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FEDERAL LEGISLATION AND ADMINISTRATION

CULTURAL PROPERTY EXPORT AND IMPORT ACT, R.S.C. 1985, C. C-51

The *Cultural Property Export and Import Act* came into effect in 1977. Its object was two-fold: to inhibit the export of culturally significant objects from Canada and to provide a regime which encourages Canadians to donate or sell such objects to designated Canadian institutions. Where an object is certified by the Review Board and disposed of to a designated institution, there will be no capital gain for *Income Tax Act* purposes pursuant to subparagraph 39(1)(a)(i.1). Further, where the disposition is by way of gift, the donor can reduce annual income by up to 100 per cent with a five-year carry-forward pursuant to the definition of "total cultural gifts" as set out in paragraph 110.1(1)(c) (in the case of corporations) and subsection 118.1(1) (in the case of individuals) of the *Income Tax Act*.

Subsection 118.1(7.1) deals with gifts of cultural property by artists from their inventory.

It should be pointed out that for gifts made after February 20, 1990, the Canadian Cultural Property Export Review Board has the right to set the fair market value for income tax purposes. The enabling legislation is to be found in subsection 118.1(10) of the *Income Tax Act*. In this conjunction, see *The Art Gallery of Ontario v. The Canadian Cultural Property Review Board* (1994), 80 F.T.R. 231.

Chapter C-51

An Act respecting the export from Canada of cultural property and the import into Canada of cultural property illegally exported from foreign states.

SHORT TITLE

1. **Short Title**—This Act may be cited as the *Cultural Property Export and Import Act*.

INTERPRETATION

2. **Definitions**—In this Act,

"**Control List**"—"Control List" means the Canadian Cultural Property Export Control List established under section 4;

"**expert examiner**"—"expert examiner" means a person or institution designated as an expert examiner under section 6;

"**export permit**"—"export permit" means a permit to export issued by a permit officer under this Act;

"**general permit**"—"general permit" means a permit to export issued by the Minister under section 17;

"**institution**"—"institution" means an institution that is publicly owned and is operated solely for the benefit of the public, that is established for educational or cultural purposes and that conserves objects and exhibits them or otherwise makes them available to the public;

"**Minister**"—"Minister" means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of this Act;

"permit officer"—"permit officer" means a person designated as a permit officer under section 5;

"public authority"—"public authority" means Her Majesty in right of Canada or a province, an agent of Her Majesty in either such right, a municipality in Canada, a municipal or public body performing a function of government in Canada or a corporation performing a function or duty on behalf of Her Majesty in right of Canada or a province;

"resident of Canada"—"resident of Canada" means, in the case of a natural person, a person who ordinarily resides in Canada and, in the case of a corporation, a corporation that has its head office in Canada or maintains one or more establishments in Canada to which employees of the corporation employed in connection with the business of the corporation ordinarily report for work;

"Review Board"—"Review Board" means the Canadian Cultural Property Export Review Board established by section 18.

HER MAJESTY

3. Binding on Her Majesty—This Act is binding on Her Majesty in right of Canada or a province.

CANADIAN CULTURAL PROPERTY EXPORT CONTROL LIST

4.(1) Establishment of Control List—The Governor in Council, on the recommendation of the Minister made after consultation with the Secretary of State for External Affairs, may by order establish a Canadian Cultural Property Export Control List.

(2) Inclusions—Subject to subsection (3), the Governor in Council may include in the Control List, regardless of their places of origin, any objects or classes of objects hereinafter described in this subsection, the export of which the Governor in Council deems it necessary to control in order to preserve the national heritage in Canada:

- (a) objects of any value that are of archaeological, prehistorical, historical, artistic or scientific interest and that have been recovered from the soil of Canada, the territorial sea of Canada or the inland or other internal waters of Canada;
- (b) objects that were made by, or objects referred to in paragraph (d) that relate to, the aboriginal peoples of Canada and that have a fair market value in Canada of more than five hundred dollars;
- (c) objects of decorative art, hereinafter described in this paragraph, that were made in the territory that is now Canada and are more than one hundred years old:
 - (i) glassware, ceramics, textiles, woodenware and works in base metals that have a fair market value in Canada of more than five hundred dollars, and
 - (ii) furniture, sculptured works in wood, works in precious metals and other objects of decorative art that have a fair market value in Canada of more than two thousand dollars;
- (d) books, records, documents, photographic positives and negatives, sound recordings, and collections of any of those objects that have a fair market value in Canada of more than five hundred dollars;

- (e) drawings, engravings, original prints and water-colours that have a fair market value in Canada of more than one thousand dollars; and
- (f) any other objects that have a fair market value in Canada of more than three thousand dollars.

(3) **Exclusion**—No object shall be included in the Control List if that object is less than fifty years old or was made by a natural person who is still living.

(4) **Deeming provision**—For the purposes of this Act, an object within a class of objects included in the Control List is deemed to be an object included in the Control List.

PERMIT OFFICERS

5. Designation of permit officers—The Minister, with the approval of the Minister of National Revenue, may designate any persons or classes of persons employed in that portion of the Department of National Revenue under the power and authority of the Deputy Minister of National Revenue for Customs and Excise as permit officers to receive applications for export permits and to issue export permits under this Act.

EXPERT EXAMINERS

6.(1) Designation of expert examiners—The Minister may designate any resident of Canada or any institution in Canada as an expert examiner for the purposes of this Act.

(2) **Remuneration**—An expert examiner that is not an agent of Her Majesty in right of Canada or a province or is not an employee of, or an employee of an agent of, Her Majesty in right of Canada or a province shall be paid such remuneration for services performed under this Act as may be approved by the Treasury Board.

(3) **Expenses**—An expert examiner or, where an expert examiner is an institution, the person acting for the institution is entitled, within such limits as may be established by the Treasury Board, to be paid reasonable travel and living expenses incurred while absent from his ordinary place of residence in connection with services performed under this Act.

EXPORT PERMITS

7. Immediate issue of export permit—A permit officer who receives from a resident of Canada an application for an export permit shall issue the permit forthwith if the person applying for the permit establishes to the satisfaction of the permit officer that the object in respect of which the application is made

- (a) was imported into Canada within the thirty-five years immediately preceding the date of the application and was not exported from Canada under a permit issued under this Act prior to that importation;
- (b) was lent to an institution or public authority in Canada by a person who was not a resident of Canada at the time the loan was made; or
- (c) is to be removed from Canada for a purpose prescribed by regulation for a period of time not exceeding such period of time as may be prescribed by regulation for the purposes of this paragraph.

8.(1) Determination by permit officer—A permit officer who receives from a resident of Canada an application for an export permit in respect of an object shall, where he does not issue an export permit under section 7, and where he is not aware of any notice of refusal sent in respect of the object under subsection 13(1) during the two years immediately preceding the date of the application, determine whether the object is included in the Control List.

(2) Export permit where object not included in Control List—Where a permit officer determines that an object in respect of which an application for an export permit is made is not included in the Control List, the permit officer shall forthwith issue an export permit in respect of the object.

(3) Reference to expert examiner—Where a permit officer determines that an object in respect of which an application for an export permit is made is or might be included in the Control List, the permit officer shall forthwith refer the application to an expert examiner for consideration.

9. Determination by expert examiner—Where an application for an export permit is referred to an expert examiner pursuant to subsection 8(3), the expert examiner shall forthwith determine whether the object in respect of which the application is made is included in the Control List.

10. Where object not included in Control List—Where an expert examiner determines that an object that is the subject of an application for an export permit that has been referred to him is not included in the Control List, the expert examiner shall forthwith in writing advise the permit officer who referred the application to issue an export permit in respect of the object and shall forthwith send a copy of that advice to the Review Board and the Minister.

11.(1) Where object included in Control List—Where an expert examiner determines that an object that is the subject of an application for an export permit that has been referred to him is included in the Control List, the expert examiner shall forthwith further determine

- (a) whether that object is of outstanding significance by reason of its close association with Canadian history or national life, its aesthetic qualities, or its value in the study of the arts or sciences; and
- (b) whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.

(2) Export permit to be issued—Where an expert examiner determines that an object that is the subject of an application for an export permit that has been referred to him is not of outstanding significance under paragraph (1)(a) or does not meet the degree of national importance referred to in paragraph (1)(b), the expert examiner shall forthwith in writing advise the permit officer who referred the application to issue an export permit in respect of the object and shall forthwith send a copy of that advice to the Review Board and the Minister.

(3) Export permit not to be issued—Where an expert examiner determines that an object that is the subject of an application for an export permit that has been referred to him is of outstanding significance under paragraph (1)(a) and meets the degree of national importance referred to in paragraph (1)(b), the expert examiner shall forthwith in writing

advise the permit officer who referred the application not to issue an export permit in respect of the object and shall provide the permit officer with the reasons therefor.

12. Issue of export permit—Subject to sections 14 and 16, a permit officer shall issue an export permit forthwith where the permit officer is advised by an expert examiner or directed by the Review Board to do so.

13.(1) Notice of refusal—Where a permit officer is advised by an expert examiner pursuant to subsection 11(3) not to issue an export permit, the permit officer shall send a written notice of refusal to the applicant, which notice shall include the reasons given by the expert examiner for the refusal.

(2) Copy to Review Board—A permit officer who sends a notice of refusal under subsection (1) shall forthwith send a copy thereof to the Review Board.

14. Deposit of copy—No export permit shall, unless it is issued under section 7, be issued under this Act for an object within a class of objects prescribed under paragraph 39(d), where the object is included in the Control List, until a copy of that object has been deposited by the person applying for the permit in such institution as the Minister may direct.

15. Alteration of permits by Minister and notice—The Minister may amend, suspend, cancel or reinstate any export permit, other than an export permit issued on the direction of the Review Board, and where an export permit is amended, suspended, cancelled or reinstated, the Minister shall forthwith send a written notice to that effect to the person who applied for the permit.

16. No export permit for two years—No export permit shall, unless it is issued under section 7 or on the direction of the Review Board pursuant to section 29 or 30, be issued under this Act in respect of an object, where the object is included in the Control List, during a period of two years from the date on which a notice of refusal was sent in respect of that object under subsection 13(1).

GENERAL PERMITS

17.(1) General permits to export—The Minister may issue to any resident of Canada who applies therefor a general permit to export any objects included in the Control List subject to such terms and conditions as the Minister may require and may at any time amend, suspend, cancel or reinstate any such permit.

(2) Open general permits to export—The Minister may, with the concurrence of the Secretary of State for External Affairs, issue generally to all persons a general permit to export objects within any class of objects that is included in the Control List and that is specified in the permit subject to such terms and conditions as the Minister may require and may, with the concurrence of the Secretary of State for External Affairs, at any time amend, suspend, cancel or reinstate any such permit.

REVIEW BOARD

Review Board Established

18.(1) Review Board established—There is hereby established a board to be known as the Canadian Cultural Property Export Review Board, consisting of a Chairman and not less than six or more than twelve other members appointed by the Governor in Council on the recommendation of the Minister.

(2) **Members**—The members of the Review Board, other than the Chairman and two other members who shall be chosen generally from among residents of Canada, shall be chosen in equal numbers

- (a) from among residents of Canada who are or have been officers, members or employees of art galleries, museums, archives, libraries of other similar institutions in Canada; and
- (b) from among residents of Canada who are or have been dealers in or collectors of art, antiques or other objects that form part of the national heritage.

(3) **Acting Chairman**—The Review Board may authorize one of its members to act as Chairman in the event of the absence or incapacity of the Chairman or if the office of Chairman is vacant.

(4) **Quorum**—Three members, at least one of whom is a person described in paragraph (2)(a) and one of whom is a person described in paragraph (2)(b), constitute a quorum of the Review Board.

19.(1) Remuneration—Each member of the Review Board who is not an employee of, or an employee of an agent of, Her Majesty in right of Canada or a province shall be paid such salary or other amount by way of remuneration as may be fixed by the Governor in Council.

(2) **Expenses**—Each member of the Review Board is entitled, within such limits as may be established by the Treasury Board, to be paid reasonable travel and living expenses incurred while absent from his ordinary place of residence in connection with the work of the Review Board.

Duties

20. Duties—The Review Board shall, on request,

- (a) pursuant to section 29, review applications for export permits;
- (b) pursuant to section 30, make determinations respecting fair cash offers to purchase; and
- (c) pursuant to section 32, make determinations for the purposes of subparagraph 39(1)(a)(i.1), paragraph 110.1 (1)(c), the definition "total cultural gifts" in subsection 118.1(1) and subsection 118.1(10) of the *Income Tax Act*.

Head Office and Sittings

21.(1) Head office—The head office of the Review Board shall be at such place in Canada as the Governor in Council may by order prescribe.

(2) Sittings—The Review Board may sit at such times and places in Canada as it considers necessary or desirable for the proper conduct of its business.

Advisers

22.(1) Expert advice—The Review Board may call on any person who has professional, technical or other special knowledge to assist it in any matter in an advisory capacity.

(2) Valuation experts—The Minister, on the request of the Review Board, may appoint and fix the remuneration of valuation experts to assist the Review Board in making determinations pursuant to section 30 respecting fair cash offers to purchase or pursuant to section 32 respecting the fair market value of objects disposed of, or proposed to be disposed of, to institutions or public authorities.

Administration

23. Administrative services—The Minister shall provide administrative services to the Review Board.

Rules and Procedure

24. Rules—The Review Board may make rules not inconsistent with this Act for the conduct of its proceedings and the performance of its duties and functions under this Act.

25. Review Board may receive information—The Review Board may receive any information presented to it orally or in writing that it considers to be relevant to any matter before it and in so doing it is not bound by any legal or technical rules of evidence.

26. Information given to applicant—The Review Board shall make the substance of any information received by it in respect of a matter before it known to the person who applied for an export permit in respect of the object to which the matter relates, or to the person, institution or public authority that applied for a determination under subsection 32(1), as the case may be, and, before the Review Board decides the matter, it shall give that person, institution or public authority an opportunity to make representations in respect of that information.

27. Exclusion from hearing—The Review Board may exclude any person not directly interested in a matter being heard before it from the hearing unless, where the matter is in respect of an object in respect of which an application for an export permit has been made, the applicant for the permit requests that the hearing be held in public, in which case it shall be so held.

28. Review Board shall dispose of matters informally and expeditiously—The Review Board shall dispose of any matter before it as informally and expeditiously as, in its opinion, the circumstances and considerations of fairness will permit.

Review of Applications for Export Permits

29.(1) Requests for review by Review Board—Any person who receives a notice of refusal under section 13 or a notice under section 15 may, within thirty days after the date on which the notice was sent, by notice in writing given to the Review Board, request a review of his application for an export permit by the Review Board.

(2) **Review to be held within four months**—The Review Board shall review an application for an export permit and, unless the circumstances of a particular case require otherwise, render its decision within four months after the date a request is received under subsection (1).

(3) **Determination of the Review Board**—In reviewing an application for an export permit, the Review Board shall determine whether the object in respect of which the application was made

- (a) is included in the Control List;
- (b) is of outstanding significance for one or more of the reasons set out in paragraph 11(1)(a); and
- (c) meets the degree of national importance referred to in paragraph 11(1)(b).

(4) **Object that does not meet criteria**—Where the Review Board determines that an object fails to meet one or more of the criteria set out in subsection (3), it shall direct a permit officer to issue an export permit forthwith in respect of the object.

(5) **Object that meets criteria**—Where the Review Board determines that an object meets all of the criteria set out in subsection (3), it shall,

- (a) if it is of the opinion that a fair offer to purchase the object might be made by an institution or public authority in Canada within six months after the date of its determination, establish a delay period of not less than two months and not more than six months during which the Review Board will not direct that an export permit be issued in respect of the object; or
- (b) in any other case, direct a permit officer to issue an export permit forthwith in respect of the object.

(6) **Notification of delay period**—Where the Review Board establishes a delay period under paragraph (5)(a) in respect of an object, the Board shall give written notice of the delay period to the person who has applied for an export permit in respect of the object and to the Minister, which notice shall include the reasons for the determination of the Board that the object meets all of the criteria set out in subsection (3).

(7) **Idem**—The Minister, on receiving notice of a delay period under subsection (6), shall advise such institutions and public authorities in Canada as the Minister sees fit of the delay period and of the object in respect of which the delay period was established.

30.(1) Request for determination of fair offer to purchase—Subject to subsection (2), where the Review Board establishes a delay period under paragraph 29(5)(a) in respect of an object and an offer to purchase the object is made by an institution or a public authority in Canada within that period, either the person who applied for an export permit in respect of the object or the institution or public authority making the offer to purchase may, where the

offer is not accepted, by notice in writing given to the Review Board, request the Review Board to determine the amount of a fair cash offer to purchase.

(2) **When request to be made**—No request may be made under subsection (1) less than thirty days before the end of the delay period established under paragraph 29(5)(a) in respect of the object in respect of which the request is made.

(3) **Determination of the Review Board**—Where the Review Board receives a request under subsection (1), it shall determine the amount of a fair cash offer to purchase the object in respect of which the request is made and advise the person who applied for an export permit in respect of the object and the institution or public authority that offered to purchase the object of its determination.

(4) **Direction for export permit**—Where the Review Board establishes a delay period under paragraph 29(5)(a) in respect of an object and does not receive a request under subsection (1) in respect of the object, it shall forthwith, after the expiration of the delay period and on the request of the person who requested the review under subsection 29(1), direct a permit officer to issue an export permit forthwith in respect of the object.

(5) **Idem**—Where the Review Board establishes a delay period under paragraph 29(5)(a) in respect of an object and receives a request under subsection (1) in respect of the object, it shall, after the expiration of the delay period or after it has determined the amount of a fair cash offer to purchase the object under subsection (3), whichever time is the later, and on the request of the person who requested the review under subsection 29(1), direct a permit officer to issue an export permit forthwith in respect of the object unless it is satisfied that an institution or public authority has, before the request under this subsection was made, offered to purchase the object for an amount equal to or greater than the amount of the fair cash offer to purchase determined by the Review Board.

31. Limitation on export permits—The Review Board shall not direct that an export permit be issued except in accordance with section 29 or 30.

Determination Relating to Income Tax Matters

32.(1) Request for determination by Review Board—For the purposes of subparagraph 39(1)(a)(i.1), paragraph 110.1(1)(c), the definition "total cultural gifts" in subsection 118.1(1) and subsection 118.1(10) of the *Income Tax Act*, where a person disposes of or proposes to dispose of an object to an institution or a public authority designated under subsection (2), the person, institution or public authority may request, by notice in writing given to the Review Board, a determination by the Review Board as to whether the object meets the criteria set out in paragraphs 29(3)(b) and (c) and a determination by the Review Board of the fair market value of the object.

(2) **Designated authorities and institutions**—For the purposes of subparagraph 39(1)(a)(i.1), paragraph 110.1(1)(c), the definition "total cultural gifts" in subsection 118.1(1), subsection 118.1(10) and section 207.3 of the *Income Tax Act*, the Minister may designate any institution or public authority indefinitely or for a period of time, and generally or for a specified purpose.

(3) **Revocation of designation**—The Minister may at any time revoke a designation made under subsection (2).

(4) **Determination within four months**—The Review Board shall consider a request made under subsection (1) and, unless the circumstances of a particular case require otherwise, make a determination within four months after the date the request is received.

(5) **Redetermination**—The Review Board may, at any time after determining the fair market value of an object in respect of its disposition or proposed disposition, redetermine the fair market value of the object where additional information becomes available to the Review Board that, in the opinion of the Review Board, is relevant to the determination of the fair market value of the object, and such a redetermination shall be deemed, for the purposes of the *Income Tax Act*, to be the only determination of the fair market value of the object made by the Review Board in respect of that disposition or proposed disposition.

Income Tax Certificate

33.(1) Income tax certificate—Where the Review Board determines or redetermines the fair market value of an object in respect of which a request was made under section 32 or determines that an object in respect of which a request is made under subsection 29(1) or 32(1) meets the criteria set out in paragraphs 29(3)(b) and (c), it shall provide the person, institution or public authority that made the request with a certificate to that effect in such form as the Minister of National Revenue may specify.

(2) **Communication of information**—An official of the Department of Communications or a member of the Review Board may communicate to an official of the Department of National Revenue, solely for the purposes of administering the *Income Tax Act*, information obtained under this Act for the purposes of administering sections 32 and 33.

Report to Minister

34. Report to Minister—The Chairman of the Review Board shall, as soon as possible after March 31 in each year, submit to the Minister a report of the operations of the Review Board for the previous fiscal year and its recommendations, if any.

FINANCIAL

35. Grants and loans from moneys appropriate—The Minister may, out of moneys appropriated by Parliament for such purposes, make grants and loans to institutions and public authorities in Canada for the purchase of objects in respect of which export permits have been refused under this Act for the purchase of cultural property situated outside Canada that is related to the national heritage.

36.(1) Canadian Heritage Preservation Endowment Account established—There shall be established in the accounts of Canada a special account to be known as the Canadian Heritage Preservation Endowment Account.

(2) **Amounts to be credited to the Canadian Heritage Preservation Endowment Account**—There shall be credited to the Canadian Heritage Preservation Endowment Account

- (a) all moneys received by Her Majesty by gift, bequest or otherwise for the purpose of making grants to institutions and public authorities in Canada for the purchase of objects in respect of which export permits have been refused under this Act, or for the purchase of cultural property situated outside Canada that is related to the national heritage;

- (b) all moneys received by Her Majesty as income on or as proceeds from the sale of any securities received by Her Majesty for a purpose referred to in paragraph (a); and
- (c) an amount representing interest on the balance from time to time to the credit of the account at such rates and calculated in such manner as the Governor in Council may, on the recommendation of the Minister of Finance, prescribe.

