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LEGISLATIVE SUMMARY



Bill C-43: A Second Act to Implement Certain Provisions of the Budget Tabled in Parliament on February 11, 2014 and Other Measures

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

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Legislative Summary of Bill C-43
(Legislative Summary)

Publication No. 41-2-C43-E

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LEGISLATIVE SUMMARY OF BILL C-43: A SECOND ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON FEBRUARY 11, 2014 AND OTHER MEASURES*

1 BACKGROUND

Bill C-43, A second Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures (short title: Economic Action Plan 2014 Act, No. 2) was introduced in the House of Commons by the Minister of Finance and read a first time on 23 October 2014.

As its short and long titles show, the purpose of Bill C-43 is to implement the government's overall budget policy introduced in the House of Commons on 11 February 2014. Consistent with established legislative practice, it is the second implementation bill for Budget 2014. Bill C-31, the first such implementation bill, was passed on 19 June 2014.

Bill C-43 has four parts.

- Part 1 implements income tax measures (clauses 2 to 91).
- Part 2 implements certain Goods and Services Tax/Harmonized Sales Tax (GST/HST) measures (clauses 92 to 99).
- Part 3 implements measures respecting the *Excise Act, 2001* (clauses 100 and 101).
- Part 4 implements various measures, notably by enacting and amending a number of Acts, such as the *Canadian High Arctic Research Station Act*, the *Investment Canada Act*, the *DNA Identification Act*, the *Immigration and Refugee Protection Act*, the *Royal Canadian Mounted Police Superannuation Act* and Acts respecting radiocommunication, broadcasting and telecommunications (clauses 102 to 401).

2 DESCRIPTION AND ANALYSIS

This document provides a brief description of the key measures proposed in the bill by summarizing the main elements of each part. For ease of reference, the information is presented in the same order as it is listed in the summary of the bill.

2.1 PART 1: INCOME TAX AND RELATED MEASURES PROPOSED IN THE 11 FEBRUARY 2014 BUDGET

2.1.1 EXTENSION OF EXEMPTION FOR DISPOSITIONS OF PROPERTY USED IN FARMING AND FISHING BUSINESSES

The *Income Tax Act* (ITA) provides the estate of a deceased owner of a qualified farming or fishing property with a tax-deferred rollover if that property is bequeathed by the deceased taxpayer to his/her child, grandchild or great-grandchild. To qualify for the rollover, the property must have been used more than 50% of the time in a farming or fishing business. As well, the lifetime capital gains exemption is available to taxpayers who sell qualified farming or fishing property if the property has been used more than 50% of the time in a farming or fishing business.

Clauses 3, 7, 10, 11, 13, 14, 15, 26, 28, 30 and 71 of Bill C-43 amend the ITA to clarify that the intergenerational rollover and lifetime capital gains exemption provided for farming and fishing property applies to property that is used more than 50% of the time for a combination of farming and fishing activities.

2.1.2 EXTENSION OF TAX DEFERRAL PROVISION FOR BREEDING ANIMALS

According to section 80.3 of the ITA, a taxpayer carrying on a farming business in a prescribed region of drought, flood or excess moisture conditions at some time during the current fiscal period can defer a portion of the income from the sale of breeding animals until the next taxation year, or longer if the region continues to be prescribed; with this deferral, income from the sale can be offset by the cost of reacquiring breeding animals. The portion that can be deferred depends on the percentage reduction in the size of the breeding herd: up to 30% of the net sales amount if the herd is reduced by at least 15% but less than 30%; and up to 90% if the herd is reduced by more than 30%. “Breeding animals,” which are deer, elk and other similar grazing ungulates, bovine cattle, bison, goats and sheep that are kept for breeding purposes, as well as horses bred to produce pregnant mares’ urine for sale, must be older than 12 months.

Clause 17 of Bill C-43 amends the definition of the term “breeding animals” in section 80.3(1) to remove the reference to horses bred in relation to commercial production of pregnant mares’ urine, and to add a reference to horses older than 12 months that are for breeding purposes. As well, definitions for the terms “breeding bees” and “breeding bee stock” are added to that section. According to the definition, “breeding bees” and the larvae of those bees are not used principally to pollinate plants in greenhouses.

Clause 17(3) adds new section 80.3(4.1) to the Act. This new section, which provides the formula for calculating the amount of income eligible for deferral when a taxpayer in a prescribed region reduces his/her breeding bee stock, is consistent with that which exists in relation to a breeding herd; new section 80.3(7) addresses the unit of measurement in estimating a breeding bee stock. New section 80.3(4.1) gives rise to consequential amendments to sections 80.3(5) and 80.3(6). These changes apply to the 2014 and later taxation years.

