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LEGISLATIVE SUMMARY

BILL C-32: AN ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE FALL ECONOMIC STATEMENT TABLED IN PARLIAMENT ON NOVEMBER 3, 2022 AND CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON APRIL 7, 2022

44-1-C32-E

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Research and Education

BUDGET IMPLEMENTATION BILL
UNEDITED

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

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Legislative Summary of Bill C-32:
(Budget implementation bill)

44-1-C32-E

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LEGISLATIVE SUMMARY OF BILL C-32: BILL C-32: AN ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE FALL ECONOMIC STATEMENT TABLED IN PARLIAMENT ON NOVEMBER 3, 2022 AND CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON APRIL 7, 2022*

1 BACKGROUND

Bill C-32, An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 3, 2022, and certain provisions of the budget tabled in Parliament on April 7, 2022 (short title: Fall Economic Statement Implementation Act, 2022), was introduced in the House of Commons on 4 November 2022 by the Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance.[1]

The bill implements some of the measures that were announced in the federal government's Fall Economic Statement 2022 and Budget 2022, which were released on 3 November 2022 and 7 April 2022, respectively.[2]

The bill has four parts:

- Part 1 implements certain income tax measures, such as introducing the Tax-Free First Home Savings Account, the Multigenerational Home Renovation Tax Credit and the Canada Recovery Dividend, which is a one-time 15% tax, payable over five years, on banks' and life insurers' taxable income above $1 billion (clauses 2 to 92).
- Part 2 implements changes to the federal excise duty frameworks for cannabis products, vaping products and other products (clauses 93 to 112).
- Part 3 amends the *Underused Housing Tax Act* to make technical and housekeeping amendments, as well as to make regulations under the Act, including to implement an exception for vacation properties (clauses 113 to 117).
- Part 4 implements a range of measures and is subdivided in five divisions (clauses 118 to 168):
  - Division 1 authorizes the Minister of Finance to requisition amounts from the Consolidated Revenue Fund to acquire non-voting shares of a wholly owned subsidiary of the Canada Development Investment Corporation, which is responsible for administering the Canada Growth Fund.

- Division 2 amends the *Bretton Woods and Related Agreements Act* to increase the maximum financial assistance that may be provided in respect of foreign states.
- Division 3 enacts the Framework Agreement on First Nation Land Management Act and repeals the *First Nations Land Management Act.*
- Division 4 amends the *Government Employees Compensation Act* to fulfil Canada's obligations under the Memorandum of Understanding between the Government of Canada and the Government of the United States of America concerning Cooperation on the Civil Lunar Gateway.
- Division 5 amends the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act* and the *Apprentice Loans Act* to eliminate the accrual of interest on guaranteed student loans, student loans and apprentice loans, respectively.

This Legislative Summary provides a brief description of the main measures proposed in the bill. For ease of reference, the information is presented in the same order as it appears in the bill.

2 DESCRIPTION AND ANALYSIS

2.1 PART 1: IMPLEMENTATION OF CERTAIN INCOME TAX MEASURES

2.1.1 Tax Treatment of Any Gain on the Disposition of a Canadian Housing Unit Held for Less Than One Year

Clause 2(1) of Bill C-32 adds sections 12(12), 12(13) and 12(14) to the *Income Tax Act* (ITA)[3] to ensure that profits from the sale of residential real property that has been owned for less than 365 consecutive days by the same taxpayer are subject to full taxation as business income, subject to some exceptions.

New section 12(12) of the ITA provides that a taxpayer's gain on the sale of a "flipped property" as defined in new section 12(13) is deemed to be business income and therefore fully subject to income tax without the benefit of the principal residence exemption in section 40(2).

New section 12(12)(a) deems the taxpayer to be carrying on a business that is an "adventure or concern in the nature of trade with respect to the flipped property." New sections 12(12)(b) and 12(12)(c) respectively deem the flipped property to be inventory of the taxpayer's business and not to be capital property so that its disposition generates business income rather than a capital gain.

New section 12(13) defines the term "flipped property" for the purposes of new sections 12(12) and 12(14) as a housing unit located in Canada that was owned by a taxpayer for less than 365 consecutive days prior to its disposition. There are several exceptions to new section 12(13), including that a property will not be considered to have been disposed of by way of a flipped sale if the disposition can reasonably be considered to have occurred due to, or in anticipation of, the death of the taxpayer, the breakdown of the taxpayer's marriage, the taxpayer or a related person suffering from a serious illness or disability, the insolvency of the taxpayer, or the involuntary termination of the employment of the taxpayer or the taxpayer's spouse or common-law partner.

New section 12(14) provides that a taxpayer's loss from a business in respect of a flipped property is deemed to be nil.

These amendments apply in respect of dispositions occurring after 2022.

2.1.2 Tax-Free First Home Savings Account

Bill C-32 creates the First Home Savings Account (FHSA), a registered account that assists Canadian residents saving for their first home. In general, FHSA contributions can be deducted from income, and income earned on FHSA contributions is tax-free. Transfers from an FHSA to a Registered Retirement Savings Plan (RRSP) or Registered Retirement Investment Fund (RRIF), and from an RRSP to an FHSA are also permitted on a tax-deferred basis. The FHSA has an annual contribution limit of $8,000 and a lifetime contribution limit of $40,000.

2.1.2.1 First Home Savings Account Framework

Clause 31(1) of Bill C-32 adds section 146.6 to the ITA to create the FHSA framework. Key definitions in new section 146.6(1) include the following:

- "Annual FHSA limit" is the maximum amount, determined by a formula, that a taxpayer can claim as a deduction from income with respect to FHSA contributions. The annual contribution limit is $8,000. As contributions to an RRSP are already deductible, any transfers from an RRSP to an FHSA are not eligible for the FHSA deduction.
- "First home savings account or FHSA" is an arrangement registered with the Minister of National Revenue that has not ceased to be an FHSA under new section 146.6(16).
- "FHSA carryforward" is the amount of unused FHSA contribution amounts that can be used in future taxation years. It is limited to $8,000 per year.

- "Maximum participation period" for an FHSA is the earliest of 15 years after entering into a "qualifying arrangement," the end of the year following the year of the individual's 70th birthday, or the end of the year following the year when the individual first makes a "qualifying withdrawal" from an FHSA.
- "Qualifying arrangement" is an FHSA arrangement entered into after March 2023 between a specific type of issuer and a qualifying individual.
- "Qualifying home" is a housing unit located in Canada or a share of a cooperative housing corporation where the shareholder is entitled to possess a housing unit located in Canada.
- "Qualifying individual" is a resident of Canada who is at least 18 years of age and who did not at any prior time in the calendar year or the preceding four calendar years inhabit as a principal residence a qualifying home that was owned, jointly or otherwise, by the individual or a person who is the spouse or common-law spouse of the individual at that time.
- "Qualifying withdrawal" sets out the conditions required to make a tax-free withdrawal from the FHSA to purchase a first home:
    - The withdrawal must be made by written request in the prescribed form, indicating the location of the qualifying home that the individual has begun using or intends to use as a principal residence within one year of purchase.
    - The individual is a resident of Canada from the time of the FHSA withdrawal to the time of purchase, with the individual not living in a home they owned in the period spanning four calendar years before the withdrawal.
    - The agreement must be in place, before the withdrawal, to purchase or build a qualifying house before 1 October of the year following the date of the withdrawal.
    - The individual does not buy the qualifying home more than 30 days before the withdrawal is made.

New section 146.6(2) sets out several conditions for qualifying arrangements, such as requiring the arrangement be maintained for the exclusive benefit of the FHSA holder, allowing only the holder to make contributions, allowing amounts to be transferred to another FHSA, an RRSP or an RRIF of the holder, and providing that an arrangement ceases to be an FHSA once the holder's maximum participation period ends.

New section 146.6(3) states that no tax is payable by a trust governed by an FHSA unless the trust carries on a business or holds non-qualified investments. Moreover, new section 146.6(4) states that if tax is payable by a trust governed by an FHSA due to it carrying on one or more businesses during the taxation year, the holder of the FHSA is jointly and severally (or solidarily) liable with the trust to pay the tax owed.

The liability of the FHSA issuer is limited to the amount of property in the trust plus the amount of property distributed from the trust on or after the notice of assessment was sent.

New section 146.6(5) states that an individual may deduct from income for a taxation year an amount not exceeding the lesser of the following amounts: 1) the taxpayer's total undeducted "annual FHSA limit" for the year and all preceding taxation years; and 2) any remaining contribution room available under the lifetime contribution limit of $40,000.

New section 146.6(6) specifies that all amounts received by a taxpayer from an FHSA are to be included in income except for those that are a "qualifying withdrawal" used to purchase a qualifying home, a "designated amount" under section 207.01(1) as amended by clause 50(8) used to correct an overcontribution, or any other amounts already included when computing income.

New sections 146.6(7) to 146.6(10) set out the conditions for a tax-free transfer from an FHSA. In general, new section 146.6(7) states that an amount can only be transferred from an FHSA by an individual who is the holder of the FHSA, or by a spouse or common-law partner or former spouse or common-law partner of the FHSA holder who is entitled to the amount due to the breakdown of the relationship or due to the death of the FHSA holder. The amount must be transferred directly to another FHSA held by the same individual or their RRSP or RRIF. New section 146.6(8) provides that these transfers are not included when calculating the income of any taxpayer and they are not deducted from income. However, as described in new sections 146.6(9) and 146.6(10), if the transfer does not meet the conditions in new section 146.6(7), then the amount of the transfer is included in the income of the FHSA holder that initiated the transfer and if the transfer is to an RRIF, the tax levied under Part X.1 of the ITA might be applicable for any excess contributions.

New sections 146.6(11) and 146.6(12) state that if a trust governed by an FHSA uses the property of the trust as security for a loan at any time during a taxation year, the fair market value (FMV) of the property at the time will be included in the income of the FHSA holder, with a deduction permitted if the property stops being used as security for a loan.

New sections 146.6(13) to 146.6(15) address how the funds in an FHSA are dealt with upon the death of the FHSA holder. The individual who is designated as the successor holder of the FHSA can keep the FHSA or transfer the amounts to their RRSP, RRIF, or have it distributed as described under new section 146.6(14) by the end of the year following the death of the holder. New section 146.6(14) provides that

any amount distributed to or on behalf of a beneficiary is included in the successor's income for the year. New section 146.6(15) clarifies the legal status of the distribution when the FHSA transfer is made through the deceased's legal representative rather than directly to the successor.

New sections 146.6(16) and 146.6(17) provide that an arrangement ceases to be an FHSA at the earliest of the end of the maximum participation period, the end of the year following the year of the death of the last holder, when an arrangement ceases to be a qualifying arrangement, when an arrangement is not administered in accordance with new section 146.6(2) or at a later time specified by the Minister of National Revenue in writing. As well, when an arrangement ceases to be an FHSA, the trust governing the FHSA is no longer free from tax, and the holder – or if the last holder is dead, the beneficiaries of the trust – must have the amount of the FMV of all property in the FHSA included as income for that taxation year.

New section 146.6(18) states that the Governor in Council may make regulations requiring issuers of FHSAs to file information returns with respect to FHSAs.

Clause 31 comes into force on 1 April 2023.

Clause 51(1) of the bill introduces the special tax on FHSA overcontributions, which is set out in new sections 207.021 and 207.022. A special tax of 1% is imposed on the highest excess FHSA amounts on a monthly basis. As well, rules to address an excess FHSA amount upon a holder's death are included. Clause 51(1) comes into force on 1 April 2023.

Clause 52(1) adds new section 207.06(3) to the ITA to allow the Minister of National Revenue to waive or cancel any part of the tax liability under new section 207.021 if the liability arose as a consequence of a reasonable error and distributions are made from the FHSA to address the overcontribution. Clause 52(1) comes into force on 1 April 2023.

Clause 57(1) adds the definition of "first home saving account or FHSA," stating that it "has the same meaning as in subsection 146.6(1)," to section 248(1) of the ITA. Clause 57(1) comes into force on 1 April 2023.

2.1.2.2 Amendments Related to Registered Retirement Savings Plans or Registered Retirement Investment Funds

Given that transfers are allowed between an FHSA and an RRSP and RRIF, amendments are made to the RRSP and RRIF regulatory frameworks to address these transfers.

