment of, or in satisfaction of, a dividend on a share owned by the taxpayer of the capital stock of a non-resident corporation.

Dividend from foreign affiliate

(2) For the purposes of this Act, an amount is deemed to be a dividend paid or received, as the case may be, at any time on a share of a class of the capital stock of a non-resident corporation that is a foreign affiliate of a taxpayer if the amount is the share's portion of a pro rata distribution (other than a distribution made in the course of a liquidation and dissolution of the corporation or on a redemption, acquisition or cancellation of the share by the corporation) made at that time by the corporation on all the shares of that class.

Exclusion

(3) No amount paid or received at any time is, for the purposes of this Act, a dividend paid or received on a share of the capital stock of a non-resident corporation that is a foreign affiliate of a taxpayer unless it is so deemed under this Part.

Loan from foreign affiliate

(4) Except where subsection 15(2) applies, if a person or partnership that is at any time a specified debtor in respect of a taxpayer resident in Canada receives at that time a loan from, or becomes at that time indebted to, a creditor that is a foreign affiliate of the taxpayer or that is a partnership of which such an affiliate is a member, the specified amount in respect

of the loan or indebtedness is to be included in computing the income of the taxpayer for the taxpayer's taxation year that includes that time.

Exceptions to subsection (4)

(5) Subsection (4) does not apply to

(*a*) a loan or indebtedness that is repaid, other than as part of a series of loans or other transactions and repayments, within two years of the day the loan was made or the indebtedness arose; or

(*b*) indebtedness that arose in the ordinary course of the business of the creditor or a loan made in the ordinary course of the creditor's business of lending money where, at the time the indebtedness arose or the loan was made, bona fide arrangements were made for repayment of the indebtedness or loan within a reasonable time.

Deduction for amounts included under subsection (4) or (7)

(6) There may be deducted in computing the income of a taxpayer for a taxation year (referred to in this subsection as the "current year") any portion of an amount included under subsection (4) or (7) for a taxation year in respect of the specified amount in respect of a particular loan or indebtedness if

(*a*) the taxpayer demonstrates that the portion would, if instead the specified amount in respect of the particular loan or indebtedness were, at the time the particular loan was made or the particular indebtedness was incurred, distributed directly or indirectly to the taxpayer as one or more dividends, reasonably be considered to have given rise to a deduction under any of paragraphs 113(1)(*a*) to (*b*) for the full amount of those dividends in computing the taxpayer's taxable income for the taxation year in which the portion is included in the taxpayer's income under subsection (4);

(*b*) during the portion of the current year in which the particular loan or indebtedness is outstanding no dividends are paid to the taxpayer or another person resident in Canada with which the taxpayer does not deal at arm's length by any one or more of the taxpayer's foreign affiliates that are relevant to the determination made under paragraph (*a*); and

(*c*) no other loan or indebtedness made or incurred during the portion of the current year in which the particular loan or indebtedness is outstanding has relied on the same exempt, hybrid or taxable surplus balances of any foreign affiliate of the taxpayer in applying this subsection.

Add-back for subsection (6) deduction

(7) There is to be included in computing the income of a taxpayer for a particular taxation year any amount deducted by the taxpayer under subsection (6) in computing the taxpayer's income for the taxation year that immediately precedes the particular year.

No double deduction

(8) A taxpayer may not claim a deduction for a taxation year under subsection (6) in respect of the same portion of the specified amount in respect of a loan or indebtedness for which a deduction is claimed for that year by the taxpayer under subsection (9).

Repayment of loan from foreign affiliate

(9) There may be deducted in computing the income of a taxpayer for a particular taxation year the amount determined by the formula

$$A \times B/C$$

where

A is the specified amount, in respect of a loan or indebtedness, that is included under subsection (4) in computing the taxpayer's income for a preceding taxation year,

B is the portion of the loan or indebtedness that was repaid in the particular year, to the extent it is established, by subsequent events or otherwise, that the repayment was not part of a series of loans or other transactions and repayments, and

C is the amount, in respect of the loan or indebtedness, that is referred to in the description of A in the definition "specified amount".

Definitions

(10) The following definitions apply in this section.

"specified amount" « *montant déterminé* »

"specified amount", in respect of a loan or indebtedness referred to in subsection (4), means the amount determined by the formula

$$A \times B$$

where

A is the amount of the loan or indebtedness, and

B is, where the loan is received from, or the creditor under the indebtedness is,

(*a*) a foreign affiliate of the taxpayer, the percentage that is or would be, if the taxpayer were a corporation resident in Canada, the taxpayer's surplus entitlement percentage in respect of the foreign affiliate at the time referred to in subsection (4), or

(*b*) a partnership of which a foreign affiliate of the taxpayer is a member, the percentage determined by the formula

$$C \times D/E$$

where

C is the percentage that is or would be, if the taxpayer were a corporation resident in Canada, the taxpayer's surplus entitlement percentage in respect of the foreign affiliate at the time referred to in subsection (4),

D is the fair market value, at that time, of the foreign affiliate's direct or indirect interest in the partnership, and

E is the fair market value, at that time, of all interests in the partnership.

"specified debtor" « *débiteur déterminé* »

"specified debtor", in respect of a taxpayer resident in Canada, at any time, means

(*a*) the taxpayer;

(*b*) a person (other than a controlled foreign affiliate of the taxpayer, within the meaning assigned by section 17) with which the taxpayer does not, at that time, deal at arm's length;

(*c*) a partnership of which a person or partnership referred to in paragraph (*a*) or (*b*) is, at that time, a member; and

(*d*) if the taxpayer is a partnership,

(i) any member of the partnership that is a corporation resident in Canada if the foreign affiliate referred to in subsection (4) is, at that time, a foreign affiliate of the corporation,

(ii) a person (other than a controlled foreign affiliate of the taxpayer, within the meaning assigned by section 17) with which a corporation referred to in subparagraph (i) does not, at that time, deal at arm's length,

(iii) a person (other than a controlled foreign affiliate of the taxpayer, within the meaning assigned by section 17) with which a corporation resident in Canada does not, at that time, deal at arm's length if a foreign affiliate of the corporation is, at that time, a member of the partnership, and

(iv) a partnership of which a person or partnership referred to in any of subparagraphs (i) to (iii) is, at that time, a member.

(2) Subsections 90(1) to (3) of the Act, as enacted by subsection (1), apply after Announcement Date. However, if a taxpayer has elected under paragraph 24(2)(*a*) of this Act, those subsections 90(1) to (3) also apply after February 27, 2004 and on or before Announcement Date in respect of the taxpayer, except that, on or before Announcement Date, subsection 90(2) of the Act, as enacted by subsection (1), is, in respect of the taxpayer, to be read as follows:

(2) For the purposes of this Act, an amount is deemed to be a dividend paid or received, as the case may be, at any time on a share of a class of the capital stock of a non-resident corporation that is a foreign affiliate of a taxpayer if the amount is the share's portion of a pro rata distribution (other than a distribution made in the course of a liquidation and dissolution of the corporation, on a redemption, acquisition or cancellation of the share by the corporation, or on a reduction of the paid-up capital of the corporation in respect of the share) made at that time by the corporation on all the shares of that class.

(3) Subsections 90(4) to (8) and (10) of the Act, as enacted by subsection (1), apply after Announcement Date, and subsection 90(9) of the Act, as enacted by subsection (1), applies to taxation years that end after Announcement Date. However, if the loan or indebtedness referred to in subsection 90(4) of the Act, as enacted by subsection (1), is received or incurred, as the case may be, before Announcement Date, subsections 90(4) to (10) of the Act, as enacted by subsection (1), are to be applied as if the portion of the loan or indebtedness that was outstanding on Announcement Date were a separate loan or indebtedness that was received or incurred, as the case may be, on Announcement Date in the same manner as the actual loan or indebtedness and no other portion of that loan or indebtedness is to be considered a loan or indebtedness for the purposes of applying those subsections 90(4) to (10).

13. (1) Section 92 of the Act is amended by adding the following after subsection (1.1):

Adjustment re adjusted cost base

(1.2) There is to be added in computing the adjusted cost base to a taxpayer of a share of the capital stock of a foreign affiliate of the taxpayer any amount required by paragraph 93(4)(*b*) to be so added.

(2) Subsection (1) applies after February 27, 2004.

14. (1) The portion of subsection 93(1) of the Act before paragraph (*b*) is replaced by the following:

Election re disposition of share of foreign affiliate

93. (1) For the purposes of this Act, if a corporation resident in Canada elects, in accordance with prescribed rules, in respect of any share of the capital stock of a particular foreign affiliate of the corporation that is disposed of, at any time, by the corporation (referred to in this subsection as the "disposing corporation") or by another foreign affiliate (referred to in this subsection as the "disposing affiliate") of the corporation,

(*a*) the amount (referred to in this subsection as the "elected amount") designated by the corporation in its election not exceeding the amount that would, in the absence of this subsection, be the gain of the disposing corporation or disposing affiliate, as the case may be, from the disposition of the share, is deemed

(i) to have been a dividend received on the share from the particular affiliate by the disposing corporation or disposing affiliate, as the case may be, immediately before that time, and

(ii) not to have been received by the disposing corporation or disposing affiliate, as the case may be, as proceeds of disposition in respect of the disposition of the share; and

(2) Subsection 93(1.1) of the Act is replaced by the following:

Application of subsection (1.11)

(1.1) Subsection (1.11) applies if

(*a*) a particular foreign affiliate of a corporation resident in Canada disposes at any time of a share (referred to in this paragraph and subsection (1.11) as the "disposed share") of the capital stock of another foreign affiliate of the corporation and the particular affiliate would, in the absence of subsections (1) and (1.11), have a capital gain from the disposition of the disposed share; or

(*b*) a corporation resident in Canada would, in the absence of subsections (1) and (1.11), be deemed under subsection 40(3) because of an election under subparagraph 5901(2)(*b*)(i) of the *Income Tax Regulations* to have realized a gain from a disposition at any time of a share (referred to in subsection (1.11) as the "disposed share") of the capital stock of a foreign affiliate of the corporation.

Deemed election

(1.11) If this subsection applies, the corporation resident in Canada referred to in subsection (1.1) is deemed

(*a*) to have made an election, at the time referred to in subsection (1.1), under subsection (1) in respect of the disposition of the disposed share; and

(*b*) to have designated, in the election, the prescribed amount in respect of the disposition of the disposed share.

(3) Subsections 93(2) to (2.3) of the Act are replaced by the following:

Application of subsection (2.01)

(2) Subsection (2.01) applies if

(*a*) a particular corporation (referred to in subparagraph (2.01)(*b*)(ii) as the "vendor", as the context requires) resident in Canada has a particular loss, determined without reference to this section, from the disposition by it at any time (referred to in subsection (2.01) as the "disposition time") of a share (referred to in subsection (2.01) as the "affiliate share") of the capital stock of a foreign affiliate of the particular corporation; or

(*b*) a foreign affiliate (referred to in subparagraph (2.01)(*b*)(ii) as the "vendor") of a particular corporation resident in Canada has a particular loss, determined without reference to this section, from the disposition by it at any time (referred to in subsection (2.01) as the "disposition time") of a share (referred to in subsection (2.01) as the "affiliate share") of the capital stock of another foreign affiliate of the particular corporation that is not excluded property.

Loss limitation on disposition of share of foreign affiliate

(2.01) If this subsection applies, the amount of the particular loss referred to in paragraph (2)(*a*) or (*b*) is deemed to be the greater of

(*a*) the amount determined by the formula

$$A - (B - C)$$

where

A is the amount of the particular loss determined without reference to this section,

B is the total of all amounts each of which is an amount received before the disposition time, in respect of an exempt dividend on the affiliate share or on a share for which the affiliate share was substituted, by

(i) the particular corporation referred to in subsection (2),

(ii) another corporation that is related to the particular corporation,

(iii) a foreign affiliate of the particular corporation, or

(iv) a foreign affiliate of another corporation that is related to the particular corporation, and

C is the total of

(i) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from a previous disposition by a corporation, or a foreign affiliate described in the description of B, of the affiliate share or a share for which the affiliate share was substituted, was reduced under this paragraph in respect of the exempt dividends referred to in the description of B,

(ii) the total of all amounts each of which is twice the amount by which an allowable capital loss (determined without reference to this section), of a corporation or a

foreign affiliate described in the description of B, from a previous disposition by a partnership of the affiliate share or a share for which the affiliate share was substituted, was reduced under paragraph (2.11)(*a*) in respect of the exempt dividends referred to in the description of B,

(iii) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from a previous disposition by a corporation, or a foreign affiliate described in the description of B, of an interest in a partnership, was reduced under paragraph (2.21)(*a*) in respect of the exempt dividends referred to in the description of B, and

(iv) the total of all amounts each of which is twice the amount by which an allowable capital loss (determined without reference to this section), of a corporation, or a foreign affiliate described in the description of B, from a previous disposition by a partnership of an interest in another partnership, was reduced under paragraph (2.31)(*a*) in respect of the exempt dividends referred to in the description of B; and

(*b*) the lesser of

(i) the portion of the particular loss, determined without reference to this section, that can reasonably be considered to be attributable to a fluctuation in the value of a currency other than Canadian currency relative to Canadian currency, and

(ii) the amount determined in respect of the vendor that is

(A) where the particular loss is a capital loss, the amount of a gain (other than a specified gain) that

(I) was made within 30 days before or after the disposition time by the vendor and that

1. is deemed under subsection 39(2) to be a capital gain of the vendor for the taxation year that includes the time the gain was made from the disposition of currency other than Canadian currency, and

2. is in respect of the settlement or extinguishment of a foreign currency debt that was issued or incurred by the vendor within 30 days before or after the acquisition of the affiliate share by the vendor and that was, at all times at which it was a debt obligation of the vendor owing to a person or partnership that dealt, at all times during which the foreign currency debt was outstanding, at arm's length with the particular corporation and can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate share, or

(II) is a capital gain realized within 30 days before or after the disposition time by the vendor under an agreement that

1. was entered into by the vendor within 30 days before or after the acquisition of the affiliate share by the vendor with a person or partnership that dealt, at all times during which the agreement was in force, at arm's length with the particular corporation,

2. provides for the purchase, sale or exchange of currency, and

3. can reasonably be considered to have been entered into by the vendor for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate share, or

(B) in any other case, the amount of a gain (other than a specified gain or a capital gain) that was realized within 30 days before or after the disposition time by the vendor that is included in computing the income of the vendor for the taxation year that includes the time the gain was realized and

(I) that is in respect of the settlement or extinguishment of a foreign currency debt that

1. was issued or incurred by the vendor within 30 days before or after the acquisition of the affiliate share by the vendor,

2. was, at all times at which it was a debt obligation of the vendor owing to a person or partnership that dealt, at all times during which the foreign currency debt was outstanding, at arm's length with the particular corporation, and

3. can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate share, or

(II) under an agreement that

1. was entered into by the vendor within 30 days before or after the acquisition of the affiliate share by the vendor with a person or partnership that dealt, at all times during which the agreement was in force, at arm's length with the particular corporation,

2. provides for the purchase, sale or exchange of currency, and

3. can reasonably be considered to have been entered into by the vendor for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate share.

Specified gain

(2.02) For the purposes of clauses (2.01)(*b*)(ii)(A) and (B), a "specified gain" means a gain in respect of the settlement or extinguishment of a foreign currency debt referred to in sub-subclause (2.01)(*b*)(ii)(A)(I)2 or subclause (2.01)(*b*)(ii)(B)(I), as the case may be, or that arises under a particular agreement referred to in subclause (2.01)(*b*)(ii)(A)(II) or (B)(II), if the particular corporation or any person or partnership with which the particular corporation was not — at any time during which the foreign currency debt was outstanding or the particular agreement was in force, as the case may be — dealing at arm's length entered into an agreement that may reasonably be considered to have been entered into for the principal purpose of hedging any foreign exchange exposure arising in connection with the foreign currency debt or the particular agreement.

Application of subsection (2.11)

(2.1) Subsection (2.11) applies if

(*a*) a particular corporation resident in Canada has a particular allowable capital loss, determined without reference to this section, from the disposition at any time (referred to in subsection (2.11) as the "disposition time") by a partnership (referred to in subsections (2.11) and (2.12) as the "disposing partnership") of a share (referred to in subsection (2.11) as the "affiliate share") of the capital stock of a foreign affiliate of the particular corporation; or

(*b*) a foreign affiliate of a particular corporation resident in Canada has a particular allowable capital loss, determined without reference to this section, from the disposition at any time (referred to in subsection (2.11) as the "disposition time") by a partnership (referred to in subsections (2.11) and (2.12) as the "disposing partnership") of a share (referred to in subsection (2.11) as the "affiliate share") of the capital stock of another foreign affiliate of the particular corporation that would not be excluded property of the affiliate if the affiliate had owned the share immediately before the disposition time.

Loss limitation on disposition of foreign affiliate share by a partnership

(2.11) If this subsection applies, the amount of the particular allowable capital loss referred to in paragraph (2.1)(*a*) or (*b*) is deemed to be the greater of

(*a*) the amount determined by the formula

$$A - (B - C)$$

where

A is the amount of the particular allowable capital loss determined without reference to this section,

B is ½ of the total of all amounts each of which is an amount received before the disposition time, in respect of an exempt dividend on the affiliate share or on a share for which the affiliate share was substituted, by

(i) the particular corporation referred to in subsection (2.1),

(ii) another corporation that is related to the particular corporation,

(iii) a foreign affiliate of the particular corporation, or

(iv) a foreign affiliate of another corporation that is related to the particular corporation, and

C is the total of

(i) the total of all amounts each of which is ½ of the amount by which a loss (determined without reference to this section), from a previous disposition by a corporation, or a foreign affiliate described in the description of B, of the affiliate share or a share for which the affiliate share was substituted, was reduced under paragraph (2.01)(*a*) in respect of the exempt dividends referred to in the description of B,

(ii) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation or a

foreign affiliate described in the description of B, from a previous disposition by a partnership of the affiliate share or a share for which the affiliate share was substituted, was reduced under this paragraph in respect of the exempt dividends referred to in the description of B,

(iii) the total of all amounts each of which is ½ of the amount by which a loss (determined without reference to this section), from a previous disposition by a corporation, or a foreign affiliate described in the description of B, of an interest in a partnership, was reduced under paragraph (2.21)(*a*) in respect of the exempt dividends referred to in the description of B, and

(iv) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation, or a foreign affiliate described in the description of B, from a previous disposition by a partnership of an interest in another partnership, was reduced under paragraph (2.31)(*a*) in respect of the exempt dividends referred to in the description of B; and

(*b*) the lesser of

(i) the portion of the particular allowable capital loss, determined without reference to this section, that can reasonably be considered to be attributable to a fluctuation in the value of a currency other than Canadian currency relative to Canadian currency, and

(ii) ½ of the amount determined in respect of the particular corporation, or the foreign affiliate (that is referred to in paragraph (2.1)(*b*)) of the particular corporation, that is the amount of a gain (other than a specified gain) that

(A) was made within 30 days before or after the disposition time by the disposing partnership to the extent that the gain is reasonably attributable to the particular corporation or the foreign affiliate, as the case may be, and that

(I) is deemed under subsection 39(2) to be a capital gain of the disposing partnership for the taxation year that includes the time the gain was made from the disposition of currency other than Canadian currency, and

(II) is in respect of the settlement or extinguishment of a foreign currency debt that

1. was issued or incurred by the disposing partnership within 30 days before or after the acquisition of the affiliate share by the disposing partnership,

2. was, at all times at which it was a debt obligation of the disposing partnership, owing to a person or partnership that dealt, at all times during which the foreign currency debt was outstanding, at arm's length with the particular corporation, and

3. can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate share, or

(B) is a capital gain (to the extent that the capital gain is reasonably attributable to the particular corporation or the foreign affiliate, as the case may be) realized within

30 days before or after the disposition time by the disposing partnership under an agreement that

(I) was entered into by the disposing partnership, within 30 days before or after the acquisition of the affiliate share by the disposing partnership, with a person or partnership that dealt, at all times during which the agreement was in force, at arm's length with the particular corporation,

(II) provides for the purchase, sale or exchange of currency, and

(III) can reasonably be considered to have been entered into by the disposing partnership for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate share.

Specified gain

(2.12) For the purposes of subparagraph (2.11)(*b*)(ii), a "specified gain" means a gain in respect of the settlement or extinguishment of a foreign currency debt referred to in subclause (2.11)(*b*)(ii)(A)(II), or that arises under a particular agreement referred to in clause (2.11)(*b*)(ii)(B), if the disposing partnership or any person or partnership with which the particular corporation was not — at any time during which the foreign currency debt was outstanding or the particular agreement was in force, as the case may be — dealing at arm's length entered into an agreement that may reasonably be considered to have been entered into for the principal purpose of hedging any foreign exchange exposure arising in connection with the foreign currency debt or the particular agreement.

Application of subsection (2.21)

(2.2) Subsection (2.21) applies if

(*a*) a particular corporation (referred to in subparagraph (2.21)(*b*)(ii) as the "vendor", as the context requires) resident in Canada has a particular loss, determined without reference to this section, from the disposition by it at any time (referred to in subsection (2.21) as the "disposition time") of an interest (referred to in subsection (2.21) as the "partnership interest") in a partnership that has a direct or indirect interest in shares (referred to in subsection (2.21) as the "affiliate shares") of the capital stock of a foreign affiliate of the particular corporation; or

(*b*) a foreign affiliate (referred to in subparagraph (2.21)(*b*)(ii) as the "vendor") of a particular corporation resident in Canada has a particular loss, determined without reference to this section, from the disposition by it at any time (referred to in subsection (2.21) as the "disposition time") of an interest (referred to in subsection (2.21) as the "partnership interest") in a partnership that has a direct or indirect interest in shares (referred to in subsection (2.21) as the "affiliate shares") of the capital stock of another foreign affiliate of the particular corporation that would not be excluded property of the affiliate if the affiliate had owned the shares immediately before the disposition time.

Loss limitation on disposition of partnership that has foreign affiliate shares

(2.21) If this subsection applies, the amount of the particular loss referred to in paragraph (2.2)(*a*) or (*b*) is deemed to be the greater of

(*a*) the amount determined by the formula

$$A - (B - C)$$

where

A is the amount of the particular loss determined without reference to this section,

B is the total of all amounts each of which is an amount received before the disposition time, in respect of an exempt dividend on affiliate shares or on shares for which affiliate shares were substituted, by

(i) the particular corporation referred to in subsection (2.2),

(ii) another corporation that is related to the particular corporation,

(iii) a foreign affiliate of the particular corporation, or

(iv) a foreign affiliate of another corporation that is related to the particular corporation, and

C is the total of

(i) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from a previous disposition by a corporation, or a foreign affiliate described in the description of B, of the affiliate shares or shares for which the affiliate shares were substituted, was reduced under paragraph (2.01)(*a*) in respect of the exempt dividends referred to in the description of B,

(ii) the total of all amounts each of which is twice the amount by which an allowable capital loss (determined without reference to this section), of a corporation or a foreign affiliate described in the description of B, from a previous disposition by a partnership of the affiliate shares or shares for which the affiliate shares were substituted, was reduced under paragraph (2.11)(*a*) in respect of the exempt dividends referred to in the description of B,

(iii) the total of all amounts each of which is the amount by which a loss (determined without reference to this section), from a previous disposition by a corporation, or a foreign affiliate described in the description of B, of an interest in a partnership, was reduced under this paragraph in respect of the exempt dividends referred to in the description of B, and

(iv) the total of all amounts each of which is twice the amount by which an allowable capital loss (determined without reference to this section), of a corporation, or a foreign affiliate described in the description of B, from a previous disposition by a partnership of an interest in another partnership, was reduced under paragraph (2.31)(*a*) in respect of the exempt dividends referred to in the description of B; and

(*b*) the lesser of

(i) the portion of the particular loss, determined without reference to this section, that can reasonably be considered to be attributable to a fluctuation in the value of a currency other than Canadian currency relative to Canadian currency, and

(ii) the amount determined in respect of the vendor that is

(A) where the particular loss is a capital loss, the amount of a gain (other than a specified gain) that

(I) was made within 30 days before or after the disposition time by the vendor and that

1. is deemed under subsection 39(2) to be a capital gain of the vendor for the taxation year that includes the time the gain was made from the disposition of currency other than Canadian currency, and

2. is in respect of the settlement or extinguishment of a foreign currency debt that was issued or incurred by the vendor within 30 days before or after the acquisition of the partnership interest by the vendor and that was, at all times at which it was a debt obligation of the vendor owing to a person or partnership that dealt, at all times during which the foreign currency debt was outstanding, at arm's length with the particular corporation and can reasonably be considered to have been issued or incurred in relation to the acquisition of the partnership interest, or

(II) is a capital gain realized within 30 days before or after the disposition time by the vendor under an agreement that

1. was entered into by the vendor within 30 days before or after the acquisition of the partnership interest by the vendor with a person or partnership that dealt, at all times during which the agreement was in force, at arm's length with the particular corporation,

2. provides for the purchase, sale or exchange of currency, and

3. can reasonably be considered to have been entered into by the vendor for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the partnership interest, or

(B) in any other case, the amount of a gain (other than a specified gain or a capital gain) that was realized within 30 days before or after the disposition time by the vendor that is included in computing the income of the vendor for the taxation year that includes the time the gain was realized and

(I) that is in respect of the settlement or extinguishment of a foreign currency debt that

1. was issued or incurred by the vendor within 30 days before or after the acquisition of the partnership interest by the vendor,

2. was, at all times at which it was a debt obligation of the vendor owing to a person or partnership that dealt, at all times during which the foreign currency debt was outstanding, at arm's length with the particular corporation, and

3. can reasonably be considered to have been issued or incurred in relation to the acquisition of the partnership interest, or

(II) under an agreement that

1. was entered into by the vendor within 30 days before or after the acquisition of the partnership interest by the vendor with a person or partnership that dealt, at all times during which the agreement was in force, at arm's length with the particular corporation,

2. provides for the purchase, sale or exchange of currency, and

3. can reasonably be considered to have been entered into by the vendor for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the partnership interest.