(3) **Amounts that may be charged to the Canadian Heritage Preservation Endowment Account**—There may be charged to the Canadian Heritage Preservation Endowment Account such amounts as the Minister may expend otherwise than under section 35 for grants to institutions and public authorities in Canada for the purchase of objects in respect of which export permits have been refused under this Act or for the purchase of cultural property situated outside Canada that is related to the national heritage.

FOREIGN CULTURAL PROPERTY

37.(1) **Definitions**—In this section,

"cultural property agreement"— "cultural property agreement", in relation to a foreign State, means an agreement between Canada and the foreign State or an international agreement to which Canada and the foreign State are both parties, relating to the prevention of illicit international traffic in cultural property;

"foreign cultural property"—"foreign cultural property", in relation to a reciprocating State, means any object that is specifically designated by that State as being of importance for archaeology, prehistory, history, literature, art or science;

"reciprocating State"—"reciprocating State" means a foreign State that is a party to a cultural property agreement.

(2) **Illegal imports**—From and after the coming into force of a cultural property agreement in Canada and a reciprocating State, it is illegal to import into Canada any foreign cultural property that has been illegally exported from that reciprocating State.

(3) **Action for recovery of foreign cultural property**—Where the government of a reciprocating State submits a request in writing to the Minister for the recovery and return of any foreign cultural property that has been imported into Canada illegally by virtue of subsection (2) and that is in Canada in the possession of or under the control of any person, institution or public authority, the Attorney General of Canada may institute an action in the Federal Court or in a superior court of a province for the recovery of the property by the reciprocating State.

(4) **Notice**—Notice of the commencement of an action under this section shall be served by the Attorney General of Canada on such persons and given in such manner as is provided by the rules of the court in which the action is taken, or, where the rules do not so provide, served on such persons and given in such manner as is directed by a judge of the court.

(5) **Order for recovery of designated property**—A court in which an action has been taken under this section on behalf on a reciprocating State may, after affording all persons that it considers to have an interest in the action a reasonable opportunity to be heard, make an order for the recovery of the property in respect of which the action has been taken or any other order sufficient to ensure the return of the property to the reciprocating State, where the

court is satisfied that the property has been illegally imported into Canada by virtue of subsection (2) and that the amount fixed under subsection (6), if any, has been paid to or for the benefit of the person, institution or public authority referred to in that subsection.

(6) **Compensation**—Where any person, institution or public authority establishes to the satisfaction of the court in which an action under this section is being considered that the person, institution or public authority.

- (a) is a *bona fide* purchaser for value of the property in respect of which the action has been taken and had no knowledge at the time the property was purchased by him or it that the property had been illegally exported from the reciprocating State on whose behalf the action has been taken, or
- (b) has a valid title to the property in respect of which the action has been taken and had no knowledge at the time such title was acquired that the property had been illegally exported from the reciprocating State on whose behalf the action has been taken,

the court may fix such amount to be paid as compensation by the reciprocating State to that person, institution or public authority as the court considers just in the circumstances.

(7) **Safe-keeping**—The court may, at any time in the course of an action under this section, order that the property in respect of which the action has been taken be turned over to the Minister for safe-keeping and conservation pending final disposition of the action.

(8) **Permit to export**—The Minister shall, on receipt of a copy of an order of a court made under subsection (5), issue a permit authorizing any person authorized by the reciprocating State on behalf of which the action was taken to export the property in respect of which the order was made to that State.

(9) **Limitations inapplicable**—Section 39 of the *Federal Court Act* does not apply in respect of any action taken under this section.

DESIGNATION OF CULTURAL PROPERTY

38. Designation of cultural property—For the purposes of article 1 of the *Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property*, any object included in the Control List is hereby designated by Canada as being of importance for archaeology, prehistory, history, literature, art or science.

REGULATIONS

39. Regulations—The Governor in Council, on the recommendation of the Minister and the Secretary of State for External Affairs, may make regulations

- (a) prescribing the information, documentation and undertakings to be furnished by applicants for permits under this Act, the procedure to be followed in applying for and in issuing permits under this Act, the terms and conditions applicable to them and the duration of such permits;

- (b) prescribing the circumstances in which information may be required from persons to whom permits have been issued under this Act and the type of information that may be so required;
- (c) prescribing the purposes for which an object may be removed from Canada for a limited period of time for the purpose of paragraph 7(c) and the length of time for which it may be so removed; and
- (d) prescribing classes of manuscripts, original documents, archives, photographic positives and negatives, films and sound recordings for the purpose of section 14.

OFFENCES AND PUNISHMENT

40. Export or attempt to export—No person shall export or attempt to export from Canada any object included in the Control List except under the authority of and in accordance with a permit issued under this Act.

41. No transfer of permits—No person who is authorized under a permit issued under this Act to export an object from Canada shall transfer the permit to or allow it to be used by a person who is not so authorized.

42. False information—No person shall wilfully furnish any false or misleading information or knowingly make any misrepresentation

- (a) in an application for a permit under this Act;
- (b) for the purpose of procuring the issue of a permit under this Act; or
- (c) in connection with the use of a permit issued under this Act or the disposition of any object to which such permit relates.

43. Import or attempt to import foreign cultural property—No person shall import or attempt to import into Canada any property that it is illegal to import into Canada under subsection 37(2).

44.(1) Export or attempt to export—No person shall export or attempt to export from Canada any property in respect of which an action has been instituted under subsection 37(3) while the action is being considered.

(2) Idem—No person shall export or attempt to export from Canada any property in respect of which an order has been made under subsection 37(5) except under the authority of and in accordance with a permit issued by the Minister under subsection 37(8).

45.(1) Offences and punishment—Every person who contravenes any of the provisions of sections 40 to 44 is guilty of an offence and liable

- (a) on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both; or
- (b) on conviction on indictment to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding five years or to both.

(2) Limitation period—A prosecution under paragraph (1)(a) may be instituted at any time within but not later than three years after the time when the subject-matter of the complaint arose.

46. Officers, etc. of corporations—Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on summary conviction or on conviction on indictment to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted.

47. Venue—Any proceedings in respect of an offence under this Act may be instituted, tried or determined at the place in Canada where the offence was committed or at the place in Canada in which the person charged with the offence is, resides or has an office or place of business at the time of institution of the proceedings.

48.(1) Evidence—The original or a copy of a bill of lading, customs document, commercial invoice or other document (in this section called a "shipping document") is admissible in evidence in any prosecution under this Act in relation to the sending or shipping of an object where it appears from the shipping document that

- (a) the object was sent or shipped from Canada or came into Canada;
- (b) a person, as shipper, consignor or consignee, sent or shipped the object from Canada or brought the object into Canada; or
- (c) the object was sent or shipped to a particular destination or person.

(2) **Proof of the facts**—In the absence of evidence to the contrary, a shipping document that is admissible in evidence under subsection (1) is proof of any of the facts set out in paragraph (1)(a), (b) or (c) that appear from the shipping document.

GENERAL

49. Other lawful obligations—An export permit or other permit to export issued under this Act does not affect the obligation of any person to obtain any licence, permit or certificate to export that may be required under any other law or to pay any tax, duty, toll or other sum required by any law to be paid in respect of the export of any goods.

50. Customs officers' duties—An officer, as defined in the *Customs Act*, before permitting the export or import of any object that the officer has reason to suspect is being exported or imported in contravention of any of the provisions of this Act or the regulations, shall satisfy himself that the exporter or importer has not contravened any of the provisions of this Act or the regulations and that all requirements thereof have been complied with in respect of that object.

51. Application of powers under the *Customs Act*—All officers, as defined in the *Customs Act*, have, with respect to any object to which this Act applies, all the powers they have under the *Customs Act* with respect to the export or import of goods and all the provisions of the *Customs Act* and regulations thereunder respecting search, detention, forfeiture and condemnation apply, with such modifications as the circumstances require,

- (a) to any objects tendered for export or import, exported or imported, or otherwise dealt with contrary to the provisions of this Act and the regulations; and
- (b) to all documents relating to objects described in paragraph (a).

52. Report to Parliament—As soon as practicable after receiving, pursuant to section 34, the report of the Chairman of the Review Board, the Minister shall prepare and lay before Parliament a report of the operations under this Act for the fiscal year to which the report of the Chairman relates and shall include therewith the report of the Chairman.

Other material which may be of use in understanding the *Cultural Property Export and Import Act* will include Interpretation Bulletin IT-407R3, Disposition After 1987 of Canadian Cultural Property. Also reproduced in this volume are several application forms related to certification of property and designation of institutions. Reference may also be had to Forms T-871 and T-913.

52. Report to Parliament—As soon as practicable after receiving, pursuant to section 34, the report of the Chairman of the Review Board, the Minister shall prepare and lay before Parliament a report of the operations under this Act for the fiscal year to which the report of the Chairman relates and shall include therewith the report of the Chairman.

Other material which may be of use in understanding the *Cultural Property Export and Import Act* will include Interpretation Bulletin IT-407R3, Disposition After 1987 of Canadian Cultural Property. Also reproduced in this volume are several application forms related to certification of property and designation of institutions. Reference may also be had to Forms T-871 and T-913.

THE INCOME TAX ACT, R.S.C. 1985 (5th supp.)

The *Income Tax Act* of Canada has a pervasive influence on the operation of not-for-profit organizations in Canada. It is this legislation which confers tax-free status on varying terms. It is also under this legislation that charities are registered, thereby allowing them to issue receipts. And it is this legislation that allows taxpayers to get tax relief in respect of charitable donations.

The approach which we take in this section is to reproduce the provisions in the order they appear in the *Income Tax Act*. This means that very often related provisions are not grouped. We would note, however, that the key provisions with regard to non-profits (other than charities) will be found in section 149, and the basic rules with regard to registered charities will be found in section 149.1.

Some cases are cited which are not yet included in the ones reproduced in this work. Many of them will be added in future releases. Where the cases have not been reproduced, citations are given.

37(5)

Section 37 provides for enhanced deductibility in respect of scientific research. Such work is sometimes carried on by registered charities and this provision in effect prohibits a claim for charitable donations where the deduction under section 37 is available.

37.(5) Where no deduction allowed under sections 110.1 and 118.1—Where, in respect of an expenditure on scientific research and experimental development made by a taxpayer in a taxation year, an amount is otherwise deductible under this section and under section 110.1 or 118.1, no deduction may be made in respect of the expenditure under section 110.1 or 118.1 in computing the taxable income of, or the tax payable by, the taxpayer for any taxation year.

39(1)(a)(i.1)

This provision excludes from the computation of capital gains the gain which would otherwise be taxable in respect of a gift of certified cultural property to a designated institution. See the discussion relating to the *Cultural Property Export and Import Act* for more detail.

39.(1) Meaning of capital gain and capital loss [and business investment loss]—For the purposes of this Act,

- (a) a taxpayer's capital gain for a taxation year from the disposition of any property is the taxpayer's gain for the year determined under this subdivision (to the extent of the amount thereof that would not, if section 3 were read without reference to the expression "other than a taxable capital gain from the disposition of a property" in paragraph 3(a) and without reference to paragraph 3(b), be included in computing the taxpayer's income for the year or any other taxation year) from the disposition of any property of the taxpayer other than

.....

- (i.1) an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraphs 29(3)(b) and (c) of the Cultural Property Export and Import Act and that has been disposed of,

- (A) in the case of a gift to which subsection 118.1(5) applies, within the period ending 36 months after the death of the taxpayer or, where written application therefor has been made to the Minister by the taxpayer's legal representative within that period, within such longer period as the Minister considers reasonable in the circumstances, and

- (B) in any other case, at any time,

to an institution or a public authority in Canada that was, at the time of the disposition, designated under subsection 32(2) of that Act either generally or for a specified purpose related to that object,

.....

43.1

This provision, effective after December 20, 1991, basically eliminates the use of remainder interest trusts to transfer real estate from one generation to another. However, it exempts from its operation situations where the capital beneficiary is a registered charity or the Crown.

43.1(1) Life estates in real property—Notwithstanding any other provision of this Act, where at any time a taxpayer disposes of a remainder interest in real property (except as a result of a transaction to which subsection 73(3) would otherwise apply or by way of a gift to a donee described in the definition "total charitable gifts" or "total Crown gifts" in subsection 118.1(1)) to a person or partnership and retains a life estate or an estate pur autre vie (in this section called the "life estate") in the property, the taxpayer shall be deemed

- (a) to have disposed at that time of the life estate in the property for proceeds of disposition equal to its fair market value at that time; and

(b) to have reacquired the life estate immediately after that time at a cost equal to the proceeds of disposition referred to in paragraph (a).

(2) **Idem**—Where, as a result of an individual's death, a life estate to which subsection (1) applied is terminated,

(a) the holder of the life estate immediately before the death shall be deemed to have disposed of the life estate immediately before the death for proceeds of disposition equal to the adjusted cost base to that person of the life estate immediately before the death; and

(b) where a person who is the holder of the remainder interest in the real property immediately before the death was not dealing at arm's length with the holder of the life estate, there shall, after the death, be added in computing the adjusted cost base to that person of the real property an amount equal to the lesser of

(i) the adjusted cost base of the life estate in the property immediately before the death, and

(ii) the amount, if any, by which the fair market value of the real property immediately after the death exceeds the adjusted cost base to that person of the remainder interest immediately before the death.

56(1)(aa)

This provision taxes benefits conferred on individuals by a national arts service organization. The key legislation dealing with such organizations will be found in subsections 149.1(6.4) and (6.5).

56.1(1) Amounts to be included in income for year—Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,

(aa) [**benefit from registered national arts service organization**]—the value of benefits received or enjoyed by any person in the year in respect of workshops, seminars, training programs and similar development programs because of the taxpayer's membership in a registered national arts service organization.

67.1

Section 67.1 is the provision which limits the deductibility of meal and entertainment expenses to 50 per cent. In the case of fundraising events sponsored by registered charities, there is an exemption under paragraph 2(b).

67.1(1) Expenses for food, etc.—For the purposes of this Act, other than sections 62, 63 and 118.2, an amount paid or payable in respect of the human consumption of food or beverages or the enjoyment of entertainment shall be deemed to be 50% of the lesser of

(a) the amount actually paid or payable in respect thereof, and

(b) an amount in respect thereof that would be reasonable in the circumstances.

(2) **Exceptions**—Subsection (1) does not apply to an amount paid or payable by a person in respect of the consumption of food or beverages or the enjoyment of entertainment where the amount

- (a) is paid or payable for food, beverages or entertainment provided for, or in expectation of, compensation in the ordinary course of a business carried on by that person of providing the food, beverages or entertainment for compensation;
- (b) relates to a fund-raising event the primary purpose of which is to benefit a registered charity;
- (c) is an amount for which the person is compensated and the amount of the compensation is reasonable and specifically identified in writing to the person paying the compensation;
- (d) is required to be included in computing the income of an employee of the person or would be so required but for subparagraph 6(6)(a)(ii); or
- (e) is incurred by the person for food, beverages or entertainment generally available to all individuals employed by the person at a particular place of business of the person and consumed or enjoyed by such individuals.

(3) **Fees for convention, etc.**—For the purposes of this section, where a fee paid or payable for a conference, convention, seminar or similar event entitles the participant to food, beverages or entertainment (other than incidental beverages and refreshments made available during the course of meetings or receptions at the event) and a reasonable part of the fee, determined on the basis of the cost of providing the food, beverages and entertainment, is not identified in the account for the fee as compensation for the food, beverages and entertainment, \$50 or such other amount as may be prescribed shall be deemed to be the actual amount paid or payable in respect of food, beverages and entertainment for each day of the event on which food, beverages or entertainment is provided and, for the purposes of this Act, the fee for the event shall be deemed to be the actual amount of the fee minus the amount deemed by this subsection to be the actual amount paid or payable for the food, beverages and entertainment.

(4) **Interpretation**—For the purposes of this section,

- (a) no amount paid or payable for travel on an airplane, train or bus shall be considered to be in respect of food, beverages or entertainment consumed or enjoyed while travelling thereon; and
- (b) "entertainment" includes amusement and recreation.

82(1)

This provision grosses-up dividends received by individuals from taxable Canadian corporations. This means that 125 per cent of dividends are to be reported as income. Taxable individuals get relief through the dividend tax credit. An exemption for trusts (which are considered to be individuals) that are registered charities will be found in paragraph 82(1)(b) in recognition of the fact that as non-taxable entities, they will get no relief from the tax credits.

82.(1) Taxable dividends received—In computing the income of a taxpayer for a taxation year, there shall be included

(a) the total of

(i) all amounts each of which is a taxable dividend received by the taxpayer in the year as part of a dividend rental arrangement of the taxpayer from a corporation resident in Canada or a taxable dividend received by the taxpayer in the year from a corporation resident in Canada that is not a taxable Canadian corporation, and

Proposed Addition—82(1)(a)(i.1)

(i.1) where the taxpayer is a trust, all amounts each of which is all or part of a taxable dividend (other than a taxable dividend described in subparagraph (i)) that was received by the trust in the year on a share of the capital stock of a taxable Canadian corporation and that can reasonably be considered as having been included in computing the income of a beneficiary under the trust who was non-resident at the end of the year, and

Application—The April 26, 1995 draft legislation, subsec. 30(1), will add subpara. 82(1)(a)(i.1), applicable to taxation years that end after April 26, 1995.

Technical Note—Subsection 82(1) provides that taxable dividends received by a taxpayer from a corporation resident in Canada are included in computing the taxpayer's income. It also generally provides an extra 1/4 gross-up of the amount of such dividends from taxable Canadian corporations, which is added in computing the income of an individual. Section 121 provides a dividend tax credit equal to 2/3 of an individual's gross-up. For this purpose, an individual includes a trust (other than a trust that is a registered charity). Subsection 82(1) is amended to provide that the gross-up for a taxation year does not apply to taxable dividends received by a trust in the year from a taxable Canadian corporation, to the extent that such dividends are included in computing the income of a non-resident beneficiary under the trust. As a consequence, the calculation of the trust's dividend tax credit will not be affected by whether or not the trust designates amounts under subsection 104(19) in respect of non-resident beneficiaries. The rationale for this amendment is that the dividend tax credit is aimed at Canadian residents, whose income tax rates under Part I are generally higher than the withholding rates for non-residents under Part XIII. The purpose of this amendment is to prevent trusts with non-resident beneficiaries from obtaining access to the dividend tax credit in connection with income allocated to those beneficiaries that has not been flowed-out to those beneficiaries under subsection 104(19).

(ii) the amount, if any, by which

(a) the total of all amounts received by the taxpayer in the year from corporations resident in Canada as, on account or in lieu of payment of, or in satisfaction of, taxable dividends, other than an amount included in computing the income of the taxpayer by reason of subparagraph (i),

Proposed Amendment—82(1)(a)(ii)(A)

(A) the total of all amounts received by the taxpayer in the year from corporations resident in Canada as, on account of, in lieu of payment of or in satisfaction of, taxable dividends, other than an amount included in computing the income of the taxpayer because of subparagraph (i) or (i.1)

Application—The April 26, 1995 draft legislation, subsec. 30(2), will amend cl. 82(1)(a)(ii)(a) to read as above, applicable to taxation years that end after April 26, 1995.

Technical Note—See under 82(1)(a)(i.1).

exceeds

- (B) where the taxpayer is an individual, the total of all amounts paid by the taxpayer in the year that are deemed by subsection 260(5) to have been received by another person as taxable dividends, plus
- (b) where the taxpayer is an individual, other than a trust that is a registered charity, 1/4 of the amount determined under subparagraph (a)(ii) in respect of the taxpayer for the year.

110(2)

This provision allows members of a religious order who have taken a vow of perpetual poverty the right to deduct from earned income up to 100 per cent of gifts made to the order. This provision recognizes the special problems facing members of religious orders who have taken a vow of poverty but who work in the secular world and get paid. Note that the exemption does not apply to investment income. See Interpretation Bulletin IT-86R, Vow of Perpetual Poverty.

110.(2) Charitable gifts—Where an individual is, during a taxation year, a member of a religious order and has, as such, taken a vow of perpetual poverty, the individual may deduct in computing the individual's taxable income for the year an amount equal to the total of the individual's superannuation or pension benefits and the individual's earned income for the year (within the meaning assigned by section 63) if, of the individual's income, that amount is paid in the year to the order.

110.1

Section 110.1 offers tax relief to corporations for charitable donations. These provisions mirror to some extent the provisions in section 118.1, which applies to individuals. However, in the case of corporations, the *Income Tax Act* offers a deduction rather than a tax credit as is the case with individuals.

110.1(1) Deduction for gifts—For the purpose of computing the taxable income of a corporation for a taxation year, there may be deducted such of the following amounts as are applicable:

- (a) **charitable gifts**—the total of all amounts each of which is the fair market value of a gift made by the corporation in the year (or in any of the 5 immediately preceding taxation years to the extent that the amount thereof was not deducted in computing its taxable income for any preceding taxation year) to
 - (i) a registered charity,
 - (ii) a registered Canadian amateur athletic association,
 - (iii) a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i),
 - (iv) a Canadian municipality,
 - (v) the United Nations or an agency thereof,
 - (vi) a university outside Canada that is prescribed to be a university the student body of which ordinarily includes students from Canada, or
 - (vii) a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift during the corporation's taxation year or the 12 months immediately preceding that taxation year,

not exceeding 20% of its income for the year computed without reference to subsection 137(2);

Proposed Amendment—Donations of Ecologically Sensitive Land

Notice of Ways and Means Motion, federal budget, February 27, 1995

See under 118.1(1) "total gifts".