Section 146 of the ITA sets out the framework for RRSPs. Clause 29(1) of Bill C-32 adds section 146(16)(a.2) to allow funds from an individual's RRSP to be transferred on a tax-deferred basis to the same individual's FHSA, provided the funds were not recent spousal contributions. As well, clause 29(2) amends section 146(16)(d) of the ITA so that the amounts transferred to the FHSA from the RRSP are not deductible from income. Clause 29 comes into force on 1 April 2023.

Section 146.3 provides the framework for RRIFs. Clause 30(1) of the bill adds new section 146.3(2)(f)(x) so that funds can be transferred from an FHSA to a RRIF. Clause 30(1) comes into force on 1 April 2023.

Section 160.2 deals with tax liability with respect to amounts received from an RRSP. Clause 40(1) adds section 160.2(2.3) to the ITA so that if an amount that is supposed to be included in the FHSA holder's income is received by a different taxpayer, that taxpayer is jointly and severally (or solidarily) liable with the FHSA holder for the tax owing. Clause 40(2) amends section 160.2(4) of the ITA to include a reference to new section 160.2(2.3). Clause 40 comes into force on 1 April 2023.

2.1.2.3 Consequential Amendments to the *Income Tax Act*

Several other consequential amendments are made to the ITA in relation to the FHSA, many of which involve the FHSA being included in provisions that govern all registered plans. All of these clauses come into force on 1 April 2023.

Clauses 3(1) and 3(3) of Bill C-32 amend section 18 of the ITA, which sets out limitations on various types of deductions claimed by taxpayers. Clause 3(1) amends section 18(1)(u) so that any fees paid by a taxpayer for services in respect of an FHSA are not deductible from the taxpayer's income, while clause 3(3) adds section 18(11)(k) to prohibit interest from being deducted from a taxpayer's income if that taxpayer borrowed money to make a contribution to an FHSA.

Section 40 of the ITA describes how to calculate a taxpayer's gains and losses for a taxation year. Clause 4 of the bill amends section 40(2)(g)(iv)(A) of the ITA to prohibit a taxpayer from claiming a capital loss from the disposition of property to a trust governed by an FHSA.

Section 56(1) describes amounts that are included in a taxpayer's income for a taxation year. Clause 5(1) adds new section 56(1)(z.6) to the ITA to specify that any amount required under new section 146.6 should be included as income.

Section 60 deals with other deductions from income allowed under the ITA. Clause 6(1) amends section 60(i) of the ITA to add a reference to any amount that is deductible under new section 146.6.

Section 74.5 regulates the transfers of property, including restricting transfers of property between spouses or common-law partners in order to reduce taxes. Clause 9(1) adds new section 74.5(12)(d) to the ITA so that contributions to an FHSA are exempt from the spousal attribution rules, that is, a contribution to an FHSA made by the FHSA holder using funds gifted by that individual's spouse or common-law partner will not be attributed back to the spouse or common-law partner.

Section 75(3) exempts certain trusts from the attribution rules set out in section 75(2), which permits income or losses from trust property to be attributed to the individual who transferred the property. Clause 10(1) amends section 75(3)(a) of the ITA so that a trust governed by an FHSA is also exempt from the attribution rules.

Clause 15 amends the definition of "trust" in section 108(1) of the ITA, which deals with the taxation of trusts, to exclude FHSAs from the definition and thus exclude them from certain provisions specific to trusts, such as the 21-year deemed disposition rule.

Section 128.1 sets out the taxation rules for individuals who are immigrating to or emigrating from Canada. Clause 23(1) amends the definition of "excluded right or interest" in section 128.1(10) so that FHSAs are included in the list of property that is excluded from the deemed dispositions rules for property found in section 128.1.

Section 148 regulates amounts that are included in a taxpayer's income in related to life insurance policies. Clause 32(1) adds section 148(1)(b.4) to the ITA so that a policy that is issued pursuant to an FHSA is not included in the income of a policyholder.

Section 149 lists various persons that are exempt from paying tax on their taxable income. Clause 33(1) adds section 149(1)(u.4) to the ITA to include a trust governed by an FHSA in the list of exempted persons.

Section 153 provides that tax must be withheld with respect to certain payments, such as salaries or certain payments from registered plans. Clause 37(1) adds section 153(1)(v) to the ITA to require tax to be withheld for payments from an FHSA that are to be included as income and for payments from an arrangement that ceases to be an FHSA.

Section 204.6 describes the amount of tax that is payable when a registered plan holds investments that are not qualified investments. Clause 49(2) amends section 204.6(1) of the ITA to add FHSAs to the list of registered plans.

Section 207.01 contains anti-avoidance rules that apply to registered plans, such as requiring plans to hold only qualified investments. Clauses 50(1) to 50(5) and clause 50(7) amend section 207.01(1) and the definitions for "registered plan," "controlling individual," "qualified investment," "registered plan strip" and "swap transaction" to include a reference to FHSAs or to new section 146.6. Clause 50(6) also adds paragraphs (b.1) and (b.2) to the definition for "registered plan strip" to include a reference to "a qualifying withdrawal under section 146.6" and a "designated amount," both of which refer to FHSAs. Clause 50(8) amends section 207.01(1) to add definitions of the terms "designated amount" and "excess FHSA amount." "Designated amount" is a withdrawal to correct an overcontribution to an FHSA, while "excess FHSA amount" calculates the amount of FHSA overcontributions in a particular month and is the amount to which the special tax on FHSA overcontributions is applied, which is introduced by new section 207.021 (under clause 51(1) of the bill).

Section 212 describes the 25% tax, called the "non-resident withholding tax," that is imposed on certain payments to non-residents. Clause 53(1) adds new section 212(1)(y) to include payments out of an FHSA.

2.1.2.4 Amendments to the *Canada Deposit Insurance Corporation Act*

Clause 59(1) of Bill C-32 adds section 5(3.1) to the schedule to the *Canada Deposit Insurance Corporation Act* to clarify that money held within an FHSA is considered a single deposit separate from any other deposit of the taxpayer. Clause 59(1) comes into force on 1 April 2023.

2.1.2.5 Amendments to the *Income Tax Regulations*

Clauses 70 and 71 of Bill C-32 are consequential amendments in relation to the withholding of tax for certain payments made by an employer to an employee. Clause 70(1) amends the definition of "remuneration" in section 100(1) of the *Income Tax Regulations* (ITR)[4] to include payments out of an FHSA that are subject to withholding tax under new section 153(1)(v) of the ITA. As well, clause 70(2) adds section 100(3)(c.1) to the ITR to include a contribution to an FHSA to be made by an employer. Clause 71(1) adds section 103(6)(i) to the ITR to include payments out of an FHSA that are subject to withholding tax under new section 153(1)(v) as part of a list of payments that are considered lump sum payments. Clauses 70 and 71 come into force on 1 April 2023.

Clauses 73 and 74 of the bill amend the tables found in sections 205(3) and 205.1(1) of the ITR, respectively, to add "First Home Savings Account (FHSA) Annual Information Return" to the types of information returns that must be filed within prescribed time limits (section 205(3)) and by the prescribed means (section 205.1(1)). Clauses 73 and 74 come into force on 1 April 2023.

Clause 76(1) adds section 219 to the ITR to set out the rules for FHSA issuers with respect to filing an FHSA information return in relation to such accounts and the transmission of other information to FHSA holders by FHSA issuers that govern a trust. Clause 76(1) applies to the 2023 and subsequent taxation years.

Clauses 75(1) and 75(2) amend sections 209(1) and 209(5) of the ITR, respectively, to include a reference to new section 219 of the ITR (amended section 209(1)) and FHSA information returns (amended section 209(5)). Clauses 75(1) and 75(2) come into force on 1 April 2023.

Lastly, section 4900 of the ITR describes investments that are considered "qualified investments" in registered plans. Clauses 88(1) to 88(4) amend sections 4900(5), 4900(14), 4900(14)(a)(iii) and 4900(15) of the ITR, respectively, to include a reference to FHSAs. Clause 88 comes into force on 1 April 2023.

2.1.3 Flow-Through Shares for Oil, Gas and Coal Activities

In the Canadian resource sector, corporations are permitted to pass along, or "renounce," certain exploration and development expenses to investors that have purchased flow-through shares through a flow-through share agreement. These investors can deduct these expenses from their own income, thus reducing their taxable income. As part of its Group of 20 climate change commitments, Canada agreed to phase out tax benefits for the fossil fuel industry, such as flow-through shares, by 2023.

Section 66(12.6) of the ITA sets out the rules for renouncing Canadian exploration expenses to flow through shareholders. Clause 7(2) of Bill C-32 adds section 66(12.6)(b.2), which, for flow-through share agreements made after March 2023, only allows the renunciation of exploration expenses that are a Canadian renewable and conservation expense or are expenses related to a mineral resource. Clause 7(1) amends section 66(12.6)(a) to provide that assistance related to new section 66(12.6)(b.2) does not reduce the eligible exploration expenses that can be renounced.

Similarly, section 66(12.62) of the ITA sets out the rules for renouncing Canadian development expenses to flow through shareholders. Clause 7(4) of the bill adds new section 66(12.62)(b.2) which, for flow-through agreements made after

March 2023, only allows for the renunciation of development expenses related to a mineral resource. Clause 7(3) amends section 66(12.62)(a) to provide that assistance related to new section 66(12.62)(b.2) does not reduce the eligible development expenses that can be renounced.

Clauses 7(1) and 7(3) only apply to flow-through share agreements made after March 2023.

2.1.4 Critical Mineral Exploration Tax Credit

A Canadian mining company can "renounce" certain expenditures to investors who have purchased flow-through shares through a flow-through share agreement, who can then deduct these expenses from their own income. In addition, the investors can claim the Mineral Exploration Tax Credit, which is an investment tax credit equal to 15% of certain qualifying expenditures that are flowed through to investors. In order to encourage investment in mining activities for specified minerals that are critical to developing and producing clean energy technologies, Bill C-32 introduces the Critical Mineral Exploration Tax Credit.

Clause 22 of the bill makes several amendments to section 127 of the ITA, which provides the framework for various investment tax credits, among other matters. Section 127(5) lists the various investment tax credits that can be deducted by a taxpayer from their tax payable for a taxation year. Clause 22(1) amends section 127(5)(a)(i) of the ITA and clause 22(2) amends section 127(5)(a)(ii)(A) to include references to a taxpayer's "flow-through critical mineral mining expenditure for the year or a preceding taxation year" and to their "flow-through critical mineral mining expenditure for a subsequent taxation year," respectively, when calculating a taxpayer's total investment tax credit at the end of a year.

Clause 22(3) amends the definition of "flow-through mining expenditure" found in section 127(9). "Flow-through mining expenditure" defines the expenses that qualify for the 15% Mineral Exploration Tax Credit. Clause 22(3) adds paragraph (e) to the definition so that it does not include any expenses claimed under the Critical Mineral Exploration Tax Credit, thus preventing a taxpayer from claiming both tax credits.

Clause 22(4) adds paragraph (a.21) to the definition "investment tax credit" in section 127(9) to include the Critical Mineral Exploration Tax Credit, which is described as "where the taxpayer is an individual (other than a trust), 30% of the taxpayer's flow-through critical mineral mining expenditures for the year."

Clause 22(5) adds three definitions to section 127(9):

- "Critical mineral" is defined as copper, nickel, lithium, cobalt, graphite, a rare-earth element, scandium, titanium, gallium, vanadium, tellurium, magnesium, zinc, a platinum group metal or uranium.
- "Flow-through critical mineral mining expenditure" is defined as, among other things:
  - "a Canadian exploration expense incurred by a corporation after 7 April 2022 in conducting mining activity from or above the surface of the earth primarily targeting critical minerals," with some exceptions;
  - an amount that is renounced by the corporation to a taxpayer under a flow-through share agreement made between 7 April 2022 and 31 March 2027;
  - an expense that a qualified professional engineer or geoscientist certifies as incurred in accordance with an exploration plan that primarily targets critical minerals, with the certification being completed in the 12-month period before the flow-through share agreement is made and with the professional engineer or geoscientist "acting reasonably, in their professional capacity, in completing the certification"; and
  - an expense that is not claimed under the Mineral Exploration Tax Credit.
- "Qualified professional engineer or professional geoscientist" is defined as an individual who:
  - "is an engineer or geoscientist with a university degree, or equivalent accreditation, in an area of geoscience, or engineering, relating to mineral exploration or mining," with at least five years of relevant experience;
  - "has experience relevant to the subject matter of the exploration plan and the certification described in … the definition of flow-through critical mineral mining expenditure"; and
  - "is registered and in good standing with a professional association that has the authority or recognition by law of a jurisdiction in Canada to regulate the profession of engineering or geoscience."