Specified gain

(2.22) For the purposes of clauses (2.21)(*b*)(ii)(A) and (B), a "specified gain" means a gain in respect of the settlement or extinguishment of a foreign currency debt referred to in sub-subclause (2.21)(*b*)(ii)(A)(I)2 or subclause (2.21)(*b*)(ii)(B)(I), as the case may be, or that arises under a particular agreement referred to in subclause (2.21)(*b*)(ii)(A)(II) or (B)(II), if the particular corporation or any person or partnership with which the particular corporation was not — at any time during which the foreign currency debt was outstanding or the particular agreement was in force, as the case may be — dealing at arm's length entered into an agreement that may reasonably be considered to have been entered into for the principal purpose of hedging any foreign exchange exposure arising in connection with the foreign currency debt or the particular agreement.

Application of subsection (2.31)

(2.3) Subsection (2.31) applies if

(*a*) a particular corporation resident in Canada has a particular allowable capital loss, determined without reference to this section, from the disposition at any time (referred to in subsection (2.31) as the "disposition time") by a particular partnership of an interest (referred to in subsection (2.31) as the "partnership interest") in another partnership that has a direct or indirect interest in shares (referred to in subsection (2.31) as the "affiliate shares") of the capital stock of a foreign affiliate of the particular corporation; or

(*b*) a foreign affiliate of a particular corporation resident in Canada has a particular allowable capital loss, determined without reference to this section, from the disposition at any time (referred to in subsection (2.31) as the "disposition time") by a particular partnership of an interest (referred to in subsection (2.31) as the "partnership interest") in another partnership that has a direct or indirect interest in shares (referred to in subsection (2.31) as the "affiliate shares") of the capital stock of a foreign affiliate of the particular corporation that would not be excluded property of the affiliate if the affiliate had owned the shares immediately before the disposition time.

Loss limitation on disposition by a partnership of an indirect interest in foreign affiliate shares

(2.31) If this subsection applies, the amount of the particular allowable capital loss referred to in paragraph (2.3)(*a*) or (*b*) is deemed to be the greater of

(*a*) the amount determined by the formula

$$A - (B - C)$$

where

A is the amount of the particular allowable capital loss determined without reference to this section,

B is ½ of the total of all amounts each of which is an amount received before the disposition time, in respect of an exempt dividend on the affiliate shares or on shares for which the affiliate shares were substituted, by

(i) the particular corporation referred to in subsection (2.3),

(ii) another corporation that is related to the particular corporation,

(iii) a foreign affiliate of the particular corporation, or

(iv) a foreign affiliate of another corporation that is related to the particular corporation, and

C is the total of

(i) the total of all amounts each of which is ½ of the amount by which a loss (determined without reference to this section), from a previous disposition by a corporation, or a foreign affiliate described in the description of B, of the affiliate shares or shares for which the affiliate shares were substituted, was reduced under paragraph (2.01)(*a*) in respect of the exempt dividends referred to in the description of B,

(ii) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation or a foreign affiliate described in the description of B, from a previous disposition by a partnership of the affiliate shares or shares for which the affiliate shares were substituted, was reduced under paragraph (2.11)(*a*) in respect of the exempt dividends referred to in the description of B,

(iii) the total of all amounts each of which is ½ of the amount by which a loss (determined without reference to this section), from a previous disposition by a corporation, or a foreign affiliate described in the description of B, of an interest in a partnership, was reduced under paragraph (2.21)(*a*) in respect of the exempt dividends referred to in the description of B, and

(iv) the total of all amounts each of which is the amount by which an allowable capital loss (determined without reference to this section), of a corporation, or a foreign affiliate described in the description of B, from a previous disposition by a partnership of an interest in another partnership, was reduced under this paragraph in respect of the exempt dividends referred to in the description of B; and

(*b*) the lesser of

(i) the portion of the particular allowable capital loss, determined without reference to this section, that can reasonably be considered to be attributable to a fluctuation in the value of a currency other than Canadian currency relative to Canadian currency, and

(ii) ½ of the amount determined in respect of the particular corporation, or the foreign affiliate (that is referred to in paragraph (2.3)(*b*)), of the particular corporation, that is the amount of a gain (other than a specified gain) that

(A) was made within 30 days before or after the disposition time by the particular partnership to the extent that the gain is reasonably attributable to the particular corporation or the foreign affiliate, as the case may be, and that

(I) is deemed under subsection 39(2) to be a capital gain of the particular partnership for the taxation year that includes the time the gain was made from the disposition of currency other than Canadian currency, and

(II) is in respect of the settlement or extinguishment of a foreign currency debt that

1. was issued or incurred by the particular partnership within 30 days before or after the acquisition of the partnership interest by the particular partnership,

2. was, at all times at which it was a debt obligation of the particular partnership, owing to a person or partnership that dealt, at all times during which the foreign currency debt was outstanding, at arm's length with the particular corporation, and

3. can reasonably be considered to have been issued or incurred in relation to the acquisition of the partnership interest, or

(B) is a capital gain (to the extent that the capital gain is reasonably attributable to the particular corporation or the foreign affiliate, as the case may be) realized within 30 days before or after the disposition time by the particular partnership under an agreement that

(I) was entered into by the particular partnership, within 30 days before or after the acquisition of the partnership interest by the particular partnership, with a person or partnership that dealt, at all times during which the agreement was in force, at arm's length with the particular corporation,

(II) provides for the purchase, sale or exchange of currency, and

(III) can reasonably be considered to have been entered into by the particular partnership for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the partnership interest.

Specified gain

(2.32) For the purposes of subparagraph (2.31)(*b*)(ii), a "specified gain" means a gain in respect of the settlement or extinguishment of a foreign currency debt referred to in subclause (2.31)(*b*)(ii)(A)(II), or that arises under a particular agreement referred to in clause (2.31)(*b*)(ii)(B), if the particular partnership or any person or partnership with which the particular corporation was not — at any time during which the foreign currency debt was

outstanding or the particular agreement was in force, as the case may be — dealing at arm's length entered into an agreement that may reasonably be considered to have been entered into for the principal purpose of hedging any foreign exchange exposure arising in connection with the foreign currency debt or the particular agreement.

(4) The portion of subsection 93(3) of the Act before paragraph (*b*) is replaced by the following:

Exempt dividends

(3) For the purposes of subsections (2.01), (2.11), (2.21) and (2.31),

(*a*) a dividend received by a corporation resident in Canada is an exempt dividend to the extent of the amount in respect of the dividend that is deductible from the income of the corporation for the purposes of computing the taxable income of the corporation because of any of paragraphs 113(1)(*a*) to (*c*); and

(5) Subsection 93(4) of the Act is replaced by the following:

Loss on disposition of shares of foreign affiliate

(4) If a taxpayer resident in Canada or a foreign affiliate (which taxpayer or foreign affiliate is referred to in this subsection as the "transferee") of the taxpayer has acquired shares of the capital stock of one or more foreign affiliates (each referred to in this subsection as an "acquired affiliate") of the taxpayer on a disposition of shares (such shares disposed of being referred to in this subsection as the "disposed shares") of the capital stock of any other foreign affiliate of the taxpayer (other than, where the transferee is a foreign affiliate of the taxpayer, a disposition of shares that are, immediately before the acquisition, excluded property of the transferee or a disposition to which subsection 40(3.4) applies), the following rules apply:

(*a*) the capital loss, if any, of the transferee from the disposition, is deemed to be nil; and

(*b*) in computing the adjusted cost base to the transferee of a share of a particular class of the capital stock of an acquired affiliate that is owned by the transferee immediately after the disposition, there is to be added the amount determined by the formula

$$[(A - B) \times C/D] / E$$

where

A is the total of all amounts each of which is the cost amount to the transferee, immediately before the disposition, of a disposed share,

B is the total of

(i) the total of all amounts each of which is the proceeds of disposition of a disposed share, and

(ii) the total of all amounts in respect of the computation of losses of the transferee from the dispositions of the disposed shares, each of which is, in respect of the disposition of a disposed share, the amount by which the amount for A in the formula in paragraph (2.01)(*a*) exceeds the amount determined by that formula,

C is the fair market value, immediately after the disposition, of all shares of the particular class owned, immediately after the disposition, by the transferee ,

D is the fair market value, immediately after the disposition, of all shares owned, immediately after the disposition, by the transferee of the capital stock of all acquired affiliates, and

E is the number of shares of the particular class that are owned by the transferee immediately after the disposition.

(6) Subsection (1) applies in respect of elections in respect of dispositions that occur after Announcement Date. However, subsection (1) does not apply in respect of the determination of the income earned or realized of a foreign affiliate of a corporation under paragraph 55(5)(*d*) of the Act unless paragraph 55(5)(*d*) of the Act, as enacted by subsection 8(1), applies in respect of that determination.

(7) Subsection (2) applies to dispositions of shares of the capital stock of a foreign affiliate of a corporation that occur after Announcement Date. However, if the corporation elects under paragraph 24(2)(*a*) of this Act, subsection (2) applies to dispositions of shares of the capital stock of all foreign affiliates of the corporation that occur after February 27, 2004.

(8) Subsection (3) applies in respect of losses of a corporation resident in Canada, or of foreign affiliates of such a corporation, in respect of dispositions (referred to in paragraphs (*a*) and (*c*) as "relevant dispositions" in respect of the corporation) of shares and partnership interests that occur after February 27, 2004. However,

(*a*) subject to paragraph (*c*), in respect of relevant dispositions in respect of the corporation that occur before the day that is one year after Announcement Date, the Act is to be read without reference to its subsections 93(2.02), (2.12), (2.22) and (2.32), as enacted by subsection (3), and

(i) if the corporation does not elect under subparagraph (ii),

(A) paragraph 93(2.01)(*b*) of the Act, as enacted by subsection (3), is to be read as follows:

(*b*) the total of the following amounts determined in respect of the particular corporation, or the foreign affiliate (that is referred to in paragraph (2)(*b*)), of the particular corporation, as the case may be,

(i) the amount of the gain that is included in the determination made under subsection 39(2) of the capital gain or capital loss of the particular corporation or the foreign affiliate, as the case may be, for the taxation year that includes the time the gain was made from the disposition of currency of a country other than Canada that is in respect of

(A) the settlement or extinguishment of an obligation of the particular corporation or the foreign affiliate, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate share by the particular corporation or the foreign affiliate, as the case may be, or

(B) the redemption, acquisition or cancellation of a share of the capital stock of the particular corporation or the foreign affiliate, as the case may be, that can reasonably

be considered to have been issued in relation to the acquisition of the affiliate share by the particular corporation or the foreign affiliate, as the case may be, and

(ii) the amount of any gain realized by the particular corporation or the foreign affiliate, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired, by the particular corporation or the foreign affiliate, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate share.

(B) paragraph 93(2.11)(*b*) of the Act, as enacted by subsection (3), is to be read as follows:

(*b*) ½ of the total of the following amounts determined in respect of the particular corporation, or the foreign affiliate (that is referred to in paragraph (2.1)(*b*)), of the particular corporation, as the case may be,

(i) the amount of the gain of the particular corporation, the foreign affiliate or the disposing partnership (to the extent that the gain is reasonably attributable to the particular corporation or the foreign affiliate, as the case may be) that is included in the determination made under subsection 39(2) of the capital gain or capital loss of the particular corporation, the foreign affiliate or the disposing partnership, as the case may be, for the taxation year that includes the time the gain was made from the disposition of currency of a country other than Canada that is in respect of

(A) the settlement or extinguishment of an obligation of the particular corporation, the foreign affiliate or the disposing partnership, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate share by the disposing partnership, or

(B) the redemption, acquisition or cancellation of a share of the capital stock of the particular corporation or the foreign affiliate, as the case may be, that can reasonably be considered to have been issued in relation to the acquisition of the affiliate share by the disposing partnership, and

(ii) the amount of any gain realized by the disposing partnership (to the extent that the gain is reasonably attributable to the particular corporation or the foreign affiliate, as the case may be), the particular corporation or the foreign affiliate, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired, by the disposing partnership, the particular corporation or the foreign affiliate, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate share.

(C) paragraph 93(2.21)(*b*) of the Act, as enacted by subsection (3), is to be read as follows:

(*b*) the total of the following amounts determined in respect of the particular corporation, or the foreign affiliate (that is referred to in paragraph (2.2)(*b*)) of the particular corporation, as the case may be,

(i) the amount of the gain of the particular corporation, the foreign affiliate or the partnership (to the extent that the gain is reasonably attributable to the particular corporation or the foreign affiliate, as the case may be) that is included in the determination made under subsection 39(2) of the capital gain or capital loss of the particular corporation, the foreign affiliate or the partnership, as the case may be, for the taxation year that includes the time the gain was made from the disposition of currency of a country other than Canada that is in respect of

(A) the settlement or extinguishment of an obligation of the particular corporation, the foreign affiliate or the partnership, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate shares, or

(B) the redemption, acquisition or cancellation of a share of the particular corporation or the foreign affiliate, as the case may be, or of an interest in the partnership that can reasonably be considered to have been issued in relation to the acquisition of the affiliate shares, and

(ii) the amount of any gain realized by the particular corporation or the foreign affiliate, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired by the particular corporation, the foreign affiliate or the partnership, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate shares.

(D) paragraph 93(2.31)(*b*) of the Act, as enacted by subsection (3), is to be read as follows:

(*b*) ½ of the total of the following amounts determined in respect of the particular corporation, or the foreign affiliate (that is referred to in paragraph (2.3)(*b*)) of the particular corporation, as the case may be,

(i) the amount of the gain of the particular corporation, the foreign affiliate or the particular partnership (to the extent that the gain is reasonably attributable to the particular corporation or the foreign affiliate, as the case may be) that is included in the determination made under subsection 39(2) of the capital gain or capital loss of the particular corporation, the foreign affiliate or the particular partnership, as the case may be, for the taxation year that includes the time the gain was made from the disposition of currency of a country other than Canada that is in respect of

(A) the settlement or extinguishment of an obligation of the particular corporation, the foreign affiliate, the particular partnership or the other partnership, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate shares, or

(B) the redemption, acquisition or cancellation of a share of the particular corporation or the foreign affiliate, as the case may be, or an interest in the particular partnership or the other partnership, as the case may be, that can reasonably be considered to have been issued in relation to the acquisition of the affiliate shares, and

(ii) the amount of any gain realized by a partnership (to the extent that the gain is reasonably attributable to the particular corporation or the foreign affiliate, as the case may be), by the particular corporation or the foreign affiliate, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired by the partnership, the particular corporation or the foreign affiliate, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate shares.

(ii) if the corporation elects in writing under this subparagraph in respect of all relevant dispositions in respect of the corporation and files the election with the Minister of National Revenue on or before the day that is the later of the corporation's filing-due date for the corporation's taxation year that includes the day on which this Act is assented to and the day that is one year after the day on which this Act is assented to,

(A) in respect of subsection 93(2.01) of the Act, as enacted by subsection (3),

(I) the formula in paragraph (*a*) of that subsection 93(2.01) is, in respect of all relevant dispositions in respect of the corporation, to be read as follows:

$$A - (B - C) + D$$

(II) paragraph (*a*) of that subsection 93(2.01) is, in respect of all relevant dispositions in respect of the corporation, to be read as if it contained a description of D that read as follows:

D is the lesser of

(*a*) the amount, if any, by which the amount determined for B exceeds the amount determined for C, and

(*b*) the total of the following amounts determined in respect of the particular corporation, or the foreign affiliate (that is referred to in paragraph (2)(*b*)) of the particular corporation, as the case may be,

(i) the amount of the gain that is included in the determination made under subsection 39(2) of the capital gain or capital loss of the particular corporation or the foreign affiliate, as the case may be, for the taxation year that includes the time the gain was made from the disposition of currency of a country other than Canada that is in respect of

(A) the settlement or extinguishment of an obligation of the particular corporation or the foreign affiliate, as the case may be, that can reasonably be considered to have

been issued or incurred in relation to the acquisition of the affiliate share by the particular corporation or the foreign affiliate, as the case may be, or

(B) the redemption, acquisition or cancellation of a share of the capital stock of the particular corporation or the foreign affiliate, as the case may be, that can reasonably be considered to have been issued in relation to the acquisition of the affiliate share by the particular corporation or the foreign affiliate, as the case may be, and

(ii) the amount of any gain realized by the particular corporation or the foreign affiliate, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired, by the particular corporation or the foreign affiliate, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate share.

(III) paragraph (*b*) of that subsection 93(2.01) is, in respect of all relevant dispositions in respect of the corporation, to be read as follows:

(*b*) nil.

(B) in respect of subsection 93(2.11) of the Act, as enacted by subsection (3),

(I) the formula in paragraph (*a*) of that subsection 93(2.11) is, in respect of all relevant dispositions in respect of the corporation, to be read as follows:

$$A - (B - C) + D$$

(II) paragraph (*a*) of that subsection 93(2.11) is, in respect of all relevant dispositions in respect of the corporation, to be read as if it contained a description of D that read as follows:

D is the lesser of

(*a*) the amount, if any, by which the amount determined for B exceeds the amount determined for C, and

(*b*) ½ of the total of the following amounts determined in respect of the particular corporation, or the foreign affiliate (that is referred to in paragraph (2.1)(*b*)) of the particular corporation, as the case may be,

(i) the amount of the gain of the particular corporation, the foreign affiliate or the disposing partnership (to the extent that the gain is reasonably attributable to the particular corporation or the foreign affiliate, as the case may be) that is included in the determination made under subsection 39(2) of the capital gain or capital loss of the particular corporation, the foreign affiliate or the disposing partnership, as the case may be, for the taxation year that includes the time the gain was made from the disposition of currency of a country other than Canada that is in respect of

(A) the settlement or extinguishment of an obligation of the particular corporation, the foreign affiliate or the disposing partnership, as the case may be, that can rea-

sonably be considered to have been issued or incurred in relation to the acquisition of the affiliate share by the disposing partnership, or

(B) the redemption, acquisition or cancellation of a share of the capital stock of the particular corporation or the foreign affiliate, as the case may be, that can reasonably be considered to have been issued in relation to the acquisition of the affiliate share by the disposing partnership, and

(ii) the amount of any gain realized by the disposing partnership (to the extent that the gain is reasonably attributable to the particular corporation or the foreign affiliate, as the case may be), the particular corporation or the foreign affiliate, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired, by the disposing partnership, the particular corporation or the foreign affiliate, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate share.

(III) paragraph (*b*) of that subsection 93(2.11) is, in respect of all relevant dispositions in respect of the corporation, to be read as follows:

(*b*) nil.

(C) in respect of subsection 93(2.21) of the Act, as enacted by subsection (3),

(I) the formula in paragraph (*a*) of that subsection 93(2.21) is, in respect of all relevant dispositions in respect of the corporation, to be read as follows:

$$A - (B - C) + D$$

(II) paragraph (*a*) of that subsection 93(2.21) is, in respect of all relevant dispositions in respect of the corporation, to be read as if it contained a description of D that read as follows:

D is the lesser of

(*a*) the amount, if any, by which the amount determined for B exceeds the amount determined for C, and

(*b*) the total of the following amounts determined in respect of the particular corporation, or the foreign affiliate (that is referred to in paragraph (2.2)(*b*)) of the particular corporation, as the case may be,

(i) the amount of the gain of the particular corporation, the foreign affiliate or the partnership (to the extent that the gain is reasonably attributable to the particular corporation or the foreign affiliate, as the case may be) that is included in the determination made under subsection 39(2) of the capital gain or capital loss of the particular corporation, the foreign affiliate or the partnership, as the case may be, for the taxation year that includes the time the gain was made from the disposition of currency of a country other than Canada that is in respect of

(A) the settlement or extinguishment of an obligation of the particular corporation, the foreign affiliate or the partnership, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate shares, or

(B) the redemption, acquisition or cancellation of a share of the particular corporation or the foreign affiliate, as the case may be, or of an interest in the partnership that can reasonably be considered to have been issued in relation to the acquisition of the affiliate shares, and

(ii) the amount of any gain realized by the particular corporation or the foreign affiliate, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired by the particular corporation, the foreign affiliate or the partnership, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate shares.

(III) paragraph (*b*) of that subsection 93(2.21) is, in respect of all relevant dispositions in respect of the corporation, to be read as follows:

(*b*) nil.

(D) in respect of subsection 93(2.31) of the Act, as enacted by subsection (3),

(I) the formula in paragraph (*a*) of that subsection 93(2.31) is, in respect of all relevant dispositions in respect of the corporation, to be read as follows:

$$A - (B - C) + D$$

(II) paragraph (*a*) of that subsection 93(2.31) is, in respect of all relevant dispositions in respect of the corporation, to be read as if it contained a description of D that read as follows:

D is the lesser of

(*a*) the amount, if any, by which the amount determined for B exceeds the amount determined for C, and

(*b*) ½ of the total of the following amounts determined in respect of the particular corporation, or the foreign affiliate (that is referred to in paragraph (2.3)(*b*)) of the particular corporation, as the case may be,

(i) the amount of the gain of the particular corporation, the foreign affiliate or the particular partnership (to the extent that the gain is reasonably attributable to the particular corporation or the foreign affiliate, as the case may be) that is included in the determination made under subsection 39(2) of the capital gain or capital loss of the particular corporation, the foreign affiliate or the particular partnership, as the case may be, for the taxation year that includes the time the gain was made from the disposition of currency of a country other than Canada that is in respect of

(A) the settlement or extinguishment of an obligation of the particular corporation, the foreign affiliate, the particular partnership or the other partnership, as the case may be, that can reasonably be considered to have been issued or incurred in relation to the acquisition of the affiliate shares, or

(B) the redemption, acquisition or cancellation of a share of the particular corporation or the foreign affiliate, as the case may be, or an interest in the particular partnership or the other partnership, as the case may be, that can reasonably be considered to have been issued in relation to the acquisition of the affiliate shares, and

(ii) the amount of any gain realized by a partnership (to the extent that the gain is reasonably attributable to the particular corporation or the foreign affiliate, as the case may be), by the particular corporation or the foreign affiliate, as the case may be, under an agreement that provides for the purchase, sale or exchange of currency, or from the disposition of a currency, which agreement or currency, as the case may be, can reasonably be considered to have been entered into or acquired by the partnership, the particular corporation or the foreign affiliate, as the case may be, for the principal purpose of hedging the foreign exchange exposure arising in connection with the acquisition of the affiliate shares.

(III) paragraph (*b*) of that subsection 93(2.31) is, in respect of all relevant dispositions in respect of the corporation, to be read as follows:

(*b*) nil.

(*b*) if the corporation elects in writing under this paragraph in respect of all losses of the corporation, and of all foreign affiliates of the corporation, in respect of dispositions (referred to in this paragraph as "pertinent dispositions" in respect of the corporation) of shares and partnership interests that occur on or before February 27, 2004 and files the election with the Minister of National Revenue on or before the day that is the later of the corporation's filing-due date for the corporation's taxation year that includes the day on which this Act is assented to and the day that is one year after the day on which this Act is assented to,

(i) subsections 93(2) and (2.01), and (where paragraph (*c*) applies) 93(2.02), of the Act, as enacted by subsection (3), with the modifications described in paragraph (*a*) (if applicable) being taken into account, also apply in respect of all pertinent dispositions in respect of the corporation that occur after 1994 and on or before February 27, 2004, except that the references to "twice" in that subsection 93(2.01), are, for taxation years of the corporation that

(A) end before February 28, 2000, to be read as references to "4/3 of", and

(B) include February 28, 2000 or October 17, 2000 or that begin after February 28, 2000 and end before October 17, 2000, to be read as references to "the fraction that is the reciprocal of the fraction in paragraph 38(*a*), as amended by S.C. 2001, c. 17, that applies to the taxpayer for the year, multiplied by", and

(ii) subsections 93(2.1), (2.11), (2.2), (2.21), (2.3) and (2.31) and (where paragraph (*c*) applies) 93(2.12), (2.22) and (2.32), of the Act, as enacted by subsection (3), with the modifications described in paragraph (*a*) (if applicable) being taken into account, also apply in respect of all pertinent dispositions in respect of the corporation that occur after November 1999 and on or before February 27, 2004, except that the references to "twice" in those subsections 93(2.11), (2.21) and (2.31), are, for taxation years of the corporation that

(A) end before February 28, 2000, to be read as references to "4/3 of", and

(B) include February 28, 2000 or October 17, 2000 or that begin after February 28, 2000 and end before October 17, 2000, to be read as references to "the fraction that is the reciprocal of the fraction in paragraph 38(*a*), as amended by S.C. 2001, c. 17, that applies to the taxpayer for the year, multiplied by"; and

(*c*) if the corporation elects in writing under this paragraph in respect of all relevant dispositions in respect of the corporation that occur before the day that is one year after Announcement Date and files the election with the Minister of National Revenue on or before the day that is the later of the corporation's filing-due date for the corporation's taxation year that includes the day on which this Act is assented to and the day that is one year after the day on which this Act is assented to, paragraph (*a*) does not apply in respect of all those relevant dispositions.