- (b) **gifts to Her Majesty**—the total of all amounts each of which is the fair market value of a gift made by the corporation in the year (or in any of the 5 immediately preceding taxation years to the extent that the amount thereof was not deducted in computing its taxable income for any preceding taxation year) to Her Majesty in right of Canada or a province, not exceeding the amount remaining, if any, after the amount deducted for the year under paragraph (a) by the corporation is deducted in computing its taxable income for the year; and
- (c) **gifts to institutions**—the total of all amounts each of which is the fair market value of a gift (other than a gift in respect of which an amount is or was deducted under paragraph (a) or (b)) of an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraphs 29(3)(b) and (c) of the Cultural Property Export and Import Act, which gift was made by the corporation in the year (or in any of the 5 immediately preceding taxation years to the extent that the amount thereof was not deducted in computing its taxable income for any preceding taxation year) to an institution or a public authority in Canada that was, at the time the gift was made, designated under subsection 32(2)

of that Act either generally or for a specified purpose related to that object, not exceeding the amount remaining, if any, after the amounts deducted for the year under paragraphs (a) and (b) by the corporation are deducted in computing its taxable income for the year.

(2) **Proof of gift**—A gift shall not be included for the purpose of determining a deduction under subsection (1) unless the making of the gift is proven by filing with the Minister a receipt therefor that contains prescribed information.

(3) **Gifts of capital property**—Where at any time

(a) a corporation makes a gift of

(i) capital property to a donee described in paragraph (1)(a) or (b), or

(ii) in the case of a corporation not resident in Canada, real property situated in Canada to a prescribed donee who provides an undertaking, in a form satisfactory to the Minister, to the effect that the property will be held for use in the public interest, and

(b) the fair market value of the property at that time exceeds its adjusted cost base to the corporation,

such amount, not greater than the fair market value and not less than the adjusted cost base to the corporation of the property at that time, as the corporation designates in its return of income under section 150 for the year in which the gift is made shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to be its proceeds of disposition of the property and, for the purposes of subsection (1), the fair market value of the gift made by the corporation.

(4) **Gifts made by partnership**—Where a corporation is, at the end of a fiscal period of a partnership, a member of the partnership, its share of any amount that would, if the partnership were a person, be a gift made by the partnership to any donee shall, for the purposes of this section, be deemed to be a gift made to that donee by the corporation in its taxation year in which the fiscal period of the partnership ends.

118.1

This section of the *Income Tax Act* deals with donations to charities and qualified donees (see the full listing under the definition of "total charitable gifts" in subsection (1)) and gifts of cultural property. These gifts result in tax credits to the donor.

Special note should be given to subsection (5) which deals with gifts by will, subsection (6) relating to gifts of capital property and providing for an election, subsections (7) and (7.1) which involve special rules relating to gifts out of inventory by artists, subsection (8) which deals with gifts made by a partnership and subsection (9) which involves special rules relating to gifts by individuals who live close to the Canada-U.S. border.

There are many Information Circulars and Interpretation Bulletins which deal with various aspects of gifting. In order of their original appearance, these are:

- IC 75-23 dealing with tuition fees and charitable donations paid to private secular and religious schools;
- IC 84-3R4, which lists charities abroad to which the Canadian government has made a gift;
- IT-110R2, which deals with deductible gifts and receipts in general;
- IT-111R, which deals with charitable gift annuities;
- IT-226R, which deals with gifts of residual interests;
- IT-244R3, which deals with gifts of life insurance policies;
- IT-288R2, which deals with gifts of tangible property;
- IT-297R2, which deals with gifts in kind; and
- IT-504R, notably paragraphs 9-12, dealing with gifts by visual artists and writers.

All these Circulars and Bulletins are reproduced later in this Tab. It should be noted that many of these Circulars and Bulletins may be dated and should be read with caution to ensure that the discussion relates to the law as it now stands.

118.1(1) Definitions—In this section,

"total charitable gifts"—"total charitable gifts" of an individual for a taxation year means the total of all amounts each of which is the fair market value of a gift (other than a gift the fair market value of which is included in the total Crown gifts or the total cultural gifts of the individual for the year, or would have been so included for a preceding taxation year if this section had applied to that preceding year) made by the individual in the year or in any of the 5 immediately preceding taxation years (other than in a year for which a deduction under subsection 110(2) was claimed in computing the individual's taxable income) to

- (a) a registered charity,
- (b) a registered Canadian amateur athletic association,
- (c) a housing corporation resident in Canada and exempt from tax under this Part because of paragraph 149(1)(i),
- (d) a Canadian municipality,
- (e) the United Nations or an agency thereof,
- (f) a university outside Canada that is prescribed to be a university the student body of which ordinarily includes students from Canada, or
- (g) a charitable organization outside Canada to which Her Majesty in right of Canada has made a gift during the individual's taxation year or the 12 months immediately preceding that taxation year,

to the extent that those amounts were

- (h) not deducted in computing the individual's taxable income for a taxation year ending before 1988, and
- (i) not included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year;

"total Crown gifts"—"total Crown gifts" of an individual for a taxation year means the total of all amounts each of which is the fair market value of a gift (other than a gift the fair market value of which is included in the total cultural gifts of the individual for the year, or would have been so included for a preceding taxation year if this section had applied to that preceding year) made by the individual in the year or in any of the 5 immediately preceding taxation years to Her Majesty in right of Canada or a province, to the extent that those amounts were

- (a) not deducted in computing the individual's taxable income for a taxation year ending before 1988, and
- (b) not included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year;

"total cultural gifts"—"total cultural gifts" of an individual for a taxation year means the total of all amounts each of which is the fair market value of a gift

- (a) of an object that the Canadian Cultural Property Export Review Board has determined meets the criteria set out in paragraphs 29(3)(b) and (c) of the *Cultural Property Export and Import Act*, and
- (b) that was made by the individual in the year or in any of the 5 immediately preceding taxation years to an institution or a public authority in Canada that was, at the time the gift was made, designated under subsection 32(2) of the *Cultural Property Export and Import Act* either generally or for a specified purpose related to that object,

to the extent that those amounts were

- (c) not deducted in computing the individual's taxable income for a taxation year ending before 1988, and
- (d) not included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year;

"total gifts"—"total gifts" of an individual for a taxation year means the total of

- (a) the lesser of
 - (i) the individual's total charitable gifts for the year, and
 - (ii) 1/5 of the individual's income for the year,
- (b) the individual's total Crown gifts for the year, and
- (c) the individual's total cultural gifts for the year.

Proposed Amendment—Donations of Ecologically Sensitive Land**Notice of Ways and Means Motion, federal budget, February 27, 1995**

(14) That the 20% limitation in respect of charitable donations be eliminated with respect to donations made after February 27, 1995 to Canadian municipalities and registered charities, designated by the Minister of the Environment, of land certified by the Minister to be important to the preservation of Canada's environmental heritage and that the municipality or charity be subject to a penalty of 50% of the fair market value of the donated land where the donated land is disposed of or its use is changed without the permission of the Minister.

Federal budget, Supplementary Information, February 27, 1995

The income tax system currently provides substantial assistance for donations of ecologically sensitive land to charities and government bodies. Individuals receive a federal tax credit of 17 per cent on the first \$200 donated and 29 per cent on any remaining portion of donations made in a year. Corporations claim a deduction from net income. Since the donation credit also affects surtaxes and provincial taxes, it can generate total tax savings of about 50 cents per dollar donated.

There is no limit on the amount that may be claimed for gifts to federal or provincial governments, while claims for gifts to charities and municipalities are limited to 20 per cent of an individual's (or corporation's) net income in a year. Donors are able to carry unused claims forward for up to five years, which in most cases ensures that they are able to claim the full value of their donations.

However, the value of donated land may often be high relative to the donor's income. As a result, the 20-per-cent rule may restrict the value of the donation credit, even after the five-year carry-forward is taken into account.

To further encourage the conservation and protection of Canada's environmental heritage, this budget proposes to exempt qualified donations of land, including qualified donations of covenants, servitudes and easements, from the annual limit of 20 per cent of net income.

In order to qualify for the exemption, donations must meet the following conditions:

the donated land must be certified by the Minister of the Environment to be ecologically sensitive land, the conservation and protection of which is, in the opinion of the Minister, important to the preservation of Canada's environmental heritage; and

the body to which the land is donated must be either a Canadian municipality or a registered charity that is designated by the Minister of the Environment at the time the donation is made to be a body whose primary purpose is the conservation and protection of Canada's environmental heritage for the benefit of all Canadians.

As well, it is proposed that bodies that receive such gifts of land be required to ensure that the lands are not subsequently sold or their use changed without the permission of the Minister of the Environment. Where there is an unapproved disposition or change-in-use of such land, the organization will be subject to a penalty equal to 50 per cent of the value of the land at the time of the disposition or change-in-use.

The Minister of the Environment will consult with interested parties to develop the criteria to be applied for the certification of ecologically sensitive land and the designation of qualified recipients.

This proposal will apply to gifts of land, covenants, servitudes and easements made after budget day.

The estimated revenue cost of this measure is small.

(2) **Proof of gift**—A gift shall not be included in the total charitable gifts, total Crown gifts or total cultural gifts of an individual unless the making of the gift is proven by filing with the Minister a receipt therefor that contains prescribed information.

(3) **Deduction by individuals for gifts**—For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted such amount as the individual claims not exceeding the amount determined by the formula

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

where

A is the appropriate percentage for the year;

B is the lesser of \$200 and the individual's total gifts for the year;

C is the highest percentage referred to in subsection 117(2) that applies in determining tax that might be payable under this Part for the year; and

D is the individual's total gifts for the year.

(4) **Time of gift**—For the purposes of this section, a gift made by an individual in the taxation year in which the individual dies shall be deemed to have been made by the individual in the immediately preceding taxation year to the extent that an amount in respect thereof is not deducted in computing the individual's tax payable under this Part for the taxation year in which the individual dies.

(5) **Gift by will**—Where an individual by the individual's will makes a gift to a donee described in subsection (1), the gift shall, for the purposes of this section, be deemed to have been made by the individual in the taxation year in which the individual dies.

(6) **Gift of capital property**—Where, at any time, whether by the individual's will or otherwise, an individual makes a gift of

(a) capital property to a donee described in the definition "total charitable gifts" or "total Crown gifts" in subsection (1), or

(b) in the case of an individual who is a non-resident person, real property situated in Canada to a prescribed donee who provides an undertaking, in a form satisfactory to the Minister, to the effect that such property will be held for use in the public interest,

and the fair market value of the property at that time exceeds its adjusted cost base to the individual, such amount, not greater than the fair market value and not less than the adjusted cost base to the individual of the property at that time, as the individual or the individual's legal representative designates in the individual's return of income under section 150 for the year in which the gift is made shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to be the individual's proceeds of disposition of the property and, for the purposes of subsection (1), the fair market value of the gift made by the individual.

(7) **Gifts of art**—Except where subsection (7.1) applies, where at any time, whether by the individual's will or otherwise, an individual makes a gift of a work of art that was created by the individual and that is property in the individual's inventory to a donee described in the definition "total charitable gifts" or "total Crown gifts" in subsection (1) and at that time the fair market value of the work of art exceeds its cost amount to the individual, such amount, not greater than that fair market value and not less than that cost amount, as is designated in the individual's return of income under section 150 for the year in which the gift is made shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to be the individual's proceeds of disposition of the work of art and, for the purposes of subsection (1), the fair market value of the gift made by the individual.

(7.1) **Gifts of cultural property**—Where at any time, whether by the individual's will or otherwise, an individual makes a gift described in the definition "total cultural gifts" in subsection (1) of a work of art that was created by the individual and that is property in the individual's inventory, the individual shall, if the making of the gift is proven by filing with the Minister a receipt containing prescribed information, be deemed to have received proceeds of disposition in respect of the gift at that time equal to its cost amount to the individual at that time.

(8) **Gifts made by partnership**—Where an individual is, at the end of a fiscal period of a partnership, a member of the partnership, the individual's share of any amount that would, if the partnership were a person, be a gift made by the partnership to any donee shall, for the purposes of this section, be deemed to be a gift made by the individual to that donee in the individual's taxation year in which the fiscal period of the partnership ends.

(9) **Commuter's charitable donations**—Where throughout a taxation year an individual resided in Canada near the boundary between Canada and the United States, if

- (a) the individual commuted to the individual's principal place of employment or business in the United States, and
- (b) the individual's chief source of income for the year was that employment or business,

a gift made by the individual in the year to a religious, charitable, scientific, literary or educational organization created or organized in or under the laws of the United States that would be allowed as a deduction under the *United States Internal Revenue Code* shall, for the purpose of the definition "total charitable gifts" in subsection (1), be deemed to have been made to a registered charity.

(10) **Determination of fair market value**—For the purposes of paragraph 110.1(1)(c) and the definition "total cultural gifts" in subsection (1), the fair market value of an object shall be determined by the Canadian Cultural Property Export Review Board.

Proposed Amendment—118.1(10)

Communications Canada press release, June 10, 1993

Communications Minister Perrin Beatty announced today plans to permit appeals to the Tax Court of Canada of decisions of the Canadian Cultural Property Export Review Board concerning the fair market value of cultural property donated to designated institutions in Canada.

As a result of the federal budget of February 1990 and amendments contained in Bill C-18, which received Royal Assent in December 1991, the responsibility for determining the fair market value of cultural property donated to designated Canadian museums, art galleries and libraries was transferred from Revenue Canada—Taxation to the Review Board. However, this legislation did not include provisions for appeals of the Review Board's determinations.

In response to concerns expressed by donors and custodial institutions, the Department of Communications, in cooperation with the Review Board, recently completed a series of consultations with the community on the need for an appeal of Board decisions. The outcome of the consultations made it clear that when donors disagree with a decision of the Board, they should have recourse to the judicial system.

Mr. Beatty said that the appeal process would ensure equity and fairness for donors of cultural property who disagree with Board decisions. He also noted that he and the Review Board believe that the possibility of review by the courts of Board evaluations will lead to better appraisals.

Mr. Beatty added that the Review Board is considering the advisability of establishing an internal appeal process. Donors and custodial institutions are being consulted on their views about how this process should function.

Mr. Bernard Lamarre, Chairman of the Canadian Cultural Property Export Review Board, stated that the Board fully supports the establishment of the right to appeal its decisions, noting that it is important that Board proceedings be open and transparent.

Contacts: Bill Peters, (613) 991-1690; Gerard Desroches, (613) 990-4827.

Department of Canadian Heritage press release, November 4, 1994

Canadian Heritage Minister Michel Dupuy announced today that a new process will be established to enable Canadians who donate cultural property to designated institutions to appeal the determination of the fair market value of their donation by the Canadian Cultural Property Export Review Board.

Mr. Dupuy made the announcement during a meeting with the Canadian Art Museums Director's Organization.

The determination of fair market value of movable cultural property is done by the Canadian Cultural Property Export Review Board. The announced changes would allow a donor who is not satisfied with the Board's decision to request a redetermination by the Board and to appeal to the Tax Court of Canada. Amendments will be required to the *Cultural Property Export and Import Act* before the appeal process can be implemented.

Initial decisions by the Review Board, for donations or proposed donations, may be redetermined by the Board, and may be required by either the donor or the recipient institution. Redeterminations will be made by the Board, while appeals to the Tax Court will only apply to irrevocable gifts.

The Minister indicated the amendments would also expand the circumstances in which a redetermination of the fair market value of cultural property for income tax purposes may be required and remove the present requirement that the applicant provide additional information before a request can be considered.

Mr. Dupuy said that the changes are being initiated to ensure the continued preservation of our heritage in movable cultural property by encouraging donations to designated museums, archives and libraries and to strengthen the tradition of gift-giving in Canada.

The amendments also respond to concerns expressed by donors, dealers and cultural institutions since 1991 when the responsibility for determining the fair market value of certified cultural property was transferred to the Review Board and the previous right of appeal was lost.

143.1

This section deals with a specific type of situation relating to amateur athletes. Many amateurs are in fact "paid", but preserve their status by having funds held in trust by the registered Amateur Athletic Association governing their sport. This section sets out rules to deal with this set of circumstances.

143.1(1) Amateur athletes' reserve funds—Where a national sport organization that is a registered Canadian amateur athletic association receives an amount for the benefit of an individual under an arrangement made under rules of an international sport federation that require amounts to be held, controlled and administered by the organization in order to preserve the eligibility of the individual to compete in a sporting event sanctioned by the federation,

- (a) an *inter vivos* trust (in this section referred to as an "amateur athlete trust") shall be deemed to be created on the day that is the later of
 - (i) the day on which the first such amount is received by the organization, and
 - (ii) January 1, 1992,

and to exist continuously thereafter until subsection (3) or (4) applies in respect of the trust;

- (b) all property required to be held after 1991 under the arrangement shall be deemed to be property of the trust and not property of any other person;
- (c) any amount received at any time under the arrangement by the organization shall, to the extent that it would, but for this subsection, be included in computing the individual's income for the taxation year that includes that time, be deemed to be income of the trust for the taxation year and not to be income of the individual;
- (d) all amounts paid at any time by the organization under the arrangement to or for the benefit of the individual shall be deemed to be amounts distributed at that time to the individual by the trust;
- (e) the individual shall be deemed to be the beneficiary under the trust;
- (f) the organization shall be deemed to be the trustee of the trust; and
- (g) no tax is payable under this Part by the trust on its taxable income for any taxation year.

(2) **Amounts included in beneficiary's income**—In computing the income for a taxation year of the beneficiary under an amateur athlete trust, there shall be included the total of all amounts distributed in the year to the beneficiary by the trust.

(3) **Termination of amateur athlete trust**—Where an amateur athlete trust holds property on behalf of a beneficiary who has not competed in an international sporting event as a Canadian national team member for a period of 8 years that ends in a particular taxation year and begins in the year that is the later of

- (a) where the beneficiary has competed in such an event, the year in which the beneficiary last so competed, and
- (b) the year in which the trust was created,

the trust shall be deemed to have distributed, at the end of the particular taxation year to the beneficiary, an amount equal to

- (c) where the trust is liable to pay tax under Part XII.2 in respect of the particular year, 64% of the fair market value of all property held by it at that time, and
- (d) in any other case, the fair market value of all property held by it at that time.

(4) **Death of beneficiary**—Where an amateur athlete trust holds property on behalf of a beneficiary who dies in a year, the trust shall be deemed to have distributed, immediately before the death, to the beneficiary, an amount equal to

- (a) where the trust is liable to pay tax under Part XII.2 in respect of the year, 64% of the fair market value of all property held by it at that time; and
- (b) in any other case, the fair market value of all property held by it at that time.

149

Section 149 exempts a number of "persons" from tax under Part I of the *Income Tax Act*. The vast majority of the listed persons are in fact varieties on non-profit organizations. The paragraph which applies to most non-profits (which are not registered charities) is 149(1)(l). Each paragraph should be read very carefully since the qualification for tax exempt status depends upon meeting the precise requirements. Unlike the case of registered charities, for which tax exemption flows from being registered, non-profits are exempt so long as they meet the qualifications, which Revenue Canada sees as an *ex post facto* test at the end of each taxation year.

Note that there is no need to register any of these organizations to get the exemption. Meeting the statutory requirements is sufficient.

149.(1) Miscellaneous exemptions—No tax is payable under this Part on the taxable income of a person for a period when that person was

- (a) **employees of a country other than Canada**—an officer or servant of the government of a country other than Canada whose duties require that person to reside in Canada
 - (i) if, immediately before assuming those duties, the person resided outside Canada,
 - (ii) if that country grants a similar privilege to an officer or servant of Canada of the same class,
 - (iii) if the person was not, at any time in the period, engaged in a business or performing the duties of an office or employment in Canada other than the person's position with that government, and
 - (iv) if the person was not during the period a Canadian citizen;
- (b) **members of the family and servants of employees of a country other than Canada**—a member of the family of a person described in paragraph (a) who resides with that person, or a servant employed by a person described in that paragraph,
 - (i) if the country of which the person described in paragraph (a) is an officer or servant grants a similar privilege to members of the family residing with and servants employed by an officer or servant of Canada of the same class,
 - (ii) in the case of a member of the family, if that member was not at any time lawfully admitted to Canada for permanent residence, or at any time in the period engaged in a business or performing the duties of an office or employment in Canada,
 - (iii) in the case of a servant, if, immediately before assuming his or her duties as a servant of a person described in paragraph (a), the servant resided outside Canada and, since first assuming those duties in Canada, has not at any time

engaged in a business in Canada or been employed in Canada other than by a person described in that paragraph, and

- (iv) if the member of the family or servant was not during the period a Canadian citizen;
- (c) **municipal authorities**—a municipality in Canada, or a municipal or public body performing a function of government in Canada;
- (d) **municipal or provincial corporations**—a corporation, commission or association not less than 90% of the shares or capital of which was owned by Her Majesty in right of Canada or a province or by a Canadian municipality, or a wholly-owned corporation subsidiary to such a corporation, commission or association, but this paragraph does not apply
 - (i) to such a corporation, commission or association if a person other than Her Majesty in right of Canada or a province or a Canadian municipality had, during the period, a right under a contract, in equity or otherwise either immediately or in the future and either absolutely or contingently, to, or to acquire, shares or capital of that corporation, commission or association, and
 - (ii) to such a wholly-owned subsidiary corporation if a person other than Her Majesty in right of Canada or a province or a Canadian municipality had, during the period, a right under a contract, in equity or otherwise either immediately or in the future and either absolutely or contingently, to, or to acquire, shares or capital of that wholly-owned subsidiary corporation or of the corporation, commission or association of which it is a wholly-owned subsidiary corporation;

Many of the issues under the preceding two paragraphs revolve around the status of Indian bands Councils. Reference should be made to paragraphs 7 to 14 of IT-62, Indians. However, it appears the judgment in the *Otinaka* case has replaced the Bulletin as the best guide to the current status.