Clause 22(6) adds section 127(11.1)(c.21) to the ITA, setting out rules in relation to the investment tax credit, clarifying that a taxpayer's flow-through critical mineral mining expenditure for a taxation year does not include any government or non-government assistance with respect to those expenses that the taxpayer "has received, is entitled to receive or can reasonably be expected to receive."

Clauses 22(1) to 22(6) are deemed to have come into force on 7 April 2022.

As well, clause 8(1) amends the description of L in the definition of "cumulative Canadian exploration expense" in section 66.1(6) of the ITA, so that it includes reference to a "flow-through critical mineral mining expenditure." Clause 8(1) is deemed to have come into force on 7 April 2022.

Lastly, with respect to tax assessments and reassessments, clause 36(2) adds section 152(4)(b)(v.1) to the ITA to provide that the Minister of National Revenue can make an assessment or reassessment if it is made with respect to an amount deducted under section 127(5) in respect of a "flow-through critical mineral mining expenditure." Clause 36(2) is deemed to have come into force on 7 April 2022.

2.1.5 Canada Recovery Dividend

Clause 48 of Bill C-32 adds new Part VI.2 to the ITA, called the Canada Recovery Dividend. This new part imposes a temporary 15% tax on the taxable income of banks and life insurers that is above $1 billion.

New section 191.5(1) of the ITA defines "bank or life insurer group member" as a corporation that is a bank, a life insurance corporation that carries on business in Canada or a financial institution that is related to a bank or life insurance corporation.

New section 191.5(2) states that every corporation that is a bank or life insurer group member during the 2021 taxation year is liable to pay a tax for the 2022 taxation year equal to 15% of the average taxable income earned by the corporation in its 2020 and 2021 taxation years. Taxable income is calculated in accordance with Part I of the ITA but excludes deductions for non-capital losses or net capital losses. If the corporation is not related to any other bank or life insurer group member at the end of the 2021 taxation year, then the 15% tax is levied on taxable income above $1 billion, which is referred to as the "income deduction." However, if the corporation is related to another bank or life insurer group member, the $1 billion income deduction can be allocated among the related group members, in accordance with new section 191.5(7).

New sections 191.5(3) and 191.5(4) provide rules on how to determine a corporation's taxable income for those circumstances where a corporation may have multiple 2022, 2021 and 2020 taxation years. An example of where this could occur is in the case where the ITA deems a year-end for a corporation before it amalgamates with another corporation, thus resulting in more than one taxation year in a given calendar year.

New section 191.5(5) states that if a corporation is related to another bank or life insurer group member at the end of the 2021 taxation year, the corporation can file an agreement with the Minister of National Revenue to allocate the $1 billion income

deduction among the related group members for the taxation year. New section 191.5(6) provides that if a corporation does not file an agreement with the Minister of National Revenue with respect to the allocation of the income deduction, the Minister can request that the corporation make the allocation. If, however, the corporation does not file the agreement within 30 days of the request, the minister can determine the allocation of the income deduction among the related group members for the taxation year.

New section 191.5(7) states that the amount of the income deduction allocated to each bank or life insurer group member is the lesser of the amount allocated under the agreement that was filed by the corporation with the Minister of National Revenue and the amount allocated by the Minister. However, if no allocation is made, then no income deduction is available to the bank or life insurer group members for the taxation year.

New section 191.5(8) stipulates that a corporation that is liable for tax under new Part VI.2 must file a prescribed form with the Minister of National Revenue along with its 2022 income tax return.

New section 191.5(9) provides that a corporation must pay its Part VI.2 tax in equal instalments over five years, beginning in 2022.

New section 191.6 states that certain provisions in relation to assessments, payments, appeals and other administrative matters under Part I of the ITA are applicable to Part VI.2.

Clause 48 applies to the 2022 and subsequent taxation years.

Consequential amendments in relation to Part VI.2 include the following:

- Clause 11(1) adds section 87(2)(xx) to the ITA, which addresses the amalgamation of corporations. Clause 11 states that for the purposes of Part VI.2, an amalgamated corporation is deemed to be the same corporation as each predecessor corporation. Clause 11(1) applies to the 2022 and subsequent taxation years.
- Clause 12(1) adds reference to new section 87(2)(xx) to section 88(1)(e.2) of the ITA in order to extend the same rules under Part VI.2 that apply to amalgamations to subsidiaries that are wound up into their parent corporations. Clause 12(1) applies to the 2022 and subsequent taxation years.
- Clause 41(1) amends section 161(1) of the ITA to specify that when a taxpayer has not paid their total tax payable under Part VI.2, interest can be charged on the Part VI.2 tax owing. Clause 41(1) applies to the 2022 and subsequent taxation years.

- Under Part VI of the ITA, financial institutions must pay an annual 1.25% tax on their taxable capital employed in Canada that is more than the $1 billion capital deduction for the year, referred to as the "Capital Tax on Financial Institutions." Section 190.1(3)(a) provides that any capital tax owing can be reduced by the amount of income tax payable by the financial institution under Part I of the ITA, called the Part I tax credit. Clause 46(1) amends section 190.1(3)(a) of the ITA to add reference to Part VI.2, so that any capital tax owing by a financial institution can be reduced by both its Part I and Part VI.2 tax payable. Clause 46(1) applies to the 2022 and subsequent taxation years.

2.1.6 Corporate Income Tax Rate of Banks and Life Insurer Groups

Clause 20(1) of Bill C-32 introduces new section 123.6 to the ITA, which levies an additional tax on the taxable income of banks and life insurers that is above $100 million.

New section 123.6(1) defines "bank or life insurer group member" as a corporation that is a bank, a life insurance corporation that carries on business in Canada or a financial institution that is related to a bank or a life insurance corporation.

New section 123.6(2) states that a corporation that is a bank or life insurer group member will add to its tax payable for the year an amount equal to 1.5% of the corporation's taxable income. If a corporation is not related to another bank or life insurer group member at the end of its taxation year and the corporation's taxation year is not less than 51 weeks, the tax applies to taxable income over $100 million, which is referred to as the "income deduction." Corporations with a taxation year of less than 51 weeks will have the income deduction prorated to the number of days in its taxation year. In any other case, the income deduction for the corporation is zero, subject to the allocation rules set out new section 123.6(5).

New section 123.6(3) states that if a corporation that is a bank or life insurer and is related to another bank or life insurer group member at the end of the taxation year, the corporation can file, along with its income tax return, an agreement with the Minister of National Revenue to allocate the $100 million income deduction among the related group members.

New section 123.6(4) provides that if a corporation does not file an agreement with the Minister of National Revenue with respect to the allocation of the income deduction, the Minister can request that the corporation make the allocation. If, however, the corporation does not file the agreement within 30 days of the request, the Minister can determine the allocation of the income deduction among the related group members for the taxation year. New section 123.6(5) states that the amount of the income deduction allocated to each bank or life insurer group member is the

lesser of the amount allocated under the agreement that was filed by the corporation with the Minister of National Revenue or the amount allocated by the Minister. However, if no allocation is made, then no income deduction is available to the bank or life insurer group members for the taxation year.

New section 123.6(6) is an anti-avoidance rule that states that certain deductions from income will be deemed not to have been deducted by the corporation or the purpose of computing the tax payable by the corporation under section 123.6(2) if:

- the deduction was an amount paid or payable directly or indirectly to a person or partnership that was not dealing at arm's length with the corporation;
- the person or partnership was not a bank or life insurer group member; and
- it can reasonably be considered that one of the reasons for the payments was to reduce the corporation's tax payable under new section 123.6(2).

Clause 20(1) applies to taxation years that end after 7 April 2022, but for a taxation year that includes 7 April 2022, the amount of tax payable under new section 123.6(2) is prorated based on the number of days in the taxation year that are after 7 April 2022.

2.1.7 Reporting Requirements for Trusts

Bill C-32 introduces additional reporting requirements for trusts. Section 150 of the ITA sets out the rules for filing income tax returns, with section 150(1) indicating the filing dates for different types of taxpayers and section 150(1.1) listing those taxpayers that are exempt from the application of section 150(1).

Clause 35(1) of the bill amends section 150(1.1) of the ITA to specify that the exemptions in section 150(1.1) do not apply to an express trust (or, for civil law purposes, a trust other than a trust that is established by law or by judgment) that is resident in Canada, unless the trust is exempted under new section 150(1.2).

Clause 35(2) adds new sections 150(1.2) to 150(1.4) to the ITA.
New section 150(1.2) states that an express trust (or, for civil law purposes, a trust other than a trust that is established by law or by judgment) that is resident in Canada must file a tax return for every taxation year unless the trust:

- has been in existence for less than three months at the end of the year;
- holds certain assets with a total fair market value not exceeding $50,000 throughout the year;

- "is required under rules of professional conduct, or the laws of Canada or a province to hold funds for the purposes of the activity that is regulated under those rules or laws, provided the trust is not maintained as a separate trust for a particular client";
- is a registered charity or non-profit organization;
- is a mutual fund trust, segregated fund or a master trust prescribed by regulations;
- is a trust whose units are listed on a designated stock exchange;
- is a graduated rate estate or a qualified disability trust;
- is an employee life and health trust;
- a certain government-funded trust;
- is a trust governed by a registered plan; or
- is a cemetery care trust or a trust governed by eligible funeral arrangements.

New section 150(1.3) states that for the purposes of section 150, a trust includes bare trusts, which are arrangements where a trust can reasonably be considered to act as agent for all its beneficiaries with respect to all dealings with all of the trust's property.

New section 150(1.4) states that new sections 150(1.2) and 150(1.3) do not require the disclosure of information subject to solicitor–client privilege.

Clauses 35(1) and 35(2) apply to taxation years that end after 30 December 2023.

Consequential amendments related to clause 35 include the following:

- In general, reference to a trust under the ITA does not include a bare trust. Clause 13(1) amends section 104(1) of the ITA, which set out how a reference to a trust or estate should be interpreted under the ITA, to add section 150, so that bare trusts are included when interpreting the reporting requirements set out in section 150. This amendment applies to taxation years that end after 30 December 2023.
- Clause 42(1) adds sections 163(5) and 163(6) to the ITA, so that a person or partnership would be liable to pay a penalty – the greater of $2,500 and 5% of the value of the trust's property – if it knowingly makes a false statement or omission in the trust's income tax return, fails to return the trust, or fails to comply with a demand to file a return. These changes apply to taxation years that end after 30 December 2023.

- Clause 72(1) adds section 204.2 to the *Income Tax Regulations* (ITR) to provide additional information regarding the new trust reporting requirements, including the type of information that needs to be provided, such as the name, address, date of birth, jurisdiction of residence and taxpayer identification number for the trustees, beneficiaries and settlors of the trust or persons who have the ability to exert influence over trustee decisions, as well as specific reporting requirements for certain types of trusts. Clause 72(1) applies to taxation years that end after 30 December 2023.
- Clause 87(1) adds reference to new section 150(1.2)(i) in section 4802(1.1) of the ITR. Section 4802(1.1) governs master trusts, which in general are trusts that hold investments for beneficiaries that are registered pension plans or deferred profit-sharing plans. This amendment applies to taxation years that end after 30 December 2023.

2.1.8 Rules Applicable to Mutual Fund Trusts Listed on a Designated Stock Exchange in Canada

When a mutual fund trust sells investments to pay unitholders that want to redeem their units, the trust pays capital gains tax on any gain accrued by the investments. However, the gain is also taxed when it is paid to the unitholder who is redeeming the units, thus resulting in double taxation. Section 132 of the ITA, which contains rules relating to the taxation of mutual fund trusts, allows a mutual fund trust to claim a corresponding deduction to minimize double taxation, using what is referred to as the "allocation to redeemers methodology." However, some trusts are using this methodology to allocate excess capital gains to their redeeming unitholders, which has resulted in the mutual fund trust inappropriately taking a larger corresponding deduction. Section 132(5.3) was introduced in *Budget Implementation Act, 2021, No. 1*[5] to limit the capital gains deduction taken by mutual fund trusts with respect to redeeming unitholders. Bill C-32 introduces new measures to address the deduction taken by mutual fund trusts that are exchange-traded funds (ETFs).