(9) Subsection (4) applies where subsection 93(2.01) of the Act, as enacted by subsection (3), applies except that,

(*a*) where that subsection 93(2.01) applies but subsection 93(2.11) of the Act, as enacted by subsection (3), does not apply, the portion of subsection 93(3) of the Act before paragraph (*a*), as enacted by subsection (4), is to be read as follows:

(3) For the purposes of subsection (2.01),

(*b*) in respect of dispositions that occur on or before Announcement Date, paragraph 93(3)(*a*) of the Act, as enacted by subsection (4), is to be read as follows:

(*a*) a dividend received by a corporation resident in Canada is an exempt dividend to the extent of the amount in respect of the dividend that is deductible from the income of the corporation for the purposes of computing the taxable income of the corporation because of paragraph 113(1)(*a*), (*b*) or (*c*); and

(10) Subsection (5) applies to acquisitions of shares of the capital stock of a foreign affiliate of a taxpayer that occur after February 27, 2004. However, if

(*a*) the acquisition occurs on or before Announcement Date, the portion of subsection 93(4) of the Act before paragraph (*a*), as enacted by subsection (5), is to be read as follows:

(4) If a taxpayer resident in Canada or a foreign affiliate (which taxpayer or foreign affiliate is referred to in this subsection as the "transferee") of the taxpayer has acquired shares of the capital stock of one or more foreign affiliates (each referred to in this subsection as an "acquired affiliate") of the taxpayer on a disposition of shares (such shares disposed of

being referred to in this subsection as the "disposed shares") of the capital stock of any other foreign affiliate of the taxpayer (other than a disposition to which subsection 40(3.4) applies), the following rules apply:

(*b*) the taxpayer has elected under paragraph (8)(*b*), subsection (5), with the portion of subsection 93(4) of the Act before paragraph (*a*), as enacted by that subsection, being read as required by paragraph (*a*), applies to all acquisitions of shares of the capital stock of all foreign affiliates of the taxpayer that occur after 1994.

15. (1) The portion of subsection 93.1(1) of the Act before paragraph (*a*) is replaced by the following:

Shares held by a partnership

93.1 (1) For the purposes of determining whether a non-resident corporation is a foreign affiliate of a corporation resident in Canada for the purposes of subsections (2) and 20(12), sections 90, 93 and 113, paragraph 128.1(1)(*d*), (and any regulations made for the purposes of those provisions), section 95 (to the extent that that section is applied for the purposes of those provisions) and section 126, where based on the assumptions contained in paragraph 96(1)(*c*), at any time shares of a class of the capital stock of a corporation are owned by a partnership or are deemed under this subsection to be owned by a partnership, each member of the partnership is deemed to own at that time the number of those shares that is equal to the proportion of all those shares that

(2) Section 93.1 of the Act is amended by adding the following after subsection (2):

Tiered partnerships

(3) 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, 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, for the purposes of applying

(*a*) except to the extent that the context otherwise requires, a provision of this subdivision;

(*b*) any of paragraphs 13(21.2)(*a*), 14(12)(*a*), 18(13)(*a*), 40(2)(*e.1*), (*e.3*) and (*g*) and (3.3)(*a*); and

(*c*) subsection 40(3.6).

(3) Subsection (1) applies after Announcement Date.

(4) Subsection (2) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after Announcement Date.

16. (1) The formula in the definition "foreign accrual property income" in subsection 95(1) of the Act is replaced by the following:

$$(A + A.1 + A.2 + B + C) - (D + E + F + F.1 + G + H)$$

(2) The description of B in the definition "foreign accrual property income" in subsection 95(1) of the Act is replaced by the following:

B is the total of all amounts each of which is the portion of the affiliate's income (to the extent that the income is not included under the description of A) for the year, or of the

affiliate's taxable capital gain for the year that can reasonably be considered to have accrued after its 1975 taxation year, from a disposition of property

(*a*) that is not, at the time of disposition, excluded property of the affiliate, or

(*b*) that is, at the time of disposition, excluded property of the affiliate, if any of paragraphs (2)(*c*) to (*e*) or 88(3)(*a*) applies to the disposition,

(3) The description of E in the definition "foreign accrual property income" in subsection 95(1) of the Act is replaced by the following:

E is the lesser of

(*a*) the amount of the affiliate's allowable capital losses for the year from dispositions of property (other than excluded property and property in respect of which an election is made by the taxpayer under subsection 88(3.3)) that can reasonably be considered to have accrued after its 1975 taxation year, and

(*b*) the total of all amounts each of which is the portion of a taxable capital gain of the affiliate that is included in the amount determined for B in respect of the affiliate for the year,

(4) The definition "foreign accrual property income" in subsection 95(1) of the Act is amended by adding the following after the description of F:

F.1 is the lesser of

(*a*) the prescribed amount for the year, and

(*b*) the amount, if any, by which

(i) the total of all amounts each of which is the portion of a taxable capital gain of the affiliate that is included in the amount determined for B in respect of the affiliate for the year

exceeds

(ii) the amount determined for E in respect of the affiliate for the year,

(5) Paragraph (*b*) of the description of G in the definition "foreign accrual property income" in subsection 95(1) of the Act is replaced by the following:

(*b*) the total of all amounts determined for D to F.1 in respect of the affiliate for the year, and

(6) Subparagraph (*b*)(i) of the definition "participating percentage" in subsection 95(1) of the Act is replaced by the following:

(i) the percentage that would be the taxpayer's equity percentage in the affiliate at the end of that taxation year on the assumption that the taxpayer owned no shares other than the particular share (but in no case shall that assumption be made for the purpose of determining whether or not a corporation is a foreign affiliate of the taxpayer) if

(A) the affiliate and each corporation that is relevant to the determination of the taxpayer's equity percentage in the affiliate have, at that time, only one class of issued shares, and

(B) no foreign affiliate (referred to in this clause as the "upper-tier affiliate") of the taxpayer that is relevant to the determination of the taxpayer's equity percentage in the affiliate has, at that time, an equity percentage in a foreign affiliate (including, for greater certainty, the affiliate) of the taxpayer that has an equity percentage in the upper-tier affiliate, and

(7) Subsection 95(1) of the Act is amended by adding the following in alphabetical order:

"designated liquidation and dissolution" « *liquidation et dissolution désignées* »

"designated liquidation and dissolution", of a foreign affiliate (referred to in this definition as the "disposing affiliate") of a taxpayer, means a liquidation and dissolution of the disposing affiliate in respect of which

(*a*) the taxpayer had, immediately before the time of the earliest distribution of property by the disposing affiliate in the course of the liquidation and dissolution, a surplus entitlement percentage in respect of the disposing affiliate of not less than 90%,

(*b*) both

(i) the percentage determined by the following formula is greater than or equal to 90%:

A/B

where

A is the amount, if any, by which

(A) the total of all amounts each of which is the fair market value, at the time at which it is distributed, of a property that is distributed by the disposing affiliate, in respect of shares of the capital stock of the disposing affiliate, in the course of the liquidation and dissolution to one particular shareholder of the disposing affiliate that was, immediately before the time of the distribution, a foreign affiliate of the taxpayer

exceeds

(B) the total of all amounts each of which is an amount owing (other than an unpaid dividend) by, or an obligation of, the disposing affiliate that was assumed or cancelled by the particular shareholder in consideration for a property referred to in clause (A), and

B is the amount, if any, by which

(A) the total of all amounts each of which is the fair market value, at the time at which it is distributed, of a property that is distributed by the disposing affiliate, in respect of shares of the capital stock of the disposing affiliate, to a shareholder of the disposing affiliate in the course of the liquidation and dissolution

exceeds

(B) the total of all amounts each of which is an amount owing (other than an unpaid dividend) by, or an obligation of, the disposing affiliate that was assumed or cancelled by a shareholder of the disposing affiliate in consideration for a property referred to in clause (A), and

(ii) at the time of each distribution of property by the disposing affiliate in the course of the liquidation and dissolution in respect of shares of the capital stock of the disposing affiliate, the particular shareholder holds shares of that capital stock that would, if an annual general meeting of the shareholders of the disposing affiliate were held at that time, entitle it to 90% or more of the votes that could be cast under all circumstances at the meeting, or

(*c*) one particular shareholder of the disposing affiliate that was, throughout the liquidation and dissolution, a foreign affiliate of the taxpayer owns not less than 90% of the issued shares of each class of the capital stock of the disposing affiliate throughout the liquidation and dissolution;

"taxable Canadian business" « *entreprise canadienne imposable* »

"taxable Canadian business", at any time, of a foreign affiliate of a taxpayer resident in Canada or of a partnership of which a foreign affiliate of a taxpayer resident in Canada is a member (which foreign affiliate or partnership is referred to in this definition as the "operator"), means a business the income from which

(*a*) is, or would be if there were income from the business for the operator's taxation year or fiscal period that includes that time, included in computing the foreign affiliate's taxable income earned in Canada for a taxation year under subparagraph 115(1)(*a*)(ii), and

(*b*) is not, or would not be if there were income from the business for the operator's taxation year or fiscal period that includes that time, exempt, because of a tax treaty with a country, from tax under this Part;

(8) Paragraph 95(2)(*c*) of the Act is replaced by the following:

(*c*) if a foreign affiliate (referred to in this paragraph as the "disposing affiliate") of a taxpayer has, at any time, disposed of capital property (other than property the adjusted cost base of which, at that time, is greater than the amount that would, in the absence of this paragraph, be the disposing affiliate's proceeds of disposition of the property in respect of the disposition) that was shares (referred to in this paragraph as the "shares disposed of") of the capital stock of another foreign affiliate of the taxpayer to any other corporation that was, immediately after that time, a foreign affiliate (referred to in this paragraph as the "acquiring affiliate") of the taxpayer for consideration that includes shares of the capital stock of the acquiring affiliate,

(i) the cost to the disposing affiliate of any property (other than shares of the capital stock of the acquiring affiliate) receivable by the disposing affiliate as consideration for the disposition is deemed to be the fair market value of the property at that time,

(ii) the cost to the disposing affiliate of each share of a class of the capital stock of the acquiring affiliate that is receivable by the disposing affiliate as consideration for the disposition is deemed to be the amount determined by the formula

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

where

A is the total of all amounts each of which is the relevant cost base to the disposing affiliate at that time, in respect of the taxpayer, of a share disposed of,

B is the fair market value at that time of the consideration receivable for the disposition (other than shares of the capital stock of the acquiring affiliate),

C is the fair market value, immediately after that time, of the share, and

D is the fair market value, immediately after that time, of all shares of the capital stock of the acquiring affiliate receivable by the disposing affiliate as consideration for the disposition,

(iii) the disposing affiliate's proceeds of disposition of the shares are deemed to be an amount equal to the cost to it of all shares and other property receivable by it from the acquiring affiliate as consideration for the disposition, and

(iv) the cost to the acquiring affiliate of the shares acquired from the disposing affiliate is deemed to be an amount equal to the disposing affiliate's proceeds of disposition referred to in subparagraph (iii);

(9) Subparagraph 95(2)(*d*)(iv) of the Act is replaced by the following:

(iv) "adjusted cost bases" were read as "relevant cost bases, in respect of the taxpayer,";

(10) Paragraphs 95(2)(*d.1*) to (*e.1*) of the Act are replaced by the following:

(*d.1*) if there has been a foreign merger of two or more predecessor foreign corporations to form a new foreign corporation that is, immediately after the merger, a foreign affiliate of a taxpayer and one or more of the predecessor foreign corporations (each being referred to in this paragraph as a "foreign affiliate predecessor") was, immediately before the merger, a foreign affiliate of the taxpayer,

(i) each property of the new foreign corporation that was a property of a foreign affiliate predecessor immediately before the merger is deemed to have been

(A) disposed of by the foreign affiliate predecessor immediately before the merger for proceeds of disposition equal to the relevant cost base of the property to the foreign affiliate predecessor, in respect of the taxpayer, at that time, and

(B) acquired by the new foreign corporation, at that time, at a cost equal to the amount determined under clause (A),

(ii) the new foreign corporation is deemed to be the same corporation as, and a continuation of, each foreign affiliate predecessor for the purposes of applying

(A) this subsection and the definition "foreign accrual property income" in subsection (1) with respect to any disposition by the new foreign corporation of any property to which subparagraph (i) applied,

(B) subsections 13(21.2), 14(12), 18(15) and 40(3.4) in respect of any property that was disposed of, at any time before the merger, by a foreign affiliate predecessor, and

(C) paragraph 40(3.5)(*c*) in respect of any share that was deemed under that paragraph to be owned, at any time before the merger, by a foreign affiliate predecessor, and

(iii) for the purposes of the description of A.2 in the definition "foreign accrual property income" in subsection (1), the total of all amounts each of which is the amount determined for G in respect of a foreign affiliate predecessor for its last taxation year that ends on or before the time of the merger is deemed to be the amount determined for G in respect of the new foreign corporation for its taxation year that immediately precedes its first taxation year;

(*e*) notwithstanding subsection 69(5), if at any time a foreign affiliate (referred to in this paragraph as the "shareholder affiliate") of a taxpayer receives a property (referred to in this paragraph as the "distributed property") from another foreign affiliate (referred to in this paragraph as the "disposing affiliate") of the taxpayer on a liquidation and dissolution of the disposing affiliate and the distributed property is received in respect of shares of the capital stock of the disposing affiliate that are disposed of on the liquidation and dissolution,

(i) the distributed property is deemed to have been disposed of at that time by the disposing affiliate to the shareholder affiliate for proceeds of disposition equal to the relevant cost base to the disposing affiliate of the distributed property in respect of the taxpayer, immediately before that time, if

(A) the liquidation and dissolution is a designated liquidation and dissolution of the disposing affiliate, or

(B) the distributed property is a share of the capital stock of another foreign affiliate of the taxpayer that was, immediately before that time, excluded property of the disposing affiliate,

(ii) if subparagraph (i) does not apply to the distributed property, the distributed property is deemed to have been disposed of at that time by the disposing affiliate to the shareholder affiliate for proceeds of disposition equal to the distributed property's fair market value at that time,

(iii) the distributed property is deemed to have been acquired, at that time, by the shareholder affiliate at a cost equal to the amount determined under subparagraph (i) or (ii) to be the disposing affiliate's proceeds of disposition of the distributed property,

(iv) each share of a class of the capital stock of the disposing affiliate that is disposed of by the shareholder affiliate on the liquidation and dissolution of the disposing affiliate is deemed to be disposed of for proceeds of disposition equal to

(A) if the liquidation and dissolution is a designated liquidation and dissolution of the disposing affiliate

(I) where the amount that would, if clause (B) applied, be determined under that clause in respect of the share is greater than or equal to the adjusted cost base of the share to the shareholder affiliate immediately before the disposition, that adjusted cost base, or

(II) where the adjusted cost base of the share to the shareholder affiliate immediately before the disposition exceeds the amount that would, if clause (B) applied, be determined under that clause in respect of the share

1. if the share is not excluded property of the disposing affiliate, that adjusted cost base, and

2. in any other case, the amount that would be determined under clause (B), and

(B) in any other case, the amount determined by the formula

$$(A – B)/C$$

where

A is the total of all amounts each of which is the cost to the shareholder affiliate of a distributed property, as determined under subparagraph (iii), received, at any time, in respect of the class,

B is the total of all amounts each of which is an amount owing (other than an unpaid dividend) by, or an obligation of, the disposing affiliate that was assumed or cancelled by the shareholder affiliate in consideration for the distribution of a distributed property referred to in the description of A, and

C is the total number of issued and outstanding shares of the class that are owned by the shareholder affiliate during the liquidation and dissolution, and

(v) if the liquidation and dissolution is a designated liquidation and dissolution of the disposing affiliate,

(A) the shareholder affiliate is deemed to be the same corporation as, and a continuation of, the disposing affiliate for the purposes of applying

(I) this subsection and the definition “foreign accrual property income” in subsection (1) with respect to any disposition by the shareholder affiliate of any property to which clause (i)(A) applied,

(II) subsections 13(21.2), 14(12), 18(15) and 40(3.4) in respect of any property that was disposed of, at any time before the liquidation and dissolution, by the disposing affiliate, and

(III) paragraph 40(3.5)(*c*) in respect of any share that was deemed under that paragraph to be owned, at any time before the liquidation and dissolution, by the disposing affiliate, and

(B) for the purposes of the description of A.2 in the definition "foreign accrual property income" in subsection (1), the amount, if any, determined for G in respect of the disposing affiliate for its first taxation year that ends after the beginning of the liquidation and dissolution is to be added to the amount otherwise determined for G in respect of the shareholder affiliate for its taxation year that immediately precedes its taxation year that includes the time at which the liquidation and dissolution began;

(11) Subparagraph 95(2)(*f.11*)(i) of the Act is replaced by the following:

(i) if the amount is described in subparagraph (*f*)(i), this Act is to be

(A) read without reference to section 26 of the *Income Tax Application Rules*, and

(B) applied as if, in respect of any debt obligation owing by the foreign affiliate or a partnership of which the foreign affiliate is a member (which foreign affiliate or partnership is referred to in this clause as the "debtor"), each capital gain or loss of the debtor that is deemed to arise under subsection 39(2) or (3) in respect of the debt obligation were from a disposition of property that was held by the debtor throughout the period during which the debt obligation was owed by the debtor and, for greater certainty, at the time of the disposition,

(12) Subparagraph 95(2)(*f.11*)(ii) of the Act is amended by striking out "and" at the end of clause (A), adding "and" at the end of clause (B) and adding the following after clause (B):

(C) this Act is to be applied as if, in respect of any debt obligation owing by the foreign affiliate or a partnership of which the foreign affiliate is a member (which foreign affiliate or partnership is referred to in this clause as the "debtor"), each amount of income or loss of the debtor — from a property, from a business other than an active business or from a non-qualifying business — in respect of the debt obligation were from such a property that was held, or such a business that was carried on, as the case may be, by the debtor throughout the period during which the debt obligation was owed by the debtor and at the time at which the debt obligation was settled or extinguished;

(13) Subparagraph 95(2)(*f.12*)(i) of the Act is replaced by the following:

(i) subject to paragraph (*f.13*), each capital gain, capital loss, taxable capital gain and allowable capital loss of the foreign affiliate for the taxation year from the disposition, at any time, of a property that, at that time, would, if this Act were read without reference to paragraph (*i*), be excluded property of the foreign affiliate,

(14) Paragraphs 95(2)(*f.14*) and (*f.15*) of the Act are replaced by the following:

(*f.14*) a foreign affiliate of a taxpayer shall determine using Canadian currency each amount of its income, loss, capital gain, capital loss, taxable capital gain or allowable

capital loss for a taxation year, other than an amount to which paragraph (*f.12*),(*f.13*) or (*f.15*) applies;

(*f.15*) for the purposes of applying paragraph (*f*)(i) in respect of a debt obligation owing by a foreign affiliate of a taxpayer, or a partnership of which the foreign affiliate is a member, that is a debt referred to in subparagraph (*i*)(i) or (ii) and for the purposes of applying paragraph (*f.12*)(i)

(i) the references in subsection 39(2) to "Canadian currency" are to be read as "the taxpayer's calculating currency", and

(ii) the reference in the definition "foreign currency debt" in subsection 111(8), as that definition applies for the purposes of subsection 39(2), to "currency of a country other than Canada" is to be read as "currency other than the taxpayer's calculating currency";

(15) Subparagraph 95(2)(*g*)(ii) of the Act is replaced by the following:

(ii) the redemption, acquisition or cancellation of a share of the capital stock of a qualified foreign affiliate by the qualified foreign affiliate, or

(16) Paragraph 95(2)(*g.02*) of the Act is repealed.

(17) Subparagraph 95(2)(*k*)(iv) of the Act is replaced by the following:

(iv) if the foreign business of the affiliate is a business in respect of which the affiliate would, if the foreign business were carried on in Canada, be required by law to report to a regulating authority in Canada such as the Superintendent of Financial Institutions or a similar authority of a province,

(A) the affiliate is deemed to be required by law to report to and to be subject to the supervision of such regulating authority, and

(B) if the affiliate is a life insurer and the foreign business of the affiliate is a life insurance business, the life insurance policies issued in the conduct of that business are deemed to be life insurance policies in Canada, and

(18) Paragraph 95(2)(*k*) of the Act, as amended by subsection (17), is replaced by the following:

(*j.1*) paragraph (*j.2*) applies if, in a particular taxation year of a foreign affiliate of a taxpayer or in a particular fiscal period of a partnership (which foreign affiliate or partnership is referred to in this paragraph and paragraph (*j.2*) as the "operator" and which particular taxation year or particular fiscal period is referred to in this paragraph and paragraph (*j.2*) as the "specified taxation year") a member of which is, at the end of the period, a foreign affiliate of a taxpayer,

(i) the operator carries on a business,

(ii) the business includes the insuring of risks,

(iii) the business is not, at any time, a taxable Canadian business,

(iv) the business is

(A) an investment business,

(B) a non-qualifying business, or

(C) a business whose activities include activities deemed by paragraph (*a.2*) or (*b*) to be a separate business, other than an active business, carried on by the affiliate, and

(v) in respect of the investment business, non-qualifying business or separate business (each of these businesses being referred to in this subparagraph and paragraph (*j*.2) as a "foreign business"), as the case may be, the operator would, if it were a corporation carrying on the foreign business in Canada, be required by law to report to, and be subject to the supervision of, a regulatory authority that is the Superintendent of Financial Institutions or is a similar authority of a province;

(*j.2*) if this paragraph applies, in computing the operator's income or loss from the foreign business for the specified taxation year and each subsequent taxation year or fiscal period in which the foreign business is carried on by the operator

(i) the operator is deemed to carry on the foreign business in Canada throughout that part of the specified taxation year, and of each of those subsequent taxation years or fiscal periods, in which the foreign business is carried on by the operator, and

(ii) for the purposes of Part XIV of the *Income Tax Regulations*,

(A) the operator is deemed to be required by law to report to, and to be subject to the supervision of, the regulatory authority referred to in subparagraph (*j.1*)(v), and

(B) if the operator is a life insurer and the foreign business is part of a life insurance business, the life insurance policies issued in the conduct of the foreign business are deemed to be life insurance policies in Canada;

(*k*) paragraph (*k.1*) applies if

(i) in a particular taxation year of a foreign affiliate of a taxpayer or in a particular fiscal period of a partnership (which foreign affiliate or partnership is referred to in this paragraph and paragraph (*k.1*) as the "operator" and which particular taxation year or particular fiscal period is referred to in this paragraph and paragraph (*k.1*) as the "specified taxation year") a member of which is, at the end of the period, a foreign affiliate of a taxpayer,

(A) the operator carries on a business,

(B) the business is not, at any time, a taxable Canadian business, and

(C) the business is

(I) an investment business,

(II) a non-qualifying business,

(III) a business whose activities include activities deemed by any of paragraphs (*a.1*) to (*b*) to be a separate business, other than an active business, carried on by the affiliate, or

(IV) a business the income from which is included by paragraph (*l*) in computing the affiliate's income from property for the specified taxation year, and

(ii) in the taxation year of the affiliate or the fiscal period of the partnership that includes the day that is immediately before the beginning of the specified taxation year,

(A) the affiliate or partnership carried on the business, or the activities so deemed to be a separate business, as the case may be,

(B) the business was not, or the activities were not, as the case may be, at any time, part of a taxable Canadian business, and

(C) the business was not described in any of subclauses (i)(C)(I), (II) and (IV), or the activities were not described in subclause (i)(C)(III), as the case may be;

(*k.1*) if this paragraph applies, in computing the operator's income or loss from the investment business, non-qualifying business, separate business or business described in paragraph (*l*) (each of these businesses being referred to in this paragraph as a "foreign business"), as the case may be, and the operator's capital gain or capital loss from the disposition of property used or held in the course of carrying on the foreign business, for the specified taxation year and each subsequent taxation year or fiscal period in which the foreign business is carried on by the operator

(i) the operator is deemed

(A) to have begun to carry on the foreign business in Canada at the beginning of the specified taxation year, and

(B) to carry on the foreign business in Canada throughout that part of the specified taxation year, and of each of those subsequent taxation years or fiscal periods, in which the foreign business is carried on by the operator,

(ii) where, in respect of the foreign business, the operator would, if it were a corporation carrying on the foreign business in Canada, be required by law to report to, and be subject to the supervision of, a regulatory authority that is the Superintendent of Financial Institutions or is a similar authority of a province,

(A) the operator is deemed to be required by law to report to, and to be subject to the supervision of, the regulatory authority, and

(B) if the operator is a life insurer and the foreign business is part of a life insurance business, the life insurance policies issued in the conduct of the foreign business are deemed to be life insurance policies in Canada, and

(iii) paragraphs 138(11.91)(*c*) to (*e*) apply to the operator for the specified taxation year in respect of the foreign business as if

(A) the operator were the insurer referred to in subsection 138(11.91),

(B) the specified taxation year of the operator were the particular taxation year of the insurer referred to in that subsection,

(C) the foreign business of the operator were the business of the insurer referred to in that subsection, and

(D) the reference in paragraph 138(11.91)(*e*) to "property owned by it at that time that is designated insurance property in respect of the business" were read as "property owned or held by it at that time that is used or held by it in the particular taxation year in the course of carrying on the insurance business";

(*k.2*) for the purposes of paragraphs (*j.1*) to (*k.1*) and the definition "taxable Canadian business" in subsection (1), any portion of a business carried on by a person or partnership that is carried on in Canada is deemed to be a business that is separate from any other portion of the business carried on by the person or partnership;

(19) Paragraph 95(2)(*u*) of the Act is replaced by the following:

(*u*) if any entity is (or is deemed by this paragraph to be) a member of a particular partnership that is a member of another partnership,

(i) the entity is deemed to be a member of the other partnership for the purposes of

(A) subparagraph (ii),

(B) applying the reference, in paragraph (*a*), to "a member" of a partnership,

(C) paragraphs (*a.1*) to (*b*), (*g.03*), (*j.1*) to (*k.1*) and (*o*),

(D) paragraphs (*b*) and (*c*) of the definition "investment business" in subsection (1), and

(E) the definition "taxable Canadian business" in subsection (1), and

(ii) in applying paragraph (*g.03*) and the definition "taxable Canadian business" in subsection (1), the entity is deemed to have, directly, rights to the income or capital of the other partnership to the extent of the entity's direct and indirect rights to that income or capital;

(20) Paragraph 95(2)(*u*) of the Act, as amended by subsection (19), is repealed.