For a case dealing with the general rule on municipally owned corporations, see *Enterprises Chelsea Ltee v. MNR*, [1970] C.T.C. 598.

- (e) **certain organizations**—an agricultural organization, a board of trade or a chamber of commerce, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof;
- (f) **registered charities**—a registered charity;
- (g) [Repealed under former Act]
- (h) [Repealed under former Act]
- (h.1) **Association of Universities and Colleges of Canada**—the Association of Universities and Colleges of Canada, incorporated by the *Act to incorporate Association of Universities and Colleges of Canada*, chapter 75 of the Statutes of Canada, 1964-65;

- (i) **certain housing corporations**—a corporation that was constituted exclusively for the purpose of providing low-cost housing accommodation for the aged, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof;
- (j) **non-profit corporations for scientific research and experimental development**—a corporation that was constituted exclusively for the purpose of carrying on or promoting scientific research and experimental development, no part of whose income was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof, that has not acquired control of any other corporation and that, during the period,
 - (i) did not carry on any business, and
 - (ii) expended amounts in Canada each of which is
 - (A) an expenditure on scientific research and experimental development (within the meaning that would be assigned by subsection 37(7) if that subsection were read without reference to paragraph 37(8)(d)) directly undertaken by or on behalf of the corporation, or
 - (B) a payment to an association, university, college or research institute or other similar institution, described in clause 37(1)(a)(ii)(A) or (B) to be used for scientific research and experimental development, and the total of which is not less than 90% of the corporation's income for the period;

Proposed Amendment—Filing Requirements

Federal budget, Supplementary Information, February 27, 1995

Building on the consultations held last fall, discussions will be held with affected third parties to determine how further information can be provided on the nature of the R&D performed and the expenditures incurred. This additional information will enable the government to better monitor the SR&ED tax incentives in this area. As a first step toward collecting better information, the budget proposes that corporations exempt from tax under paragraph 149(1)(j) of the *Income Tax Act* be required to file, with their annual tax return, a T661 form to report their SR&ED work and expenditures. This measure will be effective for taxation years ending after February 27, 1995.

- (k) **labour organizations**—a labour organization or society or a benevolent or fraternal benefit society or order;

See the following cases: *L.I.U.N.A.* and also *O'Brien v. The Queen*.

149(1)(l)

This paragraph is the one which applies to most non-profit organizations in Canada. Note that a *sine qua non* for qualifying under this provision is that in the opinion of the Minister of Revenue, the organization could not be

registered as a charity. There is also a special exemption from the rule against distribution of income to members for members of a registered Canadian Amateur Athletic association. This is because the scheme of the legislation recognizing such bodies assumes a national organization which has provincial and local members. The role of the national organization is to receive and receipt funds which are then distributed to the locals.

Key modern cases dealing with this paragraph include *L.I.U.N.A, Gull Bay* and, *Burns v. MNR*. The latter case involves donations, but the Tax Court judgment shows the workings of fundraising and receipting by a major amateur athletic association.

An income tax ruling, TR-58, dealing with payments to members of non-profits for services rendered, is reproduced later in this chapter.

The most important Interpretation Bulletin is IT-496, which offers Revenue Canada's views on what is a non-profit. In the light of the foregoing cases, this Bulletin should be looked at with some care as there is doubt that all its statements reflect the state of the law.

- (l) **non-profit organizations**—a club, society or association that, in the opinion of the Minister, was not a charity within the meaning assigned by subsection 149.1(1) and that was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder was a club, society or association the primary purpose and function of which was the promotion of amateur athletics in Canada;
- (m) **mutual insurance corporations**—a mutual insurance corporation that received its premiums wholly from the insurance of churches, schools or other charitable organizations;
- (n) **housing companies**—a limited-dividend housing company (within the meaning of that expression as defined in section 2 of the *National Housing Act*), all or substantially all of the business of which is the construction, holding or management of low-rental housing projects;
- (o) **pension trusts**—a trust governed by a registered pension plan;
- (o.1) **pension corporations**—a corporation incorporated and operated throughout the period solely for the administration of a registered pension plan and accepted by the Minister as a funding medium for the purposes of the registration of a pension plan;

Proposed Amendment—149(1)(o.1)**(o.1) pension corporations—a corporation****(i) incorporated and operated throughout the period either****(A) solely for the administration of a registered pension plan, or****(B) for the administration of a registered pension plan and for no other purpose other than acting as trustee of, or administering, a trust governed by a retirement compensation arrangement, where the terms of the arrangement provide for benefits only in respect of individuals who are provided with benefits under the registered pension plan, and****(ii) accepted by the Minister as a funding medium for the purpose of the registration of the pension plan;**

Application—The April 26, 1995 draft legislation, subsec. 76(1), will amend para. 149(1)(o.1) to read as above, applicable to 1994 *et seq.*

Technical Note—Section 149 exempts certain taxpayers from tax under Part I of the Act and provides special rules for such taxpayers.

Paragraph 149(1)(o.1) provides an exemption from tax under Part I of the Act for corporations incorporated and operated solely for the administration of a registered pension plan, where the corporation has been accepted by the Minister of National Revenue as a funding medium for the purposes of the registration of a pension plan.

Paragraph 149(1)(o.1) is amended, applicable to the 1994 and subsequent taxation years, to provide that such corporations may also act as trustees and administrators of trusts governed by retirement compensation arrangements, where those arrangements provide for benefits supplementary to those provided under the registered pension plan.

(o.2) idem—a corporation**(i) incorporated before November 17, 1978 solely in connection with, or for the administration of, a registered pension plan,****(ii) that has at all times since the later of November 16, 1978 and the date on which it was incorporated****(A) limited its activities to acquiring, holding, maintaining, improving, leasing or managing capital property that is real property or an interest therein owned by the corporation, another corporation described by this subparagraph and subparagraph (iv) or a registered pension plan,****(B) made no investments other than in real property or an interest therein or investments that a pension plan is permitted to make under the *Pension Benefits Standards Act, 1985* or a similar law of a province, and****(C) borrowed money solely for the purpose of earning income from real property or an interest therein,**

- (ii.1) that throughout the period
 - (A) limited its activities to
 - (I) acquiring Canadian resource properties by purchase or by incurring Canadian exploration expense or Canadian development expense, or
 - (II) holding, exploring, developing, maintaining, improving, managing, operating or disposing of its Canadian resource properties,
 - (B) made no investments other than in
 - (I) Canadian resource properties,
 - (II) property to be used in connection with Canadian resource properties described in clause (A),
 - (III) loans secured by Canadian resource properties for the purpose of carrying out any activity described in clause (A) with respect to Canadian resource properties, or
 - (IV) investments that a pension fund or plan is permitted to make under the *Pension Benefits Standards Act, 1985* or a similar law of a province, and
 - (C) borrowed money solely for the purpose of earning income from Canadian resource properties, or
 - (iii) that made no investments other than investments that a pension fund or plan was permitted to make under the *Pension Benefits Standards Act, 1985* or a similar law of a province, and
 - (A) the assets of which were at least 98% cash and investments,
 - (B) that had not issued debt obligations or accepted deposits, and
 - (C) that had derived at least 98% of its income for the period that is a taxation year of the corporation from, or from the disposition of, investments
- if, at all times since the later of November 16, 1978 and the date on which it was incorporated,
- (iv) all of the shares, and rights to acquire shares, of the capital stock of the corporation are owned by
 - (A) one or more registered pension plans,
 - (B) one or more trusts all the beneficiaries of which are registered pension plans,
 - (C) one or more related segregated fund trusts (within the meaning assigned by paragraph 138.1(1)(a)) all the beneficiaries of which are registered pension plans, or
 - (D) one or more prescribed persons, or

- (v) in the case of a corporation without share capital, all the property of the corporation has been held exclusively for the benefit of one or more registered pension plans, and for the purposes of subparagraph (iv), where a corporation has been formed as a result of the merger of two or more other corporations, it shall be deemed to be the same corporation as, and a continuation of, each such other corporation and the shares of the merged corporations shall be deemed to have been altered, in form only, by virtue of the merger and to have continued in existence in the form of shares of the corporation formed as a result of the merger;
- (o.3) **prescribed small business investment corporations**—a corporation that is prescribed to be a small business investment corporation;
- (o.4) **master trusts**—a trust that is prescribed to be a master trust and that elects to be such a trust under this paragraph in its return of income for its first taxation year ending in the period;
- (p) **trusts under profit sharing plan**—a trust under an employees profit sharing plan to the extent provided by section 144;
- (q) **trusts under a registered supplementary unemployment benefit plan**—a trust under a registered supplementary unemployment benefit plan to the extent provided by section 145;
- (q.1) **RCA trusts**—an RCA trust (within the meaning assigned by subsection 207.5(1));
- (r) **trusts under registered retirement savings plan**—a trust under a registered retirement savings plan to the extent provided by section 146;
- (s) **trusts under deferred profit sharing plan**—a trust under a deferred profit sharing plan to the extent provided by section 147;

Proposed Addition—149(1)(s.1)

(s.1) **trust governed by eligible funeral arrangement**—a trust governed by an eligible funeral arrangement;

Application—Bill C-70, s. 63, will add para. 149(1)(s.1), applicable to 1993 *et seq.*

Technical Note—New paragraph 149(1)(s.1) provides an exemption for a trust from income tax while the trust is an "eligible funeral arrangement". This expression is newly defined in subsection 148.1(1), as described in the commentary above.

- (t) **farmer's and fisherman's insurer**—an insurer who, during the period, was not engaged in any business other than insurance if, in the opinion of the Minister, on the advice of the Superintendent of Financial Institutions or of the superintendent of insurance of the province under the laws of which the insurer is incorporated, not less than 25% of the total of the gross premium income (net of reinsurance ceded) earned in the period by the insurer and, where the insurer is not a prescribed insurer, of all other insurers that
- (i) were specified shareholders of the insurer,

- (ii) were related to the insurer, or
- (iii) where the insurer is a mutual corporation, were part of a group that controlled, directly or indirectly in any manner whatever, or were controlled, directly or indirectly in any manner whatever, by the insurer, was in respect of the insurance of farm property, property used in fishing or residences of farmers or fishermen;
- (u) **registered education savings plans**—a trust governed by a registered education savings plan to the extent provided by section 146.1;
- (v) **amateur athlete trust**—an amateur athlete trust;
- (w) **trusts to provide compensation**—a trust established as required under a law of Canada or of a province in order to provide funds out of which to compensate persons for claims against an owner of a business identified in the relevant law where that owner is unwilling or unable to compensate a customer or client, if no part of the property of the trust, after payment of its proper trust expenses, is available to any person other than as a consequence of that person being a customer or client of a business so identified;
- (x) **registered retirement income funds**—a trust governed by a registered retirement income fund to the extent provided by section 146.3;
- (y) **trusts to provide vacation pay**—a trust established pursuant to the terms of a collective agreement between an employer or an association of employers and employees or their labour organization for the sole purpose of providing for the payment of vacation or holiday pay, if no part of the property of the trust, after payment of its reasonable expenses, is
 - (i) available at any time after 1980, or
 - (ii) paid after December 11, 1979
 to any person (other than a person described in paragraph (k)) otherwise than as a consequence of that person being an employee or an heir or legal representative thereof; or
- (z) **mining reclamation trust**—a mining reclamation trust.

149(2)

This provision deals with some specific rules relating to the computation of income (for the purpose of determining whether it is "available")—most notably by excluding capital gains or losses from any such determination. Note that these provisions are limited to organizations under paragraphs 149(1)(e), (i), (j) and (l).

(2) **Determination of income**—For the purposes of paragraphs (1)(e), (i), (j) and (l), in computing the part, if any, of any income that was payable to or otherwise available for the personal benefit of any person or the total of any amounts that is not less than a percentage specified in any of those paragraphs of any income for a period, the amount of such income shall be deemed to be the amount thereof determined on the assumption that the amount of any taxable capital gain or allowable capital loss is nil.

149(3)

The next few provisions (to subsection 4.3) deal with special rules relating to computation of income for specific types of organizations, fraternal or benevolent societies and insurers.

(3) **Application of subsec. (1)**—Subsection (1) does not apply in respect of the taxable income of a benevolent or fraternal society or order from carrying on a life insurance business or, for greater certainty, from the sale of property used by it in the year in, or held by it in the year in the course of, carrying on a life insurance business.

(4) **Idem**—For the purposes of subsection (3), the taxable income of a benevolent or fraternal benefit society or order from carrying on a life insurance business shall be computed on the assumption that it had no income or loss from any other sources.

(4.1) **Idem**—Subject to subsection (4.2), subsection (1) applies in respect of an insurer described in paragraph (1)(t) only in respect of that proportion of the insurer's taxable income for a taxation year that

- (a) the part of the gross premium income (net of reinsurance ceded) earned in the year by the insurer that, in the opinion of the Minister, on the advice of the Superintendent of Financial Institutions or of the superintendent of insurance of the province under the laws of which the insurer is incorporated, was in respect of insurance of farm property, property used in fishing or residences of farmers or fishermen

is of

- (b) the gross premium income (net of reinsurance ceded) earned in the year by the insurer.

(4.2) **Idem**—Subsection (4.1) does not apply to an insurer described in paragraph (1)(t) in respect of the taxable income of the insurer for a taxation year where more than 90% of the total of the gross premium income (net of reinsurance ceded) earned in the year by the insurer and, where the insurer is not a prescribed insurer, all other insurers that

- (a) are specified shareholders of the insurer,
- (b) are related to the insurer, or
- (c) where the insurer is a mutual corporation, are part of a group that controls, directly or indirectly in any manner whatever, or are controlled, directly or indirectly in any manner whatever, by the insurer,

is in respect of insurance of farm property, property used in fishing or residences of farmers or fishermen.

(4.3) **Computation of taxable income of insurer**—For the purposes of this Part, in computing the taxable income of an insurer for a particular taxation year, the insurer shall be deemed to have deducted under paragraphs 20(1)(a), 20(7)(c) and 138(3)(a) and section 140 in each taxation year preceding the particular year and in respect of which paragraph (1)(t) applied to the insurer, the greater of

- (a) the amount it claimed or deducted under those provisions for that preceding year, and

- (b) the greatest amount that could have been claimed or deducted under those provisions to the extent that the total thereof does not exceed the amount that would be its taxable income for that preceding year if no amount had been claimed or deducted under those provisions.

149(5)

This provision is a specific taxing provision, overruling the general non-taxation of the income of some paragraph 149(1)(l) entities—clubs which exist primarily for the purpose of providing dining, recreational or sporting facilities to its members. Reference should be had to IT-83R3, *Non-profit Organizations—Taxation of Income from Property*, and to the *Laurentian Club* and *Manitoba Curling Association* cases.

(5) **Exception re investment income of certain clubs**— Notwithstanding subsections (1) and (2), where a club, society or association was for any period, a club, society or association described in paragraph (1)(l) the main purpose of which was to provide dining, recreational or sporting facilities for its members (in this subsection referred to as the "club"), an *inter vivos* trust shall be deemed to have been created on the later of the commencement of the period and the end of 1971 and to have continued in existence throughout the period, and, throughout that period, the following rules apply:

- (a) the property of the club shall be deemed to be the property of the trust;
- (b) where the club is a corporation, the corporation shall be deemed to be the trustee having control of the trust property;
- (c) where the club is not a corporation, the officers of the club shall be deemed to be the trustees having control of the trust property;
- (d) tax under this Part is payable by the trust on its taxable income for each taxation year;
- (e) the income and taxable income of the trust for each taxation year shall be computed on the assumption that it had no incomes or losses other than
 - (i) incomes and losses from property, and
 - (ii) taxable capital gains and allowable capital losses from dispositions of property, other than property used exclusively for and directly in the course of providing the dining, recreational or sporting facilities provided by it for its members;
- (f) in computing the taxable income of the trust for each taxation year
 - (i) there may be deducted, in addition to any other deductions permitted by this Part, \$2,000, and
 - (ii) no deduction shall be made under section 112 or 113; and
- (g) the provisions of subdivision k of Division B (except subsections 104(1) and (2)) do not apply in respect of the trust.

(6) **Apportionment rule**—Where it is necessary for the purpose of this section to ascertain the taxable income of a taxpayer for a period that is a part of a taxation year, the taxable income for the period shall be deemed to be the proportion of the taxable income for the taxation year that the number of days in the period is of the number of days in the taxation year.

(7) [Repealed under former Act]

(8) **Interpretation of para. (1)(j)**—For the purpose of paragraph (1)(j),

(a) a corporation is controlled by another corporation if more than 50% of its issued share capital (having full voting rights under all circumstances) belongs to

(i) the other corporation, or

(ii) the other corporation and persons with whom the other corporation does not deal at arm's length, but a corporation shall be deemed not to have acquired control of a corporation if it has not purchased (or otherwise acquired for a consideration) any of the shares in the capital stock of that corporation; and

(b) there shall be included in computing a corporation's income all gifts received by the corporation and all amounts contributed to the corporation to be used for scientific research and experimental development.

(9) **Rules**—In computing the income of a corporation for the purpose of determining whether it is described by paragraph (1)(j) for a taxation year,

(a) there may be deducted an amount not exceeding its income for the year computed without including or deducting any amount under this subsection; and

(b) there shall be included any amount that has been deducted under this subsection for the immediately preceding taxation year.

149(4)

The next two provisions set out what happens upon the organizations ceasing to be exempt from tax under section 149. In essence, there is a deemed realization of assets at the time this occurs, which is a non-taxable occurrence, and tax applies thereafter. Interpretation Bulletin IT-409, Winding-up of a Non-profit Organization, discusses Revenue Canada's view on these provision in significant detail.

(10) **Exempt corporations [becoming or ceasing to be exempt]**— Where, at any time (in this subsection referred to as "that time"), a corporation becomes or ceases to be exempt from tax under this Part on its taxable income otherwise than by reason of paragraph (1)(t), the following rules apply:

(a) the taxation year of the corporation that would otherwise have included that time shall be deemed to have ended immediately before that time and a new taxation year of the corporation shall be deemed to have commenced at that time;

(a.1) for the purpose of computing the corporation's income for its first taxation year ending after that time, the corporation shall be deemed to have deducted under

sections 20, 138 and 140 in computing its income for its taxation year ending immediately before that time, the greatest amount that could have been claimed or deducted for that year as a reserve under those sections;

- (b) the corporation shall be deemed to have disposed, immediately before the time that is immediately before that time, of each property (other than, where, at that time, the corporation ceases to be exempt from tax under this Part on its taxable income, a Canadian resource property or a foreign resource property) that was owned by it immediately before that time for an amount equal to its fair market value at that time and to have reacquired the property at that time at a cost equal to that fair market value;
- (c) where paragraph (b) applies in respect of depreciable property of the corporation and the capital cost thereof to the corporation immediately before the disposition exceeds the fair market value thereof at that time, for the purposes of sections 13 and 20 and any regulations made under paragraph 20(1)(a),
 - (i) the capital cost of the property to the corporation at that time shall be deemed to be the amount that was its capital cost thereof immediately before the disposition, and
 - (ii) the excess shall be deemed to have been allowed to the corporation in respect of the property under regulations made under paragraph 20(1)(a) in computing its income for taxation years ending before that time; and
- (d) notwithstanding section 111, no amount is deductible in computing the corporation's taxable income for a taxation year ending after that time in respect of a non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year ending before that time to the extent that the loss could have been applied to reduce the corporation's taxable income for taxation years ending before that time.

Proposed Amendment—149(10)

- (b) the corporation shall be deemed to have disposed, at the time (in this subsection referred to as the "disposition time") that is immediately before the time that is immediately before that time, of each property that was owned by it immediately before that time (other than a depreciable property of a prescribed class to which paragraph (d) applies) for an amount equal to its fair market value at that time and to have reacquired the property at that time at a cost equal to that fair market value;
- (c) for the purposes of applying sections 37, 65 to 66.4, 66.7, 111 and 126, subsections 127(5) to (12.3), and section 127.3 to the corporation, the corporation shall be deemed to be a new corporation the first taxation year of which began at that time;
- (d) where, immediately before the disposition time, the undepreciated capital cost to the corporation of depreciable property of a prescribed class exceeds the total of
 - (i) the fair market value of all the property of that class, and

- (ii) the amount in respect of property of that class otherwise allowed under regulations made for the purpose of paragraph 20(1)(a) or deductible under subsection 20(16) in computing the corporation's income for the taxation year that ended immediately before that time, the excess shall be deducted under paragraph 20(1)(a) in computing the income of the corporation for the taxation year that ended immediately before that time; and
- (e) where, immediately before the disposition time, the corporation's cumulative eligible capital in respect of a business exceeds the total of
 - (i) $\frac{3}{4}$ of the fair market value of the eligible capital property in respect of the business, and
 - (ii) the amount otherwise deducted under paragraph 20(1)(b) in computing the corporation's income from the business for the taxation year that ended immediately before that time,

the excess shall be deducted under paragraph 20(1)(b) in computing the corporation's income from the business for the taxation year that ended immediately before that time.

Application—The April 26, 1995 draft legislation, subsec. 76(2), will amend the portion of subsec. 149(10) after para. (a.1) to read as above, applicable where a corporation becomes or ceases to be exempt from tax on its taxable income under Part I of the Act after April 26, 1995.