Clause 24(1) amends section 132(4) of the ITA to define "net asset value" as having "the same meaning as in *National Instrument 81-102 Investment Funds*, as amended from time to time, of the Canadian Securities Administrators." This term is used in new section 132(5.31), which is introduced by clause 24(3).

Clause 24(3) adds section 132(5.31) to the ITA to limit the capital gains deduction taken by ETFs when allocating gains to redeeming unitholders. New section 132(5.31)(a) sets out a formula that limits the deduction that can be taken when all the units of the ETF are listed on a designated stock exchange in Canada and the units are in continuous distribution, while new section 132(5.31)(b) limits the deduction for those ETFs that have a class or series of units that are listed on a

designated stock exchange but have another class or series of units are not listed or in continuous distribution.

Clause 24(2) amends section 132(5.3) of the ITA to include a reference to new section 132(5.31) for ETFs.

Clauses 24(1) to 24(3) apply to taxation years that begin after 15 December 2021.

Consequential amendments include the following:

- Clause 14(1) amends section 107(2.1)(c) of the ITA, which sets out the rules for the distribution of capital interest from a trust, to clarify that this section does not apply to mutual funds trusts. This amendment applies to taxation years that begin after 15 December 2021.
- Clause 25(1) adds section 132.2(3)(o) to include reference to the types of ETFs described in new section 132(5.31). Section 132.2(3) of the ITA addresses the situation where a mutual fund trust or mutual fund corporation transfers all or substantially all of its property to one or more mutual funds trusts, referred to as a "qualifying exchange." Clause 25(1) applies to taxation years that begin after 15 December 2021.

2.1.9 Discretion to Decline to Issue a Certificate Under Section 116 of the *Income Tax Act*

Pursuant to section 116 of the ITA, a non-resident can obtain a certificate of compliance in respect of the disposition, or proposed disposition, of property if the required capital gains tax has been paid. Without such a certificate, the purchaser is liable to pay the required tax on behalf of the non-resident vendor. Clause 16 of Bill C-32 provides the Minister of National Revenue with the discretion to decline to provide a certificate of compliance in certain circumstances related to the administration and enforcement of the *Underused Housing Tax Act*, such as when not all returns required under that Act have been filed by the non-resident person or when all taxes required under that Act have not been paid by that person.

2.1.10 First-Time Homebuyers' Tax Credit

First introduced in Budget 2009, the First-Time Homebuyers' Tax Credit permits first-time home buyers who acquire a qualifying home to obtain tax relief by claiming this non-refundable credit.

Section 118.05(3) of the ITA provides for the calculation of the non-refundable tax credit for the taxation year in which a qualifying home is acquired. Specifically, it is calculated by multiplying the applicable income amount of $5,000 by the lowest

personal income tax rate (15% in 2022). Any unused portion of the credit may be transferred to an individual's spouse or common-law partner.[6]

Clause 17 of Bill C-32 amends section 118.05(3) to double the applicable income amount to $10,000, thereby doubling the maximum tax relief from $750 to $1,500.

This amendment applies to the 2022 and subsequent taxation years.

2.1.11 Eligibility Criteria for the Medical Expense Tax Credit

The medical expense tax credit provided for in section 118.2 of the ITA is a non-refundable credit equal to 15% of the eligible medical expenses incurred by an individual for the individual, the individual's spouse or the individual's dependants that exceed the lesser of $2,479 and 3% of the individual's net income for 2022.

Clause 18(1) of Bill C-32 adds section 118.2(2)(v) to the ITA to add to eligible medical expenses fees paid to a fertility clinic or donor bank in Canada to obtain sperm or ova to enable the conception of a child by the individual, the individual's spouse or common-law partner or a surrogate mother on behalf of the individual.

Clause 18(2) of the bill adds section 118.2(2.21) to the ITA to include eligible medical expenses amounts paid by an individual or the individual's spouse or common-law partner in respect of a surrogate mother or donor for expenses incurred in Canada. To qualify, the medical expenses must be:

- paid by the individual or the individual's spouse or common-law partner (new section 118.2(2.21)(a));
- an expenditure described under any of sections 2 to 4 of the *Reimbursement Related to Assisted Human Reproduction Regulations* or paid in respect of a surrogate mother or donor (new section 118.2(2.21)(b));
- a medical expense of the individual, within the meaning of section 118.2(2) of the ITA, if the amount was paid in respect of a good or service provided to the individual or the individual's spouse or common-law partner (new section 118.2(2.21)(c));
- an expense incurred in Canada (new section 118.2(2.21)(d)); and
- an expense for the purpose of the individual becoming a parent (new section 118.2(2.21)(e)).

The amendments apply to the 2022 and subsequent taxation years.

2.1.12 Multigenerational Home Renovation Tax Credit

Clause 19 of Bill C-32 adds section 122.92 to the ITA, which creates new subdivision A.6, introducing the Multigenerational Home Renovation Tax Credit (MHRTC). New section 122.92 provides for a refundable tax credit worth 15% of qualifying renovation expenditures up to a maximum of $50,000, which allows an eligible individual to receive up to $7,500 to build or modify a secondary unit in an eligible dwelling for the purpose of living with a qualifying relation.

New section 122.92(1) sets out the definitions applicable for the purposes of the MHRTC, including the terms "eligible dwelling," "eligible individual," "qualifying expenditure," "qualifying individual," "qualifying relation" and "secondary unit."

New section 122.92(2) provides for a special rule concerning a qualifying expenditure where an eligible individual is a beneficiary of a trust. To this end, clause 15 makes consequential amendments to the definition of "trust" in sections 108(1) and 108(1.1)(a) of the ITA.

New section 122.92(3) sets out the formula for calculating the MHRTC for an eligible individual who is resident in Canada. The credit is calculated by multiplying the appropriate percentage (set in section 248(1) at 15%) by the individual's qualifying expenditure in respect of a qualifying renovation that ended in the taxation year. An individual's total qualifying expenditure must not exceed $50,000 and must comply with the additional limits described in new section 122.92(4).

Lastly, new sections 122.92(5) and 122.92(6) specify provisions in the event of bankruptcy or death, respectively, of an eligible individual or qualifying individual.

These amendments apply to the 2023 and subsequent taxation years in respect of qualifying expenditures paid after December 31, 2022, for services performed or goods acquired after that date.

2.1.13 Eligibility Criteria for the Small Business Tax Rate

Canadian-controlled private corporations benefit, under certain conditions, from the small business deduction,[7] which provides a reduction from 15% to 9% of the general corporate income tax rate applicable, up to a maximum annual active business income of $500,000 (the "business limit"). Section 125(5.1)(a) of the ITA provides that the business limit of a Canadian-controlled private corporation is phased out on a straight-line basis when its taxable capital employed in Canada exceeds $10 million, up to a maximum of $15 million, at which point the business limit reaches zero.

Clause 21(1) of Bill C-32 amends the formula in section 125(5.1)(a) to increase the upper threshold from $15 million to $50 million. The business limit of a Canadian-controlled private corporation is now phased out on a straight-line basis when its taxable capital employed in Canada exceeds $10 million, up to a maximum of $50 million, at which point the business limit reaches zero.

This amendment applies to taxation years that begin on or after 7 April 2022.

2.1.14 Computation of Income as a Result of the Adoption of a New International Accounting Standard for Insurance Contracts

Clause 26 of Bill C-32 amends section 138 of the ITA to incorporate key concepts arising from the adoption of the new International Financial Reporting Standard for Insurance Contracts ("IFRS 17") effective for years beginning on or after 1 January 2023. These new concepts are incorporated into the calculation of the policy reserve (amended sections 138(3) and 138(4)), investment income of non-resident insurers and resident life insurers carrying on a business both inside and outside Canada (amended section 138(9)) and Parts I.3 and VI of the ITA. Section 138 is also amended to introduce a transition to the new accounting standard.

Clauses 77 to 86 of the bill make consequential amendments to sections 309.1, 1400, 1402, 1404 to 1408, 2400 and 2401 of the ITR.

These amendments apply to tax years beginning after 2022, except for the amendments to sections 309.1(b) and 309.1(c) of the ITR, which apply to tax years beginning after 2023.

2.1.15 Graduated Disbursement Quota Rate for Charities

Clause 34(1) of Bill C-32 amends the "disbursement quota" formula in section 149.1(1) of the ITA by introducing a new tier.

The disbursement quota is the minimum calculated amount that a charity is required to spend each year on its own charitable activities or by way of gifts that are qualifying disbursements. It is generally calculated based on the value of the charity's property not used for charitable activities or administration.

Going forward, in addition to the 3.5% applicable when the prescribed amount[8] for the year exceeds $100,000 for a charitable organization (or $25,000 for a charitable foundation) but is equal to or less than $1 million, a 5% rate will apply to the portion of the amount exceeding $1 million.

Clause 34(2) of the bill amends the deeming provision contained in section 149.1(1.1)of the ITA. New section 149.1(1.1)(d) provides that expenditures on administration and management of the charity are deemed to be neither an amount expended in a taxation year on charitable activities, nor a gift made to a qualified donee. Therefore, they cannot be included in the calculation to determine whether the charity expended an amount that is at least equal to its disbursement quota for that year as required in sections 149.1(2)(b), 149.1(3)(b) and 149.1(4)(b), nor in the calculation of a disbursement excess pursuant to section 149.1(21). Determining the nature of the expenditure is a factual determination "based on the activities and practices of the organization."[9]

These changes apply to taxation years beginning on or after 1 January 2023 (clause 34(6)).

Clause 34(3) corrects a typographical error in section 149.1(4.1)(d) of the English version of the ITA. This amendment is deemed to have come into force on 23 June 2022.[10]

Clause 34(4) amends section 149.1(5) to replace the presumption by which the amount specified in an application made to the Minister of National Revenue by a charity under this section is deemed to be expended by the charity in the year on charitable activities carried on by it. The amendment now deems the amount to reduce the charity's disbursement quota instead. This change "is intended to improve transparency with respect to charities that have a reduction to their disbursement quota, and to better reflect actual expenditures on charitable activities."[11] It applies to taxation years beginning on or after 1 January 2023 (clause 34(6)).

Clause 34(5) repeals section 149.1(8), which allowed a registered charity to accumulate property for a particular purpose, with the approval of the Minister of National Revenue and in accordance with the specified terms and conditions. It was deemed that this provision is no longer necessary in a context where "a number of spending requirements [have been removed], as well as existing provisions, which provide relief to charities."[12] This provision is repealed in respect of applications made on or after 1 January 2023 (clause 34(8)).

2.1.16 General Anti-avoidance Rules

According to Budget 2022, certain court decisions have held that the general anti-avoidance rule (GAAR) does not apply to transactions that result in an increase in tax attributes that have not yet been used to reduce a taxpayer's liability. Limiting the GAAR in these circumstances is contrary to the Government of Canada's objectives and the policy behind the GAAR.

To address these concerns, clause 36(1) of Bill C-32 amends section 152(1.11) of the ITA to provide that the GAAR may apply to transactions affecting tax attributes that have not yet become relevant for computing tax.

Clause 56(1) of the bill amends the definition of "tax consequences" in section 245(1) to include any amount that is, or could at a subsequent time be, relevant for the purpose of computing a person's income, taxable income or taxable income earned in Canada under the ITA or the tax or other amount payable by or refundable to a person under the ITA.

Clause 56(1) also amends the definition of "tax benefit" in section 245(1) to include a reduction, increase or preservation of an amount that could at a subsequent time be used in computing a taxpayer's liability.

These amendments generally apply on or after 7 April 2022. However, they may also apply before that date if a determination is made under section 152(1.11) on or after 7 April 2022 in respect of the transaction.

2.1.17 Rules on Avoidance of Tax Debts

Section 160 of the ITA provides for an anti-avoidance rule addressing transactions intended to avoid the collection of tax debts.[13] For example, it targets situations where an individual transfers an asset or assets to a spouse or common-law partner, to a person under the age of 18 or to another person with whom they are not dealing at arm's length.[14] Among other consequences, this rule results in the transferee being jointly and severally, or solidarily, liable to pay all or parts of the amounts payable by the transferor under the ITA in respect of the taxation year in which the property is transferred or any preceding taxation year. However, the transferee is not liable when the value of the consideration given for the property at the time of the transfer is equal to or exceeds the fair market value (FMV) of the property transferred.[15] The transferee's liability, in all cases, is limited to the amount by which the FMV of the property that was transferred exceeds the FMV at that time of the consideration given. Section 325 of the *Excise Tax Act* (ETA), section 297 of the *Excise Act, 2001*, and section 161 of the *Greenhouse Gas Pollution Pricing Act* contain similar provisions to those of section 160 of the ITA.[16]

Clause 38(1) of Bill C-32 adds section 160(0.1) to the ITA. It provides that, for the purposes of section 160 and new section 160.01 (introduced by clause 39(1)), a transaction includes an arrangement or event.