(21) The definition "relevant cost base" in subsection 95(4) of the Act is replaced by the following:

"relevant cost base"
« *prix de base approprié* »

"relevant cost base", of a property at any time to a foreign affiliate of a taxpayer, in respect of the taxpayer, means the greater of

(*a*) the amount determined — or, if the taxpayer is not a corporation, the amount that would be determined if the taxpayer were a corporation resident in Canada — by the formula

$$A + B - C$$

where

A is the amount for which the property could be disposed of at that time that would not, in the absence of paragraph (2)(*f.1*), result in any amount being added to, or deducted from, any of the affiliate's

(i) exempt earnings, exempt loss, taxable earnings and taxable loss (all within the meaning of subsection 5907(1) of the *Income Tax Regulations*), in respect of the taxpayer, for the taxation year of the affiliate that includes that time, and

(ii) hybrid surplus and hybrid deficit, in respect of the taxpayer, at that time,

B is the amount, if any, by which any income or gain from a disposition of the property would, if the property were disposed of at that time for proceeds of disposition equal to its fair market value at that time be reduced under paragraph (2)(*f.1*), and

C is the amount, if any, by which any loss from a disposition of the property would, if the property were disposed of at that time for proceeds of disposition equal to its fair market value at that time be reduced under paragraph (2)(*f.1*); and

(*b*) either

(i) if the affiliate is an eligible controlled foreign affiliate of the taxpayer at that time, the amount that the taxpayer elects, in accordance with prescribed rules, in respect of the property not exceeding the fair market value at that time of the property, or

(ii) in any other case, nil.

(22) Subsection 95(4) of the Act is amended by adding the following in alphabetical order:

"eligible controlled foreign affiliate" « *société étrangère affiliée contrôlée admissible* »

"eligible controlled foreign affiliate", of a taxpayer, at any time, means a foreign affiliate at that time of the taxpayer in respect of which the following conditions are met:

(*a*) the affiliate is a controlled foreign affiliate of the taxpayer at that time and at the end of the affiliate's taxation year that includes that time, and

(*b*) the total of all amounts each of which is the participating percentage (determined at the end of the taxation year) of a share owned by the taxpayer of the capital stock of a corporation, in respect of the affiliate, is not less than 90%;

(23) Section 95 of the Act is amended by adding the following after subsection (4.1):

Absorptive mergers

(4.2) For the purposes of the definition "foreign merger" in subsection 87(8.1) (as that definition applies for the purposes of this section), paragraph (*n*) of the definition "disposition" in subsection 248(1) (as that definition applies for the purposes of this section) and Part LIX of the *Income Tax Regulations*, if there is a merger or combination, otherwise than as a result of the distribution of property to one corporation on the winding-up of another corporation, of two or more non-resident corporations (each of which is referred to in this

subsection as a "predecessor foreign corporation"), as a result of which one or more predecessor foreign corporations ceases to exist and, immediately after the merger or combination, another predecessor foreign corporation (referred to in this subsection as the "survivor corporation") owns properties (except amounts receivable from, or shares of the capital stock of, any predecessor foreign corporation) representing 90% or more of the fair market value of all such properties owned by each predecessor foreign corporation immediately before the merger or combination,

(*a*) the merger or combination is deemed to be a merger or combination of the predecessor foreign corporations to form one non-resident corporation;

(*b*) the survivor corporation is deemed to be the non-resident corporation so formed;

(*c*) all properties of the survivor corporation immediately before the merger or combination that are properties of the survivor corporation immediately after the merger or combination are deemed to become properties of the survivor corporation as a consequence of the merger or combination;

(*d*) all liabilities of the survivor corporation immediately before the merger or combination that are liabilities of the survivor corporation immediately after the merger or combination are deemed to become liabilities of the survivor corporation as a consequence of the merger or combination; and

(*e*) all shares of the capital stock of the survivor corporation immediately before the merger or combination that are shares of the capital stock of the survivor corporation immediately after the merger or combination are deemed to be exchanged by shareholders of the survivor corporation for shares of the capital stock of the survivor corporation as a consequence of the merger or combination.

(24) Subsections (1), (4), (5) and (11) to (16) apply in respect of taxation years of a foreign affiliate of a taxpayer that end after Announcement Date.

(25) Subsection (2) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after December 19, 2002.

(26) Subsection (3) applies to dispositions of property by a foreign affiliate of a taxpayer that occur after February 27, 2004 except that, in respect of such dispositions of property that occur in taxation years of the foreign affiliate that end on or before Announcement Date, the description of E in the definition "foreign accrual property income" in subsection 95(1) of the Act, as enacted by subsection (3), is to be read as follows:

E is the amount of the affiliate's allowable capital losses for the year from dispositions of property (other than excluded property and property in respect of which an election is made by the taxpayer under subsection 88(3.3)) that can reasonably be considered to have accrued after its 1975 taxation year,

(27) Subsection (6) applies in respect of taxation years of a foreign affiliate of a taxpayer that begin after Announcement Date.

(28) The definition "designated liquidation and dissolution" in subsection 95(1) of the Act, as enacted by subsection (7), paragraph 95(2)(*e*) of the Act, as enacted by subsection (10), and the repeal by subsection (10) of paragraph 95(2)(*e.1*) of the Act apply in respect of liquidations and dissolutions of foreign affiliates of a taxpayer that begin after Announcement Date. However, if the taxpayer elects in writing under this subsection in respect of all of its foreign affiliates and files the election with the Minister of National Revenue on or before the day that is the later of the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to and the day that is one year after the day on which this Act is assented to,

(*a*) the definition "designated liquidation and dissolution" in subsection 95(1) of the Act, as enacted by subsection (7), that paragraph 95(2)(*e*) and that repeal of paragraph 95(2)(*e.1*) apply to liquidations and dissolutions of all foreign affiliates of the taxpayer that begin after December 20, 2002; and

(*b*) in respect of liquidations and dissolutions of all foreign affiliates of the taxpayer that begin on or before Announcement Date,

(i) the definition "designated liquidation and dissolution" in subsection 95(1) of the Act, as enacted by subsection (7), is to be read without reference to its subparagraph (*b*)(ii), and

(ii) subparagraphs 95(2)(*e*)(iv) and (v) of the Act, as enacted by subsection (10), are to be read as follows:

(iv) each share of a class of the capital stock of the disposing affiliate that is disposed of by the shareholder affiliate on the liquidation and dissolution of the disposing affiliate is deemed to be disposed of for proceeds of disposition equal to

(A) if the liquidation and dissolution is a designated liquidation and dissolution of the disposing affiliate, the adjusted cost base of the share to the shareholder affiliate immediately before the disposition, and

(B) in any other case, the amount determined by the formula

$$(A - B)/C$$

where

A is the total of all amounts each of which is the cost to the shareholder affiliate of a distributed property, as determined under subparagraph (iii), received in respect of the class,

B is the total of all amounts each of which is an amount owing (other than an unpaid dividend) by, or an obligation of, the disposing affiliate that was assumed or cancelled by the shareholder affiliate in consideration for the distribution of a distributed property referred to in the description of A, and

C is the total number of issued and outstanding shares of the class that are owned by the shareholder affiliate during the liquidation and dissolution, and

(v) if the liquidation and dissolution is a designated liquidation and dissolution of the disposing affiliate, for the purposes of this subsection and the definition "foreign accrual property income" in subsection (1), the shareholder affiliate is, with respect to any disposition by it of any property to which clause (i)(A) applied, deemed to be the same corporation as, and a continuation of, the disposing affiliate;

(29) The definition "taxable Canadian business" in subsection 95(1) of the Act, as enacted by subsection (7), and subsection (18) apply in respect of taxation years of a foreign affiliate of a taxpayer that begin after December 20, 2002. However,

(*a*) in respect of taxation years of a foreign affiliate of the taxpayer that begin before Announcement Date,

(i) subparagraph 95(2)(*j.1*)(iv) of the Act, as enacted by subsection (18), is to be read without reference to its clause (B),

(ii) subparagraph 95(2)(*j.1*)(v) of the Act, as enacted by subsection (18), is to be read as follows:

(v) in respect of the investment business or separate business (each of these businesses being referred to in this subparagraph and paragraph (*j*.2) as a "foreign business"), as the case may be, the operator would, if it were a corporation carrying on the foreign business in Canada, be required by law to report to, and be subject to the supervision of, a regulatory authority that is the Superintendent of Financial Institutions or a similar authority of a province;

(iii) clause 95(2)(*k*)(i)(C) of the Act, as enacted by subsection (18), is to be read without reference to its subclause (II),

(iv) clause 95(2)(*k*)(ii)(C) of the Act, as enacted by subsection (18), is to be read as follows:

(C) the business was not described in subclause (i)(C)(I) or (IV) or the activities were not described in subclause (i)(C)(III);

(v) the portion of paragraph 95(2)(*k.1*) of the Act before subparagraph (i), as enacted by subsection (18), is to be read as follows:

(*k.1*) if this paragraph applies, in computing the operator's income or loss from the investment business, separate business or business referred to in paragraph (*l*) (each of these businesses being referred to in this paragraph as a "foreign business"), as the case may be, and the operator's capital gain or capital loss from the disposition of property used or held in the course of carrying on the foreign business, for the specified taxation year and each subsequent taxation year or fiscal period in which the foreign business is carried on by the operator

(*b*) if the taxpayer elects in writing under this paragraph in respect of all of its foreign affiliates and files the election with the Minister of National Revenue on or before the day that is the later of the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to and the day that is one year after the day on which this Act is assented to,

(i) the definition "taxable Canadian business" in subsection 95(1) of the Act, as enacted by subsection (7), and subsection (18), with paragraphs 95(2)(*j.1*) to (*k.1*) of the Act, as enacted by that subsection, being read as required by subparagraphs (*a*)(i) to (v), also apply in respect of taxation years of all foreign affiliates of the taxpayer that begin after 1994 and before December 21, 2002,

(ii) in applying paragraph (*b*) of the definition "taxable Canadian business" in subsection 95(1) of the Act, as enacted by subsection (7), in respect of the 1997 and preceding taxation years of all foreign affiliates of the taxpayer, that paragraph is to be read as follows:

(*b*) is not, or would not be if there were income from the business for the operator's taxation year or fiscal period that includes that time, exempt — because of a comprehensive agreement or convention for the elimination of double taxation on income, between the Government of Canada and the government of another country, which has the force of law in Canada at that time — from tax under this Part;

(iii) in applying subparagraph 95(2)(*k*)(ii) of the Act, as enacted by subsection (18), in respect of taxation years of all foreign affiliates of the taxpayer that begin after 1994 and before December 21, 2002, that subparagraph is to be read as follows:

(ii) both

(A) in the taxation year of the affiliate or the fiscal period of the partnership that includes the day that is immediately before the beginning of the specified taxation year,

(I) the affiliate or partnership carried on the business, or the activities deemed to be a separate business, as the case may be,

(II) the business was not, or the activities were not, as the case may be, at any time, part of a taxable Canadian business, and

(III) the business was not described in subclause (i)(C)(IV), or the activities were not described in subclause (i)(C)(III), as the case may be, and

(B) in the case of the business, if any, either

(I) the business was not described in subclause (i)(C)(I) in that taxation year or fiscal period, or

(II) the definition "investment business" in subsection (1) did not apply in respect of that taxation year or fiscal period;

(30) Subsection (8) applies to dispositions that occur after Announcement Date.

(31) Subsection (9) and paragraph 95(2)(*d.1*) of the Act, as enacted by subsection (10), apply in respect of mergers or combinations in respect of a foreign affiliate of a taxpayer that occur after Announcement Date. However, if the taxpayer elects in writing under this subsection in respect of all of its foreign affiliates and files the election with the Minister of National Revenue on or before the day that is the later of the

taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to and the day that is one year after the day on which this Act is assented to,

(*a*) that paragraph 95(2)(*d.1*) applies to mergers or combinations in respect of all foreign affiliates of the taxpayer that occur after December 20, 2002; and

(*b*) in respect of such mergers or combinations that occur before Announcement Date, the portion of paragraph 95(2)(*d.1*) of the Act after subparagraph (i), as enacted by subsection (10), is to be read as follows:

(ii) for the purposes of this subsection and the definition "foreign accrual property income" in subsection (1), the new foreign corporation is, with respect to any disposition by it of any property to which subparagraph (i) applied, deemed to be the same corporation as, and a continuation of, the foreign affiliate predecessor that owned the property immediately before the merger;

(32) Subsection (17) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after 1999.

(33) Subsection (19) applies in respect of taxation years of a foreign affiliate of a taxpayer that begin after December 20, 2002. However, if the taxpayer has elected under paragraph (29)(*b*), subsection (19) also applies in respect of taxation years of all foreign affiliates of the taxpayer that begin after 1994 and before December 21, 2002 except that, if the taxpayer has not elected under subsection 26(40) of the *Budget and Economic Statement Implementation Act, 2007*, paragraph 95(2)(*u*) of the Act, as enacted by subsection (19), is, in respect of taxation years of all foreign affiliates of the taxpayer that end before 2000, to be read as follows:

(*u*) if any entity is (or is deemed by this paragraph to be) a member of a particular partnership that is a member of another partnership,

(i) the entity is deemed to be a member of the other partnership for the purposes of

(A) paragraphs (*j.1*) to (*k.1*), and

(B) the definition "taxable Canadian business" in subsection (1), and

(ii) in applying the definition "taxable Canadian business" in subsection (1), the entity is deemed to have, directly, rights to the income or capital of the other partnership to the extent of the entity's direct and indirect rights to that income or capital;

(34) Subsection (20) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after Announcement Date.

(35) Subsections (21) and (22) apply in respect of determinations made after February 27, 2004 in respect of property of a foreign affiliate of a taxpayer. However,

(*a*) if the taxpayer has elected under subsection (28) or (31), subsections (21) and (22) also apply to such determinations made after December 20, 2002 and before February 28, 2004 but only in respect of,

(i) where an election is made under subsection (28) but no election is made under subsection (31), property that is subject to the application of paragraph 95(2)(*e*) of the Act, as enacted by subsection (10),

(ii) where no election is made under subsection (28) but an election is made under subsection (31), property that is subject to the application of paragraph 95(2)(*d.1*) of the Act, as enacted by subsection (10), and

(iii) where elections are made under subsections (28) and (31), property that is subject to the application of paragraph 95(2)(*d.1*) or (*e*) of the Act, as enacted by subsection (10);

(*b*) in respect of any such determinations made for the purposes of paragraph 88(3)(*a*) of the Act, as enacted by subsection 11(1),

(i) where the determination is made on or before Announcement Date and is in respect of property that is a share of the capital stock of a foreign affiliate of the taxpayer that is excluded property (within the meaning assigned by subsection 95(1) of the Act) of the disposing affiliate, the definition "relevant cost base" in subsection 95(4) of the Act, as enacted by subsection (21), is to be read as follows:

"relevant cost base", of a property at any time to a foreign affiliate of a taxpayer, means the adjusted cost base to the affiliate of the property at that time or such greater amount as the taxpayer elects, in accordance with prescribed rules, in respect of the property not exceeding the fair market value at that time of the property.

(ii) where the determination is made on or before Announcement Date and is in respect of property received in the course of a qualifying liquidation and dissolution of the disposing affiliate, the definition "eligible controlled foreign affiliate" in subsection 95(4) of the Act, as enacted by subsection (22), is to be read as follows:

"eligible controlled foreign affiliate", of a taxpayer at any time, means a controlled foreign affiliate of the taxpayer at that time.

(*c*) in respect of any such determinations made on or before Announcement Date for the purposes of paragraph 95(2)(*c*), (*d*) or, if the taxpayer has not elected under subsection (28), paragraph 95(2)(*e*) of the Act, the definition "relevant cost base" in subsection 95(4) of the Act, as enacted by subsection (21), is to be read in the manner specified in subparagraph (*b*)(i);

(*d*) if the taxpayer has elected under subsection (31), in respect of any such determinations made on or before Announcement Date for the purposes of paragraph 95(2)(*d.1*) of the Act, as enacted by subsection (10), the definition "eligible controlled foreign affiliate" in subsection 95(4) of the Act, as enacted by subsection (22), is to be read in the manner specified in subparagraph (*b*)(ii); and

(*e*) if the taxpayer has elected under subsection (28), in respect of any such determinations made on or before Announcement Date for the purposes of paragraph 95(2)(*e*) of the Act, as enacted by subsection (10), the definition "eligible controlled

foreign affiliate" in subsection 95(4) of the Act, as enacted by subsection (22), is to be read in the manner specified in subparagraph (*b*)(ii).

(36) Subsection (23) applies in respect of mergers or combinations in respect of a foreign affiliate of a taxpayer that occur after 1994. However, subsection (23) does not apply in respect of mergers or combinations in respect of all of the foreign affiliates of the taxpayer that occur on or before Announcement Date if the taxpayer elects in writing under this subsection in respect of all of its foreign affiliates and files the election with the Minister of National Revenue on or before the day that is the later of the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to and the day that is one year after the day on which this Act is assented to.

17. (1) Subsection 113(1) of the Act is amended by adding the following after paragraph (*a*):

(*a.1*) an amount equal to the total of

(i) one-half of such portion of the dividend as is prescribed to have been paid out of the hybrid surplus, as defined by regulation (in this Part referred to as "hybrid surplus"), of the affiliate, and

(ii) the lesser of

(A) the total of

(I) the product obtained when the foreign tax prescribed to be applicable to the portion of the dividend referred to in subparagraph (i) is multiplied by the amount by which

1. the corporation's relevant tax factor for the year

exceeds

2. one-half, and

(II) the product obtained when

1. the non-business-income tax paid by the corporation applicable to the portion of the dividend referred to in subparagraph (i)

is multiplied by

2. the corporation's relevant tax factor for the year, and

(B) the amount determined under subparagraph (i);

(2) Subparagraph 113(2)(*b*)(iii.1) of the Act is replaced by the following:

(iii.1) the total of all amounts received by the corporation on the share after the end of its 1975 taxation year and on or before Announcement Date on a reduction of the paid-up capital of the foreign affiliate in respect of the share, and

(3) Subsection (1) applies in respect of dividends received after Announcement Date.

(4) Subsection (2) applies after Announcement Date.

18. (1) Subparagraphs 128.1(1)(*d*)(i) and (ii) of the Act are replaced by the following:

(i) the affiliate is deemed to have been a controlled foreign affiliate of the other taxpayer immediately before the particular time, and

(ii) the prescribed amount is to be included in the foreign accrual property income of the affiliate for its taxation year that ends immediately before the particular time.

(2) Subsection (1) applies to taxation years that begin after 2006.

19. (1) Paragraph 152(6.1)(*b*) of the Act is replaced by the following:

(*b*) the amount included in computing the taxpayer's income for the particular year under subsection 91(1) is subsequently reduced because of a reduction in the foreign accrual property income of a foreign affiliate of the taxpayer for a taxation year (referred to in this paragraph as the "claim year") of the affiliate that ends in the particular year, where

(i) the reduction is

(A) attributable to a foreign accrual property loss (within the meaning assigned by subsection 5903(3) of the *Income Tax Regulations*) of the affiliate for a taxation year of the affiliate that ends in a subsequent taxation year of the taxpayer, and

(B) included in the description of F in the definition "foreign accrual property income" in subsection 95(1) in respect of the affiliate for the claim year, or

(ii) the reduction is

(A) attributable to a foreign accrual capital loss (within the meaning assigned by subsection 5903.1(3) of the *Income Tax Regulations*) of the affiliate for a taxation year of the affiliate that ends in a subsequent taxation year of the taxpayer, and

(B) included in the description of F.1 in the definition "foreign accrual property income" in subsection 95(1) in respect of the affiliate for the claim year, and

(2) Subsection (1) applies to taxation years that end after Announcement Date.

20. (1) The portion of subsection 186(1) of the French version of the Act before subparagraph (*b*)(i) is replaced by the following:

Impôt sur les dividendes imposables déterminés

186. (1) Toute société qui est une société privée ou une société assujettie au cours d'une année d'imposition est tenue de payer, au plus tard à la date d'exigibilité du solde qui lui est applicable pour l'année, un impôt pour l'année en vertu de la présente partie égal à l'excédent éventuel du total des montants suivants :

a) le tiers de l'ensemble des dividendes imposables déterminés qu'elle a reçus au cours de l'année de sociétés autres que des sociétés payantes auxquelles elle est rattachée,

b) les montants représentant chacun un montant au titre d'un dividende imposable déterminé qu'elle a reçu au cours de l'année d'une société privée ou d'une société assujettie qui était une société payante à laquelle elle était rattachée, égal au produit de la multiplication du remboursement au titre de dividendes, au sens de l'alinéa 129(1)*a*), de la société

payante pour son année d'imposition au cours de laquelle elle a versé le dividende par le rapport entre :

(2) The portion of subsection 186(1.1) of the French version of the Act before paragraph (*a*) is replaced by the following:

Réduction d'impôt

(1.1) Malgré le paragraphe (1), l'impôt payable par ailleurs en vertu de la présente partie par une société pour une année d'imposition est réduit de celui des montants ci-après qui est applicable si elle reçoit au cours de l'année un dividende imposable déterminé qui est inclus dans un montant sur lequel l'impôt prévu à la partie IV.1 est payable par elle pour l'année :

(3) The definition "dividende déterminé" in subsection 186(3) of the French version of the Act is repealed.

(4) The definition "assessable dividend" in subsection 186(3) of the English version of the Act is replaced by the following:

"assessable dividend" « *dividende imposable déterminé* »

"assessable dividend" means an amount received by a corporation at a time when it is a private corporation or a subject corporation as, on account of, in lieu of payment of or in satisfaction of, a taxable dividend from a corporation, to the extent of the amount in respect of the dividend that is deductible under section 112, paragraph 113(1)(*a*), (*a.1*), (*b*) or (*d*) or subsection 113(2) in computing the recipient corporation's taxable income for the year.

(5) Subsection 186(3) of the French version of the Act is amended by adding the following in alphabetical order:

« *dividende imposable déterminé* » "*assessable dividend*"

"*dividende imposable déterminé*" Somme reçue par une société, à un moment où elle est une société privée ou une société assujettie, au titre ou en paiement intégral ou partiel d'un dividende imposable d'une société, jusqu'à concurrence de la somme relative au dividende qui est déductible en application de l'article 112, des alinéas 113(1)*a*), *a.1*), *b*) ou *d*) ou du paragraphe 113(2) dans le calcul du revenu imposable pour l'année de la société qui a reçu le dividende.

(6) Subsections (1) to (5) apply after Announcement Date.

21. (1) Subsection 258(4) of the Act is replaced by the following:

Exception

(4) Subsection (3) does not apply to a dividend described in paragraph (3)(*a*)

(*a*) if the share on which the dividend was paid was not acquired in the ordinary course of the business carried on by the corporation; or

(*b*) to the extent that the dividend would be described by subparagraph 53(2)(*b*)(ii) if the corporation not resident in Canada were not a foreign affiliate of the corporation.

(2) Section 258 of the Act is amended by adding the following after subsection (5):

Exception

(6) Subsection (5) does not apply to a dividend described in that subsection to the extent that the dividend would be described by subparagraph 53(2)(*b*)(ii) if the corporation not resident in Canada were not a foreign affiliate of the recipient.

(3) Subsections (1) and (2) apply to dividends paid after Announcement Date.

22. (1) Paragraph 261(5)(*e*) of the Act is replaced by the following:

(*e*) except in applying paragraph 95(2)(*f.15*) in respect of a taxation year, of a foreign affiliate of the taxpayer, that is a functional currency year of the foreign affiliate within the meaning of subsection (6.1), each reference in subsection 39(2) to "Canadian currency" is to be read, in respect of the taxpayer and the particular taxation year, and with such modifications as the context requires, as "the taxpayer's elected functional currency";

(2) Subparagraph 261(5)(*f*)(i) of the Act is replaced by the following:

(i) section 76.1, subsection 79(7), paragraph 80(2)(*k*), subsections 80.01(11), 80.1(8), 93(2.01) to (2.31), 142.4(1) and 142.7(8) and the definition "amortized cost" in subsection 248(1), and subparagraph 231(6)(*a*)(iv) of the *Income Tax Regulations*, to "Canadian currency" is, in respect of the taxpayer and the particular taxation year, and with such modifications as the context requires, to be read as "the taxpayer's elected functional currency", and

(3) Subparagraph 261(7)(*a*)(i) of the Act is replaced by the following:

(i) is, or is relevant to the determination of, an amount that may be deducted under subsection 37(1) or 66(4), variable F or F.1 in the definition "foreign accrual property income" in subsection 95(1), section 110.1 or 111 or subsection 126(2), 127(5), 129(1), 181.1(4) or 190.1(3), in the particular functional currency year, and

(4) Subsection (1) applies in respect of gains made and losses sustained in taxation years that begin after Announcement Date.

(5) Subsection (2) applies in respect of taxation years that begin after December 13, 2007.

(6) Subsection (3) applies after Announcement Date.

INCOME TAX REGULATIONS

23. (1) Subsection 5900(1) of the *Income Tax Regulations* is amended by adding the following after paragraph (*a*):

(*a.1*) for the purposes of this Part and paragraph 113(1)(*a.1*) of the Act, the portion of the dividend paid out of the hybrid surplus of the affiliate is prescribed to be that proportion of the dividend received that

(i) such portion of the whole dividend paid by the affiliate on the shares of that class at that time as was deemed by section 5901 to have been paid out of the affiliate's hybrid surplus in respect of the corporation

is of

(ii) the whole dividend paid by the affiliate on the shares of that class at that time;

(2) Subsection 5900(1) of the Regulations is amended by striking out "and" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(*c.1*) for the purposes of this Part and paragraph 113(1)(*a.1*) of the Act, the foreign tax applicable to the portion of the dividend prescribed to have been paid out of the hybrid surplus of the affiliate is prescribed to be that proportion of the hybrid underlying tax applicable, in respect of the corporation, to the whole dividend paid by the affiliate on the shares of that class at that time that

(i) the amount of the dividend received by the corporation or the affiliate, as the case may be, on that share at that time

is of

(ii) the whole dividend paid by the affiliate on the shares of that class at that time; and

(3) Subsections (1) and (2) apply to dividends received after Announcement Date.