Technical Note—Subsection 149(10) sets out the tax treatment of a corporation that either becomes or ceases to be exempt under Part I (otherwise than because of paragraph 149(1)(t), which exempts certain farmers' and fishers' insurers). In broad terms, subsection 149(10) provides for: a year-end, the mandatory deduction of available reserves, the fair market value disposition and reacquisition of the corporation's property, the preservation of latent recapture on depreciable property and a limitation on loss carry-forwards.

The principle underlying subsection 149(10) is that where a corporation's tax status changes, it ought to be treated more or less as though it had begun a new existence. This amendment applies that "fresh start" principle more comprehensively, drawing a clearer line between a corporation's tax position before it becomes or ceases to be exempt, and its position once that has happened. This is accomplished by broadening the deemed disposition and reacquisition rule in paragraph 149(10)(b) and by substantially reworking the portion of the subsection that follows that paragraph.

The deemed disposition and reacquisition rules in paragraph 149(10)(b) are made more complete by deleting the existing exception for the resource properties of a corporation that ceases to be exempt. A corporation will be treated as having disposed of all of its property, with the exception of depreciable property subject to the special rule in new paragraph 149(10)(d), for proceeds equal to its fair market value, at the "disposition time"—that is, the time immediately before the time immediately before it becomes or ceases to be exempt.

Next, the amendment replaces existing paragraphs 149(10)(c) and (d), and adds new paragraph (e). Paragraph 149(10)(c) currently applies where the corporation's capital cost of a depreciable property exceeds the property's fair market value. To ensure that on a later disposition of the property the corporation is subject to the recapture of any excess capital cost allowance it claimed before its status changed, the paragraph preserves the property's capital cost, and treats the excess as having been allowed as capital cost allowance. In keeping with the more complete separation between the tax history of a corporation before its status changes and its treatment afterwards, this rule is deleted.

New paragraph 149(10)(c), which is unrelated to the existing provision, provides that a corporation that becomes or ceases to be exempt from tax is to be treated for certain purposes of the Act as a new corporation the first taxation year of which began with its change in status. Those purposes include: the scientific research and experimental development deduction and credit under sections 37 and 127.3, the resource property rules in sections 65 to 66.4 and 66.7, loss carryovers under section 111, foreign tax credits under section 126, and investment tax credits under subsections 127(5) to (12.3). New paragraph 149(10)(c) thus precludes a corporation whose tax status changes from subsequently using any of the listed deductions and credits it may have accumulated before the change, and vice versa.

Existing paragraph 149(10)(d) limits a corporation's use of losses incurred before its tax status changed. Since new paragraph 149(10)(c) denies any carryover of losses across a change in status, existing paragraph (d) is superfluous. It is replaced with a rule requiring the corporation to realize any latent terminal loss before becoming or ceasing to be exempt from tax. This rule, in new paragraph 149(10)(d), provides that where immediately before the disposition time the corporation's undepreciated capital cost of depreciable property of a prescribed class exceeds the total of its fair market value and the amount otherwise deductible by the corporation as capital cost allowance or a terminal loss, the excess is to be deducted under paragraph 20(1)(a) in computing the corporation's income for the taxation year that ended immediately before its tax status changed.

New paragraph 149(10)(e) provides an analogous rule for the cumulative eligible capital (CEC) of a corporation that becomes or ceases to be exempt from tax. Where, immediately before the disposition time, the corporation's CEC in respect of a business exceeds the total of $\frac{3}{4}$ of the fair market value of the business's eligible capital property and the CEC amount otherwise deducted under paragraph 20(1)(b) for the corporation's last taxation year before its tax status changes, the excess is to be deducted in computing the corporation's income for that year.

(11) **Exception**—Subsection (10) does not apply to a corporation that ceases to be exempt from tax under this Part after November 12, 1981 by reason of control of the corporation being acquired by a person or persons pursuant to an agreement in writing entered into on or before that date.

Proposed Repeal—149(11)

Application—The April 26, 1995 draft legislation, subsec. 76(3), will repeal subsec. 149(11), applicable on Royal Assent.

Technical Note—Subsection 149(11) provides that subsection 149(10) does not apply to a corporation that becomes or ceases to be exempt from tax because its control is acquired, if the acquisition of control takes place pursuant to an agreement in writing entered into on or before November 12, 1981. With the passage of time, this transitional rule has become redundant.

149(12)

This relatively new provision (effective for the first time in 1993) puts a reporting requirement on paragraphs 149(1)(e) and (l) corporations if they have significant amounts of income or capital. With the exception of a tax return required of corporations under paragraph 150(1)(a), this is the only federal reporting requirement. The required form is T1044.

(12) **Information returns**—Every person who, because of paragraph (1)(e) or (l), is exempt from tax under this Part on all or part of the person's taxable income shall, within 6 months after the end of each fiscal period of the person and without notice or demand therefor, file with the Minister an information return for the period in prescribed form and containing prescribed information, if

- (a) the total of all amounts each of which is a taxable dividend or an amount received or receivable by the person as, on account of, in lieu of or in satisfaction of, interest, rentals or royalties in the period exceeds \$10,000;
- (b) at the end of the person's preceding fiscal period the total assets of the person (determined in accordance with generally accepted accounting principles) exceeded \$200,000; or
- (c) an information return was required to be filed under this subsection by the person for a preceding fiscal period.

149.1

This section contains the basic rules regarding registered charities and includes within it, the rules with regard to National Arts Service Organizations. The definition provisions found under subsection (1) are particularly important. These define the categories of charities and, in effect, set many of the rules. For example, while other provisions require that a charity meet its annual disbursement quota, the definition along with the appropriate regulations, determines how that quota is calculated.

Revenue Canada has issued an Information Circular, IC 80-10R, which deals with the operation of registered charities. The circular contains a huge

amount of information about the mechanics of meeting the statutory and administrative requirements.

It should be noted that nowhere is the term "charity" defined. The key cases dealing with the subject, both under the *Income Tax Act* and at common law, have been reproduced earlier in this work.

149.1(1) Definitions—In this section,

"charitable foundation"—"charitable foundation" means a corporation or trust that is constituted and operated exclusively for charitable purposes, no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof, and that is not a charitable organization;

"charitable organization"—"charitable organization" means an organization, whether or not incorporated,

- (a) all the resources of which are devoted to charitable activities carried on by the organization itself,
- (b) no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof,
- (c) more than 50% of the directors, trustees, officers or like officials of which deal with each other and with each of the other directors, trustees, officers or officials at arm's length, and
- (d) where it has been designated as a private foundation or public foundation pursuant to subsection (6.3) of this section or subsection 110(8.1) or (8.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, or has applied after February 15, 1984 for registration under paragraph 110(8)(c) of that Act or under the definition "registered charity" in subsection 248(1), not more than 50% of the capital of which has been contributed or otherwise paid into the organization by one person or members of a group of persons who do not deal with each other at arm's length and, for the purpose of this paragraph, a reference to any person or to members of a group does not include a reference to Her Majesty in right of Canada or a province, a municipality, another registered charity that is not a private foundation, or any club, society or association described in paragraph 149(1)(l);

"charitable purposes"—"charitable purposes" includes the disbursement of funds to qualified donees;

"charity"—"charity" means a charitable organization or charitable foundation;

"disbursement quota"—"disbursement quota" for a taxation year of a charitable foundation means the amount determined by the formula

$$0.8A + A.1 + B + \frac{C \times 0.045 [D - (E + F)]}{365} + G$$

Proposed Amendment—149.1(1)"disbursement quota"

$$A + A.1 + B + \frac{C \times 0.045 [D - (E + F)]}{365} + G$$

Application—The April 26, 1995 draft legislation, subsec. 77(1), will amend the formula in the definition "disbursement quota" in subsec. 149.1(1) to read as above, applicable to taxation years that end after November 1991, except that for such taxation years that begin before 1993, the formula in the definition "disbursement quota" in subsec. 149.1(1) shall be read as:

$$A + B + \frac{C \times 0.045 [D - (E + F)]}{365} + G$$

Technical Note—See under 149.1(1) "disbursement quota" A.

where

A is the total of all amounts each of which is the amount of a gift for which the foundation issued a receipt described in subsection 110.1(2) or 118.1(2) in its immediately preceding taxation year, other than

Proposed Amendment—149.1(1)"disbursement quota"A

A is 80% of the total of all amounts each of which is the amount of a gift for which the foundation issued a receipt described in subsection 110.1(2) or 118.1(2) in its immediately preceding taxation year, other than

Application—The April 26, 1995 draft legislation, subsec. 77(2), will amend the opening words of the description of A in the definition "disbursement quota" in subsec. 149.1(1) to read as above, applicable to taxation years that end after November 1991.

Technical Note—Section 149.1 contains rules relating to registered charities. Definitions for purposes of these rules are found in subsection 149.1(1).

The definition "disbursement quota" in subsection 149.1(1) is a formula which requires that a charity spend a specified proportion of donations for which tax receipts are issued, and in the case of charitable foundations a specified percentage of the value of investment assets, on charitable activities or gifts to other charities.

This formula was introduced by the Statute Revision Commission in the Fifth Supplement of the Revised Statutes of Canada, 1985, to replace the then-existing narrative description of the disbursement quota. The formula erroneously departed from the underlying structure of the disbursement quota, by failing to properly account for the mathematical relationship between gifts received by a charitable foundation and the amount that such a foundation is required to disburse. This amendment to the definition, which generally applies to taxation years that end after November 1991, restores the correct relationship between these two factors.

- (a) a gift of capital received by way of bequest or inheritance,
- (b) a gift received subject to a trust or direction to the effect that the property given, or property substituted therefor, is to be held by the foundation for a period of not less than 10 years, or
- (c) a gift received from a registered charity,

A.1 is 80% of the total of all amounts each of which is the amount of a gift received in a preceding taxation year, to the extent that the amount of the gift

- (a) is expended in the year, and
- (b) was excluded from the disbursement quota of the foundation
 - (i) because of paragraph (a) of the description of A for a taxation year that begins after 1993, or
 - (ii) because of paragraph (b) of the description of A,

B is

- (a) in the case of a private foundation, the total of all amounts each of which is an amount received by it in its immediately preceding taxation year from a registered charity, other than an amount that is a specified gift, or
- (b) in the case of a public foundation, 80% of the total of all amounts each of which is an amount received by it in its immediately preceding taxation year from a registered charity, other than an amount that is a specified gift,

C is the number of days in the taxation year,

D is the prescribed amount for the year in respect of property (other than a prescribed property) or a portion thereof owned by the foundation at any time in the immediately preceding 24 months that was not used directly in charitable activities or administration,

E is $\frac{5}{4}$ of the total of the amounts determined for A and A.1 for the year in respect of the foundation,

F is the amount equal to

- (a) in the case of a private foundation, the amount determined as the value of B for the year in accordance with paragraph (a) of the description of B, or
- (b) in the case of a public foundation, $\frac{5}{4}$ of the amount determined as the value of B for the year in accordance with paragraph (b) of the description of B, and

G is, for each of the first 10 taxation years of the foundation commencing after 1983, a portion of the amount, if any, by which

- (a) 90% of the amount, if any, by which the amount deducted by the foundation, for its last taxation year that commenced before 1984, pursuant to paragraph 149.1(18)(a) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952, as it read for that year, exceeds the total of the amounts determined in respect of the foundation under clauses 149.1(1)(e)(iv)(B) to (D) of that Act for its first taxation year commencing after 1983

exceeds

- (b) the total of all amounts each of which is an amount that, for a preceding taxation year, has been determined as the value of G or included under subparagraph 149.1(1)(e)(v) of the above-mentioned Act in determining the disbursement quota of the foundation, that is not less than the amount obtained when such excess is divided by the difference between 10 and the number of preceding taxation years of the foundation that commenced after 1983 and before the year.

"non-qualified investment"—"non-qualified investment" of a private foundation means

- (a) a debt (other than a pledge or undertaking to make a gift) owing to the foundation by
- (i) a person (other than an excluded corporation)
 - (A) who is a member, shareholder, trustee, settlor, officer, official or director of the foundation,
 - (B) who has, or is a member of a group of persons who do not deal with each other at arm's length who have, contributed more than 50% of the capital of the foundation, or
 - (C) who does not deal at arm's length with any person described in clause (A) or (B), or
 - (ii) a corporation (other than an excluded corporation) controlled by the foundation, by any person or group of persons referred to in subparagraph (i), by the foundation and any other private foundation with which it does not deal at arm's length or by any combination thereof,
- (b) a share of a class of the capital stock of a corporation (other than an excluded corporation) referred to in paragraph (a) held by the foundation (other than a share listed on a prescribed stock exchange or a share that would be a qualifying share within the meaning assigned by subsection 192(6) if that subsection were read without reference to the expression "issued after May 22, 1985 and before 1987"), and
- (c) a right held by the foundation to acquire a share referred to in paragraph (b),

and, for the purpose of this definition, an "excluded corporation" is

- (d) a limited-dividend housing company to which paragraph 149(1)(n) applies,
- (e) a corporation all of the property of which is used by a registered charity in its administration or in carrying on its charitable activities, or
- (f) a corporation all of the issued shares of which are held by the foundation;

"private foundation"—"private foundation" means a charitable foundation that is not a public foundation;

"public foundation"—"public foundation" means a charitable foundation of which,

- (a) where the foundation has been registered after February 15, 1984 or designated as a charitable organization or private foundation pursuant to subsection (6.3) or to

subsection 110(8.1) or (8.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,

- (i) more than 50% of the directors, trustees, officers or like officials deal with each other and with each of the other directors, trustees, officers or officials at arm's length, and
 - (ii) not more than 50% of the capital contributed or otherwise paid in to the foundation has been so contributed or otherwise paid in by one person or members of a group of such persons who do not deal with each other at arm's length, or
- (b) in any other case,
- (i) more than 50% of the directors or trustees deal with each other and with each of the other directors or trustees at arm's length, and
 - (ii) not more than 75% of the capital contributed or otherwise paid in to the foundation has been so contributed or otherwise paid in by one person or by a group of persons who do not deal with each other at arm's length

and, for the purpose of subparagraph (a)(ii), a reference to any person or to members of a group does not include a reference to Her Majesty in right of Canada or a province, a municipality, another registered charity that is not a private foundation, or any club, society or association described in paragraph 149(1)(l);

"qualified donee"—"qualified donee" means a donee described in any of paragraphs 110.1(1)(a) and (b) and the definitions "total charitable gifts" and "total Crown gifts" in subsection 118.1(1);

"qualified investment [para. 149.1(1)(i)]"—[Repealed under former Act]

"related business"—"related business", in relation to a charity, includes a business that is unrelated to the objects of the charity if substantially all persons employed by the charity in the carrying on of that business are not remunerated for that employment;

"specified gift"—"specified gift" means that portion of a gift, made in a taxation year by a registered charity, that is designated as a specified gift in its information return for the year;

"taxation year"—"taxation year" means, in the case of a registered charity, a fiscal period.

149.1(1.1)

This provision excludes from the definition of charitable expenditures amounts spent on political activity and a "specified gift", i.e., a gift made out of capital. Reference should be had, however, to subsection 149.1(10).

(1.1) **Exclusions**—For the purposes of paragraphs (2)(b), (3)(b), (4)(b) and (21)(a), the following shall be deemed to be neither an amount expended in a taxation year on charitable activities nor a gift made to a qualified donee:

- (a) a specified gift; and
- (b) an expenditure on political activities made by a charitable organization or a charitable foundation.

(1.2) **Authority of Minister**—For the purposes of the determination of D in the definition "disbursement quota" in subsection (1), the Minister may

- (a) authorize a change in the number of periods chosen by a charitable foundation in determining the prescribed amount; and
- (b) accept any method for the determination of the fair market value of property or a portion thereof that may be required in determining the prescribed amount.

149.1(2)

The four provisions from subsection 149.1(2) to 149.1(4.1) deal with situations under which charities can be deregistered. It should be noted that the rules vary depending upon the nature of the organization.

With regard to the issue of business activity, reference should be made to the *Alberta Institute on Mental Retardation* case. With regard to political activities, two Information Circulars, 78-3 and 87-1, should be reviewed.

Subsection 149.1(5) gives the Minister the power to reduce the amount a charity must spend to meet its disbursement quota. Subsections 149.1(6) through (6.2) are clarificatory provisions which for the most part are relieving in nature—setting clearer rules which charities have to meet.

(2) **Revocation of registration of charitable organization**—The Minister may, in the manner described in section 168, revoke the registration of a charitable organization for any reason described in subsection 168(1) or where the organization

- (a) carries on a business that is not a related business of that charity; or
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the total of
 - (i) 80% of the amount that would be determined for the year for A, and
 - (ii) the amount that would be determined for the year for A.1,

in the definition "disbursement quota" in subsection (1) in respect of the organization if it were a charitable foundation.

(3) **Revocation of registration of public foundation**—The Minister may, in the manner described in section 168, revoke the registration of a public foundation for any reason described in subsection 168(1) or where the foundation

- (a) carries on a business that is not a related business of that charity;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (c) since June 1, 1950, acquired control of any corporation;

- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities; or
- (e) at any time within the 24 month period preceding the day on which notice is given to the foundation by the Minister pursuant to subsection 168(1) and at a time when the foundation was a private foundation, took any action or failed to expend amounts such that the Minister was entitled, pursuant to subsection (4), to revoke its registration as a private foundation.

(4) **Revocation of registration of private foundation**—The Minister may, in the manner described in section 168, revoke the registration of a private foundation for any reason described in subsection 168(1) or where the foundation

- (a) carries on any business;
- (b) fails to expend in any taxation year, on charitable activities carried on by it and by way of gifts made by it to qualified donees, amounts the total of which is at least equal to the foundation's disbursement quota for that year;
- (c) since June 1, 1950, acquired control of any corporation; or
- (d) since June 1, 1950, incurred debts, other than debts for current operating expenses, debts incurred in connection with the purchase and sale of investments and debts incurred in the course of administering charitable activities.

(4.1) **Revocation of registration of registered charity**—Where a registered charity has made a gift to another registered charity and it may reasonably be considered that one of the main purposes of making the gift was to unduly delay the expenditure of amounts on charitable activities, the Minister may, in the manner described in section 168, revoke the registration of the charity that made the gift and, where it may reasonably be considered that the charities acted in concert, of the other charity.

(5) **Reduction**—The Minister may, on application made to the Minister in prescribed form by a registered charity, specify an amount in respect of the charity for a taxation year and, for the purpose of paragraph (2)(b), (3)(b) or (4)(b), as the case may be, that amount shall be deemed to be an amount expended by the charity in the year on charitable activities carried on by it.

(6) **Devoting resources to charitable activity**—A charitable organization shall be considered to be devoting its resources to charitable activities carried on by it to the extent that

- (a) it carries on a related business;
- (b) in any taxation year, it disburses not more than 50% of its income for that year to qualified donees; or
- (c) it disburses income to a registered charity that the Minister has designated in writing as a charity associated with it.

(6.1) **Charitable purposes**—For the purposes of the definition "charitable foundation" in subsection (1), where a corporation or trust devotes substantially all of its resources to charitable purposes and

- (a) it devotes part of its resources to political activities,
- (b) those political activities are ancillary and incidental to its charitable purposes, and
- (c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office, the corporation or trust shall be considered to be constituted and operated for charitable purposes to the extent of that part of its resources so devoted.

(6.2) **Charitable activities**—For the purposes of the definition "charitable organization" in subsection (1), where an organization devotes substantially all of its resources to charitable activities carried on by it and

- (a) it devotes part of its resources to political activities,
- (b) those political activities are ancillary and incidental to its charitable activities, and
- (c) those political activities do not include the direct or indirect support of, or opposition to, any political party or candidate for public office, the organization shall be considered to be devoting that part of its resources to charitable activities carried on by it.

149.1(6.3)

This provision allows the Minister, either on his own or upon application by a charity, to change the designation of an organization. An application has to be made using form T2095. This should be read in conjunction with subsection 149.1(6.5) which allows for the revocation of a designation. Reference should also be made to subsection 149.1(13) which allows for the switch from a private to a public foundation.

(6.3) **Designation as public foundation, etc.**—The Minister may, by notice sent by registered mail to a registered charity, on the Minister's own initiative or on application made to the Minister in prescribed form, designate the charity to be a charitable organization, private foundation or public foundation and the charity shall be deemed to be registered as a charitable organization, private foundation or public foundation, as the case may be, for taxation years commencing after the day of mailing of the notice unless and until it is otherwise designated under this subsection or its registration is revoked under subsection (2), (3), (4), (4.1) or 168(2).

149.1(6.4)

This subsection contains the basic rules with regard to national arts service organizations. Strictly speaking, these are not charities and are in fact creatures of the *Income Tax Act*. With some slight variations, they are subject to the same rules as are registered charities. This provision should be read in conjunction with Regulation 8700.

(6.4) **National arts service organizations**—Where an organization that

- (a) has, on written application to the Minister of Communications describing all of its objects and activities, been designated by that Minister on approval of those objects and activities to be a national arts service organization,
- (b) has, as its exclusive purpose and its exclusive function, the promotion of arts in Canada on a nation-wide basis,
- (c) is resident in Canada and was formed or created in Canada, and
- (d) complies with prescribed conditionsapplies in prescribed form to the Minister of National Revenue for registration, that Minister may register the organization for the purposes of this Act and, where the organization so applies or is so registered, this section and sections 110.1, 118.1, 168, 172, 180 and 230 and Part V apply, with such modifications as the circumstances require, to the organization as if it were an applicant for registration as a charitable organization or a registered charity that is designated as a charitable organization, as the case may be.