Clause 38(4) adds section 160(5) to the ITA, which introduces a number of deeming provisions regarding property transfers in a transaction or series of transactions. This provision aims to prevent planning that seeks to circumvent the conditions for the application of the anti-avoidance rule or to avoid its consequences by deeming the following:

- that the transferor is not dealing at arm's length with the transferee, including at the time of the transfer, if
  - immediately before and immediately after the transaction or series of transactions, the transferor and transferee do not deal at arm's length, and
  - it is reasonable to conclude that one of the purposes of the transaction or series of transactions is to avoid joint and several, or solidary, liability for an amount payable under the ITA;
- that a future amount payable by the transferor under the ITA has become payable in the taxation year in which the property was transferred if it is reasonable to conclude that one of the purposes for the transfer of property is to avoid the payment of this amount by the transferor or the transferee; and
- that the amount of the FMV of the property transferred by the transferor over the FMV of the consideration given by the transferee, determined under section 160(1)(e) of the ITA, is the greater of
  - the amount otherwise determined (at the time of the transfer), and
  - the difference between the FMV of the property at the time of the transfer and the lowest FMV – including that of any property that is substituted for the consideration but excluding that of property that is cancelled or extinguished during that period[17] – of the consideration held by the transferor during the period beginning immediately prior to and ending immediately after the transaction or services of transactions.

As a result of the introduction of the term "bénéficiaire du transfert" in French, the French version of sections 160(1)(d) and 160(1)(e) of the ITA is amended to clarify that these provisions apply to the transferee (clauses 38(2) and 38(3)).

These changes are deemed to have come into force on Budget Day 2021, that is, 19 April 2021 (clause 38(5)).

The bill makes several changes to the following Acts in order to introduce anti-tax avoidance provisions similar to those contained in new sections 160(0.1) and 160(5) of the ITA:

- Clauses 64(1) and 64(2) amend the ETA by adding section 325(0.1) and amending section 325(5).

- Clauses 67(1) and 67(2) amend the *Excise Act, 2001* by adding section 297(0.1) and amending section 297(6).
- Clauses 69(1) and 69(2) amend the *Greenhouse Gas Pollution Pricing Act* by adding sections 161(0.1) and 161(6).

These changes are deemed to have come into force on 19 April 2021 (clauses 64(3), 67(3) and 69(3)).

Clause 39(1) of the bill adds section 160.01 to the ITA, which sets out a penalty for planners and promoters of tax debt avoidance schemes that mirrors an existing penalty in the third-party civil penalty rules outlined in section 163.2 of the ITA in respect of certain false statements.[18]

In this regard, new section 160.01 provides that every person – excluding those providing clerical or secretarial services – that engages in, participates in, assents to or acquiesces in a "planning activity" that they know or would reasonably be expected to know but for gross negligence amounts to "section 160 avoidance planning," is liable to a penalty.

New section 160.01(1) introduces a number of definitions, including those for the terms "planning activity" and "section 160 avoidance planning." "Planning activity" refers to the meaning provided in section 163.2(1), which

> generally includes organizing or creating an arrangement, entity, plan or scheme … [and] participating (directly or indirectly) in the selling of an interest in, or the promotion of, an arrangement, entity, plan or scheme.[19]

"Section 160 avoidance planning" includes a planning activity in respect of which the conditions set out in new section 160(5) of the ITA apply.

New section 160.01(2) establishes that the penalty is generally the lesser of the following:

- 50% of the amount payable under the ITA, the joint and several, or solidary, liability for which was sought to be avoided through the planning; and
- the total of $100,000 and any gross amount that the person is entitled to receive in respect of a planning.

New sections 160.01 is deemed to apply in respect of a transaction or series of transactions occurring all or in part after 18 April 2021 (clause 39(2)).

Finally, the bill makes the following amendments to the ETA, which contains similar provisions with respect to tax debt avoidance schemes:

- Clause 61(1) adds section 285.03 to the ETA in relation to "section 325 avoidance planning," which outlines an identical penalty, with certain modifications as regards the definitions. This provision is deemed to have come into force on 19 April 2021 (clause 61(2)).
- Clause 63 amends section 298(1)(e) of the ETA by adding a reference to new section 285.03 to allow an assessment for this penalty to be issued outside the four-year period provided under this section.

2.1.18 Calculation of the Taxes Applicable to Registered Investments That Hold Property That Is Not a Qualified Investment

Clause 49 of Bill C-32 amends section 204.6(1) of the ITA to modify the formula for calculating the amount of tax payable by a registered investment on property that is not a qualified investment.

Clause 49(1) of the bill amends the formula by imposing the current 1% tax on the FMV of the property that is not a qualified investment multiplied by the ratio of the total number of shares or units of the registered investment held by registered plans or other registered investments to the total number of issued and outstanding shares or units of the registered investment held by all investors at the end of the month. The new formula thus reduces the tax imposed by the proportion of shares or units held by investors not subject to the qualified investment rules.

This new formula applies to taxes calculated for months after 2020. It also applies to a month before 2021 if, on or before 19 April 2021,

- no notice of assessment of an amount payable for the month had been sent to the taxpayer with respect to the month; or
- if such a notice of assessment had been sent to the taxpayer in respect of the month on or before that date, the taxpayer had rights of objection or appeal in respect of the assessment on that date.

2.1.19 Tax Treatment of Certain Interest Coupon Stripping Arrangements

Clause 53(2) of Bill C-32 adds an anti-avoidance rule by adding sections 212(21), 212(22) and 212(23) to the ITA to prevent planning that seeks to circumvent the non-resident withholding tax provided for in Part XIII of the ITA by taking advantage of "differences between Canada's various tax treaties."[20]

Pursuant to new section 212(21), this new rule will generally apply when:

- the taxpayer pays a person or partnership (the interest coupon holder) an amount in interest in respect of certain debt or obligation owed to a non-resident person with whom the taxpayer is not dealing at arm's length or a partnership other than a Canadian partnership[21] (the non-arm's-length creditor); and
- the withholding tax that would be payable under the ITA in respect of the interest amount if it were paid to the non-arm's-length creditor is greater than the tax payable under the ITA in respect of the interest amount actually paid to the interest coupon holder.

Pursuant to new section 212(22), the taxpayer is deemed to pay interest to the non-arm's length creditor for an amount equal to the result determined by the formula provided by this new measure, triggering the withholding tax provided for in Part XIII with respect to this deemed amount. The purpose is to

> ensure that the total amount of non-resident withholding tax paid under the arrangement is the same as if the arrangement had not been carried out and the interest was instead paid directly to the non-arm's length creditor.[22]

New section 212(23) defines "specified publicly offered debt obligation," which is excluded from the application of the new rule.

The new anti-avoidance rule applies in respect of interest that accrues on or after Budget Day 2022, that is, 7 April 2022 if the conditions are met. However, it does not apply to interest accrued before 7 April 2023 if the interest is paid or payable in respect of a debt or other obligation incurred by the taxpayer before 7 April 2022, the holder deals at arm's length with the creditor and the holder acquired the entitlement to the interest as a consequence of an agreement or other arrangement entered into in writing before 7 April 2022 (clause 53(4)).

2.1.20 Audits by Canada Revenue Agency Officials

In order to clarify the rules applicable to audits by the Canada Revenue Agency, in particular with respect to the requirement that taxpayers provide reasonable assistance and answer all proper questions for tax purposes, clauses 54, 60, 62, 65, 66 and 68 of Bill C-32 amend the following legislation:

- section 231.1 of the ITA (clause 54);
- sections 98(3) and 288 of the ETA (clauses 60 and 62, respectively);
- section 70 of the *Air Travellers Security Charge Act* (clause 65);

- section 260 of the *Excise Act, 2001* (clause 66); and
- section 141 of the *Greenhouse Gas Pollution Pricing Act* (clause 68).

2.1.21 Capital Cost Allowance for Clean Energy and the Tax Rate Reduction for Zero-Emission Technology Manufacturers

The *Income Tax Regulations* (ITR) establish the capital cost allowance (CCA) system for determining the tax deductions that a taxpayer may claim in respect of the capital cost of their depreciable property. In general, CCA rates are based on the useful life of assets. Accelerated CCA provides a financial benefit to the taxpayer by virtue of the tax deferral it provides.

CCA rates are set according to a class system, with each class having its own CCA rate. Schedule II of the ITR lists the types of properties included in each CCA class. Class 43.1 provides an accelerated CCA rate of 30% per year on a declining-balance basis for certain clean energy and energy conservation equipment, and Class 43.2 provides an accelerated CCA rate of 50% for Class 43.1 property meeting certain conditions. Clause 92 of Bill C-32 amends Class 43.1 to expand eligibility to classes 43.1 and 43.2 to air-source heat pumps that are used primarily for space or water heating. These amendments apply to property acquired after 6 April 2022 that has not been used or acquired for use before 7 April 2022.

Budget Implementation Act, 2022, No. 1 [23] introduced a deduction that reduces the corporate income tax rate applicable to profits that arise from qualified zero-emission technology manufacturing activities performed in Canada by 50% for tax years beginning after 2021 and before 2029. Specifically, the reduced tax rates on qualified zero-emission technology manufacturing income are:

- 7.5%, where such income would otherwise be taxed at the general corporate income tax rate of 15%; and
- 4.5%, where such income would otherwise be taxed at the small business tax rate of 9%.

Clause 89 of the bill amends the definition of "qualified zero-emission technology manufacturing activities" in section 5202 of the ITR, which describes the activities that may qualify for the deduction, to include the manufacturing or processing of air-source heat pumps designed for space or water heating as a qualified activity. This measure is deemed to have come into force on 1 January 2022.

2.2 PART 2: FEDERAL EXCISE DUTY FRAMEWORKS FOR CANNABIS, VAPING PRODUCTS AND OTHER PRODUCTS

2.2.1 Changes to the Federal Excise Duty Frameworks for Cannabis and Other Products

2.2.1.1 Federal Excise Duty Framework for Cannabis Products

2.2.1.1.1 Licences

Clause 94 of Bill C-32 amends section 158.01 of the *Excise Act*, *2001*,[24] to exempt from the application of Part 4.1 of the Act cannabis products that are in the possession of a holder of a licence for research or a cannabis drug licence, within the meaning of the *Cannabis Regulations*,[25] to the extent that they are used by the holder of the licence in activities that are not prohibited under the conditions of the licence or the *Cannabis Act*.[26] This exemption is provided because these categories of licence holders generally "use relatively small amounts of cannabis, and pose little risk of cannabis product diversion."[27]

Clause 105 of the bill amends section 4 of the *Regulations Respecting Excise Licences and Registrations* (RRELR)[28] to provide that the validity period for a cannabis licence must end no later than on or before the date of expiry of the licence or permit issued to the person under the *Cannabis Act*, or after five years. The purpose of this provision is to allow the harmonization of the validity periods of licences issued to cannabis producers under the *Excise Act*, *2001*, and the *Cannabis Act*.[29]

2.2.1.1.2 Service Agreements

Clause 101 of Bill C-32 amends section 304(1) of the *Excise Act*, *2001*, to authorize the Governor in Council to make regulations respecting, among others, the packaging or stamping and entry into the duty-paid market by a cannabis licensee of cannabis products that are owned or produced by another cannabis licensee, with the authorization of the Minister of National Revenue.

Clause 111 of the bill adds section 5.1 to the *Stamping and Marking of Tobacco*, *Cannabis and Vaping Products Regulations*.[30] In general, this new section allows certain cannabis licensees to enter into a service agreement, subject to the conditions set out in new sections 5.1(2) to 5.1(8), under which one of them (the provider licensee) will package or affix a cannabis excise stamp to cannabis products for the other (the particular licensee). New section 5.1(9) of the *Stamping and Marking of Tobacco*, *Cannabis and Vaping Products Regulations* further provides that a particular licensee that is a party to an authorized service agreement and has in their possession cannabis excise stamps that are issued to the provider licensee and

are to be affixed to packaged cannabis products in accordance with the authorized service agreement is a prescribed person for the purposes of section 158.05(2)(c) of the *Excise Act*, *2001*, which concerns exceptions to the illegal possession of cannabis excise stamps.