24. (1) Subsections 5901(1) and (2) of the Regulations are replaced by the following:

5901. (1) Subject to subsection (1.1), if at any time in its taxation year a foreign affiliate of a corporation resident in Canada has paid a whole dividend on the shares of any class of its capital stock, for the purposes of this Part

(*a*) the portion of the whole dividend deemed to have been paid out of the affiliate's exempt surplus in respect of the corporation at that time is an amount equal to the lesser of

(i) the amount of the whole dividend, and

(ii) the amount, if any, by which the exempt surplus exceeds the total of

(A) the affiliate's hybrid deficit, if any, in respect of the corporation at that time, and

(B) the affiliate's taxable deficit, if any, in respect of the corporation at that time;

(*a.1*) the portion of the whole dividend deemed to have been paid out of the affiliate's hybrid surplus in respect of the corporation at that time is an amount equal to the lesser of

(i) the amount, if any, by which the amount of the whole dividend exceeds the portion determined under paragraph (*a*), and

(ii) the amount, if any, by which the hybrid surplus exceeds

(A) if the affiliate has an exempt deficit and a taxable deficit, in respect of the corporation at that time, the total of the exempt deficit and the taxable deficit,

(B) if the affiliate has an exempt deficit and no taxable deficit, in respect of the corporation at that time, the amount of the exempt deficit, and

(C) if the affiliate has a taxable deficit and no exempt deficit, in respect of the corporation at that time, the amount, if any, by which the taxable deficit exceeds the affiliate's exempt surplus in respect of the corporation at that time;

(*b*) the portion of the whole dividend deemed to have been paid out of the affiliate's taxable surplus in respect of the corporation at that time is an amount equal to the lesser of

(i) the amount, if any, by which the amount of the whole dividend exceeds the total of the portions determined under paragraphs (*a*) and (*a.1*), and

(ii) the amount, if any, by which the taxable surplus exceeds

(A) if the affiliate has an exempt deficit and a hybrid deficit, in respect of the corporation at that time, the total of the exempt deficit and the hybrid deficit,

(B) if the affiliate has an exempt deficit and no hybrid deficit, in respect of the corporation at that time, the amount, if any, by which the exempt deficit exceeds the affiliate's hybrid surplus in respect of the corporation at that time, and

(C) if the affiliate has a hybrid deficit and no exempt deficit, in respect of the corporation at that time, the amount, if any, by which the hybrid deficit exceeds the affiliate's exempt surplus in respect of the corporation at that time; and

(*c*) the portion of the whole dividend deemed to have been paid out of the affiliate's pre-acquisition surplus in respect of the corporation at that time is the amount, if any, by which the whole dividend exceeds the total of the portions determined under paragraphs (*a*) to (*b*).

(1.1) If the corporation resident in Canada that is referred to in subsection (1) elects in writing under this subsection in respect of the whole dividend referred to in subsection (1) and files the election with the Minister on or before the corporation's filing-due date for its taxation year that includes the day the whole dividend was paid, subsection (1) applies in respect of the whole dividend as if its paragraphs (*a.1*) and (*b*) read as follows:

(*a.1*) the portion of the whole dividend deemed to have been paid out of the affiliate's taxable surplus in respect of the corporation at that time is an amount equal to the lesser of

(i) the amount, if any, by which the amount of the whole dividend exceeds the portion determined under paragraph (*a*), and

(ii) the amount, if any, by which the taxable surplus exceeds

(A) if the affiliate has an exempt deficit and a hybrid deficit, in respect of the corporation at that time, the total of the exempt deficit and the hybrid deficit,

(B) if the affiliate has an exempt deficit and no hybrid deficit, in respect of the corporation at that time, the amount of the exempt deficit, and

(C) if the affiliate has a hybrid deficit and no exempt deficit, in respect of the corporation at that time, the amount, if any, by which the hybrid deficit exceeds the affiliate's exempt surplus in respect of the corporation at that time;

(*b*) the portion of the whole dividend deemed to have been paid out of the affiliate's hybrid surplus in respect of the corporation at that time is an amount equal to the lesser of

(i) the amount, if any, by which the amount of the whole dividend exceeds the total of the portions determined under paragraphs (*a*) and (*a.1*),

(ii) the amount, if any, by which the hybrid surplus exceeds

(A) if the affiliate has an exempt deficit and a taxable deficit, in respect of the corporation at that time, the total of the exempt deficit and the taxable deficit,

(B) if the affiliate has an exempt deficit and no taxable deficit, in respect of the corporation at that time, the amount, if any, by which the exempt deficit exceeds the affiliate's taxable surplus in respect of the corporation at that time, and

(C) if the affiliate has a taxable deficit and no exempt deficit, in respect of the corporation at that time, the amount, if any, by which the taxable deficit exceeds the affiliate's exempt surplus in respect of the corporation at that time; and

(2) Notwithstanding subsection (1),

(*a*) if a foreign affiliate of a corporation resident in Canada pays a whole dividend (other than a whole dividend referred to in subsection 5902(1)) at any particular time in its taxation year that is more than 90 days after the commencement of that year or at any particular time in its 1972 taxation year that is before January 1, 1972, the portion of the whole dividend that would, in the absence of this paragraph, be deemed to have been paid out of the affiliate's pre-acquisition surplus in respect of the corporation (otherwise than because of an election under paragraph (*b*)) is instead deemed to have been paid out of the exempt surplus, hybrid surplus and taxable surplus of the affiliate in respect of the corporation to the extent that it would have been deemed to have been so paid if, immediately after the end of that year, that portion were paid as a separate whole dividend before any whole dividend paid after the particular time and after any whole dividend paid before the particular time by the affiliate, and for the purposes of determining the exempt deficit, exempt surplus, hybrid deficit, hybrid surplus, hybrid underlying tax, taxable deficit, taxable surplus and underlying foreign tax of the affiliate in respect of the corporation at any time, that portion is deemed to have been paid as a separate whole dividend immediately following the end of the year and not to have been paid at the particular time; and

(*b*) a whole dividend referred to in subsection (1) any portion of which is paid at any time by a foreign affiliate of a corporation resident in Canada to the corporation that would, in the absence of this paragraph, be deemed under subsection (1) to have been, in whole or in part, paid out of the exempt surplus, hybrid surplus or taxable surplus of the affiliate in respect of the corporation is instead deemed to have been paid out of the pre-acquisition surplus of the affiliate in respect of the corporation if

(i) the corporation, and each other corporation, if any, of which the affiliate would, at that time, be a foreign affiliate if paragraph (*b*) of the definition "equity percentage" in subsection 95(4) were read as if the reference in that paragraph to "any corporation" were a reference to "any corporation other than a corporation resident in Canada" and that is, at that time, related to the corporation,

(A) where there is no such other corporation, elects in writing under this subparagraph and files the election with the Minister on or before the filing-due date for its taxation year in which the whole dividend is paid, and

(B) in any other case, jointly elect in writing under this subparagraph and file the election with the Minister on or before the earliest of the filing-due dates for their taxation years in which the whole dividend is paid, and

(ii) no shareholder of the affiliate is, at that time, a partnership of which a corporation electing under subparagraph (i) is a member.

(2) Subsection (1) applies to dividends paid after Announcement Date by a foreign affiliate of a corporation. However,

(*a*) if the corporation and each other corporation (the corporation and those other corporations together referred to in this paragraph as the "elector corporations"), if any, of which the affiliate would be a foreign affiliate if paragraph (*b*) of the definition "equity percentage" in subsection 95(4) of the Act were read as if the reference in that paragraph to "any corporation" were a reference to "any corporation other than a corporation resident in Canada" and that is related to the corporation jointly elect in writing under this paragraph in respect of all of their respective foreign affiliates and file the election with the Minister of National Revenue on or before the day that is the later of the earliest of the filing-due dates for their taxation years that include the day on which this Act is assented to and the day that is one year after the day on which this Act is assented to, subsection 5901(2) of the Regulations, as enacted by subsection (1), applies to dividends paid after February 27, 2004 by all the respective foreign affiliates of the elector corporations, except that, for such dividends paid on or before Announcement Date,

(i) paragraph 5901(2)(*a*) of the Regulations, as enacted by subsection (1), is to be read as follows:

(*a*) if a foreign affiliate of a corporation resident in Canada pays a whole dividend (other than a whole dividend referred to in subsection 5902(1)) at any particular time in its taxation year that is more than 90 days after the commencement of that year or at any particular time in its 1972 taxation year that is before January 1, 1972, the portion of the whole dividend that would, in the absence of this paragraph, be deemed to have been paid out of the affiliate's pre-acquisition surplus in respect of the corporation (otherwise than because of an election under paragraph (*b*)) is instead deemed to have been paid out of the exempt surplus and taxable surplus of the affiliate in respect of the corporation to the extent that it would have been deemed to have been so paid if, immediately after the end of that year, that portion were paid as a separate whole dividend before any whole dividend paid after the particular time and after any whole dividend paid before the particular time by the affiliate, and for the purposes of determining the exempt deficit, exempt surplus, taxable deficit, taxable surplus and underlying foreign tax of the affiliate in respect of the corporation at any time, that portion is deemed to have been paid as a separate whole dividend immediately following the end of the year and not to have been paid at the particular time, and

(ii) the portion of paragraph 5901(2)(*b*) of the Regulations, as enacted by subsection (1), before subparagraph (i) is to be read as follows:

(*b*) a whole dividend referred to in subsection (1) any portion of which is paid at any time by a foreign affiliate of a corporation resident in Canada to the corporation that would, in the absence of this paragraph, be deemed under subsection (1) to have been, in whole or in part, paid out of the exempt surplus or taxable surplus of the affiliate in respect of the corporation is instead deemed to have been paid out of the pre-acquisition surplus of the affiliate in respect of the corporation if

(*b*) any election referred to in subparagraph 5901(2)(*b*)(i) of the Regulations, as enacted by subsection (1), that would otherwise be required to be filed with the Minister of National Revenue before the day that is 120 days after the day on which this Act is assented to is deemed to have been filed with the Minister on a timely basis if it is filed with the Minister within 365 days after the day on which this Act is assented to.

25. (1) The portion of subparagraph 5902(1)(*a*)(i) of the Regulations before clause (A) is replaced by the following:

(i) the particular affiliate's exempt surplus or exempt deficit, hybrid surplus or hybrid deficit, hybrid underlying tax, taxable surplus or taxable deficit, underlying foreign tax and net surplus, in respect of the corporation at the dividend time, are deemed to be those amounts that would otherwise be determined immediately before the dividend time if

(2) Paragraph 5902(1)(*b*) of the Regulations is amended by adding the following after subparagraph (i):

(i.1) under subparagraph (vi) of the description of B in the definition "hybrid surplus" in subsection 5907(1) in computing the particular affiliate's hybrid surplus or hybrid deficit, as the case may be, in respect of the corporation an amount equal to the product obtained when the specified adjustment factor in respect of the disposition is multiplied by the total of all amounts each of which is the portion of any elected dividend that is prescribed by paragraph 5900(1)(*a.1*) to have been paid out of the hybrid surplus of the particular affiliate,

(i.2) under subparagraph (iii) of the description of B in the definition "hybrid underlying tax" in subsection 5907(1) in computing the particular affiliate's hybrid underlying tax in respect of the corporation an amount equal to the product obtained when the specified adjustment factor in respect of the disposition is multiplied by the total of all amounts each of which is the amount prescribed by paragraph 5900(1)(*c.1*) to be the foreign tax applicable to the portion of any elected dividend that is prescribed by paragraph 5900(1)(*a.1*) to have been paid out of the hybrid surplus of the particular affiliate,

(3) Subparagraphs 5902(2)(*a*)(i) and (ii) of the Regulations are replaced by the following:

(i) if a particular foreign affiliate of a corporation has an equity percentage (within the meaning assigned by subsection 95(4) of the Act) in another foreign affiliate of the corporation that has an equity percentage in the particular affiliate, the exempt surplus or exempt deficit, hybrid surplus or hybrid deficit, hybrid underlying tax, taxable surplus or taxable deficit, underlying foreign tax and net surplus of, and the amount of a dividend paid or received by, the particular affiliate are to be determined in a manner that is

(A) reasonable in the circumstances, and

(B) consistent with the results that would be obtained if a series of actual dividends had been paid and received by the foreign affiliates of the corporation that are relevant to the determination, and

(ii) if any foreign affiliate of a corporation resident in Canada has issued shares of more than one class of its capital stock, the amount that would be paid as a dividend on the shares of any class is the portion of its net surplus that, in the circumstances, it might reasonably be expected to have paid on all the shares of the class, and

(4) The portion of subsection 5902(6) of the Regulations before paragraph (*a*) is replaced by the following:

(6) If at any time a corporation resident in Canada is deemed under subsection 93(1.11) of the Act to have made an election under subsection 93(1) of the Act in respect of a share of the capital stock of a particular foreign affiliate of the corporation disposed of by another foreign affiliate of the corporation, the prescribed amount is the lesser of

(5) Subsections (1) to (3) apply in respect of elections in respect of dispositions of shares of the capital stock of a foreign affiliate of a taxpayer that occur after Announcement Date.

(6) Subsection (4) applies in respect of elections in respect of dispositions of shares of the capital stock of a foreign affiliate of a corporation that occur after Announcement Date. However, if the corporation elects under paragraph 24(2)(*a*) of this Act, subsection (4) applies in respect of elections in respect of dispositions of shares of the capital stock of all foreign affiliates of the corporation that occur after February 27, 2004.

26. (1) Paragraph 5903(3)(*a*) of the Regulations is replaced by the following:

(*a*) where, at the end of the year, the affiliate is a controlled foreign affiliate of a person or partnership that is, at the end of the year, a relevant person or partnership in respect of the taxpayer, the amount, if any, determined by the formula

$$J - (K + L + M + N)$$

where

J is the amount determined for D in the formula in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the affiliate for the year,

K is the amount, if any, by which

(i) the amount determined for A in that formula in respect of the affiliate for the year

exceeds

(ii) the amount determined for H in that formula in respect of the affiliate for the year,

L is the amount, if any, by which

(i) the amount determined for B in that formula in respect of the affiliate for the year

exceeds

(ii) the total of

(A) the amount determined for E in that formula in respect of the affiliate for the year, and

(B) the amount determined for F.1 in that formula in respect of the affiliate for the year,

M is the amount determined for C in that formula in respect of the affiliate for the year, and

N is the amount, if any, by which

(i) the total of

(A) the amount determined for A.1 in that formula in respect of the affiliate for the year, and

(B) the amount determined for A.2 in that formula in respect of the affiliate for the year

exceeds

(ii) the amount determined for G in that formula in respect of the affiliate for the year; and

(2) Subsection 5903(4) of the Regulations is replaced by the following:

(4) In computing under subsection (3) the foreign accrual property loss of the affiliate for a taxation year, if the affiliate or another corporation receives a payment described in subsection 5907(1.3) from a non-resident corporation that is, at the time of the payment, a foreign affiliate of a relevant person or partnership in respect of the taxpayer and any portion of the payment can reasonably be considered to relate to a loss or portion of a loss of the affiliate for the year described in the description of D in the definition "foreign accrual property income" in subsection 95(1) of the Act, the amount of the loss or portion of the loss is deemed to be nil.

(3) The portion of subsection 5903(5) of the Regulations before paragraph (*a*) is replaced by the following:

(5) For the purposes of this section and section 5903.1,

(4) Paragraphs 5903(5)(*a*) and (*b*) of the Regulations are replaced by the following:

(*a*) if paragraph 95(2)(*d.1*) of the Act applies to a foreign merger, the new foreign corporation referred to in that paragraph is, except in the determination of the foreign accrual property income of a foreign affiliate predecessor referred to in that paragraph, deemed to be the same corporation as, and a continuation of, each foreign affiliate predecessor; and

(*b*) if paragraph 95(2)(*e*) of the Act applies to a liquidation and dissolution, of a disposing affiliate referred to in that paragraph, that is a designated liquidation and dissolution of the disposing affiliate, the shareholder affiliate referred to in that paragraph is, except in the determination of the foreign accrual property income of the disposing affiliate, deemed to be the same corporation as, and a continuation of, the disposing affiliate.

(5) The portion of subsection 5903(6) of the Regulations before paragraph (*a*) is replaced by the following:

(6) In this section and section 5903.1, a "relevant person or partnership", in respect of the taxpayer at any time, means the taxpayer or a person (other than a designated acquired corporation of the taxpayer), or a partnership, that is at that time

(6) Subsections (1) to (3) and (5) apply in respect of taxation years of a foreign affiliate of a taxpayer that end after Announcement Date.

(7) Subsection (4) applies in respect of mergers or combinations that occur, and liquidations and dissolutions that begin, in respect of a foreign affiliate of a taxpayer, after Announcement Date. However,

(*a*) if the taxpayer has elected under subsection 16(31) of this Act,

(i) paragraph 5903(5)(*a*) of the Regulations, as enacted by subsection (4), also applies in respect of mergers or combinations in respect of all foreign affiliates of the taxpayer that occur after December 20, 2002 and on or before Announcement Date, and

(ii) that paragraph is, for such mergers or combinations, to be read as follows:

(*a*) if paragraph 95(2)(*d.1*) of the Act applies to a foreign merger, the new foreign corporation referred to in that paragraph is deemed to be the same corporation as, and a continuation of, each foreign affiliate predecessor; and

(*b*) if the taxpayer has elected under subsection 16(28) of this Act,

(i) paragraph 5903(5)(*b*) of the Regulations, as enacted by subsection (4), also applies in respect of liquidations and dissolutions of all foreign affiliates of the taxpayer that begin after December 20, 2002 and on or before Announcement Date, and

(ii) that paragraph is, in respect of such liquidations and dissolutions, to be read as follows:

(*b*) if paragraph 95(2)(*e*) of the Act applies to a liquidation and dissolution, of a disposing affiliate referred to in that paragraph, that is a designated liquidation and dissolution of the disposing affiliate, the shareholder affiliate referred to in that paragraph is deemed to be the same corporation as, and a continuation of, the disposing affiliate.

27. (1) The Regulations are amended by adding the following after section 5903:

5903.1 (1) For the purposes of the description of F.1 in the definition "foreign accrual property income" in subsection 95(1) of the Act, subject to subsection (2), the prescribed amount for the year (referred to in this subsection and subsection (2) as the "particular year") is the total of all amounts each of which is a portion designated for the particular year by the taxpayer of the foreign accrual capital loss of the affiliate for a taxation year of the affiliate that is

(*a*) one of the twenty taxation years of the affiliate that immediately precede the particular year; or

(*b*) one of the three taxation years of the affiliate that immediately follow the particular year.

(2) For the purposes of this subsection and subsection (1),

(*a*) a portion of a foreign accrual capital loss of the affiliate for any taxation year of the affiliate may be designated for the particular year only to the extent that the foreign accrual capital loss exceeds the total of all amounts each of which is a portion, of the foreign accrual capital loss, designated by the taxpayer for a taxation year of the affiliate that precedes the particular year;

(*b*) no portion of the foreign accrual capital loss of the affiliate for a taxation year of the affiliate is to be designated for the particular year until the foreign accrual capital losses of the affiliate for the preceding taxation years referred to in paragraph (1)(*a*) have been fully designated; and

(*c*) if any person or partnership that was, at the end of a taxation year (referred to in this paragraph as the "relevant loss year") of the affiliate, a relevant person or partnership in respect of the taxpayer designates for a taxation year (referred to in this paragraph as the "relevant claim year") of the affiliate a particular portion of the foreign accrual capital loss of the affiliate for the relevant loss year, there is deemed to have been designated for the relevant claim year by the taxpayer the portion of that loss that is the greater of

(i) the particular portion, and

(ii) the greatest of the portions of that loss that are so designated by any other relevant persons or partnerships in respect of the taxpayer.

(3) For the purposes of this section, and subject to subsection (4), "foreign accrual capital loss" of the affiliate for a taxation year of the affiliate means

(*a*) where, at the end of the year, the affiliate is a controlled foreign affiliate of a person or partnership that is, at the end of the year, a relevant person or partnership in respect of the taxpayer, the amount, if any, by which

(i) the amount determined under paragraph (*a*) of the description of E in the formula in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the affiliate for the year

exceeds

(ii) the amount determined for E in that formula in respect of the affiliate for the year; and

(*b*) in any other case, nil.

(4) In computing under subsection (3) the foreign accrual capital loss of the affiliate for a taxation year, if the affiliate or another corporation receives a payment described in subsection 5907(1.3) from a non-resident corporation that is, at the time of the payment, a foreign affiliate of a relevant person or partnership in respect of the taxpayer and any portion of the payment can reasonably be considered to relate to an allowable capital loss or a portion of an allowable capital loss of the affiliate for the year described in the description of E in the definition "foreign accrual property income" in subsection 95(1) of the Act, the amount of the loss or portion of the loss is deemed to be nil.

(2) Subsection (1) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after Announcement Date.

28. (1) Paragraph 5904(1)(*c*) of the Regulations is replaced by the following:

(c) the direct equity percentage of a person in any foreign affiliate of the taxpayer, for which the total of the distribution entitlements of all the shares of all classes of the capital stock of the affiliate would not, in the absence of this paragraph, be greater than nil, was determined on the assumption that the amount determined under subparagraph (2)(*b*)(i) were the greater of

(i) the amount of the affiliate's retained earnings, if any, determined at the end of the taxation year under accounting principles that are relevant to the affiliate for the taxation year, and

(ii) the amount determined by the formula

$$A \times B$$

where

A is the amount of the affiliate's total assets determined at the end of the taxation year under accounting principles that are relevant to the affiliate for the taxation year, and

B is 25 percent.

(2) Paragraph 5904(3)(*b*) of the Regulations is replaced by the following:

(*b*) if a particular foreign affiliate of a corporation has an equity percentage (within the meaning assigned by subsection 95(4) of the Act) in another foreign affiliate of the corporation that has an equity percentage in the particular affiliate, the net surplus of, or the

amount of a distribution received by, the particular affiliate is to be determined in a manner that is

(i) reasonable in the circumstances, and

(ii) consistent with the results that would be obtained if a series of actual distributions had been made and received by the foreign affiliates of the corporation that are relevant to the determination;

(3) Subsections (1) and (2) apply in respect of taxation years of a foreign affiliate of a taxpayer that begin after Announcement Date.

29. (1) The portion of subsection 5905(1) of the Regulations before the formula is replaced by the following:

5905. (1) If, at any time, there is an acquisition or a disposition of shares of the capital stock of a particular foreign affiliate of a corporation resident in Canada and the surplus entitlement percentage of the corporation in respect of the particular foreign affiliate or any other foreign affiliate (the particular affiliate and those other affiliates each being referred to in this subsection as a "relevant affiliate") of the corporation in which the particular affiliate has an equity percentage (within the meaning assigned by subsection 95(4) of the Act) changes, for the purposes of the definitions "exempt surplus", "hybrid surplus", "hybrid underlying tax", "taxable surplus", and "underlying foreign tax" in subsection 5907(1), each of the opening exempt surplus or opening exempt deficit, opening hybrid surplus or opening hybrid deficit, opening hybrid underlying tax, opening taxable surplus or opening taxable deficit, and opening underlying foreign tax, as the case may be, of the relevant affiliate in respect of the corporation is, except where the acquisition or disposition occurs in a transaction to which paragraph (3)(*a*) or subsection (5) or (5.1) applies, the amount determined at that time by the formula

(2) The portion of paragraph 5905(3)(*a*) of the Regulations before subparagraph (i) is replaced by the following:

(*a*) for the purposes of the definitions "exempt surplus", "hybrid surplus", "hybrid underlying tax", "taxable surplus" and "underlying foreign tax" in subsection 5907(1), as they apply in respect of the merged affiliate,

(3) Paragraph 5905(3)(*a*) of the Regulations is amended by adding the following after subparagraph (ii):

(ii.1) the merged affiliate's opening hybrid surplus, in respect of the corporation, shall be the amount, if any, by which the total of all amounts each of which is the hybrid surplus of a predecessor corporation, in respect of the corporation, immediately before the merger time exceeds the total of all amounts each of which is the hybrid deficit of a predecessor corporation, in respect of the corporation, immediately before the merger time,

(ii.2) the merged affiliate's opening hybrid deficit, in respect of the corporation, shall be the amount, if any, by which the total of all amounts each of which is the hybrid deficit of a predecessor corporation, in respect of the corporation, immediately before

the merger time exceeds the total of all amounts each of which is the hybrid surplus of a predecessor corporation, in respect of the corporation, immediately before the merger time,

(ii.3) the merged affiliate's opening hybrid underlying tax in respect of the corporation shall be the total of all amounts each of which is the hybrid underlying tax of a predecessor corporation, in respect of the corporation, immediately before the merger time,

(4) The portion of subparagraph 5905(3)(*b*)(i) of the Regulations before the formula is replaced by the following:

(i) each of the exempt surplus or exempt deficit, hybrid surplus or hybrid deficit, hybrid underlying tax, taxable surplus or taxable deficit and underlying foreign tax, in respect of the corporation, of each predecessor corporation immediately before the merger time is deemed to be the amount determined by the formula

(5) The portion of paragraph 5905(5)(*a*) of the Regulations before subparagraph (i) is replaced by the following:

(*a*) each of the opening exempt surplus or opening exempt deficit, opening hybrid surplus or opening hybrid deficit, opening hybrid underlying tax, opening taxable surplus or opening taxable deficit, and opening underlying foreign tax, in respect of the acquiring corporation, of the particular affiliate and of each foreign affiliate of the disposing corporation in which the particular affiliate has, immediately before that time, an equity percentage (within the meaning assigned by subsection 95(4) of the Act) is deemed to be the amount, if any,

(6) Paragraph 5905(5)(*a*) of the Regulations is amended by adding the following after subparagraph (ii):

(ii.1) in the case of its opening hybrid surplus, by which the total of its hybrid surplus in respect of each of the disposing corporation and the acquiring corporation, determined immediately before that time, exceeds the total of its hybrid deficit in respect of each of the disposing corporation and the acquiring corporation, determined immediately before that time,

(ii.2) in the case of its opening hybrid deficit, by which the total of its hybrid deficit in respect of each of the disposing corporation and the acquiring corporation, determined immediately before that time, exceeds the total of its hybrid surplus in respect of each of the disposing corporation and the acquiring corporation, determined immediately before that time,

(ii.3) in the case of its opening hybrid underlying tax, that is the total of its hybrid underlying tax in respect of each of the disposing corporation and the acquiring corporation, determined immediately before that time,

(7) The portion of paragraph 5905(5)(*b*) of the Regulations before the formula is replaced by the following:

(*b*) for the purposes of paragraph (*a*), each of the exempt surplus or exempt deficit, hybrid surplus or hybrid deficit, hybrid underlying tax, taxable surplus or taxable deficit, and

underlying foreign tax of an affiliate in respect of the disposing corporation and the acquiring corporation, determined immediately before that time, is deemed to be the amount determined by the formula

(8) Paragraphs 5905(5)(*c*) and (*d*) of the Regulations are replaced by the following:

(*c*) if the disposing corporation makes an election under subsection 93(1) of the Act in respect of the disposed shares,

(i) for the purposes of paragraph (*b*), the exempt surplus or exempt deficit, hybrid surplus or hybrid deficit, hybrid underlying tax, taxable surplus or taxable deficit, and underlying foreign tax of an affiliate in respect of the disposing corporation, as determined without reference to this subsection, immediately before that time, shall be adjusted in accordance with paragraph 5902(1)(*b*) as if the disposing corporation's surplus entitlement percentage that is referred to in the description of B in paragraph 5902(2)(*b*) were determined as if the disposed shares were the only shares owned by the disposing corporation immediately before that time, and

(ii) no adjustment shall be made to the amount of the exempt surplus or exempt deficit, hybrid surplus or hybrid deficit, hybrid underlying tax, taxable surplus or taxable deficit, or underlying foreign tax of an affiliate in respect of the disposing corporation under paragraph 5902(1)(*b*) other than for the purpose of paragraph (*b*); and

(*d*) for greater certainty, no adjustment shall be made under subsection (1) to the exempt surplus or exempt deficit, hybrid surplus or hybrid deficit, hybrid underlying tax, taxable surplus or taxable deficit, or underlying foreign tax of an affiliate in respect of the disposing corporation.