(6.5) **Revocation of designation**—The Minister of Communications may, at any time, revoke the designation of an organization made for the purpose of subsection (6.4) where

- (a) an incorrect statement was made in the furnishing of information for the purpose of obtaining the designation, or
- (b) the organization has amended its objects after its last designation was made,

and, where the designation is so revoked, the organization shall be deemed for the purpose of section 168 to have ceased to comply with the requirements of this Act for its registration under this Act.

149.1(7)

This provision allows the Minister to "associate" charities which allows a more free flow of income between them. Reference should be made to Information Circular 77-6 and the applicable form is T3011.

(7) **Designation of associated charities**—On application made to the Minister in prescribed form, the Minister may, in writing, designate a registered charity as a charity associated with one or more specified registered charities where the Minister is satisfied that the charitable aim or activity of each of the registered charities is substantially the same, and on and after a date specified in such a designation, the charities to which it relates shall, until such time, if any, as the Minister revokes the designation, be deemed to be associated.

149.1(8)

Subsection 149.1(8) allows for the accumulation of property which remains outside the ambit of the requirement of the disbursement quota. Application is usually made through the writing of a letter. The effect of accumulation is expanded upon in subsection 149.1(9).

(8) **Accumulation of property**—A registered charity may, with the approval in writing of the Minister, accumulate property for a particular purpose, on terms and conditions, and over such period of time, as the Minister specifies in the approval, and any property accumulated after receipt of such an approval and in accordance therewith, including any income earned in respect of the property so accumulated, shall be deemed

- (a) to have been expended on charitable activities carried on by the charity in the taxation year in which it was so accumulated; and
- (b) not to have been expended in any other year.

(9) **Idem**—Property accumulated by a registered charity as provided in subsection (8), including any income earned in respect of that property, that is not used for the particular purpose for which it was accumulated either

- (a) before the expiration of any period of time specified by the Minister in the Minister's approval of the accumulation, or
- (b) at an earlier time at which the registered charity decides not to use the property for that purposeshall, notwithstanding subsection (8), be deemed to be income of the charity for, and the amount of a gift for which it issued a receipt described in subsection 110.1(2) or 118.1(2) in, its taxation year in which the period referred to in paragraph (a) expires or the time referred to in paragraph (b) occurs, as the case may be.

(10) **Deemed charitable activity**—An amount paid by a charitable organization to a qualified donee that is not paid out of the income of the charitable organization shall be deemed to be a devotion of a resource of the charitable organization to a charitable activity carried on by it.

(11) [Repealed under former Act]

149.1(12)

This provision sets out various rules relating to other tests applied in this section. Note that the "control" test in paragraph (a) runs completely counter to the provisions of the *Ontario Charitable Gifts Act* with respect to a charity holding an interest in a commercial corporation.

(12) **Rules**—For the purposes of this section,

- (a) a corporation is controlled by a charitable foundation if more than 50% of the corporation's issued share capital, having full voting rights under all circumstances, belongs to
 - (i) the foundation, or
 - (ii) the foundation and persons with whom the foundation does not deal at arm's length, but, for the purpose of paragraph (3)(c) or (4)(c), as the case may be, a charitable foundation shall be deemed not to have acquired control of a corporation if it has not purchased or otherwise acquired for consideration more than 5% of the issued shares of any class of the capital stock of that corporation;

- (b) there shall be included in computing the income of a charity for a taxation year all gifts received by it in the year including gifts from any other charity but not including
 - (i) a specified gift or a gift referred to in paragraph (a) or (b) of the description of A in the definition "disbursement quota" in subsection (1),
 - (ii) any gift or portion of a gift in respect of which it is established that the donor is not a charity and
 - (A) has not been allowed a deduction under paragraph 110.1(1)(a) in computing the donor's taxable income or under subsection 118.1(3) in computing the donor's tax payable under this Part, or
 - (B) was not taxable under section 2 for the taxation year in which the gift was made, or
 - (iii) any gift or portion of a gift in respect of which it is established that the donor is a charity and that the gift was not made out of the income of the donor; and
- (c) subsections 104(6) and (12) are not applicable in computing the income of a charitable foundation that is a trust.

(13) **Designation of private foundation as public**—On application made to the Minister by a private foundation, the Minister may, on such terms and conditions as the Minister considers appropriate, designate the foundation to be a public foundation, and on and after the date specified in such a designation, the foundation to which it relates shall, until such time, if any, as the Minister revokes the designation, be deemed to be a public foundation.

149.1(14)

Subsections 149.1(14) and (15) require the filing of the public information return, T3010, and authority to Revenue Canada to make it available to the public.

(14) **Information returns**—Every registered charity shall, within 6 months from the end of each taxation year of the charity, file with the Minister both an information return and a public information return for the year, each in prescribed form and containing prescribed information, without notice or demand therefor.

(15) **Information may be communicated**—Notwithstanding section 241,

- (a) the information contained in a public information return referred to in subsection (14) shall be communicated or otherwise made available to the public by the Minister in such manner as the Minister deems appropriate; and
- (b) the Minister may make available to the public in such manner as the Minister deems appropriate an annual listing of all registered or previously registered charities indicating for each the name, location, registration number, date of registration and, in the case of a charity the registration of which has been revoked, annulled or terminated, the effective date of the revocation, annulment or termination.

(16) [Repealed under former Act]

(17) [Repealed under former Act]

(18) [Repealed under former Act]

(19) [Repealed under former Act]

149.1(20)

Subsections 149.1(20) and (21) deal with a "disbursement excess". These provisions are relieving in nature, allowing charities which "overspend" their disbursement quota to make up for it by "underspending" in subsequent years.

(20) **Rule regarding disbursement excess**—Where a registered charity has expended a disbursement excess for a taxation year, the charity may, for the purpose of determining whether it complies with the requirements of paragraph (2)(b), (3)(b) or (4)(b), as the case may be, for the immediately preceding taxation year of the charity and 5 or less of its immediately subsequent taxation years, include in the computation of the amounts expended on charitable activities carried on by it and by way of gifts made by it to qualified donees, such portion of that disbursement excess as was not so included under this subsection for any preceding taxation year.

(21) **Definition of "disbursement excess"**—For the purpose of subsection (20), "disbursement excess" for a taxation year of a charity means the amount, if any, by which

(a) the total of amounts expended in the year by the charity on charitable activities carried on by it or by way of gifts made by it to qualified donees

exceeds

(b) in the case of a charitable foundation, its disbursement quota for the year, and

(c) in the case of a charitable organization, the total of

(i) 80% of the amount that would be determined for the year for A, and

(ii) the amount that would be determined for the year for A.1,

in the definition "disbursement quota" in subsection (1) in respect of the organization if it were a charitable foundation.

150(1)(a)

This paragraph imposes a requirement on all corporations, *except* those which are registered charities, to file corporate tax returns. It should be noted that even non-taxable corporations should file annually, though, they will show no tax payable.

150.(1) Returns—A return of income for each taxation year in the case of a corporation (other than a corporation that was a registered charity throughout the year) and in the case of an individual, for each taxation year for which tax is payable by the individual or in which

the individual has a taxable capital gain or has disposed of a capital property, shall, without notice or demand therefor, be filed with the Minister in prescribed form and containing prescribed information,

- (a) **corporations**—in the case of a corporation, by or on behalf of the corporation within 6 months from the end of the year;

.....

168 to 172

Section 168 confers on the Minister the right to revoke the registration of a registered charity or registered Canadian amateur athletic association. Subsections 172(3) to (6) set out the appeal procedure. It should be pointed out that the court of first instance is the Federal Court of Appeal. Several cases on procedural issues will be found under the heading Federal Court Procedural Issues at page 2-1101 under the Cases Tab of this sourcebook.

168.(1) Notice of intention to revoke registration

Where a registered charity or a registered Canadian amateur athletic association

- (a) applies to the Minister in writing for revocation of its registration,
- (b) ceases to comply with the requirements of this Act for its registration as such,
- (c) fails to file an information return as and when required under this Act or a regulation,
- (d) issues a receipt for a gift or donation otherwise than in accordance with this Act and the regulations or that contains false information,
- (e) fails to comply with or contravenes any of sections 230 to 231.5, or
- (f) in the case of a registered Canadian amateur athletic association, accepts a gift or donation the granting of which was expressly or impliedly conditional on the association making a gift or donation to another person, club, society or association,

the Minister may, by registered mail, give notice to the registered charity or registered Canadian amateur athletic association that the Minister proposes to revoke its registration.

(2) **Revocation of registration**—Where the Minister gives notice under subsection (1) to a registered charity or to a registered Canadian amateur athletic association,

- (a) if the charity or association has applied to the Minister in writing for the revocation of its registration, the Minister shall, forthwith after the mailing of the notice, publish a copy of the notice in the Canada Gazette, and
- (b) in any other case, the Minister may, after the expiration of 30 days from the day of mailing of the notice, or after the expiration of such extended period from the day of mailing of the notice as the Federal Court of Appeal or a judge of that Court, on application made at any time before the determination of any appeal pursuant to subsection 172(3) from the giving of the notice, may fix or allow, publish a copy of the notice in the Canada Gazette, and on that publication of a copy of the notice, the registration of the charity or association is revoked.

172.(3) Appeal from refusal to register, revocation of registration, etc.—Where the Minister

- (a) refuses to register an applicant for registration as a charitable organization, private foundation, public foundation or Canadian amateur athletic association, or gives notice under subsection 149.1(2), (3), (4) or (4.1) or 168(1) to any such organization, foundation or association that the Minister proposes to revoke its registration,
- (a.1) designates or refuses to designate a registered charity pursuant to subsection 149.1(6.3) of this Act or subsection 110(8.1) or (8.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,
- (b) refuses to accept for registration for the purposes of this Act any retirement savings plan,
- (c) refuses to accept for registration for the purposes of this Act any profit sharing plan or revokes the registration of such a plan,
- (d) refuses to issue a certificate of exemption under subsection 212(14),
- (e) refuses to accept for registration for the purposes of this Act any education savings plan or revokes the registration of any such plan,
- (f) refuses to register for the purposes of this Act any pension plan or gives notice under subsection 147.1(11) to the administrator of a registered pension plan that the Minister proposes to revoke its registration,
- (f.1) refuses to accept an amendment to a registered pension plan, or
- (g) refuses to accept for registration for the purposes of this Act any retirement income fund,

the applicant or the organization, foundation, association or registered charity, as the case may be, in a case described in paragraph (a) or (a.1), the applicant in a case described in paragraph (b), (d), (e) or (g), a trustee under the plan or an employer of employees who are beneficiaries under the plan, in a case described in paragraph (c), or the administrator of the plan or an employer who participates in the plan, in a case described in paragraph (f) or (f.1), may appeal from the Minister's decision, or from the giving of the notice by the Minister, to the Federal Court of Appeal.

(4) Deemed refusal to register—For the purposes of subsection (3), the Minister shall be deemed to have refused

- (a) to register an applicant for registration as a charitable organization, private foundation, public foundation or Canadian amateur athletic association,
- (a.1) to designate a registered charity pursuant to an application under subsection 149.1(6.3) of this Act or subsection 110(8.2) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952,
- (b) to accept for registration for the purposes of this Act any retirement savings plan or profit sharing plan,
- (c) to issue a certificate of exemption under subsection 212(14),

- (d) to accept for registration for the purposes of this Act any education savings plan, or
- (e) [Repealed under former Act]
- (f) to accept for registration for the purposes of this Act any retirement income fund, where the Minister has not notified the applicant of the disposition of the application within 180 days after the filing of the application with the Minister, and, in any such case, an appeal from the refusal to the Federal Court of Appeal pursuant to subsection (3) may, notwithstanding anything in subsection 180(1), be instituted under section 180 at any time by filing a notice of appeal in the Court.

(5) **Idem**—For the purposes of subsection (3), the Minister shall be deemed to have refused

- (a) to register for the purposes of this Act any pension plan, or
- (b) to accept an amendment to a registered pension plan

where the Minister has not notified the applicant of the Minister's disposition of the application within 1 year after the filing of the application with the Minister, and, in any such case, an appeal from the refusal to the Federal Court of Appeal pursuant to subsection (3) may, notwithstanding anything in subsection 180(1), be instituted under section 180 at any time by filing a notice of appeal in the Court.

(6) **Application of subsec. 149.1(1)**—The definitions in subsection 149.1(1) apply to this section.

187.7 to 189

Sections 187.7 to 189 comprise Part V of the *Income Tax Act* and deal with several taxes which are in fact impossible on charities. Section 188 deals with the so-called revocation tax, an attempt to take any funds or assets owned by a charity which has had its registration revoked (either voluntarily or otherwise) which have not been transferred to other qualified donees or used for acceptable purposes.

Section 189 contains a series of rules dealing with non-qualified investments of private foundations. In essence, it is acceptable for a foundation to hold non-qualified investments (as defined in subsection 149.1(1)) so long as there is an appropriate return to the foundation. Where such a return is not generated, the taxpayer who benefits, not the foundation, is subject to tax.

187.7 Application of subsec. 149.1(1)—The definitions in subsection 149.1(1) apply to this Part.

188.(1) Revocation tax—Where the registration of a charity is revoked, the charity shall, on or before the day (in this subsection referred to as the "payment day") in a taxation year that is one year after the day on which the revocation is effective,

- (a) pay a tax under this Part for the year equal to the amount determined by the formula

$$A + B - C - D - E - F$$

where

A is the total of all amounts each of which is the fair market value of an asset of the charity on the day (in this section referred to as the "valuation day") that is 120 days before the day on which notice of the Minister's intention to revoke its registration is mailed,

B is the total of all amounts each of which is the amount of a gift for which it issued a receipt described in subsection 110.1(2) or 118.1(2) in the period (in this section referred to as the "winding-up period") that begins on the valuation day and ends immediately before the payment day, or an amount received by it in the winding-up period from a registered charity,

C is the total of all amounts each of which is the fair market value, at the time of the transfer, of an asset transferred by it in the winding-up period to a qualified donee,

D is the total of all amounts each of which is expended by it in the winding-up period on charitable activities carried on by it,

E is the total of all amounts each of which is paid by it in the winding-up period in respect of its debts that were outstanding on the valuation day and not included in determining the value of D, and

F is the total of all amounts each of which is a reasonable expense incurred by it in the winding-up period and not included in determining the value of D; and

(b) file with the Minister a return in prescribed form and containing prescribed information, without notice or demand therefor.

(2) **Idem**—A person (other than a qualified donee) who, after the valuation day of a charity, receives an amount from the charity is jointly and severally liable with the charity for the tax payable under subsection (1) by the charity in an amount not exceeding the amount by which the total of all such amounts so received by the person exceeds the total of all amounts each of which is

(a) a portion of such an amount that is included in determining an amount in the description of C, D, E or F in subsection (1) in respect of the charity, or

(b) the consideration given by the person in respect of such an amount.

(3) **Transfer of property tax**—Where, as a result of a transaction or series of transactions, property owned by a registered charity that is a charitable foundation and having a net value greater than 50% of the net asset amount of the charitable foundation immediately before the transaction or series of transactions, as the case may be, is transferred before the end of a taxation year, directly or indirectly, to one or more charitable organizations and it may reasonably be considered that the main purpose of the transfer is to effect a reduction in the disbursement quota of the foundation, the foundation shall pay a tax under this Part for the year equal to the amount by which 25% of the net value of that property determined as of the day of its transfer exceeds the total of all amounts each of which is its tax payable under this subsection for a preceding taxation year in respect of the transaction or series of transactions.

(4) **Idem**—Where property has been transferred to a charitable organization in circumstances described in subsection (3) and it may reasonably be considered that the

organization acted in concert with a charitable foundation for the purpose of reducing the disbursement quota of the foundation, the organization is jointly and severally liable with the foundation for the tax imposed on the foundation by that subsection in an amount not exceeding the net value of the property.

(5) **Definitions**—In this section,

"net asset amount"—"net asset amount" of a charitable foundation at any time means the amount determined by the formula

$$A - B$$

where

A is the fair market value at that time of all the property owned by the foundation at that time, and

B is the total of all amounts each of which is the amount of a debt owing by or any other obligation of the foundation at that time;

"net value"—"net value" of property owned by a charitable foundation, as of the day of its transfer, means the amount determined by the formula

$$A - B$$

where

A is the fair market value of the property on that day, and

B is the amount of any consideration given to the foundation for the transfer.

189.(1) Tax regarding non-qualified investment—Where at any particular time in a taxation year a debt (other than a debt in respect of which subsection 80.4(1) applies or would apply but for subsection 80.4(3)) is owing by a taxpayer to a registered charity that is a private foundation and at that time the debt was a non-qualified investment of the foundation, the taxpayer shall pay a tax under this Part for the year equal to the amount, if any, by which

- (a) the amount that would be payable as interest on that debt for the period in the year during which it was outstanding and was a non-qualified investment of the foundation if the interest were payable at such prescribed rates as are in effect from time to time during the period

exceeds

- (b) the amount of interest for the year paid on that debt by the taxpayer not later than 30 days after the end of the year.

(2) **Computation of interest on debt**—For the purpose of paragraph (1)(a), where a debt in respect of which subsection (1) applies (other than a share or right that is deemed by subsection (3) to be a debt) is owing by a taxpayer to a private foundation, interest on that debt for the period referred to in that paragraph shall be computed at the least of

- (a) such prescribed rates as are in effect from time to time during the period,
- (b) the rate per annum of interest on that debt that, having regard to all the circumstances (including the terms and conditions of the debt), would have been

agreed on, at the time the debt was incurred, had the taxpayer and the foundation been dealing with each other at arm's length and had the ordinary business of the foundation been the lending of money, and

- (c) where that debt was incurred before April 22, 1982, a rate per annum equal to 6% plus 2% for each calendar year after 1982 and before the taxation year referred to in subsection (1).

(3) **Share deemed to be debt**—For the purpose of subsection (1), where a share, or a right to acquire a share, of the capital stock of a corporation held by a private foundation at any particular time during the corporation's taxation year was at that time a non-qualified investment of the foundation, the share or right shall be deemed to be a debt owing at that time by the corporation to the foundation

- (a) the amount of which was equal to,
 - (i) in the case of a share or right last acquired before April 22, 1982, the greater of its fair market value on April 21, 1982 and its cost amount to the foundation at the particular time, or
 - (ii) in any other case, its cost amount to the foundation at the particular time,
- (b) that was outstanding throughout the period for which the share or right was held by the foundation during the year, and
- (c) in respect of which the amount of interest paid in the year is equal to the total of all amounts each of which is the amount of a dividend received on the share by the foundation in the year,

and the reference in paragraph (1)(a) to "such prescribed rates as are in effect from time to time during the period" shall be read as a reference to "2/3 of such prescribed rates as are in effect from time to time during the period".

(4) **Computation of interest with respect to a share**—For the purposes of subsection (3), where a share or right in respect of which that subsection applies was last acquired before April 22, 1982, the reference therein to "2/3 of such prescribed rates as are in effect from time to time during the period" shall be read as a reference to "the lesser of

- (a) a rate per annum equal to 4% plus 1% for each 5 calendar years contained in the period commencing after 1982 and ending before the particular time, and
- (b) a rate per annum equal to 2/3 of such prescribed rates as are in effect from time to time during the year".

(5) **Share substitution**—For the purpose of subsection (3), where a share or right is acquired by a charity in exchange for another share or right in a transaction after April 21, 1982 to which section 51, 85, 85.1, 86 or 87 applies, it shall be deemed to be the same share or right as the one for which it was substituted.

(6) **Taxpayer to file return and pay tax**—Every taxpayer who is liable to pay tax under this Part (except a charity that is liable to pay tax under [sub]section 188(1)) for a taxation year shall, on or before the day on or before which the taxpayer is, or would be if tax were payable by the taxpayer under Part I for the year, required to file a return of income or an information return under Part I for the year,

- (a) file with the Minister a return for the year in prescribed form and containing prescribed information, without notice or demand therefor;
- (b) estimate in the return the amount of tax payable by the taxpayer under this Part for the year; and
- (c) pay to the Receiver General the amount of tax payable by the taxpayer under this Part for the year.

(7) **Interest**—Where a taxpayer is liable to pay tax under this Part and has failed to pay all or any part thereof on or before the day on or before which the tax was required to be paid, the taxpayer shall pay to the Receiver General interest at the prescribed rate on the amount that the taxpayer failed to pay computed from the day on or before which the tax was required to be paid to the day of payment.

(8) **Provisions applicable to Part**—Subsections 150(2) and (3), sections 152 and 158, subsection 161(11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

207.3

This provision imposes a tax on institutions which have received certain cultural property if that property is disposed of within five years after the time it has been received. This is to ensure that individuals cannot get the benefit of the exemption from capital gains tax and then, in arrangements with the institution, arrange for the object to be sold by a tax-free entity. Reference may be had to Interpretation Bulletin IT-407R3.

The form to be used in such a situation is T913.

207.3 Tax payable by institution or public authority—Any institution or public authority that, at any time in a year, disposes of an object within 5 years after the object became an object described in subparagraph 39(1)(a)(i.1) shall, in respect of that year, pay a tax under this Part equal to 30% of the fair market value of the object at the time the object was so disposed of, unless the disposition was made to another institution or public authority that was, at the time of the disposition, designated under subsection 32(2) of the *Cultural Property Export and Import Act* either generally or for a specified purpose related to that object.

208

This is a provision which is designed to inhibit certain types of tax planning using tax-exempt entities to shelter resource royalty revenues.