As for the conditions, the service agreement must be filed with the Minister of National Revenue in the prescribed manner and form no later than 60 days before the proposed effective date of the authorization or any later day that the Minister may allow (new section 5.1(4)). If the Minister authorizes the service agreement, the authorization remains in effect until it is revoked (for the reasons provided by new sections 5.1(2), 5.1(7) and 5.1(8)). In addition, the Minister may at any time specify conditions that the Minister considers appropriate in respect of an authorized service agreement (new section 5.1(6) t).

Consequential to these amendments, clause 95 amends the conditions set out in section 158.13 of the *Excise Act*, *2001*, which concerns the entering of cannabis products into the duty-paid market, to include references to the new regulatory provisions for authorized service agreements.[31] The substantive conditions remain the same, but section 158.13 of the *Excise Act*, *2001*, as amended, reflects the fact that cannabis products under an authorized service agreement can now be packaged, stamped – and the additional cannabis duty in respect of a specified province, if applicable, be paid – by two different licensees: the particular licensee or the provider licensee. However, the particular licensee must be responsible for the cannabis products immediately before they are stamped.

Clause 96 amends section 158.19(2) of the *Excise Act*, *2001*, to specify that the *ad valorem* duty is imposed on cannabis products that are both packaged and stamped. Clauses 96 and 97 amend sections 158.19(3) 158.19(4) and section 158.2(2) of the *Excise Act*, *2001*, to specify that duties under sections 158.19(1) and 158.19(2) and the additional duty under section 158.2(2), if applicable, are payable by the cannabis licensee responsible for the cannabis products immediately before they are stamped.

These amendments are intended to address the “inventory management issues and inefficiencies in the supply chain for the cannabis industry” caused by the restrictions provided by the *Excise Act*, *2001*, which provided that “packaged but unstamped cannabis products [could] not be transferred between licensed cannabis producers.”[32]

2.2.1.1.3 Returns and Payment of Excise Duties

Clause 99(1) of Bill C-32 adds new section 159.2 to the *Excise Act*, *2001*. This new section enables a cannabis licensee to change their reporting period[33] to calendar quarters, with the Minister of National Revenue's written authorization. Pursuant to section 160 of the *Excise Act, 2001*, a licensee must file a return and pay excise duties no later than the last day of the first month after each reporting period. To be eligible to file an application for authorization to report on a quarterly basis, the total of all duties payable on the cannabis products of the licensee, and any associated person,[34] must not exceed $1 million over the preceding four calendar quarters (the threshold). This new provision affects the smallest licensees, who sometimes experience cash-flow problems because "not all buyers – which are primarily provincial Crown entities – pay for those products on a monthly basis; in some cases, buyer payment terms extend well beyond one month."[35]

Under new section 159.2(4), this authorization is valid for each quarter at the beginning of which the threshold is not met and is deemed revoked at the start of a quarter in relation to which the threshold is met. Under new section 159.2(5), the authorization can also be revoked on written request of the licensee or if the Minister considers it is no longer required, among other reasons. New section 159.2(7) sets out the reporting requirements in case of revocation of the authorization.

Clause 98(1) of the bill makes a consequential amendment to section 159.1(1) of the *Excise Act*, *2001*, which determines a person's reporting period, to add a reference to new section 159.2.

These provisions are deemed to have come into force on 1 April 2022 (clauses 98(2) and 99(2)).

2.2.1.1.4 Other Changes

Clause 93 of Bill C-32 amends the definition of the term "responsible" in section 2 of the *Excise Act*, *2001*, by adding references to the provisions determining responsibility for cannabis products and vaping products.

Clause 100 of the bill amends section 234.1 of the *Excise Act*, *2001*, which provides for a penalty in certain situations, by removing references to specific acts and retaining only references to the relevant sections. This change expands the scope of the penalty to situations where "unlicensed parties [that] illegally possess or purchase cannabis products or where licensed parties illegally distribute such products."[36]

Clause 104 amends section 2(2)(b)(i) of the RRELR to add a reference to cannabis products. In general, this provision makes any person who in the five years prior to the application has failed to comply with any Act of Parliament or of a provincial legislature respecting the taxation of or controls on products subject to excise duty ineligible for a licence under the *Excise Act*, *2001*.

2.2.1.2 Federal Excise Duty Frameworks for Other Products

Clause 106 of Bill C-32 amends section 5(2) of the RRELR to reflect the types of financial security that the Canada Revenue Agency can accept.[37]

Clause 107 of the bill amends section 10(1) of the RRELR to include among the grounds for suspending the licence of an excise licensee the grounds for revoking (or cancelling) such a licence under section 12(1) of the RRELR, except for "a proactive request by a licensee to cancel its licence."[38] Consequential to this change, clause 108 amends section 12(1)(e) of the RRELR, which sets out a ground for revoking a licence (failing to comply with federal and provincial legislation and regulations respecting the taxation and control of alcohol and tobacco products), to add a reference to cannabis products.

Clause 112 amends sections 8 and 9 of the *Excise Duties on Cannabis Regulations*,[39] which determine which provinces are "specified provinces" for the purpose of applying certain penalties provided by the *Excise Act*, *2001*.[40] The effect of this amendment is that "the higher penalty … for a province or territory with an additional cannabis duty adjustment only applies if the adjustment rate is greater than 0 per cent."[41]

2.2.2 Changes to the Federal Excise Duty Framework for Vaping Products

Clause 103(1) of Bill C-32 amends section 3(4) of the *Storage of Goods Regulations*[42] to include vaping products among goods of a prescribed class, within the meaning of the *Customs Act*. These goods are forfeit if they are not removed from a customs office within the prescribed period of 14 days.

Clause 109(1) of the bill amends the definition of "case" in section 1 of the SMTCVPR to include a reference to vaping products.

Clause 110(1) adds new sections 3.6 to 3.9 to the SMTCVPR to provide for the prescribed information that must appear on the packaging of vaping products, imported vaping products and on containers of vaping products stored in an excise warehouse.

The above provisions are deemed to have come into force on 1 October 2022, which was the entry-into-force date of the federal excise duty framework for vaping products introduced by *Budget Implementation Act*, *2022*, *No. 1* (clauses 103(2), 109(2) and 110(2)).

Clause 102 amends section 128(3) of *Budget Implementation Act*, *2022*, *No. 1* and adds to it section 128(3.1). These amendments to that Act concern the transitional rules for the federal excise duty framework for vaping products and provide that

> the duties for vaping products that are taken for use or that cannot be accounted for do not apply at all (even after the end of the transitional period) in respect of unstamped vaping products manufactured in Canada that are packaged before October 1, 2022, or in respect of unstamped vaping products that are imported before October 1, 2022.[43]

2.3 PART 3: AMENDMENTS TO THE *UNDERUSED HOUSING TAX ACT*

Clause 113(1) of Bill C-32 amends the definition of "specified Canadian partnership" in section 2 of the *Underused Housing Tax Act* (UHTA)[44] so that the definition does not exclude partnerships where one or more members are individuals who are citizens or permanent residents.

Clause 113(2) of the bill also amends the definition of "propriétaire exclu" in the same section of the UHTA to correct an omission in the French version.

Clause 114(1) amends section 6(7)(l) of the UHTA "to correct the time at which construction of a residential property must be substantially completed in order to qualify under that section for an exclusion from the payment of tax"[45] to January, February or March, rather than after March as provided in the current version of the UHTA. Section 6(7)(k) continues to apply to newly constructed residential properties that are not substantially completed before April of a calendar year.

Clause 115(1) makes a "housekeeping amendment" to section 47(1) of the UHTA "to provide for proper cross-referencing of provisions within the Act."[46]

These amendments are deemed to have come into force on 1 January 2022 (clauses 113(3), 114(2) and 115(2)).

Under section 6(7)(m) of the UHTA, residential property is exempt from tax if it is located in a prescribed area and prescribed conditions are met. Clause 116 introduces the Underused Housing Tax Regulations (UHTR) to implement this exemption specifically for vacation and recreational properties.[47]

Section 2(1) of the UHTR defines the terms "census metropolitan area," "population centre" and "specified census agglomeration," including by reference to a Statistics Canada document.[48] This provision comes into force, or is deemed to have come into force, on 31 December 2022 (clause 117(1)).

Section 2(2) of the UHTR defines a "prescribed area" as

- an area that is neither within a census metropolitan area nor within a specified census agglomeration; or
- a region that is within a census metropolitan area or specified census agglomeration but not within a population centre.

Section 2(3) of the UHTR requires that the residential property be used as a place of residence or lodging by the owner or the owner's spouse or common-law partner for at least 28 days during the calendar year.

Sections 2(2) and 2(3) of the UHTR apply to the 2022 and subsequent calendar years (clause 117(2)).

Section 3 of the UHTR allows the Minister of National Revenue to require an individual to provide their Social Insurance Number in a return filed under the UHTA. This provision comes into force or is deemed to have come into force on 31 December 2022 (clause 117(1)).

Lastly, the UHTR are deemed to have been made in accordance with the relevant provisions of the UHTA and the *Statutory Instruments Act*[49] (clause 117(3)).

2.4 PART 4: IMPLEMENTATION OF VARIOUS MEASURES

2.4.1 Non-voting Shares of a Wholly-Owned Subsidiary of the Canada Development Investment Corporation

Division 1 of Part 4 of Bill C-32 authorizes the Minister of Finance to requisition amounts from the Consolidated Revenue Fund to acquire non-voting shares of a wholly-owned subsidiary of the Canada Development Investment Corporation, which is responsible for administering the Canada Growth Fund

First announced in Budget 2022,

> [t]he Canada Growth Fund will be a new public investment vehicle that will operate at arms-length from the federal government. It will invest using a broad suite of financial instruments including all forms of debt, equity, guarantees, and specialized contracts. The fund will be initially capitalized at $15 billion over the next five years. It will invest on a

> concessionary basis, with the goal that for every dollar invested by the fund, it will aim to attract at least three dollars of private capital.[50]

Clause 118 authorizes the Minister of Finance to requisition up to $2 billion from the Consolidated Revenue Fund in order to capitalize the Canada Growth Fund. This is done by the Minister acquiring and holding on behalf of the government non-voting shares of a corporation that is incorporated as a wholly owned subsidiary of the Canada Development Investment Corporation.

Further, clause 119 of the bill stipulates that the Minister of Finance may, on behalf of the government, enter into contracts with the subsidiary referred to in clause 118.

2.4.2 Maximum Financial Assistance That May Be Provided to Foreign States

Division 2 of Part 4 of Bill C-32 amends the *Bretton Woods and Related Agreements Act*[51] to increase the maximum financial assistance that may be provided in respect of foreign states.

Sections 8.3(5)(a) and 8.3(5)(b) of the *Bretton Woods and Related Agreements Act* to authorize the Minister of Finance to provide financial assistance of up to US$2.5 billion in respect of any particular foreign state and US$5 billion in respect of all foreign states, respectively.

Clause 120 amends these two sections of that Act to increase the limits to C$7 billion in respect of any particular foreign state and C$14 billion in respect of all foreign states.

2.4.3 Framework Agreement on First Nation Land Management Act

Division 3 of Part 4 of Bill C-32 contains two subdivisions. Subdivision A enacts the Framework Agreement on First Nation Land Management Act (the Framework Agreement Act). Subdivision B repeals the *First Nations Land Management Act* (FNLMA).[52] Division 3 also contains transitional provisions related to the enactment of the Framework Agreement Act and makes consequential amendments to other Acts.

2.4.3.1 Enactment of the Framework Agreement on First Nation Land Management Act

2.4.3.1.1 Background on First Nations Land Management

Under section 91(24) of the *Constitution Act, 1867*,[53] the federal government has exclusive legislative authority over First Nations reserve lands and resources. There is no single federal land management system that applies to all First Nations reserves in Canada. Generally, there are three broad types of land management regimes:

1. through the *Indian Act*[54] land management framework;

2. pursuant to a self-government agreement whether stand-alone or as part of a modern treaty; and
3. through the *Framework Agreement on First Nation Land Management* (the Framework Agreement).