2.1.3 AMATEUR ATHLETE TRUSTS

Clause 50 of Bill C-43 amends section 146(1) of the ITA to provide that an individual's qualifying performance income that is contributed to an amateur athlete trust is included in the definition of "earned income" for the determination of the individual's Registered Retirement Savings Plan (RRSP) contribution limit. It also amends the ITA to exclude amounts distributed to the beneficiary of an amateur athlete trust so that an individual's athletics-related income is not counted twice as earned income.

These amendments apply to the 2014 tax year and subsequent tax years. An individual can also submit a request to the Minister of National Revenue before 3 March 2015 to have the amendments apply retroactively to the 2011, 2012 or 2013 tax years. The individual's annual RRSP contribution limit would then be recalculated for each of those years and any further RRSP contribution room would be added to the individual's RRSP contribution room for 2014.

2.1.4 DEFINITION OF "SPLIT INCOME"

Clause 37 amends section 120.4(1) of the ITA in order to include in the definition of "split income" the income from a business or property that is paid or allocated to a minor child from a partnership or trust where a person related to the child is engaged in the activities of the partnership or trust to earn that income.

Clause 37(4) applies this change to the 2014 and subsequent tax years.

2.1.5 ELIMINATION OF GRADUATED RATE TAXATION FOR TRUSTS AND CERTAIN ESTATES

The federal income tax system treats both testamentary trusts – a trust or estate created as a consequence of a person's death – and *inter vivos* trusts – all trusts that are not testamentary trusts – as taxpayers; thus, trusts and estates are required to pay tax on their taxable income.¹ In calculating that income, a trust or estate is entitled to deduct income paid in that year to its beneficiaries or heirs, which reduces the tax payable by the trust or estate. The beneficiaries or heirs must both include that income when calculating their income for tax purposes and pay tax at their marginal rate of taxation; these tax rates are graduated. In situations where a trust or estate does not distribute income to its beneficiaries or heirs, it must include the income for tax purposes and pay tax at the appropriate rate. The tax rates applied to testamentary trusts and "grandfathered" *inter vivos* trusts – *inter vivos* trusts that were created before the taxation of capital gains in 1972 – are the same rates that are applied to individuals. *Inter vivos* trusts that are not grandfathered calculate federal tax using the highest federal marginal tax rate applied to individuals, which is currently 29%.

Clauses 2, 8 to 12, 16, 31, 38, 42 to 49, 51, 53, 54, 56 to 58, 60 to 63, 67, 71 to 73 and 76 of Bill C-43 amend sections 12, 34.1, 38, 39, 40, 69, 80.04, 112, 122, 127, 127.51, 127.52, 128.1, 138.1, 143, 143.1, 146.1, 149, 149.1, 156.1, 160, 161, 164, 165, 207.6, 210, 220, 248, 249, 249.1 and 256 of the ITA, and clause 80 amends section 304 of the *Income Tax Regulations*, to apply the highest federal

marginal tax rate – currently, 29% – to testamentary and all *inter vivos* trusts. With this change, the majority of trusts will be taxed at the same rate.² To allow estate planning, clause 71 amends section 248 of the ITA by adding the definition of the term “graduated rate estate”; it provides for graduated rates to be applied to the estate that arose as a consequence of an individual's death for up to 36 months following the individual's death. These measures apply to existing and new trust and estate arrangements for the 2016 and later taxation years.

Moreover, for the 2016 and later taxation years, clause 72 amends section 249 of the ITA to require all *inter vivos* trusts to have a fiscal period that coincides with the calendar year, and clause 58 amends section 161 of the ITA to require all such trusts to pay tax in instalments.

2.1.6 TAXATION OF CHARITABLE DONATIONS MADE ON DEATH OF A TAXPAYER

Individuals are permitted to claim a tax credit for a donation or gift made to a “qualified donee.”³ A donation or gift made as a consequence of an individual's will is deemed to have been made immediately before the individual's death, and the resulting tax credit is applied against the deceased individual's taxable income. Similarly, a donation or gift made by a deceased individual's estate is applied against the estate's taxable income.

Clauses 26 and 34 of Bill C-43 amend sections 104 and 118.1 of the ITA respectively to permit a deceased individual's estate to claim, a tax credit for a donation or gift in one of three periods:

- the taxation year of the estate in which the donation or gift is made;
- a taxation year of the estate that is earlier than the year in which the donation or gift is made; or
- the last two taxation years of the individual.

In order to qualify for the tax credit, the donation or gift provided pursuant to the will must be transferred to the qualified donee within 36 months after the individual's death.