(9) The portion of paragraph 5905(5.1)(*a*) of the Regulations before subparagraph (i) is replaced by the following:

(*a*) each of the opening exempt surplus or opening exempt deficit, opening hybrid surplus or opening hybrid deficit, opening hybrid underlying tax, opening taxable surplus or opening taxable deficit, and opening underlying foreign tax, in respect of the new corporation, of the particular affiliate and of each foreign affiliate of the predecessor corporation in which the particular affiliate has, immediately before that time, an equity percentage (within the meaning assigned by subsection 95(4) of the Act) is deemed to be the amount, if any,

(10) Paragraph 5905(5.1)(*a*) of the Regulations is amended by adding the following after subparagraph (ii):

(ii.1) in the case of its opening hybrid surplus, by which the total of its hybrid surplus in respect of each predecessor corporation, determined immediately before that time, exceeds the total of its hybrid deficit in respect of each predecessor corporation, determined immediately before that time,

(ii.2) in the case of its opening hybrid deficit, by which the total of its hybrid deficit in respect of each predecessor corporation, determined immediately before that time, ex-

ceeds the total of its hybrid surplus in respect of each predecessor corporation, determined immediately before that time,

(ii.3) in the case of its opening hybrid underlying tax, that is the total of its hybrid underlying tax in respect of each predecessor corporation, determined immediately before that time,

(11) The portion of paragraph 5905(5.1)(*b*) of the Regulations before the formula is replaced by the following:

(*b*) for the purpose of paragraph (*a*), each of the exempt surplus or exempt deficit, hybrid surplus or hybrid deficit, hybrid underlying tax, taxable surplus or taxable deficit, and underlying foreign tax of an affiliate in respect of a predecessor corporation, determined immediately before that time, is deemed to be the amount determined by the formula

(12) Paragraph 5905(5.5)(*a*) of the Regulations is replaced by the following:

(*a*) the amount, if any, by which the affiliate's exempt surplus in respect of the corporation at that time exceeds the total of

(i) the affiliate's hybrid deficit, if any, in respect of the corporation at that time, and

(ii) the affiliate's taxable deficit, if any, in respect of the corporation at that time;

(*a.1*) the amount, if any, by which the amount of the affiliate's hybrid surplus in respect of the corporation at that time exceeds the amount determined under subsection (5.7) in respect of the corporation at that time if, at that time, the amount of that hybrid surplus is less than or equal to the amount determined by the formula

$$[A \times (B - 0.5)] + (C \times 0.5)$$

where

A is the affiliate's hybrid underlying tax in respect of the corporation at that time,

B is the corporation's relevant tax factor (within the meaning assigned by subsection 95(1) of the Act) for the corporation's taxation year that includes that time, and

C is the affiliate's hybrid surplus in respect of the corporation at that time; and

(13) Subparagraph 5905(5.5)(*b*)(ii) of the Regulations is replaced by the following:

(ii) the amount, if any, by which the affiliate's taxable surplus in respect of the corporation at that time exceeds

(A) if the affiliate has an exempt deficit and a hybrid deficit, in respect of the corporation at that time, the total of the exempt deficit and the hybrid deficit,

(B) if the affiliate has an exempt deficit and no hybrid deficit, in respect of the corporation at that time, the amount, if any, by which the exempt deficit exceeds the affiliate's hybrid surplus in respect of the corporation at that time, and

(C) if the affiliate has a hybrid deficit and no exempt deficit, in respect of the corporation at that time, the amount, if any, by which the hybrid deficit exceeds the affiliate's exempt surplus in respect of the corporation at that time.

(14) Subsection 5905(5.6) of the Regulations is replaced by the following:

(5.6) For the purposes of subsection (5.5), the amounts of exempt surplus or exempt deficit, hybrid surplus or hybrid deficit, hybrid underlying tax, taxable surplus or taxable deficit, and underlying foreign tax, of a foreign affiliate of corporation resident in Canada, in respect of the corporation, at a particular time are those amounts that would be determined, at the particular time, under subparagraph 5902(1)(*a*)(i) if that subparagraph were applicable at the particular time and the references in that subparagraph to "the dividend time" were references to the particular time.

(5.7) For the purposes of paragraph (5.5)(*a.1*), the amount determined under this subsection in respect of the corporation at any time is

(*a*) if the affiliate has an exempt deficit and a taxable deficit, in respect of the corporation at that time, the total of the exempt deficit and the taxable deficit;

(*b*) if the affiliate has an exempt deficit and no taxable deficit, in respect of the corporation at that time, the amount of the exempt deficit; and

(*c*) if the affiliate has a taxable deficit and no exempt deficit, in respect of the corporation at that time, the amount, if any, by which the taxable deficit exceeds the affiliate's exempt surplus in respect of the corporation at that time.

(15) Subsection 5905(7) of the Regulations is replaced by the following:

(7) If at any time there has been a liquidation and dissolution of a foreign affiliate (referred to in this subsection as the "dissolved affiliate") of a corporation resident in Canada that is a designated liquidation and dissolution (within the meaning assigned by subsection 95(1) of the Act) of the dissolved affiliate, each other foreign affiliate of the corporation that had a direct equity percentage (within the meaning assigned by subsection 95(4) of the Act) in the dissolved affiliate immediately before that time is, for the purposes of computing its exempt surplus or exempt deficit, hybrid surplus or hybrid deficit, hybrid underlying tax, taxable surplus or taxable deficit, and underlying foreign tax, in respect of the corporation, deemed to have received dividends immediately before that time the total of which is equal to the amount it might reasonably have expected to receive if the dissolved affiliate had, immediately before that time, paid dividends on all shares of its capital stock the total of which was equal to the amount of its net surplus in respect of the corporation immediately before that time, determined on the assumption that the taxation year of the dissolved affiliate that otherwise would have included that time had ended immediately before that time.

(16) Subsection 5905(11) of the Regulations is replaced by the following:

(11) For the purposes of subsection (10),

(*a*) if a particular foreign affiliate of a corporation has an equity percentage in another foreign affiliate of the corporation that has an equity percentage in the particular affiliate, the amount that would be the net surplus of, or the amount that would be a dividend received by, the particular affiliate is to be determined in a manner that is

(i) reasonable in the circumstances, and

(ii) consistent with the results that would be obtained if a series of actual dividends had been paid and received by the foreign affiliates of the corporation that are relevant to the determination;

(*b*) if any foreign affiliate of a corporation resident in Canada has issued shares of more than one class of its capital stock, the amount that would be paid as a dividend on the shares of any class is the portion of its net surplus that, in the circumstances, it might reasonably be expected to have paid on all the shares of that class; and

(*c*) if the particular affiliate's net surplus as determined for the purposes of that subsection would, in the absence of this paragraph, be nil the particular affiliate's net surplus for the purposes of that subsection is deemed to be the greater of

(i) the amount of the particular affiliate's retained earnings, if any, determined at the end of its last taxation year ending before the time referred to in that subsection under accounting principles that are relevant to the particular affiliate for that year, and

(ii) the amount determined by the formula

$$A \times B$$

where

A is the amount of the particular affiliate's total assets determined at the end of that year under accounting principles that are relevant to the particular affiliate for that year, and

B is 25 percent.

(17) Subsection 5905(12) of the Regulations is repealed.

(18) Paragraph 5905(13)(*a*) of the Regulations is replaced by the following:

(*a*) the percentage that is the corporation's equity percentage in the particular affiliate at that time if

(i) the particular affiliate and each corporation that is relevant to the determination of the corporation's equity percentage in the particular affiliate have, at that time, only one class of issued shares, and

(ii) no foreign affiliate (referred to in this subparagraph as the "upper-tier affiliate") of the corporation that is relevant to the determination of the corporation's equity percentage in the particular affiliate has, at that time, an equity percentage in a foreign affiliate (including, for greater certainty, the particular affiliate) of the corporation that has an equity percentage in the upper-tier affiliate; and

(19) The portion of subsection 5905(13) of the Regulations after subparagraph (*b*)(ii) is repealed.

(20) Section 5905 of the Regulations is amended by adding the following after subsection (13):

(14) For the purposes of subsections (10), (11) and (13), "equity percentage" has the meaning that would be assigned by subsection 95(4) of the Act if the reference in paragraph

(*b*) of the definition "equity percentage" in that subsection to "any corporation" were read as a reference to "any corporation other than a corporation resident in Canada".

(21) Subsection (1) applies in respect of acquisitions and dispositions that occur after Announcement Date.

(22) Subsections (2) to (14) apply after Announcement Date.

(23) Subsection (15) applies in respect of liquidations and dissolutions of foreign affiliates of a taxpayer that begin after Announcement Date. However, if the taxpayer has elected under subsection 16(28) of this Act,

(*a*) subsection (15) applies in respect of all liquidations and dissolutions of foreign affiliates of the taxpayer that begin after December 20, 2002; and

(*b*) subsection 5905(7) of the Regulations, as enacted by subsection (15), is, in respect of all such liquidations and dissolutions that begin on or before Announcement Date, to be read as follows:

(7) If at any time there has been a liquidation and dissolution of a foreign affiliate (referred to in this subsection as the "dissolved affiliate") of a corporation resident in Canada that is a designated liquidation and dissolution (within the meaning assigned by subsection 95(1) of the Act) of the dissolved affiliate, each other foreign affiliate of the corporation that had a direct equity percentage (within the meaning assigned by subsection 95(4) of the Act) in the dissolved affiliate immediately before that time is, for the purposes of computing its exempt surplus or exempt deficit, taxable surplus or taxable deficit, and underlying foreign tax, in respect of the corporation, deemed to have received dividends immediately before that time the total of which is equal to the amount it might reasonably have expected to receive if the dissolved affiliate had, immediately before that time, paid dividends on all shares of its capital stock the total of which was equal to the amount of its net surplus in respect of the corporation immediately before that time, determined on the assumption that the taxation year of the dissolved affiliate that otherwise would have included that time had ended immediately before that time.

(24) Subsections (16) and (18) to (20) apply after Announcement Date.

(25) Subsection (17) applies after December 18, 2009.

30. (1) Paragraph (*b*) of the definition "earnings" in subsection 5907(1) of the Regulations is replaced by the following:

(*b*) in any other case, the total of all amounts each of which is an amount of income that would be required under paragraph 95(2)(*a*) of the Act to be included in computing the affiliate's income or loss from an active business for the year if that income were computed taking into account the rules in subsection (2.03); (*gains*)

(2) The portion of the definition "exempt earnings" in subsection 5907(1) of the Regulations before subparagraph (*a*)(iii) is replaced by the following:

"exempt earnings", of a particular foreign affiliate of a particular corporation for a taxation year of the particular affiliate, means, subject to subsection (2.02), the total of all amounts each of which is

(*a*) the amount by which the capital gains of the particular affiliate for the year (other than capital gains included in computing the amount, at any time in the year, of the particular affiliate's hybrid surplus, or hybrid deficit, in respect of the particular corporation) exceed the total of

(i) the amount of the taxable capital gains for the year referred to in the description of B in the definition "foreign accrual property income" in subsection 95(1) of the Act,

(ii) the amount of the taxable capital gains for the year referred to in subparagraphs (*c*)(i), (*e*)(i) and (*f*)(iv) of the definition "net earnings", and

(3) The portion of the definition "exempt loss" in subsection 5907(1) of the Regulations before subparagraph (*a*)(iii) is replaced by the following:

"exempt loss", of a foreign affiliate of a corporation for a taxation year of the affiliate, means, subject to subsection (2.02), the total of all amounts each of which is

(*a*) the amount by which the capital losses of the affiliate for the year (other than capital losses included in computing the amount, at any time in the year, of the particular affiliate's hybrid surplus, or hybrid deficit, in respect of the particular corporation) exceed the total of

(i) the amount of the allowable capital losses for the year referred to in the description of E in the definition "foreign accrual property income" in subsection 95(1) of the Act,

(ii) the amount of the allowable capital losses for the year referred to in subparagraphs (*c*)(i), (*e*)(i) and (*f*)(iv) of the definition "net loss", and

(4) The portion of the definition "exempt surplus" in subsection 5907(1) of the Regulations before paragraph (*a*) is replaced by the following:

"exempt surplus", of a foreign affiliate (in this definition referred to as the "subject affiliate") of a corporation in respect of the corporation, at any particular time, means the amount determined by the following formula in respect of the period that begins with the latest of the following times and that ends with the particular time:

(5) The portion of the definition "exempt surplus" in subsection 5907(1) of the English version of the Regulations after paragraph (*c*) and before the description of A is replaced by the following:

A – B

where

(6) Subparagraph (vii) of the description of A in the definition "exempt surplus" in subsection 5907(1) of the Regulations is replaced by the following:

(vii) an amount added, in the period and before the particular time, to the exempt surplus of the subject affiliate under paragraph (7.1)(*d*) (as that paragraph applied to dividends paid on or before Announcement Date), and

(7) Paragraph (*b*) of the definition "loss" in subsection 5907(1) of the Regulations is replaced by the following:

(*b*) in any other case, the total of all amounts each of which is an amount of a loss that would be required under paragraph 95(2)(*a*) of the Act to be included in computing the affiliate's income or loss from an active business for the year if that loss were computed taking into account the rules in subsection (2.03);

(8) 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 "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, 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,

(9) Subparagraphs (*d*)(i) and (ii) of the definition "net earnings" in subsection 5907(1) of the Regulations are replaced by the following:

(i) shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate (other than dispositions to which any of paragraphs 95(2)(*c*) to (*e*) of the Act was applicable and dispositions in respect of which the amount of the capital gain is included in computing the amount, at any time in the year, of the affiliate's hybrid surplus, or hybrid deficit, in respect of the corporation), or

(ii) partnership interests that were excluded property of the affiliate (other than dispositions in respect of which the amount of the capital gain is included in computing the amount, at any time in the year, of the affiliate's hybrid surplus, or hybrid deficit, in respect of the corporation)

(10) Paragraph (*d*) of the definition "net earnings" in subsection 5907(1) of the Regulations, as amended by subsection (9), is repealed.

(11) Clause (*b*)(i)(A) of the definition "net loss" in subsection 5907(1) of the Regulations is replaced by the following:

(A) the total of

(I) the amount determined for D in the formula in the definition "foreign accrual property income" in subsection 95(1) of the Act for the year,

(II) the amount determined under paragraph (*a*) of the description of E in that formula for the year,

(III) the amount determined for G in that formula for the year, and

(IV) the amount determined for H in that formula for the year

(12) Subparagraphs (*d*)(i) and (ii) of the definition "net loss" in subsection 5907(1) of the Regulations are replaced by the following:

(i) shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate (other than dispositions to which paragraph 95(2)(*c*), (*d*) or (*e*) of the Act was applicable and dispositions in respect of which the amount of the capital loss is included in computing the amount, at any time in the year, of the affiliate's hybrid surplus, or hybrid deficit, in respect of the corporation), or

(ii) partnership interests that were excluded property of the affiliate (other than dispositions in respect of which the amount of the capital loss is included in computing the amount, at any time in the year, of the affiliate's hybrid surplus, or hybrid deficit, in respect of the corporation)

(13) Paragraph (*d*) of the definition "net loss" in subsection 5907(1) of the Regulations, as amended by subsection (12), is repealed.

(14) Paragraphs (*a*) to (*c*) of the definition "net surplus" in subsection 5907(1) of the Regulations are replaced by the following:

(*a*) if the affiliate has no exempt deficit, no hybrid deficit and no taxable deficit, the amount that is the total of its exempt surplus, hybrid surplus and taxable surplus in respect of the corporation,

(*b*) if the affiliate has no exempt deficit but has a hybrid deficit and a taxable deficit, the amount, if any, by which its exempt surplus exceeds the total of its hybrid deficit and taxable deficit in respect of the corporation,

(*c*) if the affiliate has no exempt deficit and no hybrid deficit but has a taxable deficit, the amount, if any, by which the total of its exempt surplus and hybrid surplus exceeds its taxable deficit in respect of the corporation,

(*d*) if the affiliate has no exempt deficit and no taxable deficit but has a hybrid deficit, the amount, if any, by which the total of its exempt surplus and taxable surplus exceeds its hybrid deficit in respect of the corporation,

(*e*) if the affiliate has an exempt deficit but no hybrid deficit or taxable deficit, the amount, if any, by which the total of its hybrid surplus and taxable surplus exceeds its exempt deficit in respect of the corporation,

(*f*) if the affiliate has an exempt deficit and a hybrid deficit but no taxable deficit, the amount, if any, by which its taxable surplus exceeds the total of its exempt deficit and hybrid deficit in respect of the corporation, or

(*g*) if the affiliate has an exempt deficit and a taxable deficit but no hybrid deficit, the amount, if any, by which its hybrid surplus exceeds the total of its exempt deficit and taxable deficit in respect of the corporation,

(15) Paragraph (*b*) of the definition "taxable earnings" in subsection 5907(1) of the Regulations is amended by striking out "or" at the end of subparagraph (iii), adding "or" at the end of subparagraph (iv) and adding the following after subparagraph (iv):

(iv.1) the amount, if any, by which

(A) the total of all amounts each of which is an amount required by paragraph (2.02)(*a*) to be included under this definition for the year

exceeds

(B) the total of all amounts each of which is an amount required by paragraph (2.02)(*b*) to be deducted under this definition for the year,

(16) The portion of the definition "taxable surplus" in subsection 5907(1) of the Regulations before paragraph (*a*) is replaced by the following:

"taxable surplus", of a foreign affiliate (in this definition referred to as the "subject affiliate") of a corporation in respect of the corporation, at any particular time, means the amount determined by the following formula in respect of the period that begins with the latest of the following times and that ends with the particular time:

(17) The portion of the definition "taxable surplus" in subsection 5907(1) of the English version of the Regulations after paragraph (*c*) and before the description of A is replaced by the following:

A – B

where

(18) Subparagraph (v) of the description of A in the definition "taxable surplus" in subsection 5907(1) of the Regulations is replaced by the following:

(v) an amount added, in the period and before the particular time, to the subject affiliate's taxable surplus under paragraph (7.1)(*e*) (as that paragraph applied to dividends paid on or before Announcement Date), and

(19) Subparagraph (iv) of the description of B in the definition "taxable surplus" in subsection 5907(1) of the Regulations is replaced by the following:

(iv) the portion of any whole dividend paid by the subject affiliate in the period and before the particular time deemed by paragraph 5901(1)(*b*) or, if subsection 5901(1.1) applied to the whole dividend, paragraph 5901(1)(*a.1*) to have been paid out of the subject affiliate's taxable surplus in respect of the corporation,

(20) The portion of the definition "underlying foreign tax" in subsection 5907(1) of the Regulations before paragraph (*a*) is replaced by the following:

"underlying foreign tax", of a foreign affiliate (in this definition referred to as the "subject affiliate") of a corporation in respect of the corporation, at any particular time, means the amount determined by the following formula in respect of the period that begins with the later of the following times and that ends with the particular time:

(21) The portion of the definition "underlying foreign tax" in subsection 5907(1) of the English version of the Regulations after paragraph (*b*) and before the description of A is replaced by the following:

A – B

where

(22) Subparagraph (ii) of the description of A in the definition "underlying foreign tax" in subsection 5907(1) of the Regulations is replaced by the following:

(ii) the portion of any income or profits tax paid to the government of a country by the subject affiliate that can reasonably be regarded as having been paid in respect of the taxable earnings, including for greater certainty any amounts included because of paragraph (2.02)(*a*) in computing the taxable earnings, of the affiliate for a taxation year ending in the period,

(23) Subparagraph (ii) of the description of B in the definition "underlying foreign tax" in subsection 5907(1) of the Regulations is replaced by the following:

(ii) the underlying foreign tax applicable to any whole dividend paid by the subject affiliate in the period and before the particular time deemed by paragraph 5901(1)(*b*) or, if subsection 5901(1.1) applied to the whole dividend, paragraph 5901(1)(*a.1*) to have been paid out of the subject affiliate's taxable surplus in respect of the corporation before that time,

(24) Subsection 5907(1) of the Regulations is amended by adding the following in alphabetical order:

"designated person or partnership", in respect of a taxpayer at any time, means the taxpayer or a person or partnership that is at that time

(*a*) a person (other than a partnership) that does not, at that time, deal at arm's length with the taxpayer, or

(*b*) a partnership a member of which is, at that time, a designated person or partnership in respect of the taxpayer under this definition; (*personne ou société de personnes désignée*)

"hybrid deficit", of a foreign affiliate of a corporation in respect of the corporation at any time, means the amount, if any, by which

(*a*) the total of all amounts each of which is an amount determined at that time under any of subparagraphs (i) to (vii) of the description of B in the definition "hybrid surplus"

exceeds

(*b*) the total of all amounts each of which is an amount determined at that time under any of subparagraphs (i) to (v) of the description of A in that definition; (*déficit hybride*)

"hybrid surplus", of a foreign affiliate (in this definition referred to as the "subject affiliate") of a corporation in respect of the corporation, at any particular time, means the amount

determined by the following formula in respect of the period that begins with the latest of the following times and that ends with the particular time:

(*a*) the first day of the taxation year of the subject affiliate in which it last became a foreign affiliate of the corporation,

(*b*) the last time for which the opening hybrid surplus of the subject affiliate in respect of the corporation was required to be determined under section 5905, and

(*c*) the last time for which the opening hybrid deficit of the subject affiliate in respect of the corporation was required to be determined under section 5905

A – B

where

A is the total of all amounts, in respect of the period, each of which is

(i) the opening hybrid surplus, if any, of the subject affiliate in respect of the corporation as determined under section 5905, at the time established in paragraph (*b*),

(ii) the amount of a capital gain (except to the extent that the taxable portion of the capital gain is included under the description of B in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the subject affiliate), for a taxation year, of the subject affiliate, or of a partnership of which the subject affiliate is a member (to the extent that the capital gain is reasonably attributable to the subject affiliate), in respect of a disposition, at any time in the period, of

(A) a share of the capital stock of another foreign affiliate of the corporation,

(B) a partnership interest, or

(C) a property, that is an excluded property of the subject affiliate because of paragraph (*c.1*) of the definition "excluded property" in subsection 95(1) of the Act, that related to

(I) an amount that was receivable under an agreement that relates to the sale of a property that is referred to in clause (A) or (B) the capital gain or capital loss from the sale of which is included under this subparagraph or subparagraph (ii) of the description of B, as the case may be, or

(II) an amount payable, or an amount of indebtedness, described in clause (*c.1*)(ii)(B) of that definition "excluded property" arising in respect of the acquisition of an excluded property of the affiliate that is referred to in clause (A) or (B) any capital gain or capital loss from the disposition of which would, if that excluded property were disposed of, be included under this subparagraph or subparagraph (ii) of the description of B, as the case may be,

(iii) the portion of any income or profits tax refunded by the government of a country to the subject affiliate that can reasonably be regarded as having been refunded in respect of an amount referred to in subparagraph (ii) or (iii) of the description of B,

(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 by subsection 5905(7) to have been received by the subject affiliate) that 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, or

(v) an amount added to the hybrid surplus of the subject affiliate or deducted from its hybrid deficit in the period and before the particular time under subsection (1.1) or (1.2), and

B is the total of those of the following amounts that apply in respect of the period:

(i) the opening hybrid deficit, if any, of the subject affiliate in respect of the corporation as determined under section 5905, at the time established in paragraph (*c*),