208.(1) Tax payable by exempt person—Where in a taxation year an amount (other than an amount to which paragraph 18(1)(l.1) or (m) applies) was paid, payable, distributed or distributable in any manner whatever by a person (other than a prescribed person) who was exempt from tax under Part I on that person's taxable income to anyone in respect of any production from a Canadian resource property of the person of petroleum, natural gas or other related hydrocarbons or of metals or minerals to any stage that is not beyond the specified

stage or in respect of any revenue or income that may reasonably be regarded as attributable to that production, the person shall, in respect of the year, pay a tax under this Part equal to 33 1/3% of the lesser of

- (a) the total of all amounts in respect of the property, each of which is
 - (i) an amount that became receivable in the year and that was required by paragraph 12(1)(o) to be included in computing the person's income for the year,
 - (ii) an amount that was paid or became payable by the person in the year and that by virtue of paragraph 18(1)(l.1) or (m) was not deductible in computing the person's income for the year,
 - (iii) an amount by which the person's proceeds of disposition were increased by virtue of subsection 69(6) in the year, or
 - (iv) an amount by which the person's cost of acquisition was decreased by virtue of subsection 69(7) in the year, and
- (b) the proportion of the amount determined under paragraph (a) that
 - (i) the total of all amounts each of which is an amount (other than an amount to which paragraph 18(1)(l.1) or (m) applies) that was paid, payable, distributed or distributable by the person in the year in any manner whatever to
 - (A) another person (other than a person whose taxable income is exempt from tax under Part I), or
 - (B) another person whose taxable income is exempt from tax under Part I, where the amount was paid, payable, distributed or distributable as part of a transaction or event or series of transactions or events to which any person whose taxable income is not exempt from tax under Part I was a party

in respect of any production from the property of petroleum, natural gas or other related hydrocarbons or of metals or minerals to any stage that is not beyond the specified stage or in respect of any revenue or income that can reasonably be regarded as attributable to that production

is of

- (ii) the amount, if any, by which the total of
 - (A) the income of the person from the property for the year from the production of petroleum, natural gas or other related hydrocarbons or of metals or minerals to any stage that is not beyond the specified stage, computed in accordance with Part I on the assumption that the property was the person's only source of income and that the person was allowed only those deductions in computing income from the property (other than a deduction under paragraph 20(1)(v.1) or section 65) that may reasonably be regarded as applicable to that income from the property, and

- (B) the amount determined under subparagraph (i) exceeds
- (C) the amount determined under paragraph (a).

(1.1) **Definition of "specified stage"**—For the purpose of subsection (1), "specified stage" means, in respect of the production from a Canadian resource property

- (a) where the production is petroleum, natural gas or related hydrocarbons from an oil or gas well or a mineral resource, the crude oil stage or its equivalent;
- (b) where the production is metal or minerals (other than iron or petroleum or related hydrocarbons) from a mineral resource, the prime metal stage or its equivalent; and
- (c) where the production is iron from a mineral resource, the pellet stage or its equivalent.

(2) **Return and payment of tax**—A person liable to pay a tax under this Part in respect of a year shall, within 3 months from the end of the year,

- (a) file with the Minister a return for the year under this Part in prescribed form and containing prescribed information, without notice or demand therefor;
- (b) estimate in the return the amount of tax payable by the person under this Part in respect of the year; and
- (c) pay to the Receiver General the tax payable by the person under this Part for the year.

(3) **Liability of trustee**—Where a trustee of a trust liable to pay tax under subsection (1) does not pay to the Receiver General the amount of the tax within the time specified in subsection (2), the trustee is personally liable to pay on behalf of the trust the full amount of the tax and is entitled to recover from the trust any amount paid by the trustee as tax under this section.

(4) **Provisions applicable to Part**—Subsections 150(2) and (3), sections 152 and 158, subsections 161(1) and (11), sections 162 to 167 and Division J of Part I are applicable to this Part with such modifications as the circumstances require.

227.1

This section deals with directors' liability for certain types of taxes not paid by the corporation. It applies to non-taxable as well as taxable corporations.

227.1(1) Liability of directors for failure to deduct.—Where a corporation has failed to deduct or withhold an amount as required by subsection 135(3) or section 153 or 215, has failed to remit such an amount or has failed to pay an amount of tax for a taxation year as required under Part VII or VIII, the directors of the corporation at the time the corporation was required to deduct, withhold, remit or pay the amount are jointly and severally liable, together with the corporation, to pay that amount and any interest or penalties relating thereto.

(2) **Limitations on liability**—A director is not liable under subsection (1), unless

- (a) a certificate for the amount of the corporation's liability referred to in that subsection has been registered in the Federal Court under section 223 and execution for that amount has been returned unsatisfied in whole or in part;
- (b) the corporation has commenced liquidation or dissolution proceedings or has been dissolved and a claim for the amount of the corporation's liability referred to in that subsection has been proved within six months after the earlier of the date of commencement of the proceedings and the date of dissolution; or
- (c) the corporation has made an assignment or a receiving order has been made against it under the *Bankruptcy and Insolvency Act* and a claim for the amount of the corporation's liability referred to in that subsection has been proved within six months after the date of the assignment or receiving order.

(3) **Idem**—A director is not liable for a failure under subsection (1) where the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(4) **Limitation period**—No action or proceedings to recover any amount payable by a director of a corporation under subsection (1) shall be commenced more than two years after the director last ceased to be a director of that corporation.

(5) **Amount recoverable**—Where execution referred to in paragraph (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

(6) **Preference**—Where a director pays an amount in respect of a corporation's liability referred to in subsection (1) that is proved in liquidation, dissolution or bankruptcy proceedings, the director is entitled to any preference that Her Majesty in right of Canada would have been entitled to had that amount not been so paid and, where a certificate that relates to that amount has been registered, the director is entitled to an assignment of the certificate to the extent of the director's payment, which assignment the Minister is hereby empowered to make.

(7) **Contribution**—A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim.

230

The following sections deal with the rules relating to retention of books and records. Subsection 230(2) refers specifically to registered charities and registered Canadian amateur athletic associations, though all the provisions apply, generally speaking. Reference should also be made to Regulation 5800, paragraphs (d) to (g). For registered Canadian amateur athletic associations, Regulation 216 should be consulted.

230.(1) Records and books—Every person carrying on business and every person who is required, by or pursuant to this Act, to pay or collect taxes or other amounts shall keep records and books of account (including an annual inventory kept in prescribed manner) at the person's place of business or residence in Canada or at such other place as may be designated by the Minister, in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.

Proposed Amendment — Imaging Technology

Revenue Canada news release, October 31, 1994

National Revenue Minister David Anderson announced today that Revenue Canada has approved imaging technology as a way for business to keep books and records for tax purposes.

"Revenue Canada believes that technology is the key to improving the quality and efficiency of its programs and services," said Mr. Anderson. "Imaging is the latest of many initiatives, already in place; designed to: assist the business community; reduce the burden and cost of compliance; and help Canadian businesses be more competitive. Storing financial records using devices such as optical disks (CD-ROM) is less expensive than paper, and is more environmentally friendly."

Firms that provide imaging services estimate that a small retail store, for example, could anticipate a 10% to 20% reduction in related operational costs. A larger business which implements a full-featured imaging system within its corporate structure could expect a 30% to 60% savings in related operational costs.

Companies that would like to use imaging will have to follow the procedures for the technology outlined in the Canadian General Standards Board (CGSB) publication called Microfilm and Electronic Images as Documentary Evidence.

For technical information about imaging, contact Carl Colwell, Revenue Canada, at (613) 957-3661. More information about the CGSB publication is available by calling (613) 941-8703 or toll-free at 1-800-665-2472. For media information please contact Michel Cleroux, Media Relations, Revenue Canada, (613) 957-3504.

(1.1) [Repealed under former Act]

(2) **Idem**—Every registered charity and registered Canadian amateur athletic association shall keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing

- (a) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act;
- (b) a duplicate of each receipt containing prescribed information for a donation received by it; and
- (c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act.

(2.1) **Idem, lawyers**—For greater certainty, the records and books of account required by subsection (1) to be kept by a person carrying on business as a lawyer (within the meaning assigned by subsection 232(1)) whether by means of a partnership or otherwise, include all accounting records of the lawyer, including supporting vouchers and cheques.

(3) **Minister's requirement to keep records, etc.**—Where a person has failed to keep adequate records and books of account for the purposes of this Act, the Minister may require the person to keep such records and books of account as the Minister may specify and that person shall thereafter keep records and books of account as so required.

(4) **Limitation period for keeping records, etc.**—Every person required by this section to keep records and books of account shall retain

- (a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as is prescribed; and
- (b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the end of the last taxation year to which the records and books of account relate.

(5) **Exception**—Where, in respect of any taxation year, a person referred to in subsection (1) has not filed a return with the Minister as and when required by section 150, that person shall retain every record and book of account that is required by this section to be kept and that relates to that taxation year, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the day the return for that taxation year is filed.

(6) **Exception where objection or appeal**—Where a person required by this section to keep records and books of account serves a notice of objection or where that person is a party to an appeal to the Tax Court of Canada under this Act, that person shall retain every record, book of account, account and voucher necessary for dealing with the objection or appeal until, in the case of the serving of a notice of objection, the time provided by section 169 to appeal has elapsed or, in the case of an appeal, until the appeal is disposed of and any further appeal in respect thereof is disposed of or the time for filing any such further appeal has expired.

(7) **Exception where demand by Minister**—Where the Minister is of the opinion that it is necessary for the administration of this Act, the Minister may, by registered letter or by a demand served personally, require any person required by this section to keep records and books of account to retain those records and books of account, together with every account and voucher necessary to verify the information contained therein, for such period as is specified in the letter or demand.

(8) **Permission for earlier disposal**—A person required by this section to keep records and books of account may dispose of the records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, before the expiration of the period in respect of which those records and books of account are required to be kept if written permission for their disposal is given by the Minister.

251(1) and (2)

Because the issue of "arm's length relationships" can arise in the context of charities—most notably in determining whether a foundation is public or private—the following two subsections have been reproduced to aid readers in determining whether such a status exists.

251.(1) Arm's length—For the purposes of this Act,

- (a) related persons shall be deemed not to deal with each other at arm's length; and
- (b) it is a question of fact whether persons not related to each other were at a particular time dealing with each other at arm's length.

(2) Definition of "related persons"—For the purpose of this Act, "related persons", or persons related to each other, are

- (a) individuals connected by blood relationship, marriage or adoption;
- (b) a corporation and
 - (i) a person who controls the corporation, if it is controlled by one person,
 - (ii) a person who is a member of a related group that controls the corporation, or
 - (iii) any person related to a person described in subparagraph (i) or (ii); and
- (c) any two corporations
 - (i) if they are controlled by the same person or group of persons,
 - (ii) if each of the corporations is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation,
 - (iii) if one of the corporations is controlled by one person and that person is related to any member of a related group that controls the other corporation,
 - (iv) if one of the corporations is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation,
 - (v) if any member of a related group that controls one of the corporations is related to each member of an unrelated group that controls the other corporation, or
 - (vi) if each member of an unrelated group that controls one of the corporations is related to at least one member of an unrelated group that controls the other corporation.

INCOME TAX REGULATIONS

The following Income Tax Regulations which apply to charities and not-for-profit organizations have been referenced within the appropriate text relating to the *Income Tax Act*. Regulations expand upon the tax rules and, unlike Information Circulars or Interpretation Bulletins, have the force of law. In each case, the statute must authorize the passing of Regulations, which are authorized by the federal cabinet.

We would, however, make particular reference to Regulation 3500 which sets out in detail the rules regarding the issuing of charitable receipts.

Regulation 3504 prescribes The Nature Conservancy as the only foreign charity recognized under subparagraph 110.1(3)(a)(ii) and paragraph 118.1(6)(b) of the *Income Tax Act*.

216. Registered Canadian amateur athletic associations—(1) Every registered Canadian amateur athletic association shall make an information return in prescribed form for each fiscal period of the association within six months after the end of the fiscal period.

(2) For the purposes of this section, "fiscal period" means the period for which the accounts of the registered Canadian amateur athletic association have been ordinarily made up and, in the absence of an established practice, the fiscal period is that adopted by the association but no such fiscal period shall exceed 12 months.

PART XXXV

Receipts for Donations and Gifts

3500. Interpretation—In this Part,

"employees' charity trust"—"employees' charity trust" means a registered charity that is organized for the purpose of remitting, to other registered charities, donations that are collected from employees by an employer;

"official receipt"—"official receipt" means a receipt for the purposes of subsection 110.1(2) or (3) or 118.1(2), (6) or (7) of the Act, containing information as required by section 3501 or 3502;

"official receipt form"—"official receipt form" means any printed form that a registered organization or other recipient of a gift has that is capable of being completed, or that originally was intended to be completed, as an official receipt by it; and

"other recipient of a gift"—"other recipient of a gift" means a person, to whom a gift is made by a taxpayer, referred to in any of subparagraphs 110.1(1)(a)(iii) to (vii), paragraphs 110.1(1)(b) and (c), subparagraph 110.1(3)(a)(ii), paragraphs (c) to (g) of the definition "total charitable gifts" in subsection 118.1(1), the definition "total Crown gifts" in subsection 118.1(1), paragraph (b) of the definition "total cultural gifts" in subsection 118.1(1) and paragraph 118.1(6)(b) of the Act;

"registered organization"—"registered organization" means a registered charity, a registered Canadian amateur athletic association or a registered national arts service organization.

3504. Prescribed donees—For the purposes of subparagraph 110.1(3)(a)(ii) and paragraph 118.1(6)(b) of the Act, The Nature Conservancy, a charity established in the United States, is a prescribed donee.

PART XXXVII

Charitable Foundations

3700. Interpretation—In this Part,

"charitable foundation"—"charitable foundation" has the meaning assigned by paragraph 149.1(1)(a) of the Act;

"limited-dividend housing company"—"limited-dividend housing company" means a limited-dividend housing company described in paragraph 149(1)(n) of the Act;

"non-qualified investment"—"non-qualified investment" has the meaning assigned by paragraph 149.1(1)(e.1) of the Act;

"prescribed stock exchange"—"prescribed stock exchange" means a stock exchange referred to in Part XXXII;

"taxation year"—"taxation year" has the meaning assigned by paragraph 149.1(1)(l) of the Act.

.....

5800. "Required retention periods"—(1) For the purposes of paragraph 230(4)(a) of the Act, the required retention periods for records and books of account of a person are prescribed as follows:

.....

- (d) in respect of
- (i) any record of the minutes of meetings of the executive of a registered charity or registered Canadian amateur athletic association,
 - (ii) any record of the minutes of meetings of the members of a registered charity or registered Canadian amateur athletic association,
 - (iii) all documents and by-laws governing a registered charity or registered Canadian amateur athletic association, and
 - (iv) all records of any donations received by a registered charity that were subject to a direction by the donor that the property given be held by the charity for a period of not less than 10 years, the period ending on the day that is two years after the date on which the registration of the registered charity or the registered Canadian amateur athletic association under the Act is revoked;
- (e) in respect of all records and books of account that are not described in paragraph (d) and that relate to a registered charity or registered Canadian amateur athletic association whose registration under the Act is revoked, and in respect of the vouchers and accounts necessary to verify the information in such records and books of account, the period ending on the day that is two years after the date on which the registration of the registered charity or the registered Canadian amateur athletic association under the Act is revoked;
- (f) in respect of duplicates of receipts for donations (other than donations referred to in subparagraph (d)(iv)) that are received by a registered charity or registered Canadian amateur athletic association and are required to be kept by that charity or association pursuant to subsection 230(2) of the Act, the period ending on the day that is two years from the end of the last calendar year to which the receipts relate; and
- (g) notwithstanding paragraphs (c) to (f), in respect of all records, books of account, vouchers and accounts of a deceased taxpayer or a trust in respect of which a clearance certificate is issued pursuant to subsection 159(2) of the Act with respect

to the distribution of all the property of such deceased taxpayer or trust, the period ending on the day that the clearance certificate is issued.

8700. "Prescribed conditions"—For the purposes of paragraph 149.1(6.4)(d) of the Act, the following conditions are prescribed for a national arts service organization:

- (a) the organization is an organization
 - (i) that is, because of paragraph 149(1)(l) of the Act, exempt from tax under Part I of the Act,
 - (ii) that represents, in an official language of Canada, the community of artists from one or more of the following sectors of activity in the arts community, that is, theatre, opera, music, dance, painting, sculpture, drawing, crafts, design, photography, the literary arts, film, sound recording and other audio-visual arts, and such other sectors of artistic activity related to the creation or performance of works of art as the Minister of Communications may recognize,
 - (iii) no part of the income of which may be payable to, or otherwise available for the personal benefit of, any proprietor, member, shareholder, trustee, or settlor of the organization, except where the payment is for services rendered or is an amount to which paragraph 56(1)(n) of the Act applies in respect of the recipient,
 - (iv) all of the resources of which are devoted to the activities and objects described in its application for its last designation by the Minister of Communications pursuant to paragraph 149.1(6.4)(a) of the Act,
 - (v) more than 50 per cent of the directors, trustees, officers or other officials of which deal with each other at arm's length, and
 - (vi) no more than 50 per cent of the property of which at any time has been contributed or otherwise paid into the organization by one person or by members of a group of persons who do not deal with each other at arm's length and, for the purposes of this subparagraph, a reference to any person or to members of a group does not include a reference to Her Majesty in right of Canada or a province, a municipality, or a registered charity (other than a club, society or association described in paragraph 149(1)(l) of the Act or a private foundation as that term is defined in paragraph 149.1(1)(f) of the Act); and
- (b) the activities of the organization are confined to one or more of
 - (i) promoting one or more art forms,
 - (ii) conducting research into one or more art forms,
 - (iii) sponsoring arts exhibitions or performances,
 - (iv) representing interests of the arts community or a sector thereof (but not of individuals) before governmental, judicial, quasi-judicial or other public bodies,

- (v) conducting workshops, seminars, training programs and similar development programs relating to the arts for members of the organization, in respect of which the value of benefits received or enjoyed by members of the organization is required by paragraph 56(1)(aa) of the Act to be included in computing the incomes of those members,
- (vi) educating the public about the arts community or the sector represented by the organization,
- (vii) organizing and sponsoring conventions, conferences, competitions and special events relating to the arts community or the sector represented by the organization,
- (viii) conducting arts studies and surveys of interest to members of the organization relating to the arts community or the sector represented by the organization,
- (ix) acting as an information centre by maintaining resource libraries and data bases relating to the arts community or the sector represented by the organization,
- (x) disseminating information relating to the arts community or the sector represented by the organization, and
- (xi) paying amounts to which paragraph 56(1)(n) of the Act applies in respect of the recipient and which relate to the arts community or the sector represented by the organization.