The main piece of legislation governing the management of First Nations reserve lands is the *Indian Act*, and most First Nations still manage their land through this regime.[55] However, the *Indian Act* land management provisions have been described as inadequate.[56] As a result, in the 1980s and 1990s, a group of First Nations Chiefs negotiated the Framework Agreement with the federal government to provide an alternative to the *Indian Act*'s land management provisions.[57] In 1999, the FNLMA was enacted to ratify and bring into effect the Framework Agreement. As of 7 November 2022, 194 First Nations had signed the Framework Agreement.[58] The Framework Agreement established the First Nations Lands Advisory Board and the First Nations Land Management Resource Centre to provide support to First Nations in implementing their land management regimes.[59]

The FNLMA and the underlying Framework Agreement provide an opt-in regime that empowers any First Nation to develop land codes that ultimately replace the sections of the *Indian Act* related to land management.[60] Once a First Nation land code is in effect, land administration, including the "authority to enact laws with respect to land, the environment and resources" is transferred to the First Nation.[61] Functionally, the regime provides for

> a process for bands to contract out of many of the land management provisions of the *Indian Act*, replacing them with similar or expanded powers under the [FNLMA]. …
>
> These broader powers give First Nations more direct control over their reserve lands, and allow for more extensive powers such as the power to register interests, rights and licenses in respect of the land, and the power to enact a First Nation's own environmental assessment regime. …
>
> The net effect of this is that many of the powers that were formerly exercised by the Crown in respect of reserve lands … are either removed or transferred to the First Nation under the [FNLMA].[62]

On 1 March 2022, Chief Robert Louie, Chair of the First Nations Lands Advisory Board, testified before the House of Commons Standing Committee on Indigenous and Northern Affairs. Chief Louie explained:

> Unfortunately, government drafters either put in extra wording or omitted wording contained in the [Framework Agreement]. This has consistently caused confusion and clarity interpretation differences to this day.[63]

He noted that his organization had been working with the federal government to draft new legislation to replace the FNLMA.

The following month, in Budget 2022, the federal government announced its intention to replace the FNLMA with the "shorter, simpler" Framework Agreement Act.[64] Ultimately, the new legislation was included in Bill C-32.

2.4.3.2 Enactment of the Framework Agreement Act

Clause 121 of Bill C-32 enacts the Framework Agreement Act, which enables First Nations to opt out of the land management sections of the *Indian Act*.

The new Framework Agreement Act contains a preamble indicating that this new Act reflects the primacy of the Framework Agreement while ensuring continuity with the legal framework under the FNLMA.

Section 2(1) of the Framework Agreement Act defines "First Nation land," "First Nation law," "Framework Agreement," "Minister" and "reserve" as follows:

- "First Nation land" includes reserve land or lands set aside[65] to which a land code applies, and it includes "all of the interests or land rights in, and resources of, the land that are within the legislative authority of Parliament."
- "First Nation law" is defined as a law enacted by a First Nation under the Framework Agreement and the respective land code of the First Nation.
- "Framework Agreement" refers to the version agreed to in 1996 between the Crown and signatory First Nations as subsequently amended.
- "Minister" refers to the Minister of Crown-Indigenous Relations;
- "Reserve" is defined in accordance with section 2(1) of the *Indian Act* as a tract of land that is the property of the Crown and that has been set aside for the use and benefit of a band.

Section 3 of the Framework Agreement Act clarifies that the Act is not considered a treaty under section 35 of the *Constitution Act, 1982*,[66] which means that it does not create constitutionally protected "aboriginal and treaty rights."

Under sections 5 and 6, the Framework Agreement:

- is binding on all persons and bodies (section 5(3));
- continues to have effect and the force of law (section 5(1));
- establishes the rights and obligations and confers liabilities of individuals and organizations (section 5(2)); and
- prevails if an inconsistency or conflict is found between the Framework Agreement and this Act and any other federal law (sections 6(1) and 6(2)).

Section 7 of the Framework Agreement Act provides that the Minister must make available to the public the most recent consolidated version of the Framework Agreement as approved by the First Nations Lands Advisory Board and the Minister.

Section 8 establishes the rights and obligations of the Crown. On the coming into force of a First Nation land code, the rights and obligations of the Crown

> as grantor in respect of the interests or land rights and licences described in the First Nation's individual agreement referred to in clause 6 of the Framework Agreement are transferred to the First Nation in accordance with that individual agreement.

Section 9 stipulates that the First Nations Land Register (the Register) established by the Minister under the FNLMA continues under the Framework Agreement Act.

According to section 10 of the Framework Agreement Act, the Governor in Council can make regulations on a range of matters respecting the administration of the Register, including, but not limited to regulations:

- with respect to registering interests or land rights and the payment of fees for registering interests or land rights or for any other services related to the Register (sections 10(a) and 10(b));
- the appointment, remuneration, powers and duties of the officers or others who administer the Register, as well as the keeping of documents that are not registrable (sections 10(c) and 10(d)); and
- the transfer of the administration of the Register to an individual or organization and the power to disclose such personal information as defined in section 3 of the *Privacy Act* (section 10(e)).

Section 11 of the Framework Agreement Act requires judicial notice[67] to be taken of the Framework Agreement, a land code that is in force and any First Nation law.

Section 12 of the Framework Agreement Act provides that if any issues are raised by a party in any judicial or administrative proceeding regarding either the interpretation or the validity of the Framework Agreement itself or the Framework Agreement Act, the Attorney General of Canada and the First Nations Lands Advisory Board must be served notice in the prescribed form and according to the specified timelines. They will also have a right to participate in the hearing. Similarly, where an issue arises in relation to the interpretation or validity of a land code or First Nation law, notice must be served on the First Nation, and the First Nation will have a right to participate in the hearing.

Section 13 specifies that the *Statutory Instruments Act* is not applicable to a land code, a First Nation law or an order made under clause 14.2.1 of the Framework Agreement.

2.4.3.3 Transitional Provisions, Consequential Amendments and Repeal

Clauses 122 to 124 of Bill C-32 include provisions for the transition between the FNLMA and the Framework Agreement Act. Clause 123 provides that nothing in the Framework Agreement Act affects documents and decisions made in accordance with the FNLMA (including land codes, individual agreements, First Nation laws, licences, authorizations, contracts, registrations of rights and interests in land, as well as priorities and rankings). Clause 124 establishes that, unless the context requires otherwise, a reference to the FNLMA in First Nation land codes, laws, agreements or documents is to be read as a reference to the Framework Agreement Act.

Clauses 125 to 142 of the bill specifically replace references to the FNLMA by the Framework Agreement Act in the following statutes:

- *Indian Oil and Gas Act*;
- *Westbank First Nation Self-Government Act*;
- *First Nations Oil and Gas and Moneys Management Act*;
- *First Nations Jurisdiction over Education in British Columbia Act*;
- *Tsawwassen First Nation Final Agreement Act*;
- *Family Homes on Reserves and Matrimonial Interests or Rights Act*; and
- *Tla'amin Final Agreement Act*.

Finally, clause 143 of the bill repeals the FNLMA.

2.4.4 Obligations Under the Memorandum of Understanding Between the Government of Canada and the Government of the United States of America concerning Cooperation on the Civil Lunar Gateway

Division 4 of Part 4 of Bill C-32 amends the *Government Employees Compensation Act* (GECA)[68] to fulfil Canada's obligations under the Memorandum of Understanding between the Government of Canada and the Government of the United States of America concerning Cooperation on the Civil Lunar Gateway.

The GECA allows most employees[69] of the federal government and Parliament, as well as employees of departments, corporations or other bodies established to perform a function or duty on behalf of the Government of Canada, or their dependants, to claim compensation under the GECA or make a claim against a third party in the event of an accident during the course of their employment (sections 2 and 9(1) of the GECA). The GECA provides for somewhat different rules regarding claims against third parties and compensation, based on whether the worker's employer is, or is not, listed in regulations made under section 13(1)(b) of the Act (sections 9.1 and 9.2, respectively).

If an injured employee claims compensation under the GECA, the Act entitles the Crown to stand in the shoes of the injured worker (or that worker's dependants) to pursue legal claims the worker may have had against third parties in a process known as subrogation (sections 9.1(3) and 9.2(3)).

Clause 144 of Bill C-32 amends section 9.2(3) of the GECA dealing with the Crown's right of subrogation in respect of legal claims from employees of corporations and bodies not listed in the regulations to bring it in line with section 9.1(3), so that all subrogation provisions are subject to the same Acts for all employees that fall under the GECA. Specifically, clause 144 amends section 9.2(3) to make the Crown's right of subrogation subject to the provisions of the *Memorandum of Understanding between the Government of Canada and the Government of the United States of America concerning Cooperation on the Civil Lunar Gateway* (Civil Lunar Gateway Agreement).[70] This amendment implements a cross-waiver of liability between the Gateway partners contained in the Civil Lunar Gateway Agreement (the Canadian Space Agency, National Aeronautic and Space Administration, the European Space Agency and the Japan Aerospace Exploration Agency).

The Civil Lunar Gateway Agreement was implemented as part of the *Civil Lunar Gateway Agreement Implementation Act*, which was enacted pursuant to the *Budget Implementation Act, 2022, No. 1*.

2.4.5 Eliminating the Accrual of Interest on Guaranteed Student Loans, Student Loans and Apprentice Loans

Division 5 of Part 4 of Bill C-32 makes amendments to the *Canada Student Loans Act* (CSLA),[71] the *Canada Student Financial Assistance Act* (CSFAA)[72] and the *Apprentice Loans Act* (ALA)[73] to eliminate the accrual of interest on guaranteed student loans and apprentice loans starting on 1 April 2023. The CSFAA governs the provision of student financial assistance under the Canada Student Financial Assistance Program on or after 1 August 1995, while the CSLA governs student loans made prior to that date. The ALA governs the provision of loans under the Apprentice Loans Program, which offers loans to eligible apprentices in Red Seal trades.[74]

Under the Canada Student Financial Assistance Program, the federal government provides grants and loans to eligible post-secondary students. Currently, loans administered under the Canada Student Financial Assistance Program do not accrue interest while a student is in school and for a period of six months after the end of a student's studies.[75] The Apprentice Loans Program's loans have similar interest accrual rules.[76]

During the pandemic, interest-free periods were offered on all student and apprentice loans due to changes enacted by the *COVID-19 Emergency Response Act* and *Budget Implementation Act, 2021, No. 1*. Currently, no interest is accruing on student and apprentice loans until 31 March 2023.[77]

2.4.5.1 Amendments to the *Canada Student Loans Act*

Clause 145 of Bill C-32 amends section 4 of the CSLA to state that no interest is payable by a borrower on a guaranteed student loan starting on 1 April 2023. It also clarifies that borrowers will still be liable for interest accrued prior to that date.

Clauses 146 to 154 of the bill make consequential amendments to the CSLA to account for the elimination of the accrual of interest as of 1 April 2023.

2.4.5.2 Amendments to the *Canada Student Financial Assistance Act*

Clause 156 of Bill C-32 amends section 7 of the CSFAA to state that no interest is payable by a borrower on a guaranteed student loan starting on 1 April 2023. It also clarifies that borrowers will still be liable for interest accrued prior to that date (amended section 7(1.1)). In addition, it stipulates that no fees may be charged to borrowers on student loans for periods during which they were full- or part-time students, or for the six-month period after they ceased to be students.

Clause 155 and clauses 157 to 162 of the bill make consequential amendments to the CSFAA to account for the elimination of interest on student loans as of 1 April 2023.

2.4.5.3 Eliminating the Accrual of Interest on Apprentice Loans

Clause 164 of Bill C-32 amends section 8 of the ALA to state that no interest is payable by a borrower on an apprentice loan starting on 1 April 2023. It also clarifies that borrowers will still be liable for interest accrued prior to that date.

Unlike the CSFAA and the CLSA, many of the provisions related to repayment and interest-free periods under the ALA are found in the *Apprentice Loans Regulations*,[78] rather than the legislation itself. Clause 165 of the bill makes temporary amendments to the Regulations so that loan repayment begins at its usual time despite the elimination of the accrual of interest, and clause 167 contains a transitional provision in effect from 1 April 2023 until section 4 of the Regulations is formally amended or repealed.

Finally, clauses 164 and 166 contain consequential amendments to the ALA to account for the elimination of the accrual of interest on apprentice loans.