(ii) the amount of a capital loss (except to the extent that the allowable portion of the capital loss is included under paragraph (*a*) of the description of E in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the subject affiliate), for a taxation year, of the subject affiliate, or of a partnership of which the subject affiliate is a member (to the extent that the capital loss is reasonably attributable to the subject affiliate), in respect of a disposition, at any time in the period, of

(A) a share of the capital stock of another foreign affiliate of the corporation,

(B) a partnership interest, or

(C) a property, that is an excluded property of the subject affiliate because of paragraph (*c.1*) of the definition "excluded property" in subsection 95(1) of the Act, that related to

(I) an amount that was receivable under an agreement that relates to the sale of a property that is referred to in clause (A) or (B) the capital gain or capital loss from the sale of which is included under subparagraph (ii) of the description of A or this subparagraph, as the case may be, or

(II) an amount payable, or an amount of indebtedness, described in clause (*c.1*)(ii)(B) of that definition "excluded property" arising in respect of the acquisition of an excluded property of the affiliate that is referred to in clause (A) or (B) any capital gain or capital loss from the disposition of which would, if that excluded property were disposed of, be included under subparagraph (ii) of the description of A or this subparagraph, as the case may be,

(iii) the amount of a capital loss for a taxation year of the subject affiliate that would arise in respect of a disposition, at any time in the period, of a share of the capital stock of another foreign affiliate of the corporation in the course of the liquidation and dissolution of that other affiliate if subclause 95(2)(*e*)(iv)(A)(II) of the Act were read without reference to its sub-subclause 1 and section 93 of the Act were read without reference to its subsection (4),

(iv) the portion of any income or profits tax paid to the government of a country by the subject affiliate that can reasonably be regarded as having been paid in respect of an amount referred to in subparagraph (ii) or (iv) of the description of A,

(v) the portion of any whole dividend paid by the subject affiliate in the period and before the particular time deemed by paragraph 5901(1)(*a.1*) or, if subsection 5901(1.1) applied to the whole dividend, paragraph 5901(1)(*b*) to have been paid out of the subject affiliate's hybrid surplus in respect of the corporation,

(vi) each amount that is required under section 5902 to be included under this subparagraph in the period and before the particular time, or

(vii) an amount, in the period and before the particular time, deducted from the hybrid surplus of the subject affiliate or added to its hybrid deficit under subsection (1.1) or (1.2); (*surplus hybride*)

"hybrid underlying tax", of a foreign affiliate (in this definition referred to as the "subject affiliate") of a corporation in respect of the corporation, at any particular time, means the amount determined by the following formula in respect of the period that begins with the later of the following times and that ends with the particular time:

(*a*) the first day of the taxation year of the subject affiliate in which it last became a foreign affiliate of the corporation, and

(*b*) the last time for which the opening hybrid underlying tax of the subject affiliate in respect of the corporation was required to be determined under section 5905

A – B

where

A is the total of all amounts, in respect of the period, each of which is

(i) the opening hybrid underlying tax, if any, of the subject affiliate in respect of the corporation as determined under section 5905, at the time established in paragraph (*b*),

(ii) the portion of any income or profits tax paid to the government of a country by the subject affiliate that can reasonably be regarded as having been paid in respect of any amount referred to in subparagraph (ii) or (iv) of the description of A in the definition "hybrid surplus",

(iii) each amount that was prescribed by paragraph 5900(1)(*c.1*) to have been the foreign tax applicable to 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 was prescribed by paragraph 5900(1)(*a.1*) to have been paid out of the payer affiliate's hybrid surplus in respect of the corporation, or

(iv) the amount by which the subject affiliate's hybrid underlying tax is required to be increased under subsection (1.1) or (1.2),

B is the total of those of the following amounts that apply in respect of the period:

(i) the portion of any income or profits tax refunded by the government of a country to the subject affiliate that can reasonably be regarded as having been refunded in respect of an amount referred to in subparagraph (ii) or (iii) of the description of B in the definition "hybrid surplus",

(ii) the hybrid underlying tax applicable to any whole dividend paid by the subject affiliate in the period and before the particular time deemed by paragraph 5901(1)(*a.1*) or, if subsection 5901(1.1) applied to the whole dividend, paragraph 5901(1)(*b*) to have been paid out of the subject affiliate's hybrid surplus in respect of the corporation before that time,

(iii) each amount that is required under section 5902 to be included under this subparagraph in the period and before the particular time, or

(iv) the amount by which the subject affiliate's hybrid underlying tax is required to be decreased in the period and before the particular time under subsection (1.1) or (1.2); (*montant intrinsèque d'impôt hybride*)

"hybrid underlying tax applicable", in respect of a corporation to a whole dividend paid at any time on the shares of any class of the capital stock of a foreign affiliate of the corporation by the affiliate, means the proportion of the hybrid underlying tax of the affiliate at that time in respect of the corporation that

(*a*) the portion of the whole dividend deemed to have been paid out of the affiliate's hybrid surplus in respect of the corporation

is of

(*b*) the affiliate's hybrid surplus at that time in respect of the corporation; (*montant intrinsèque d'impôt hybride applicable*)

(25) Subsection 5907(1.01) of the Regulations is replaced by the following:

(1.01) For the purposes of section 113 of the Act, "exempt surplus", "hybrid surplus" and "taxable surplus" have the meanings assigned by subsection (1).

(26) Subparagraph 5907(1.1)(*a*)(iv) of the Regulations is amended by striking out "and" at the end of clause (A) and adding the following after clause (A):

(A.1) to the extent that such income or profits tax would otherwise have reduced the hybrid surplus or increased the hybrid deficit of the secondary affiliate,

(I) be deducted from the hybrid surplus or added to the hybrid deficit, as the case may be, of the primary affiliate, and

(II) be added to the hybrid underlying tax of the primary affiliate, and

(27) Subparagraph 5907(1.1)(*a*)(v) of the Regulations is amended by striking out "and" at the end of clause (C) and adding the following after clause (C):

(C.1) where such loss reduces the hybrid surplus or increases the hybrid deficit, as the case may be, of the secondary affiliate,

(I) be added to the hybrid surplus or deducted from the hybrid deficit, as the case may be, of the primary affiliate, and

(II) be deducted from the hybrid underlying tax of the primary affiliate, and

(28) Clause 5907(1.1)(*b*)(i)(B) of the Regulations is amended by striking out "and" at the end of subclause (I) and adding the following after subclause (I):

(I.1) such portion of the amount so paid as may reasonably be regarded as relating to an amount included in the hybrid surplus or deducted from the hybrid deficit, as the case may be, of the secondary affiliate is, at the end of the year, to be added to the hybrid surplus or deducted from the hybrid deficit, as the case may be, of the primary affiliate and deducted from the hybrid underlying tax of the primary affiliate, and

(29) Clause 5907(1.1)(*b*)(ii)(A) of the Regulations is amended by striking out "and" at the end of subclause (I) and adding the following after subclause (I):

(I.1) such portion of the amount so paid as may reasonably be regarded as relating to an amount deducted from the hybrid surplus or included in the hybrid deficit, as the case may be, of the secondary affiliate is, at the end of the year of the loss, to be deducted from the hybrid surplus or added to the hybrid deficit, as the case may be, of the primary affiliate and added to the hybrid underlying tax of the primary affiliate, and

(30) Paragraph 5907(1.2)(*c*) of the Regulations is amended by striking out "and" at the end of subparagraph (i) and adding the following after subparagraph (i):

(i.1) where such loss reduces the hybrid surplus or increases the hybrid deficit, as the case may be, of the loss affiliate,

(A) be added to the hybrid surplus or deducted from the hybrid deficit, as the case may be, of the taxpaying affiliate, and

(B) be deducted from the hybrid underlying tax of the taxpaying affiliate, and

(31) Subparagraph 5907(1.2)(*d*)(i) of the Regulations is amended by striking out "and" at the end of clause (A) and adding the following after clause (A):

(A.1) such portion of the amount as may reasonably be regarded as relating to an amount deducted from the hybrid surplus or included in the hybrid deficit, as the case may be, of the loss affiliate is, at the end of the year, to be deducted from the hybrid surplus or added to the hybrid deficit, as the case may be, of the taxpaying affiliate and added to the hybrid underlying tax of the taxpaying affiliate, and

(32) The portion of subsection 5907(1.3) of the Regulations before paragraph (*a*) is replaced by the following:

(1.3) For the purpose of paragraph (*b*) of the definition "foreign accrual tax" in subsection 95(1) of the Act and subject to subsection (1.4),

(33) Section 5907 of the Regulations is amended by adding the following after subsection (1.3):

(1.4) If the amount prescribed under paragraph (1.3)(*a*) or (*b*), or any portion of the amount, can reasonably be considered to be in respect of a loss of another corporation for a taxation year of the other corporation, then the amount so prescribed is to be reduced to the extent that it can reasonably be considered to be in respect of the portion of that loss that would, if section 5903 were read without reference to its subsection (4), not be a foreign accrual property loss (within the meaning assigned by subsection 5903(3)) of a controlled foreign affiliate of a person or partnership that is, at the end of that taxation year, a relevant person or partnership (within the meaning assigned by subsection 5903(6)) in respect of the taxpayer.

(1.5) If subsection (1.4) applied to reduce an amount that would, in the absence of subsection (1.4), be prescribed by paragraph (1.3)(*a*) to be foreign accrual tax applicable to an amount (referred to in this subsection as the "FAPI amount") included in the taxpayer's income under subsection 91(1) of the Act for a taxation year (referred to in subsection (1.6) as the "FAPI year") of the taxpayer, an amount equal to that reduction is, for the purpose of paragraph (*b*) of the definition "foreign accrual tax" in subsection 95(1) of the Act, prescribed to be foreign accrual tax applicable to the FAPI amount in the taxpayer's taxation year that includes the last day of the designated taxation year, if any, of the particular affiliate referred to in paragraph (1.3)(*a*).

(1.6) For the purposes of subsection (1.5), the designated taxation year of the particular affiliate is a particular taxation year of the particular affiliate if

(*a*) in the particular year, or in the particular affiliate's taxation year (referred to in this paragraph as the "PATY") ending in the FAPI year and one or more taxation years of the particular affiliate each of which follows the PATY and the latest of which is the particular year, all losses of the particular affiliate and the other corporations referred to in paragraph (1.3)(*a*) for their taxation years ending in the FAPI year would, on the assumption that the particular affiliate and each of those other corporations had no foreign accrual property income for any taxation year, reasonably be considered to have been fully deducted (under the tax law referred to in paragraph (1.3)(*a*)) against income (as determined under that tax law) of the particular affiliate or those other corporations;

(*b*) the taxpayer demonstrates that no other losses of the particular affiliate or those other corporations for any taxation year were, or could reasonably have been, deducted under that tax law against that income; and

(*c*) the last day of the particular year occurs in one of the five taxation years of the taxpayer that immediately follow the FAPI year.

(34) Subsection 5907(1.4) of the Regulations, as enacted by subsection (33), is replaced by the following:

(1.4) If the amount prescribed under paragraph (1.3)(*a*) or (*b*), or any portion of the amount, can reasonably be considered to be in respect of a <u>particular</u> loss <u>(other than a capital loss) or a capital loss</u> of another corporation for a taxation year of the other corporation, then

the amount so prescribed is to be reduced to the extent that it can reasonably be considered to be in respect of the portion of the particular loss or capital loss, as the case may be, that would, if sections 5903 and 5903.1 were read without reference to their subsection (4), not be a foreign accrual property loss (within the meaning assigned by subsection 5903(3)), or a foreign accrual capital loss (within the meaning assigned by subsection 5903.1(3)), as the case may be, of a controlled foreign affiliate of a person or partnership that is, at the end of that taxation year, a relevant person or partnership (within the meaning assigned by subsection 5903(6)) in respect of the taxpayer.

(35) Section 5907 of the Regulations is amended by adding the following before subsection (2):

(1.7) If the amount prescribed under paragraph (1.3)(*a*) or (*b*), or any portion of the amount, can reasonably be considered to be in respect of a capital loss of another corporation for a taxation year of the other corporation, then the amount so prescribed, as reduced by subsection (1.4), if applicable, shall be reduced to the extent that it can reasonably be considered to be in respect of the portion of that capital loss that would not be deductible by the particular affiliate in computing its foreign accrual property income for the year if the capital loss had been incurred by the particular affiliate.

(36) Subparagraph 5907(2)(*f*)(ii) of the Regulations is replaced by the following:

(ii) subject to subsection (2.01), does not arise with respect to a disposition (other than a disposition to which subsection (9) applies), of property by the affiliate,

(A) to a person or partnership that was, at the time of the disposition, a designated person or partnership in respect of the taxpayer, and

(B) to which a tax deferral, rollover or similar tax postponement provision of the income tax laws that are relevant in computing the earnings amount of the affiliate applied, and

(37) Subparagraph 5907(2)(*j*)(iii) of the Regulations is replaced by the following:

(iii) subject to subsection (2.01), does not arise with respect to a disposition (other than a disposition to which subsection (9) applies), of property by the affiliate,

(A) to person or partnership that was, at the time of the disposition, a designated person or partnership in respect of the taxpayer, and

(B) to which a loss deferral or similar loss postponement provision of the income tax laws that are relevant in computing the earnings amount of the affiliate applied, and

(38) Paragraph 5907(2)(*l*) of the Regulations is replaced by the following:

(*l*) if any property of the affiliate that was acquired from a person or partnership that was, at the time of the acquisition, a designated person or partnership in respect of the taxpayer has been disposed of, the amount in respect of that property that may reasonably be considered as having been included under paragraph (*f*) in computing the earnings amount

of any foreign affiliate of the taxpayer or of a person or partnership that was, at the time of the disposition, a designated person or partnership in respect of the taxpayer.

(39) Section 5907 of the Regulations is amended by adding the following after subsection (2):

(2.01) Subparagraphs (2)(*f*)(ii) and (*j*)(iii) do not apply to a particular disposition of property (referred to in this subsection as the "affiliate property") by a particular foreign affiliate of a taxpayer if

(*a*) the only consideration received in respect of the particular disposition is shares of the capital stock of another foreign affiliate of the taxpayer;

(*b*) all of the shares of the capital stock of the other affiliate that are, immediately after the particular disposition, owned by the particular affiliate are disposed of, at a particular time that is within 90 days of the day that includes the time of the particular disposition, to a person or partnership that at the particular time is not a designated person or partnership in respect of the taxpayer; and

(*c*) the affiliate property is not disposed of by the other affiliate as part of a series of transactions or events that includes the particular disposition.

(2.02) If an amount or a portion of an amount would, in the absence of this subsection, be included in computing the exempt earnings, or deducted in computing the exempt loss, of a foreign affiliate of a corporation in respect of the corporation for a taxation year of the affiliate and the amount or portion arises from a transaction (within the meaning of subsection 245(1) of the Act) that is, or would be (if the amount or portion were a tax benefit for the purposes of section 245 of the Act), an avoidance transaction (within the meaning of subsection 245(3) of the Act), the following rules apply:

(*a*) the amount or portion is instead to be included in the affiliate's taxable earnings for the year in respect of the corporation; and

(*b*) any income or profits tax relating to the transaction that would otherwise be deducted in computing the exempt earnings, or included in computing the exempt loss, of the affiliate for the year in respect of the corporation, is instead to be deducted from the affiliate's taxable earnings for the year in respect of the corporation.

(2.03) The determination — under subparagraph (*a*)(iii) and paragraph (*b*) of the definition "earnings", and paragraph (*b*) of the definition "loss", in subsection (1) — of the earnings or loss of a foreign affiliate of a taxpayer resident in Canada for a particular taxation year from an active business is to be made as if the affiliate

(*a*) had, in computing its income or loss from the business for each taxation year (referred to in this paragraph as an "earnings or loss year") that is the particular year or is any preceding taxation year that begins after Announcement Date,

(i) claimed all deductions that it could have claimed under the Act, up to the maximum amount deductible in computing the income or loss from the business for that earnings or loss year, and

(ii) made all claims and elections and taken all steps under applicable provisions of the Act, or of enactments implementing amendments to the Act or its regulations, to maximize the amount of any deduction referred to subparagraph (i); and

(*b*) had, in computing its income or loss from the business for any preceding taxation year that began on or before Announcement Date, claimed all deductions, if any, that it actually claimed under the Act, up to the maximum amount deductible, and made all claims and elections, if any, and taken all steps, if any, under applicable provisions of the Act, or of enactments implementing amendments to the Act or its regulations, that it actually made.

(40) Subsection 5907(2.9) of the Regulations is replaced by the following:

(2.9) If paragraph 95(2)(*k.1*) of the Act applies in respect of a particular taxation year of a foreign affiliate of a taxpayer or in respect of a particular fiscal period of a partnership (which foreign affiliate or partnership is referred to in this subsection as the "operator" and which particular taxation year or particular fiscal period is referred to in this subsection as the "specified taxation year") a member of which is, at the end of the period, a foreign affiliate of a taxpayer,

(*a*) in computing the affiliate's earnings or loss from the foreign business referred to in that paragraph for the affiliate's taxation year (referred to in subparagraphs (i) and (ii) as the "preceding taxation year") that includes the day that is immediately before the beginning of the specified taxation year,

(i) there is to be added to the amount determined under paragraph (*a*) of the definition "earnings" in subsection (1), after adjustment in accordance with subsections (2) to (2.2),

(A) where the operator is the affiliate, the total of

(I) the amount, if any, by which the total determined under sub-subclause (ii)(A)(I)2 in respect of the operator for the preceding taxation year exceeds the total determined under sub-subclause (ii)(A)(I)1 in respect of the operator for that year, and

(II) if the operator was deemed under paragraph 95(2)(*k.1*) of the Act to have, at the end of the preceding taxation year, disposed of property owned by it that was used or held by it in the course of carrying on the foreign business in that year, the amount that is the total of all amounts each of which is determined by the formula

$$(A - B) - C$$

where

A is the fair market value, immediately before the end of that year, of a property deemed because of that paragraph to have been disposed of,

B is the amount determined under paragraph (*a*) of the definition "relevant cost base" in subsection 95(4) of the Act in respect of the property, in respect of the taxpayer, immediately before the time of the disposition, and

C is the amount, if any, of the capital gain determined in respect of the disposition of the property at that time, and

(B) where the operator is the partnership, the amount determined under subsection 5908(13); and

(ii) there is to be added to the amount determined under paragraph (*a*) of the definition "loss" in subsection (1),

(A) where the operator is the affiliate, the total of

(I) the amount, if any, by which

1. the total of all amounts each of which is an amount deemed under paragraph 95(2)(*k.1*) of the Act to have been claimed under any of paragraphs 20(1)(*l*), (*l.1*) and (7)(*c*), and subparagraphs 138(3)(*a*)(i), (ii) and (iv), of the Act (each of which provisions is referred to in this subparagraph as a "reserve provision") in computing the income from the foreign business for the preceding taxation year

exceeds

2. the total of all amounts each of which is an amount actually claimed by the operator as a reserve in computing its income from the foreign business for that year that can reasonably be considered to be in respect of amounts in respect of which a reserve could have been claimed under a reserve provision on the assumption that the operator could have claimed amounts in respect of the reserve provisions for that year, and

(II) the total of all amounts each of which is the amount, if any, by which the amount determined under the description of B in the formula in subclause (i)(A)(II) in respect of a property described in that subclause exceeds the amount determined under the description of A in the formula in that clause in respect of the property, and

(B) where the operator is the partnership, the amount determined under subsection 5908(13); and

(*b*) any property of the operator that is, under that paragraph, deemed to have been disposed of and reacquired by the operator is, for the purposes of this section, deemed to have been disposed of and reacquired by the operator in the same manner and for the same amounts as if that paragraph applied for the purposes of this section.

(41) Subsection 5907(5) of the Regulations is replaced by the following:

(5) For the purposes of this section, each capital gain, capital loss, taxable capital gain or allowable capital loss of a foreign affiliate of a taxpayer from the disposition of property is to be computed in accordance with the rules set out in subsection 95(2) of the Act.

(5.01) For the purposes of subsection (6), if any capital gain, capital loss, taxable capital gain or allowable capital loss referred to in subsection (5), or any capital loss referred to in subparagraph (iii) of the description of B in the definition "hybrid surplus" in subsection (1),

of a foreign affiliate of a corporation is required to be computed in Canadian currency and the currency referred to in subsection (6) is not Canadian currency, the amount of the gain or loss is to be converted from Canadian currency into the currency referred to in subsection (6) at the rate of exchange prevailing on the date of disposition of the property.

(42) The portion of subsection 5907(5.1) of the Regulations before paragraph (*a*) is replaced by the following:

(5.1) Notwithstanding subsection (5), if, under the income tax laws of a country other than Canada that are relevant in computing the earnings of a foreign affiliate of a taxpayer resident in Canada from an active business carried on by it in a country, no gain or loss is recognized in respect of a disposition (other than a disposition to which subsection (9) applies) by the affiliate of a capital property used or held principally for the purpose of gaining or producing income from an active business to a person or partnership (in this subsection referred to as the "transferee") that was, at the time of the disposition, a designated person or partnership in respect of the taxpayer, for the purposes of this section,

(43) Subsection 5907(7.1) of the Regulations is repealed.

(44) Subsection 5907(8) of the Regulations is replaced by the following:

(8) For the purposes of computing the various amounts referred to in this section, the first taxation year of a foreign affiliate, of a corporation resident in Canada, that is formed as a result of a foreign merger (within the meaning assigned by subsection 87(8.1) of the Act) is deemed to have commenced at the time of the merger, and a taxation year of a predecessor corporation (within the meaning assigned by subsection 5905(3)) that would otherwise have ended after that time is deemed to have ended immediately before that time.

(45) Subsection 5907(9) of the Regulations is replaced by the following:

(9) If a foreign affiliate of a taxpayer has been liquidated and dissolved (otherwise than as a result of a foreign merger within the meaning assigned by subsection 87(8.1) of the Act), for the purposes of computing the various amounts referred to in this section, the following rules apply:

(*a*) where, at a particular time, property having a fair market value equal to or greater than 90 percent of the fair market value of all of the property that was owned by the affiliate immediately before the commencement of the liquidation and dissolution has been disposed of by the affiliate in the course of the liquidation and dissolution, the taxation year of the affiliate that otherwise would have included the particular time is deemed to have ended immediately before that time; and

(*b*) each property of the affiliate that was disposed of by the affiliate in the course of the liquidation and dissolution is deemed to have been

(i) disposed of by the affiliate, at the time that is the earlier of the time it was actually disposed of and the time that is immediately before the time that is immediately before the particular time, for proceeds of disposition equal to

(A) if the liquidation and dissolution is one to which subsection 88(3) of the Act applies in respect of the disposition, the amount that would, in the absence of sub-

section 88(3.3) of the Act, be determined under paragraph 88(3)(*a*) or (*b*) of the Act, as the case may be,

(B) if the liquidation and dissolution is one to which paragraph 95(2)(*e*) of the Act applies in respect of the disposition, the amount determined under subparagraph 95(2)(*e*)(i) or (ii) of the Act, as the case may be, and

(C) in any other case, the fair market value of the property at the time it was actually disposed of, and

(ii) acquired by the person or partnership to which the affiliate disposed of the property, at the time it was actually acquired, at a cost equal to the affiliate's proceeds of disposition of the property.

(9.1) Notwithstanding any other provision of this Part, in determining the earnings or loss of a foreign affiliate of a taxpayer resident in Canada, for a taxation year of the affiliate from an active business carried on by it in a country,

(*a*) from a disposition of property to which paragraph 95(2)(*d.1*) of the Act applies, those earnings or that loss are to be determined using the rules in that paragraph; and

(*b*) from a disposition of property acquired in a transaction to which paragraph 95(2)(*d.1*) of the Act applies, the cost to the affiliate of the property is to be determined using the rules in that paragraph.