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SCHEDULE VIII

Universities outside Canada

1. The universities situated in the United States of America that are prescribed by section 3503 are the following:

- Abilene Christian University, Abilene, Texas
- Adams State College, Alamosa, Colorado
- Ambassador University, Big Sandy, Texas
- American College, The, Bryn Mawr, Pennsylvania
- American Film Institute Center for Advanced Film and Television Studies, Los Angeles, California
- American Graduate School of International Management, Glendale, Arizona
- American International College, Springfield, Massachusetts
- American University, The, Washington, District of Columbia
- American University in Cairo, The, New York, New York
- Amherst College, Amherst, Massachusetts
- Anderson College, Anderson, South Carolina
- Andover Newton Theological School, Newton Centre, Massachusetts
- Andrews University, Berrien Springs, Michigan
- Anna Maria College (formerly Anna Maria College for Women), Paxton, Massachusetts
- Antioch University, New York, New York

Arizona State University, Tempe, Arizona
Asbury Theological Seminary, Wilmore, Kentucky
Associated Mennonite Biblical Seminary, Elkhart, Indiana
Atlantic Union College, South Lancaster, Massachusetts
Augsburg College, Minneapolis, Minnesota
Azusa Pacific College, Azusa, California
Babson College, Babson Park, Massachusetts
Baldwin-Wallace College, Berea, Ohio
Bard College, Annandale-on-Hudson, New York
Barnard College, New York, New York
Bates College, Lewiston, Maine
Beloit College, Beloit, Wisconsin
Bennington College, Bennington, Vermont
Bentley College, Waltham, Massachusetts
Beth Medrash, Govoha, Lakewood, New Jersey
Bethel College, Mishawaka, Indiana
Bethel College and Seminary, St. Paul, Minnesota
Bethel College, North Newton, Kansas
Biola University, LaMirada, California
Bob Jones University, Greenville, South Carolina
Bluffton College, Bluffton, Ohio
Boston College, Chestnut Hill, Massachusetts
Boston University, Boston, Massachusetts
Bowdoin College, Brunswick, Maine
Bowling Green State University, Bowling Green, Ohio
Brandeis University, Waltham, Massachusetts
Briarcliff College, Briarcliffe Manor, New York
Brigham Young University—Hawaii Campus, Laie, Hawaii
Brigham Young University, Provo, Utah
Brown University, Providence, Rhode Island
Bryn Mawr College, Bryn Mawr, Pennsylvania
Bucknell University, Lewisburg, Pennsylvania
California Institute of Technology, Pasadena, California
Calvin College, Grand Rapids, Michigan
Calvin Theological Seminary, Grand Rapids, Michigan
Canisius College, Buffalo, New York
Carleton College, Northfield, Minnesota
Carnegie-Mellon University, Pittsburgh, Pennsylvania
Carroll College, Waukesha, Wisconsin
Case Western Reserve University, Cleveland, Ohio
Catholic University of America, The, Washington, District of Columbia
Cedarville College, Cedarville, Ohio

Central Michigan University, Mount Pleasant, Michigan
Central Yeshiva Tomchei Tmimim-Lubavitch, Brooklyn, New York
Claremont McKenna College, Claremont, California
Clark University, Worcester, Massachusetts
Clarkson University, Potsdam, New York
Colby College, Waterville, Maine
Colgate University, Hamilton, New York
College of William and Mary, Williamsburg, Virginia
College of Wooster, The, Wooster, Ohio
Colorado College, The, Colorado Springs, Colorado
Colorado School of Mines, Golden, Colorado
Colorado State University, Fort Collins, Colorado
Columbia Bible College & Seminary, Columbia, South Carolina
Columbia Pacific University, San Rafael, California
Columbia Union College, Takoma Park, Maryland
Columbia University in the City of New York, New York, New York
Concordia College, Moorhead, Minnesota
Connecticut College, New London, Connecticut
Cornell University, Ithaca, New York
Covenant College, Lookout Mountain, Tennessee
Creighton University, Omaha, Nebraska
Curtis Institute of Music, The, Philadelphia, Pennsylvania
Dallas Theological Seminary, Dallas, Texas
Dana College, Blair, Nebraska
Dartmouth College, Hanover, New Hampshire
Denison University, Granville, Ohio
De Paul University, Chicago, Illinois
De Pauw University, Greencastle, Indiana
Detroit College of Law, Detroit, Michigan
Divinity School, The, Rochester, New York
Dordt College, Sioux Center, Iowa
Drake University, Des Moines, Iowa
Drew University, Madison, New Jersey
Dropsie University, The, Philadelphia, Pennsylvania
Drury College, Springfield, Missouri
Duke University, Durham, North Carolina
Earlham College, Richmond, Indiana
Eastern Baptist Theological Seminary, The, Philadelphia, Pennsylvania
Eastern Mennonite College, Harrisonburg, Virginia
Eastern Washington University, Cheney, Washington
Ecumenical Theological Center, Detroit, Michigan
Elmira College, Elmira, New York

Emerson College, Boston, Massachusetts
Emmanuel School of Religion, Johnson City, Tennessee
Emmaus Bible College, Dubuque, Iowa
Emory University, Atlanta, Georgia
Ferris State University, Big Rapids, Michigan
Florida Atlantic University, Boca Raton, Florida
Fordham University, New York, New York
Franciscan University of Steubenville, Steubenville, Ohio
Fresno Pacific College, Fresno, California
Fuller Theological Seminary, Pasadena, California
GMI Engineering & Management Institute, Flint, Michigan
Gallaudet College, Washington, District of Columbia
Geneva College, Beaver Falls, Pennsylvania
Georgetown University, Washington, District of Columbia
George Washington University, The, Washington, District of Columbia
George Williams College, Downers Grove, Illinois
Georgia Institute of Technology, Atlanta, Georgia
Goddard College, Plainfield, Vermont
God's Bible School and College, Cincinnati, Ohio
Gonzaga University, Spokane, Washington
Gordon College, Wenham, Massachusetts
Gordon-Conwell Theological Seminary, South Hamilton, Massachusetts
Goshen College, Goshen, Indiana
Grace College of the Bible, Omaha, Nebraska
Graceland College, Lamoni, Iowa
Greenville College, Greenville, Illinois
Grinnell College, Grinnell, Iowa
Gustavus Adolphus College, St. Peter, Minnesota
Hamilton College, Clinton, New York
Hampshire College, Amherst, Massachusetts
Harvard University, Cambridge, Massachusetts
Hebrew Union College—Jewish Institute of Religion, Cincinnati, Ohio
Hebrew Union College—Jewish Institute of Religion, Los Angeles, California
Hebrew Union College—Jewish Institute of Religion, New York, New York
Hillsdale College, Hillsdale, Michigan
Hobe Sound Bible College, Hobe Sound, Florida
Hollins College, Hollins College, Virginia
Hood College, Frederick, Maryland
Hope College, Holland, Michigan
Houghton College, Houghton, New York
Huntington College, Huntington, Indiana
Illinois Institute of Technology, Chicago, Illinois

Indiana University, Bloomington, Indiana
Iowa State University of Science and Technology, Ames, Iowa
Ithaca College, Ithaca, New York
Jamestown College, Jamestown, North Dakota
Jewish Theological Seminary of America, The, New York, New York
Johns Hopkins University, The, Baltimore, Maryland
Kansas State University, Manhattan, Kansas
Lafayette College, Easton, Pennsylvania
Lake Superior State University, Sault Ste. Marie, Michigan
Lehigh University, Bethlehem, Pennsylvania
Leland Stanford Junior University (Stanford University), Stanford, California
Le Moyne College, Syracuse, New York
Le Tourneau College, Longview, Texas
Liberty Baptist College, Lynchburg, Virginia
Life Chiropractic College, Marietta, Georgia
Life Chiropractic College-West, San Lorenzo, California
Logan College of Chiropractic, St. Louis, Missouri
Loma Linda University, Loma Linda, California
Louisiana State University, Baton Rouge, Louisiana
Loyola University, Chicago, Illinois
Lutheran Bible Institute of Seattle, Issaquah, Washington
Macalester College, St. Paul, Minnesota
Maharishi International University, Fairfield, Iowa
Manhattanville College, Purchase, New York
Mankato State University, Mankato, Minnesota
Marquette University, Milwaukee, Wisconsin
Marymount College, Tarrytown, New York
Massachusetts Institute of Technology, Cambridge, Massachusetts
Mayo Foundation, Rochester, Minnesota
Mayo Graduate School of Medicine, Rochester, Minnesota
Meadville-Lombard Theological School, Chicago, Illinois
Medical College of Pennsylvania, Philadelphia, Pennsylvania
Mesivta Yeshiva Rabbi Chaim Berlin, Brooklyn, New York
Messiah College, Grantham, Pennsylvania
Miami University, Oxford, Ohio
Michigan State University, East Lansing, Michigan
Michigan Technological University, Houghton, Michigan
Middlebury College, Middlebury, Vermont
Mills College, Oakland, California
Minot State University, Minot, North Dakota
Mirrer Yeshiva Central Institute, Brooklyn, New York
Montana College of Mineral Science and Technology, Butte, Montana

Montana State University, Bozeman, Montana
Moody Bible Institute, Chicago, Illinois
Moravian College, Bethlehem, Pennsylvania
Mount Holyoke College, South Hadley, Massachusetts
Mount Ida College, Newton Centre, Massachusetts
Mount Vernon College, Washington, District of Columbia
Multnomah School of the Bible, Portland, Oregon
Nasson College, Springvale, Maine
National College of Chiropractic, The, Lombard, Illinois
Nazarene Bible College, Colorado Springs, Colorado
Nazarene Theological Seminary, Kansas City, Missouri
Nebraska Wesleyan University, Lincoln, Nebraska
Ner Israel Rabbinical College, Baltimore, Maryland
New England College, Henniker, New Hampshire
New York University, New York, New York
Niagara University, Niagara, New York
North American Baptist Seminary, Sioux Falls, South Dakota
North Carolina State University at Raleigh, Raleigh, North Carolina
North Central College, Naperville, Illinois
North Dakota State University of Agriculture and Applied Science, Fargo, North
Dakota
Northeastern University, Boston, Massachusetts
Northrop Institute of Technology, Inglewood, California
Northwest College, Kirkland, Washington
Northwestern College, Orange City, Iowa
Northwestern College, St. Paul, Minnesota
Northwestern University, Evanston, Illinois
Northwood Institute, Midland, Michigan
Nyack Missionary College, Nyack, New York
Oakland University, Rochester, Michigan
Oakwood College, Huntsville, Alabama
Oberlin College, Oberlin, Ohio
Ohio College of Podiatric Medicine, Cleveland, Ohio
Ohio State University, The, Columbus, Ohio
Ohio University, Athens, Ohio
Old Dominion University, Norfolk, Virginia
Oral Roberts University, Tulsa, Oklahoma
Oregon State University, Corvallis, Oregon
Ottawa University, Ottawa, Kansas
Pace University, New York, New York
Pacific Graduate School of Psychology, Menlo Park, California
Pacific Lutheran University, Tacoma, Washington

Pacific Union College, Angwin, California
Pacific University, Forest Grove, Oregon
Palm Beach Atlantic College, West Palm Beach, Florida
Palmer College of Chiropractic, Davenport, Iowa
Palmer College of Chiropractic-West, Sunnyvale, California
Park College, Kansas City, Missouri
Pennsylvania College of Podiatric Medicine, Philadelphia, Pennsylvania
Pennsylvania State University, The, University Park, Pennsylvania
Philadelphia College of Bible, Langhorne, Pennsylvania
Philadelphia College of Textiles and Science, Philadelphia, Pennsylvania
Pine Manor College, Chestnut Hill, Massachusetts
Pomona College, Claremont, California
Princeton Theological Seminary, Princeton, New Jersey
Princeton University, Princeton, New Jersey
Principia College, The, Elmhurst, Illinois
Providence College, Providence, Rhode Island
Puget Sound Christian College ... A college of the Bible, Edmonds, Washington
Purdue University, Lafayette, Indiana
Rabbinical College of America, Morristown, New Jersey
Rabbinical College of Long Island, Long Beach, New York
Rabbinical Seminary of America, Forest Hills, New York
Radcliffe College, Cambridge, Massachusetts
Reed College, Portland, Oregon
Reconstructionist Rabbinical College, Wyncote, Pennsylvania
Reformed Bible College, Grand Rapids, Michigan
Reformed Theological Seminary, Jackson, Mississippi
Rensselaer Polytechnic Institute, Troy, New York
Rice University, Houston, Texas
Ricker College, Houlton, Maine
Ripon College, Ripon, Wisconsin
Roberts Wesleyan College, North Chili, New York
Rochester Institute of Technology, Rochester, New York
Rockefeller University, New York, New York
Rosemead Graduate School of Psychology, Rosemead, California
Rutgers—The State University, New Brunswick, New Jersey
St. John's College, Annapolis, Maryland
St. John's College, Santa Fe, New Mexico
St. John's University, Jamaica, New York
St. Lawrence University, Canton, New York
Saint Louis University, St. Louis, Missouri
Saint Mary-of-the-Woods College, Saint Mary-of-the-Woods, Indiana
Saint Mary's College, Notre Dame, Indiana

St. Mary's University of San Antonio, San Antonio, Texas
Saint Olaf College, Northfield, Minnesota
St. Vladimir's Orthodox Theological Seminary, Crestwood, New York
San Francisco State College, San Francisco, California
San Jose State College, San Jose, California
Sarah Lawrence College, Bronxville, New York
Scripps College, Claremont, California
Scripps Research Institute, The, La Jolla, California
Seattle Pacific University, Seattle, Washington
Seattle University, Seattle, Washington
Sherman College of Straight Chiropractic, Spartanburg, South Carolina
Simmons College, Boston, Massachusetts
Simpson College, Indianola, Iowa
Skidmore College, Saratoga Springs, New York
Smith College, The, Northampton, Massachusetts
South Dakota School of Mines and Technology, Rapid City, South Dakota
Southern Illinois University of Carbondale, Carbondale, Illinois
Southern Methodist University, Dallas, Texas
Southwestern Adventist College, Keene, Texas
Spring Arbor College, Spring Arbor, Michigan
Springfield College, Springfield, Massachusetts
State University College at Oswego, Oswego, New York
State University College at Potsdam, Potsdam, New York
State University of New York at Binghamton, Binghamton, New York
State University of New York at Buffalo, Buffalo, New York
State University of New York College of Arts and Science at Plattsburgh,
Plattsburgh, New York
Stephens College, Columbia, Missouri
Stevens Institute of Technology, Hoboken, New Jersey
Sunbridge College, Chestnut Ridge, New York
Swarthmore College, Swarthmore, Pennsylvania
Syracuse University, Syracuse, New York
Tabor College, Hillsboro, Kansas
Talmudical Yeshiva of Philadelphia, Philadelphia, Pennsylvania
Taylor University, Upland, Indiana
Teachers College, Columbia University, New York, New York
Telshe Yeshiva Rabbinical College of Telshe, Inc., Wickliffe, Ohio
Telshe Yeshiva-Chicago, Rabbinical College of Telshe-Chicago, Inc., Chicago,
Illinois
Temple Buell College, Denver, Colorado
Temple University, Philadelphia, Pennsylvania
Texas Chiropractic College, Pasadena, Texas

Thomas Aquinas College, Santa Paula, California
Touro College, New York, New York
Trinity Bible College, Ellendale, North Dakota
Trinity Christian College, Palos Heights, Illinois
Trinity College, Dunedin, Florida
Trinity College, Hartford, Connecticut
Trinity Episcopal School for Ministry, Ambridge, Pennsylvania
Trinity Evangelical Divinity School, Deerfield, Illinois
Trinity University, San Antonio, Texas
Tufts University, Medford, Massachusetts
Tulane University, New Orleans, Louisiana
Union College, Schenectady, New York
Union Institute, The, Cincinnati, Ohio
Union Theological Seminary, New York, New York
University of Alabama at Birmingham, The, Birmingham, Alabama
University of Arizona, The, Tucson, Arizona
University of Arkansas at Little Rock, Little Rock, Arkansas
University of California, Berkeley, California
University of California, San Francisco, California
University of Central Florida, Orlando, Florida
University of Chicago The, Chicago, Illinois
University of Cincinnati, Cincinnati, Ohio
University of Colorado, Boulder, Colorado
University of Delaware, Newark, Delaware
University of Denver, Denver, Colorado
University of Detroit, Detroit, Michigan
University of Dubuque, Dubuque, Iowa
University of Florida, Gainesville, Florida
University of Georgia, The, Athens, Georgia
University of Hawaii, Honolulu, Hawaii
University of Health Sciences/The Chicago Medical School, Chicago, Illinois
University of Houston, Houston, Texas
University of Idaho, Moscow, Idaho
University of Illinois, Urbana, Illinois
University of Iowa, Iowa City, Iowa
University of Judaism, Los Angeles, California
University of Kansas, Lawrence, Kansas
University of Kentucky, Lexington, Kentucky
University of Maine, Orono, Maine
University of Maryland, College Park, Maryland
University of Massachusetts at Amherst, Amherst, Massachusetts
University of Miami, Coral Gables, Florida

University of Michigan, The, Ann Arbor, Michigan
University of Minnesota, Minneapolis, Minnesota
University of Missouri, Columbia, Missouri
University of Montana, Missoula, Montana
University of Nebraska, The, Lincoln, Nebraska
University of Nevada-Reno, Reno, Nevada
University of North Carolina at Chapel Hill, Chapel Hill, North Carolina
University of North Dakota, Grand Forks, North Dakota
University of Notre Dame du Lac, Notre Dame, Indiana
University of Oklahoma, Norman, Oklahoma
University of Oregon, Eugene, Oregon
University of Pennsylvania, Philadelphia, Pennsylvania
University of Pittsburgh, Pittsburgh, Pennsylvania
University of Portland, Portland, Oregon
University of Rhode Island, Kingston, Rhode Island
University of Rochester, Rochester, New York
University of San Diego, San Diego, California
University of Santa Clara, Santa Clara, California
University of Southern California, Los Angeles, California
University of Texas, Austin, Texas
University of the Ozarks, Clarksville, Arkansas
University of the Pacific, Stockton, California
University of the South, The, Sewanee, Tennessee
University of Tulsa, Tulsa, Oklahoma
University of Utah, Salt Lake City, Utah
University of Vermont and State Agricultural College, Burlington, Vermont
University of Virginia, Charlottesville, Virginia
University of Washington, Seattle, Washington
University of Wisconsin, Madison, Wisconsin
Utah State University of Agriculture and Applied Science, Logan, Utah
Valparaiso University, Valparaiso, Indiana
Vanderbilt University, Nashville, Tennessee
Vassar College, Poughkeepsie, New York
Villanova University, Villanova, Pennsylvania
Wagner College, Staten Island, New York
Wake Forest University, Winston-Salem, North Carolina
Walla Walla College, College Place, Washington
Washington and Lee University, Lexington, Virginia
Washington Bible College, Lanham, Maryland
Washington State University, Pullman, Washington
Washington University, St. Louis, Missouri
Wayne State University, Detroit, Michigan

Wellesley College, Wellesley, Massachusetts
 Wesleyan University, Middleton, Connecticut
 Western Baptist College, Salem, Oregon
 Western Conservative Baptist Seminary, Portland, Oregon
 Western Evangelical Seminary, Portland, Oregon
 Western Michigan University, Kalamazoo, Michigan
 Western States Chiropractic College, Portland, Oregon
 Western Washington University, Bellingham, Washington
 Westminster Choir College, Princeton, New Jersey
 Westminster Theological Seminar, Philadelphia, Pennsylvania
 Wheaton College, Norton, Massachusetts
 Wheaton College, Wheaton, Illinois
 Whitman College, Walla Walla, Washington
 Whittier College, Whittier, California
 Whitworth College, Spokane, Washington
 William Tyndale College, Farmington Hills, Michigan
 Williams College, Williamstown, Massachusetts
 Wittenberg University, Springfield, Ohio
 Yale University, New Haven, Connecticut
 Yeshiva Ohr Elchonon Chabad/West Coast Talmudic Seminary, Los Angeles,
 California
 Yeshiva University, New York, New York
 Yeshiva University of Los Angeles, Los Angeles, California

2. The universities situated in the United Kingdom of Great Britain and Northern Ireland that are prescribed by section 3503 are the following:

Cranfield Institute of Technology, Cranfield, Bedford, England
 Gateshead Talmudical College, Gateshead, England
 Queen's University of Belfast, The, Belfast, Northern Ireland
 University of Aberdeen, Aberdeen, Scotland
 University of Bath, The, Bath, England
 University of Birmingham, Birmingham, England
 University of Bradford, Bradford, England
 University of Bristol, Bristol, England
 University of Cambridge, Cambridge, England
 University of Dundee, The, Dundee, Scotland
 University of Durham, Durham, England
 University of Edinburgh, Edinburgh, Scotland
 University of Exeter, Exeter, England
 University of Glasgow, Glasgow, Scotland
 University of Hull, The, Hull, England
 University of Lancaster, Lancaster, England
 University of Leeds, Leeds, England

University of Liverpool, Liverpool, England
University of London, London, England
University of Nottingham, The, Nottingham, England
University of Oxford, Oxford, England
University of Reading, Reading, England
University of St. Andrews, St. Andrews, Scotland
University of Sheffield, Sheffield, England
University of Southampton, Southampton, England
University of Strathclyde, Glasgow, Scotland
University of Wales, Cardiff, Wales
Victoria University of Manchester, Manchester, England

3. The universities situated in France that are prescribed by section 3503 are the following:

American University in Paris, Paris
Catholic Faculties of Lille, Lille
Catholic Faculties of Lyon, Lyon
Catholic Institute of Paris, Paris
École Nationale des Ponts et Chaussées, Paris
European Institute of Business Administration (INSEAD), Fontainebleau
Hautes Études Commerciales, Paris
Paris Graduate School of Management, Paris
University of Aix-Marseilles, Aix-en-Provence
University of Paris, Paris

4. The universities situated in Austria that are prescribed by section 3503 are the following:

University of Vienna, Vienna

5. The universities situated in Belgium that are prescribed by section 3503 are the following:

Catholic University of Louvain, Louvain
Free University of Brussels, Brussels

6. The universities situated in Switzerland that are prescribed by section 3503 are the following:

Franklin College of Switzerland, Sorengo (Lugano)
University of Fribourg, Fribourg
University of Geneva, Geneva
University of Lausanne, Lausanne

7. The universities situated in Vatican City that are prescribed by section 3503 are the following:

Pontifical Gregorian University

8. The universities situated in Israel that are prescribed by section 3503 are the following:

Bar-Ilan University, Ramat-Gan
Ben Gurion University of the Negev, Beersheba
Bezalel-Academy of Arts and Design, Jerusalem
Hebrew University of Jerusalem, The, Jerusalem
Jerusalem College for Women, Bayit-Vegan, Jerusalem
Jerusalem College of Technology, Jerusalem
Technion-Israel Institute of Technology, Haifa
Tel-Aviv University, Tel-Aviv
University of Haifa, Haifa
Weizmann Institute of Science, Rehovot
Yeshivat Aish Hatorah, Jerusalem

9. The universities situated in Lebanon that are prescribed by section 3503 are the following:

American University of Beirut, The, Beirut
St. Joseph University, Beirut

10. The universities situated in Ireland that are prescribed by section 3503 are the following:

National University of Ireland, Dublin
Royal College of Surgeons in Ireland, Dublin
University of Dublin, Dublin

11. The universities situated in the Federal Republic of Germany that are prescribed by section 3503 are the following:

Ukrainian Free University, Munich

12. The universities situated in Poland that are prescribed by section 3503 are the following:

Catholic University of Lublin, Lublin

13. The universities situated in Spain that are prescribed by section 3503 are the following:

University of Navarra, Pamplona

14. The universities situated in the People's Republic of China that are prescribed by section 3503 are the following:

Nanjing Institute of Technology, Nanjing

15. The universities situated in Jamaica that are prescribed for the purposes of section 3503 are the following:

University of the West Indies, Mona Campus, Kingston

16. The university situated in the Czech and Slovak Federal Republic that is prescribed by section 3503 is the following:

Universita Karlova, Prague

17. The universities situated in Australia that are prescribed by section 3503 are the following:

University of Sydney, The, Sydney

University of Tasmania, Hobart

18. The university situated in the Republic of Croatia that is prescribed by section 3503 is the following:

University of Zagreb, Zagreb

19. The university situated in South Africa that is prescribed by section 3503 is the following:

University of the Witwatersrand, The, Johannesburg