NOTES

* This Legislative Summary was prepared by the following authors:

- Matthew Blackshaw, sections 2.4.5;
- Sylvain Fleury, sections 2.1.1, 2.1.11, 2.1.12, 2.1.13 and 2.1.16;
- Olivier Leblanc-Laurendeau, section 2.4.3;
- Michaël Lambert-Racine, sections 2.1.9 and 2.1.21;
- Joëlle Malo, sections 2.1.15, 2.1.17, 2.1.19, 2.2 and 2.3;
- Vanessa Preston, section 2.4.4;
- Shaowei Pu, sections 2.1.10, 2.4.1 and 2.4.2;
- Édison Roy-César, "Background" section;
- Rosemonde Samedy, sections 2.1.14, 2.1.18 and 2.1.20; and
- Adriane Yong, sections 2.1.2, 2.1.3, 2.1.4, 2.1.5, 2.1.6, 2.1.7 and 2.1.8.

1. Bill C-32, An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 3, 2022 and certain provisions of the budget tabled in Parliament on April 7, 2022, 44th Parliament, 1st Session (S.C. 2022, c. 9).
2. Government of Canada, Fall Economic Statement *2022*; and Government of Canada, *A Plan to Grow Our Economy and Make Life More Affordable*, Budget 2022.
3. *Income Tax Act* (ITA), R.S.C. 1985, c. 1 (5th Supp.).
4. *Income Tax Regulations*, C.R.C., c. 945.
5. *Budget Implementation Act, 2021, No. 1*, S.C. 2021, c. 23.

6. Government of Canada, "First-Time Home Buyers' Tax Credit," *Report on Federal Tax Expenditures – Concepts, Estimates and Evaluations 2022: part 5*.

7. The small business reduction is provided for in section 125 of the ITA. See *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s. 125.

8. See *Income Tax Regulations*, C.R.C., c. 945, ss. 3701 and 3702.

9. Government of Canada, *Explanatory Notes Relating to the Income Tax Act and Other Legislation*, November 2022.

10. That is, the date on which Bill C-19, which initially amended this provision, received Royal Assent. See Bill C-19, An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures, 44th Parliament, 1st Session (S.C. 2022, c. 10).

11. Government of Canada, *Explanatory Notes Relating to the Income Tax Act and Other Legislation*, November 2022.

12. Government of Canada, "Tax Measures: Supplementary information – Relief for Certain Circumstances," *A Plan to Grow Our Economy and Make Life More Affordable,* Budget 2022.

13. Government of Canada, "Chapter 10: Responsible Government – Combatting Abusive Tax Collection Avoidance Schemes," *A Recovery Plan for Jobs, Growth, and Resilience*, Budget 2021.

14. The term "arm's length" is defined in section 251(1) of the ITA. An individual and a corporation may not be dealing at arm's length if the individual controls the corporation, for example (sections 251(1)(a) and 251(2)(b)(i) of the ITA). For more information, see Government of Canada, *Income Tax Folio S1-F5-C1, Related Persons and Dealing at Arm's Length*.

15. Government of Canada, *Explanatory Notes Relating to the Income Tax Act and Other Legislation*, November 2022

16. *Excise Tax Act*, R.S.C. 1985, c. E-15, s. 325; *Excise Act, 2001*, S.C. 2002, c. 22, s. 297; and *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c. 12, s. 186, s. 161. These sections contain an ordering provision in their respective formulae to determine the amount for which a solidary liability exists. Therefore, an assessment established under section 160(2) of the ITA in respect of the transferee generally reduces their liability in relation to any subsequent assessment. Similarly, an assessment established under section 325(2) of the *Excise Tax Act* in respect of the transferee generally reduces their liability in relation to a subsequent assessment established under section 297(3) of the *Excise Act, 2001*, which generally reduces their liability in relation to a subsequent assessment established under section 161(3) of the *Greenhouse Gas Pollution Pricing Act*. Of note, assessments established under the provisions of several other Acts are also subject to this ordering.

17. Accordingly, if the only consideration is property that is cancelled or extinguished during the period, the fair market value of the consideration is nil (see section 160(5)(c)(ii)(B)(II) of the ITA).

18. Government of Canada, "Annex 6: Tax Measures – Supplementary Information: Avoidance of Tax Debts," *A Recovery Plan for Jobs, Growth, and Resilience*, Budget 2021.

19. Government of Canada, *Explanatory Notes Relating to the Income Tax Act and Other Legislation*, November 2022.

20. Government of Canada, "Chapter 9: Tax Fairness and Effective Government – Expanding Anti-Avoidance Tax Rules," *A Plan to Grow Our Economy and Make Life More Affordable*, Budget 2022.

21. The definition of "Canadian partnership" in section 248(1) of the ITA refers to section 102 of the ITA, which defines it as a partnership all the members of which were, at any time in respect of which the expression is relevant, resident in Canada. See *Income Tax Act* (ITA), R.S.C. 1985, c. 1 (5th Supp.), s. 102.

22. Government of Canada, *Explanatory Notes Relating to the Income Tax Act and Other Legislation*, November 2022.

23. *Budget Implementation Act, 2022, No. 1*, S.C. 2022, c. 10.

24. *Excise Act, 2001*, S.C. 2002, c. 22.

25. *Cannabis Regulations*, SOR/2018-144.

26. *Cannabis Act*, S.C. 2018, c. 16.

27. Government of Canada, "Tax Measures: Supplementary Information – Licences: Cannabis Framework," *A Plan to Grow Our Economy and Make Life More Affordable*, Budget 2022.

28. *Regulations Respecting Excise Licences and Registrations*, SOR/2003-115.

29. Government of Canada, "Tax Measures: Supplementary Information – Licences: Cannabis Framework," *A Plan to Grow Our Economy and Make Life More Affordable*, Budget 2022.

30. *Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations*, SOR/2003-288.

31. The conditions provided by regulation to which amended section 158.13 now refers are found in new section 5.1(1) of the *Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations*, which is added by clause 111 of Bill C-32.

32. Government of Canada, "Tax Measures: Supplementary Information – Cannabis Taxation Framework and General Administration under the *Excise Act, 2001*," *A Plan to Grow Our Economy and Make Life More Affordable*, Budget 2022.

33. Normally, the reporting period for a cannabis licensee is a calendar month. See *Excise Act, 2001*, S.C. 2002, c. 22, ss. 159(1.01) and 159.1(1).

34. Sections 6(3) to 6(6) of the *Excise Act, 2001* define the circumstances in which a person is associated with another person. See *Excise Act, 2001*, S.C. 2002, c. 22, ss. 6(3)–6(6).

35. Government of Canada, "Tax Measures: Supplementary Information – Cannabis Taxation Framework and General Administration under the *Excise Act, 2001*," *A Plan to Grow Our Economy and Make Life More Affordable*, Budget 2022.

36. Ibid.

37. Ibid.

38. Ibid.

39. *Excise Duties on Cannabis Regulations*, SOR/2019-78.

40. The definition of "specified province" in the *Excise Act, 2001*, refers to a province prescribed by regulation. See *Excise Act, 2001*, S.C. 2002, c. 22, s. 2.

41. Government of Canada, "Tax Measures: Supplementary Information – Cannabis Taxation Framework and General Administration under the *Excise Act, 2001*," *A Plan to Grow Our Economy and Make Life More Affordable*, Budget 2022.

42. *Storage of Goods Regulations*, SOR/86-991.

43. Government of Canada, *Explanatory Notes Relating to* Excise Act, 2001, *the* Underused Housing Tax Act *and Other Related Texts*, November 2022

44. *Underused Housing Tax Act*, S.C. 2022, c. 5, s. 10.

45. Government of Canada, *Explanatory Notes Relating to* Excise Act, 2001, *the* Underused Housing Tax Act *and Other Related Texts*, November 2022.

46. Ibid.

47. Ibid. This exemption had been announced in the 2021 Economic and Fiscal Update 2021. See Government of Canada, "Annex 3: Tax Measures – Supplementary Information: Underused Housing Tax," *Economic and Fiscal Update 2021*.

48. Statistics Canada, *Standard Geographical Classification (SGC) 2021*.

49. *Statutory Instruments Act*, R.S.C. 1985, c. S-22. As noted, "[s]ince these Regulations are being enacted by Parliament [clause 117 of the bill] confirms that procedural steps under the *Statutory Instruments Act* are deemed to have been made." See Government of Canada, *Explanatory Notes Relating to* Excise Act, 2001, *the* Underused Housing Tax Act *and Other Related Texts*, November 2022.

50. Government of Canada, "Chapter 2: A Strong, Growing, and Resilient Economy – Launching a World-Leading Canada Growth Fund," *A Plan to Grow Our Economy and Make Life More Affordable*, Budget 2022.

51. *Bretton Woods and Related Agreements Act*, R.S.C. 1985, c. B-7.

52. *First Nations Land Management Act*, S.C. 1999, c. 24.

53. *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.).

54. *Indian Act*, R.S.C. 1985, c. I-5.

55. House of Commons, Standing Committee on Aboriginal Affairs and Northern Development, *Study of Land Management and Sustainable Economic Development on First Nations Reserve Lands*, Fourth report, March 2014, p. 8.

56. First Nations Lands Advisory Board, *A history of the* Framework Agreement on First Nation Land Management.

57. *Framework Agreement on First Nation Land Management*, 1996.

58. First Nations Lands Advisory Board, *Framework Agreement Signatory First Nations across Canada*.

59. Government of Canada, *First Nations Land Management*.

60. Ibid. "Any First Nation with lands reserved for Indians within the meaning of section 91(24) of the [*Constitution Act*, *1867*] or with lands set aside in Yukon can opt-in."

61. Government of Canada, *First Nations Land Management*.

62. Jack Woodward, *Aboriginal Law in Canada*, 2022, paras. 9.840, 9.850 and 9.870 [SUBSCRIPTION REQUIRED].

63. House of Commons, Standing Committee on Indigenous and Northern Affairs, *Evidence*, 1 March 2022, 1530 (Chief Robert Louie, Chairman, First Nations Lands Advisory Board, As an individual).

64. Government of Canada, "Chapter 7: Moving Forward on Reconciliation – Legislative Changes to Support Self-Determination," *A Plan to Grow Our Economy and Make Life More Affordable*, Budget 2022.

65. In the *Framework Agreement on First Nation Land Management*, "Lands Set Aside" means land in the Yukon reserved or set aside by notation in the property records of the Northern Affairs organization, Department of Indian Affairs and Northern Development, for the use of Indigenous people in the Yukon. See *Framework Agreement on First Nation Land Management*, 1996, s. 1.1.

66. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.), s. 35.

67. As described by the Supreme Court of Canada in *R. v. Find*,

> judicial notice dispenses with the need for proof of facts that are clearly uncontroversial or beyond reasonable dispute. Facts judicially noticed are not proved by evidence under oath. Nor are they tested by cross-examination.

See *R. v. Find*, 2001 SCC 32, para. 48.

68. *Government Employees Compensation Act*, R.S.C. 1985, c. G-5.

69. The *Government Employees Compensation Act* does not apply to the regular force of the Royal Canadian Mounted Police or the Canadian Armed Forces.

70. The Memorandum of Understanding was entered into on 15 December 2020. See Government of Canada, "Memorandum of Understanding between the Government of Canada and the Government of the United States of America concerning Cooperation on the Civil Lunar Gateway," *Treaty List*. For more information about the Lunar Gateway, see Canadian Space Agency, *The Lunar Gateway*; and NASA (National Aeronautics and Space Administration), *Gateway International Partners*.

71. *Canada Student Loans Act*, R.S.C. 1985, c. S-23.

72. *Canada Student Financial Assistance Act*, S.C. 1994, c. 28.

73. *Apprentice Loans Act*, S.C. 2014, c. 20, s. 483.

74. The Red Seal Program sets national standards for the common assessment of skilled tradespeople across Canada. The Red Seal is Canada's standard of excellence for the skilled trades. See Red Seal Program, *Red Seal*.

75. The end of a student's studies occurs at the end of full-time studies in the case of a loan made to a full-time student, and at the end of part-time or full-time studies in the case of a loan made to a part-time student. See *Canada Student Financial Assistance Act*, S.C. 1994, c. 28, s. 7.

76. See *Apprentice Loans Regulations*, SOR/2014-255, ss. 3 and 4.

77. See *Canada Student Financial Assistance Act*, S.C. 1994, c. 28, s. 9.4; and *Apprentice Loans Act*, S.C. 2014, c. 20, s. 483, s. 8.2.

78. See *Apprentice Loans Regulations*, SOR/2014-255, ss. 3 and 4.