(46) Subsection 5907(13) of the Regulations is replaced by the following:

(13) For the purposes of subparagraph (ii) of paragraph 128.1(1)(*d*) of the Act, the prescribed amount is the amount determined by the formula

$$X + Y$$

where

X is the amount, if any, by which

(*a*) the amount, if any, determined by the formula

$$A - B - (C - D) + (E - F)$$

where

A is the taxable surplus of the foreign affiliate of the other taxpayer referred to in that paragraph, in respect of the other taxpayer, at the end of the year referred to in that subparagraph,

B is the affiliate's net earnings for the year in respect of the affiliate's foreign accrual property income for the year to the extent those net earnings have been included in the amount referred to in the description of A,

C is the total of all amounts each of which is the amount by which the affiliate's underlying foreign tax in respect of the other taxpayer at the end of the year would have increased because of the gain or income of the affiliate that would have arisen

if a disposition, deemed by paragraph 128.1(1)(*b*) of the Act, of a property by the affiliate had been an actual disposition of the property by the affiliate,

D is the total of all amounts each of which is the amount otherwise added in computing the affiliate's underlying foreign tax in respect of the other taxpayer at the end of the year in respect of income or profits taxes paid to the government of a country in respect of all or a portion of a gain or an income of the affiliate referred to in the description of C,

E is the total of all amounts each of which is the amount by which the affiliate's underlying foreign tax in respect of the other taxpayer at the end of the year would have decreased because of the loss of the affiliate that would have arisen if a disposition, deemed by paragraph 128.1(1)(*b*) of the Act, of a property by the affiliate had been an actual disposition of the property by the affiliate, and

F is the total of all amounts each of which is the amount otherwise deducted in computing the affiliate's underlying foreign tax in respect of the other taxpayer at the end of the year in respect of income or profits taxes refunded by the government of a country in respect of all or a portion of a loss of the affiliate referred to in the description of E;

exceeds

(*b*) the amount, if any, determined by the formula

$$[(G – H) \times (J – 1)] + K$$

where

G is the amount determined by the formula

$$L + M – N$$

where

L is the underlying foreign tax of the affiliate in respect of the other taxpayer at the end of the year,

M is the amount, if any, by which the amount determined under the description of C in paragraph (*a*) exceeds the amount determined under the description of D in that paragraph, and

N is the amount, if any, by which the amount determined under the description of E in paragraph (*a*) exceeds the amount determined under the description of F in that paragraph, and

H is the portion of the value of L that can reasonably be considered to relate to the affiliate's net earnings for the year in respect of the affiliate's foreign accrual property income,

J is the other taxpayer's relevant tax factor (within the meaning assigned by subsection 95(1) of the Act) for its taxation year that includes the time that is immediately before the particular time, and

K is the amount, if any, by which

(i) the total of all amounts required by paragraph 92(1)(*a*) of the Act to be added at any time in a preceding taxation year in computing the adjusted cost base to the other taxpayer of the shares of the affiliate owned by the other taxpayer at the end of the year

exceeds

(ii) the total of all amounts required by paragraph 92(1)(*b*) of the Act to be deducted at any time in a preceding taxation year in computing the adjusted cost base to the other taxpayer of the shares of the affiliate owned by the other taxpayer at the end of the year, and

Y is the amount, if any, by which

(*a*) the amount, if any, determined by the formula

$$P – (Q – R) + (S – T)$$

where

P is the affiliate's hybrid surplus in respect of the other taxpayer at the end of the year,

Q is the total of all amounts each of which is the amount by which the affiliate's hybrid underlying tax in respect of the other taxpayer at the end of the year would have increased because of the capital gain of the affiliate that would have arisen if a disposition, deemed by paragraph 128.1(1)(*b*) of the Act, of a property by the affiliate had been an actual disposition of the property by the affiliate,

R is the total of all amounts each of which is the amount otherwise added in computing the affiliate's hybrid underlying tax in respect of the other taxpayer at the end of the year in respect of income or profits taxes paid to the government of a country in respect of all or a portion of a capital gain of the affiliate referred to in the description of Q,

S is the total of all amounts each of which is the amount by which the affiliate's hybrid underlying tax in respect of the other taxpayer at the end of the year would have decreased because of the capital loss of the affiliate that would have arisen if a disposition, deemed by paragraph 128.1(1)(*b*) of the Act, of a property by the affiliate had been an actual disposition of the property by the affiliate, and

T is the total of all amounts each of which is the amount otherwise deducted in computing the affiliate's hybrid underlying tax in respect of the other taxpayer at the end of the year in respect of income or profits taxes refunded by the government of a country in respect of all or a portion of a capital loss of the affiliate referred to in the description of S;

exceeds

(*b*) the amount, if any, determined by the formula

$$[U \times (V - 0.5)] + (W \times 0.5)$$

where

U is the amount determined by the formula

$$U.1 + U.2 - U.3$$

where

U.1 is the hybrid underlying tax of the affiliate in respect of the other taxpayer at the end of the year,

U.2 is the amount, if any, by which the amount determined under the description of Q in paragraph (*a*) exceeds the amount determined under the description of R in that paragraph, and

U.3 is the amount, if any, by which the amount determined under the description of S in paragraph (*a*) exceeds the amount determined under the description of T in that paragraph,

V is the other taxpayer's relevant tax factor (within the meaning assigned by subsection 95(1) of the Act) for its taxation year that includes the time that is immediately before the particular time, and

W is the amount determined under paragraph (*a*).

(14) For the purposes of the description of C in paragraph (*a*) of the description of X in subsection (13) and the description of Q in paragraph (*a*) of the description of Y in subsection (13), the amount by which the underlying foreign tax or the hybrid underlying tax, as the case may be, of the affiliate in respect of the other taxpayer at the end of the year would have increased if a disposition (referred to in this subsection as the "notional actual disposition") deemed by paragraph 128.1(1)(*b*) of the Act of any property by the affiliate had been an actual disposition of the property by the affiliate is the total of all amounts each of which is the amount, if any, by which

(*a*) the amount (determined on the assumption that the notional actual disposition occurred at the time of the deemed disposition) that can reasonably be considered to be the amount of income or profits tax that the affiliate would, because of the notional actual disposition, have had to pay to the government of a particular country (other than Canada), in addition to any other income or profits tax otherwise payable to that government, in relation to the gain or income of the affiliate from the notional actual disposition

exceeds

(*b*) the amount that can reasonably be considered to be the portion of the notional income or profits tax payable by the affiliate to the government of the particular country in relation to the gain or income of the affiliate from the notional actual disposition (determined on the assumptions that the notional actual disposition occurred immediately after the time that is immediately after the time of the deemed disposition and that the notional income

or profits tax payable by the affiliate to the government of the particular country in relation to the notional actual disposition is equal to the amount determined under paragraph (*a*)) that, because of a comprehensive agreement or convention for the elimination of double taxation on income between the government of the particular country and the government of any other country, would not have been payable to the government of the particular country.

(15) For the purposes of the description of E in paragraph (*a*) of the description of X in subsection (13) and the description of S in paragraph (*a*) of the description of Y in subsection (13), the amount by which the underlying foreign tax or the hybrid underlying tax, as the case may be, of the affiliate in respect of the other taxpayer at the end of the year would have decreased if a disposition (referred to in this subsection as the "notional actual disposition") deemed by paragraph 128.1(1)(*b*) of the Act of any property by the affiliate had been an actual disposition of the property by the affiliate is the total of all amounts each of which the amount, if any, by which

(*a*) the amount (determined on the assumption that the notional actual disposition occurred at the time of the deemed disposition) that can reasonably be considered to be the amount of income or profits tax that the affiliate would, because of the notional actual disposition, have had refunded to it by the government of a particular country (other than Canada), in addition to any other income or profits tax otherwise refundable by that government, in relation to the loss or capital loss, as the case may be, of the affiliate from the notional actual disposition

exceeds

(*b*) the amount that can reasonably be considered to be the portion of the notional income or profits tax refundable to the affiliate by the government of the particular country in relation to the loss or capital loss, as the case may be, of the affiliate from the notional actual disposition (determined on the assumptions that the notional actual disposition occurred immediately after the time that is immediately after the time of the deemed disposition and that the notional income or profits tax refundable to the affiliate by the government of the particular country in relation to the notional actual disposition is equal to the amount determined by paragraph (*a*)) that, because of a comprehensive agreement or convention for the elimination of double taxation on income between the government of the particular country and the government of any other country, would not have been refundable by the government of the particular country.

(47) Subsections (1), (7), (8), (11), (15), (22), (26) to (31), (34) and (35) and subsection 5907(2.03) of the Regulations, as enacted by subsection (39), apply in respect of taxation years of a foreign affiliate of a taxpayer that end after Announcement Date.

(48) Subsection (2) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after Announcement Date except that, for taxation years of the foreign affiliate that begin before 2013, subparagraph (*a*)(ii) of the definition "exempt earnings" in subsection 5907(1) of the Regulations, as enacted by subsection (2), is to be read as follows:

(ii) the amount of the taxable capital gains for the year referred to in subparagraphs (*c*)(i), (*d*)(iii), (*e*)(i) and (*f*)(iv) of the definition "net earnings", and

(49) Subsection (3) applies in respect of taxation years of a foreign affiliate of a taxpayer that end after Announcement Date except that, for taxation years of the foreign affiliate that begin before 2013, subparagraph (*a*)(ii) of the definition "exempt loss" in subsection 5907(1) of the Regulations, as enacted by subsection (3), is to be read as follows:

(ii) the amount of the allowable capital losses for the year referred to in subparagraphs (*c*)(i), (*d*)(iii), (*e*)(i) and (*f*)(iv) of the definition "net loss", and

(50) Subsections (4) to (6), (14), (16) to (21), (23), (25), (41) and (43) apply after Announcement Date.

(51) Subsections (9) and (12) apply in respect of taxation years of a foreign affiliate of a taxpayer that end after Announcement Date. However, if the taxpayer has elected under subsection 16(31), subsection (9) also applies to all mergers or combinations in respect of foreign affiliates of the taxpayer that occur after December 20, 2002 and in taxation years of those foreign affiliates that end on or before Announcement Date, except that, in respect of those mergers or combinations, subparagraphs (*d*)(i) and (ii) of the definition "net earnings" in subsection 5907(1) of the Regulations, as enacted by subsection (9), are to be read as follows:

(i) shares of the capital stock of another foreign affiliate of the corporation that were excluded property of the affiliate (other than dispositions to which any of paragraphs 95(2)(*c*) to (*e*) of the Act was applicable), or

(ii) partnership interests that were excluded property of the affiliate

(52) Subsections (10) and (13) apply to taxation years of a foreign affiliate of a taxpayer that begin after 2012.

(53) Subsection (24) applies after Announcement Date. However, in respect of dispositions that occur after Announcement Date and before 2013,

(*a*) the portion of subparagraph (ii) of the description of A in the definition "hybrid surplus" in subsection 5907(1) of the Act before clause (A), as enacted by subsection (24), is to be read as follows:

(ii) the amount of a capital gain (except to the extent that the taxable portion of the capital gain is included under the description of B in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the subject affiliate), for a taxation year, of the subject affiliate, or of a partnership of which the subject affiliate is a member (to the extent that the capital gain is reasonably attributable to the subject affiliate), in respect of a disposition, at any time in the period, to a person or partnership that was, at that time, a designated person or partnership in respect of the corporation, of

(*b*) the portion of subparagraph (ii) of the description of B in the definition "hybrid surplus" in subsection 5907(1) of the Act before clause (A), as enacted by subsection (24), is to be read as follows:

(ii) the amount of a capital loss (except to the extent that the allowable portion of the capital loss is included under paragraph (*a*) of the description of E in the definition "foreign accrual property income" in subsection 95(1) of the Act in respect of the subject affiliate), for a taxation year, of the subject affiliate, or of a partnership of which the subject affiliate is a member (to the extent that the capital loss is reasonably attributable to the subject affiliate), in respect of a disposition, at any time in the period, to a person or partnership that was, at that time, a designated person or partnership in respect of the corporation, of

(*c*) section 5907 of the Regulations is to be read as if it contained a subsection (1.001) that reads as follows:

(1.001) For the purposes of subparagraph (ii) of the description of A, and subparagraph (ii) of the description of B, in the definition "hybrid surplus" in subsection (1)

(*a*) if a foreign affiliate of a corporation redeems, acquires or cancels shares of its capital stock those shares are, for greater certainty, deemed to be disposed of to the affiliate by the person or partnership that, immediately before the redemption, acquisition or cancellation, holds those shares;

(*b*) if a partnership redeems, acquires or cancels interests in the partnership those interests are, for greater certainty, deemed to be disposed of to the partnership by the person or partnership that, immediately before the redemption, acquisition or cancellation, holds those interests; and

(*c*) if a person or partnership is deemed under subsection 40(3) of the Act to have disposed of shares of the capital stock of a corporation, the person or partnership is deemed to have disposed of those shares to itself.

(54) Subsections (32) and (33) apply to taxation years of a foreign affiliate of a taxpayer that begin after November 1999.

(55) Subsections (36) to (38) apply in respect of dispositions of property by a foreign affiliate of a taxpayer that occur after Announcement Date. However, if the taxpayer has elected under subsection (56),

(*a*) subparagraph 5907(2)(*f*)(ii) of the Regulations, as enacted by subsection (36), and subparagraph 5907(2)(*j*)(iii) of the Regulations, as enacted by subsection (37), apply in respect of dispositions of property by all foreign affiliates of the taxpayer that occur after December 20, 2002;

(*b*) that subparagraph 5907(2)(*f*)(ii) is, in respect of all such dispositions that occur on or before Announcement Date, to be read as follows:

(ii) subject to subsection (2.01), does not arise with respect to a disposition (other than a disposition to which subsection (9) applies) by the affiliate of property to another foreign affiliate of the taxpayer or to a person with whom the taxpayer does not deal at arm's length, to which a tax deferral, rollover or similar tax postponement provision of the income tax law that is relevant in computing the earnings amount of the affiliate applied, and

(*c*) that subparagraph 5907(2)(*j*)(iii) is, in respect of all such dispositions that occur on or before Announcement Date, to be read as follows:

(iii) subject to subsection (2.01), does not arise with respect to a disposition (other than a disposition to which subsection (9) applies) by the affiliate of property to another foreign affiliate of the taxpayer or to a person with whom the taxpayer does not deal at arm's length, to which a loss deferral or similar loss postponement provision of the income tax law that is relevant in computing the earnings amount of the affiliate applied, and

(56) Subsection 5907(2.01) of the Regulations, as enacted by subsection (39), applies to dispositions by a foreign affiliate of a taxpayer that occur after Announcement Date. However, if the taxpayer elects in writing under this subsection in respect of all of its foreign affiliates and files the election with the Minister of National Revenue on or before the day that is the later of the taxpayer's filing-due date for the taxpayer's taxation year that includes the day on which this Act is assented to and the day that is one year after the day on which this Act is assented to, that subsection 5907(2.01) applies to dispositions by all foreign affiliates of the taxpayer that occur after December 20, 2002.

(57) Subsection 5907(2.02) of the Regulations, as enacted by subsection (39), applies in respect of transactions (within the meaning of subsection 245(1) of the Act) that are entered into after Announcement Date.

(58) Subsection (40) applies in respect of taxation years of a foreign affiliate of a taxpayer that begin after December 20, 2002. However, if the taxpayer has elected under paragraph 16(29)(*b*) of this Act, subsection (40) applies in respect of taxation years of all foreign affiliates of the taxpayer that begin after 1994.

(59) Subsection (42) applies to dispositions that occur after Announcement Date.

(60) Subsection (44) applies in respect of mergers or combinations in respect of a foreign affiliate of a taxpayer that occur after Announcement Date.

(61) Subsection 5907(9) of the Regulations, as enacted by subsection (45), applies in respect of liquidations and dissolutions of foreign affiliates of a taxpayer that begin after December 20, 2002 except that,

(*a*) if the taxpayer has elected under subsection 16(28), paragraph 5907(9)(*b*) of the Regulations, as enacted by subsection (45), is, in respect of liquidations and dissolutions of all foreign affiliates of the taxpayer that begin on or before February 27, 2004, to be read as follows:

(*b*) each property of the affiliate that was disposed of by the affiliate in the course of the liquidation and dissolution is, subject to subsection 88(3) of the Act, deemed to have been

(i) disposed of by the affiliate, at the time that is the earlier of the time it was actually disposed of and the time that is immediately before the time that is immediately before the particular time, for proceeds of disposition equal to

(A) if the liquidation and dissolution is one to which paragraph 95(2)(*e*) of the Act applies in respect of the disposition, the amount determined under subparagraph 95(2)(*e*)(i) or (ii) of the Act, and

(B) in any other case, the fair market value of the property at the time it was actually disposed of, and

(ii) acquired by the person or partnership to which the affiliate disposed of the property, at the time it was actually acquired, at a cost equal to the affiliate's proceeds of disposition of the property.

(*b*) if the taxpayer has not elected under subsection 16(28), paragraph 5907(9)(*b*) of the Regulations, as enacted by subsection (45), is, in respect of liquidations and dissolutions of foreign affiliates of the taxpayer that

(i) begin on or before February 27, 2004, to be read as follows:

(*b*) each property of the affiliate that was disposed of by the affiliate in the course of the liquidation and dissolution is, subject to subsection 88(3) and paragraphs 95(2)(*e*) and (*e.1*) of the Act, deemed to have been

(i) disposed of by the affiliate, at the time that is the earlier of the time it was actually disposed of and the time that is immediately before the time that is immediately before the particular time, for proceeds of disposition equal to the fair market value of the property at the time it was actually disposed of, and

(ii) acquired by the person or partnership to which the affiliate disposed of the property, at the time it was actually acquired, at a cost equal to the affiliate's proceeds of disposition of the property.

(ii) begin after February 27, 2004 and on or before Announcement Date, to be read as follows:

(*b*) each property of the affiliate that was disposed of by the affiliate in the course of the liquidation and dissolution is, subject to paragraphs 95(2)(*e*) and (*e.1*) of the Act, deemed to have been

(i) disposed of by the affiliate, at the time that is the earlier of the time it was actually disposed of and the time that is immediately before the time that is immediately before the particular time, for proceeds of disposition equal to

(A) if the liquidation and dissolution is one to which subsection 88(3) of the Act applies in respect of the disposition, the amount that would (in the absence of subsection 88(3.3) of the Act) be determined under paragraph 88(3)(*a*) or (*b*) of the Act, as the case may be, and

(B) in any other case, the fair market value of the property at the time it was actually disposed of, and

(ii) acquired by the person or partnership to which the affiliate disposed of the property, at the time it was actually acquired, at a cost equal to the affiliate's proceeds of disposition of the property.

(62) Subsection 5907(9.1) of the Regulations, as enacted by subsection (45), applies to mergers or combinations in respect of a foreign affiliate of a taxpayer that occur after Announcement Date. However, if the taxpayer has elected under subsection 16(31), that subsection 5907(9.1) applies to mergers or combinations in respect of all foreign affiliates of the taxpayer that occur after December 20, 2002.

(63) Subsections 5907(13) and (14) of the Regulations, as enacted by subsection (46), apply after 1992 in respect of a foreign affiliate of a taxpayer. However,

(*a*) if the foreign affiliate elected in accordance with paragraph 111(4)(*a*) of the Statutes of Canada, 1994, chapter 21, those subsections 5907(13) and (14) apply to the foreign affiliate from the foreign affiliate's time of continuation (within the meaning assigned by that paragraph);

(*b*) in their application in respect of dispositions that occur on or before Announcement Date,

(i) subject to paragraph (*c*), subsection 5907(13) of the Regulations, as enacted by subsection (46), is to be read as follows:

(13) For the purposes of subparagraph (ii) of paragraph 128.1(1)(*d*) of the Act, the prescribed amount is the amount determined by the formula

$$X - Z$$

where

X is the amount determined by the formula

$$A - B - (C - D)$$

where

A is the taxable surplus of the foreign affiliate of the other taxpayer referred to in that paragraph, in respect of the other taxpayer, at the end of the year referred to in that subparagraph,

B is the affiliate's net earnings for the year in respect of the affiliate's foreign accrual property income for the year to the extent those net earnings have been included in the amount referred to in the description of A,

C is the total of all amounts each of which is the amount by which the affiliate's underlying foreign tax in respect of the other taxpayer at the end of the year would have increased because of the gain or income of the affiliate that would have arisen if a disposition, deemed by paragraph 128.1(1)(*b*) of the Act, of a property by the affiliate had been an actual disposition of the property by the affiliate, and

D is the total of all amounts each of which is the amount otherwise added in computing the affiliate's underlying foreign tax in respect of the other taxpayer at the end of the year in respect of income or profits taxes paid to the government of a country in respect of all or a portion of a gain or an income of the affiliate referred to in the description of C, and

Z is the amount determined by the formula

$$[(G – H) \times (J – 1)] + K$$

where

G is the amount determined by the formula

$$L + M$$

where

L is the underlying foreign tax of the affiliate in respect of the other taxpayer at the end of the year, and

M is the amount, if any, by which the amount determined under the description of C exceeds the amount determined under the description of D, and

H is the portion of the value of L that can reasonably be considered to relate to the affiliate's net earnings for the year in respect of the affiliate's foreign accrual property income,

J is the other taxpayer's relevant tax factor (within the meaning assigned by subsection 95(1) of the Act) for its taxation year that includes the time that is immediately before the particular time, and

K is the amount, if any, by which

(i) the total of all amounts required by paragraph 92(1)(*a*) of the Act to be added at any time in a preceding taxation year in computing the adjusted cost base to the other taxpayer of the shares of the affiliate owned by the other taxpayer at the end of the year

exceeds

(ii) the total of all amounts required by paragraph 92(1)(*b*) of the Act to be deducted at any time in a preceding taxation year in computing the adjusted cost base to the other taxpayer of the shares of the affiliate owned by the other taxpayer at the end of the year.

(ii) the portion of subsection 5907(14) of the Regulations before paragraph (*a*), as enacted by subsection (46), is to be read as follows:

(14) For the purposes of the description of C in the description of X in subsection (13), the amount by which the underlying foreign tax of the affiliate in respect of the taxpayer at the end of the year would have increased, if a disposition (referred to in this subsection as the "notional actual disposition") deemed by paragraph 128.1(1)(*b*) of the Act of any property by the affiliate had been an actual disposition of the property by the affiliate, is the total of all amounts each of which is the amount, if any, by which

(*c*) in its application in respect of dispositions that occur on or before February 27, 2004, the description of M in subsection 5907(13) of the Regulations, as enacted by subsection (46) and as required to be read by subparagraph (*b*)(i), is instead to be read as follows:

M is the amount that would be determined to be the amount by which the amount determined under the description of C exceeds the amount determined under the description of D if this section were read without reference to subsection (14), and

(64) Subsection 5907(15) of the Regulations, as enacted by subsection (46), applies in respect of dispositions that occur after Announcement Date.

31. (1) Paragraph 5908(10)(*a*) of the Regulations is amended by adding the following after subparagraph (iii):

(iii.1) any amount included in computing the hybrid surplus or hybrid deficit of the affiliate before that time that may reasonably be considered to relate to a capital gain of the partnership,

(2) Paragraph 5908(10)(*b*) of the Regulations is amended by adding the following after subparagraph (iii):

(iii.1) any amount included in computing the hybrid surplus or hybrid deficit of the affiliate before that time that may reasonably be considered to relate to a capital loss of the partnership,

(3) Section 5908 of the Act is amended by adding the following after subsection (12):

(13) For the purposes of clauses 5907(2.9)(*a*)(i)(B) and (ii)(B), the amount determined under this subsection is, subject to subsection (14), the amount determined by the formula

$$A \times B/C$$

where

A is

(*a*) if clause 5907(2.9)(*a*)(i)(B) applies, the amount determined under clause 5907(2.9)(*a*)(i)(A), and

(*b*) if clause 5907(2.9)(*a*)(ii)(B) applies, the amount determined under clause 5907(2.9)(*a*)(ii)(A),

B is the affiliate's direct or indirect share of the partnership's income or loss for the preceding taxation year, and

C is the partnership's income or loss for the preceding taxation year.

(14) For the purposes of subsection (13), if both the income and loss of the partnership for the preceding taxation year are nil, the descriptions of B and C in the formula in that subsection are to be applied as if the partnership had income for that year in the amount of $1,000,000.

(4) Subsections (1) and (2) apply after Announcement Date.

(5) Subsection (3) applies in respect of taxation years of a foreign affiliate of a taxpayer that begin after December 20, 2002. However, if the taxpayer has elected under paragraph 16(29)(*b*), subsection (3) applies in respect of taxation years of all foreign affiliates of the taxpayer that begin after 1994.

32. (1) The description of B in paragraph 5910(1)(*a*) of the Regulations is replaced by the following:

B is the affiliate's earnings from the business for the particular year, and

(2) Subsection 5910(3) of the Regulations is repealed.

(3) Subsections (1) and (2) apply in respect of taxation years of a foreign affiliate of a taxpayer that end after Announcement Date.

33. (1) The Regulations are amended by adding the following after section 5910:

5911. (1) A listed election is to be made by the taxpayer and, if applicable, the disposing affiliate by so notifying the Minister in writing on or before

(*a*) if the taxpayer is a partnership, the earliest of the filing-due dates of any member of the partnership for the member's taxation year that includes the last day of the partnership's fiscal period that includes the last day of the foreign affiliate's taxation year that includes the time of distribution of a distributed property; and

(*b*) in any other case, the taxpayer's filing-due date for its taxation year that includes the last day of the foreign affiliate's taxation year that includes the time of distribution of a distributed property.

(2) For the purposes of subsection (1), a listed election is any of the following:

(*a*) an election by the taxpayer under subsection 88(3.1) of the Act in respect of a liquidation and dissolution of a disposing affiliate;

(*b*) an election by the taxpayer under subsection 88(3.3) of the Act in respect of a distribution of distributed property; and

(*c*) a joint election by the taxpayer and a disposing affiliate under subsection 88(3.5) of the Act in respect of a distribution of distributed property.

(3) An election under the definition "relevant cost base" in subsection 95(4) of the Act in respect of a property of a foreign affiliate of a taxpayer, in respect of the taxpayer, is to be made by the taxpayer by so notifying the Minister in writing on or before

(*a*) if the taxpayer is a partnership, the earliest of the filing-due dates of any member of the partnership for the member's taxation year that includes the last day of the partnership's fiscal period that includes the last day of the foreign affiliate's taxation year in which the determination of the relevant cost base of the property, in respect of the taxpayer, is relevant; and

(*b*) in any other case, the taxpayer's filing-due date for its taxation year that includes the last day of the foreign affiliate's taxation year in which the determination of the relevant cost base of the property, in respect of the taxpayer, is relevant.

(2) Subsections 5911(1) and (2) of the Regulations, as enacted by subsection (1), apply in respect of liquidations and dissolutions of foreign affiliates of a taxpayer that begin after February 27, 2004. However, any listed election referred to in that subsection 5911(1) that would otherwise be required to be filed with the Minister of National

Revenue before the day that is 120 days after the day on which this Act is assented to is deemed to have been filed with the Minister on a timely basis if it is filed with the Minister within 365 days after the day on which this Act is assented to.

(3) Subsection 5911(3) of the Regulations, as enacted by subsection (1), applies in respect of determinations in respect of which subsection 16(21) applies. However, any election referred to in that subsection 5911(3) that would otherwise be required to be filed with the Minister of National Revenue before the day that is 120 days after the day on which this Act is assented to is deemed to have been filed with the Minister on a timely basis if it is filed with the Minister within 365 days after the day on which this Act is assented to.

34. Any assessment of a taxpayer's tax, interest and penalties payable under the Act for any taxation year that ends before the day on which this Act is assented to that would, in the absence of this section, be precluded because of subsections 152(4) to (5) of the Act shall be made to the extent necessary to take into account sections 1 to 33.