2.1.7 NON-RESIDENT TRUST RULES

The non-resident trust rules in the ITA are designed to discourage Canadians from using non-resident trusts to avoid paying Canadian taxes; this objective is attained by taxing the income and gains of the non-resident trust as if the trust was resident in Canada. These rules were recently amended by the *Technical Tax Amendments Act, 2012*.

Clauses 23 and 24 of Bill C-43 amend sections 94 and 94.2(1) of the ITA to eliminate the tax exemption known as the “immigration trust” exemption. This exemption from the non-resident trust rules was provided to trusts in situations where the contributor to the trust had resided in Canada for less than 60 months.

2.1.8 ACCELERATED CAPITAL COST ALLOWANCE FOR CLEAN ENERGY EQUIPMENT

Clauses 85, 89 and 90 of Bill C-43 amend classes 43.1 and 43.2 of Schedule II of the *Income Tax Regulations* to expand eligibility for calculating the accelerated capital cost allowance for clean energy generation and conservation equipment. The classes will now include water current energy equipment⁴ and a broader range of equipment used to gasify eligible waste.⁵

This change to the eligibility criteria applies to property acquired after 10 February 2014.

2.1.9 FOREIGN ACCRUAL PROPERTY INCOME RULES

The foreign accrual property income (FAPI) rules in the ITA are designed to discourage Canadian corporations from shifting certain types of income to their foreign affiliates in an attempt to defer or avoid paying Canadian taxes. The rules attribute “passive income,” such as interest or royalties, to the related Canadian corporation so that the income is taxed in Canada when it is earned by the foreign affiliate. Income earned by a foreign affiliate for insurance policies associated with persons, property or businesses in Canada are included as FAPI of the Canadian corporation.

Clauses 25, 87 and 88 of Bill C-43 amends section 95 of the ITA and section 5907 of the *Income Tax Regulations* to expand the FAPI rules so that income earned for insurance policies associated with Canadian-resident persons, property or businesses is included as FAPI of a Canadian financial institution if those policies are transferred to a third party through a foreign affiliate of the Canadian financial institution. This arrangement is known as an “insurance swap.”

2.1.10 DEFINITION OF “INVESTMENT BUSINESS”

The FAPI rules set out in the ITA attribute certain types of income earned by a foreign affiliate to a Canadian corporation, thereby preventing the corporation from shifting those types of income to the foreign affiliate. Income earned by a foreign affiliate that operates as a regulated financial services business is exempted from the FAPI rules. Some Canadian businesses have structured their foreign operations to take advantage of this exemption by having a foreign affiliate engage in investment or securities transactions on its own behalf without that affiliate operating as a “true” financial services business.

Clause 25 of Bill C-43 amends the definition of the term “investment business” in section 95 of the ITA in the FAPI rules so that foreign affiliates that provide financial services are eligible for an exemption from the FAPI rules only if certain criteria are met. For example, the parent corporation of the foreign affiliate must be a regulated Canadian financial institution.

2.1.11 BACK-TO-BACK LOAN ARRANGEMENTS

The ITA's "thin capitalization" rules limit the ability of Canadian-resident corporations to reduce their taxable income through loans entered into with, and interest payments made to, a related non-resident corporation or a related beneficiary of a trust.⁶ In general, interest may not be deducted by a Canadian-resident corporation for tax purposes if the total debt of the corporation is more than 1.5 times the corporation's equity. Additionally, subject to any reduction provided under a tax treaty, Part XIII of the ITA imposes a 25% withholding tax on interest paid by a Canadian-resident corporation to a non-arm's-length non-resident corporation.

Clauses 4, 5, 6 and 64 of Bill C-43 amend sections 15, 17, 18 and 212 of the ITA to prevent a corporation from circumventing the thin capitalization rules and the Part XIII withholding tax through the use of a loan entered into with a foreign intermediary, such as a foreign bank; these loans are known as "back-to-back" loans. In general, the debt and interest owed by the Canadian-resident corporation to the foreign intermediary are included in the calculation of total debt for purposes of the thin capitalization rules and Part XIII withholding tax respectively.

2.1.12 EXTENSION OF TAX CREDIT FOR INTEREST PAID ON STUDENT LOANS

Clauses 35 and 36 expand the student loan interest tax credit by amending sections 118.62 and 118.92 of the ITA to include interest paid on Canada Apprentice Loans. This is effective 19 June 2014, the day on which the *Economic Action Plan 2014 Act, No. 1* was given Royal Assent. Division 30 of Part 6 of the Act brought into force the *Apprentice Loans Act*, which provides financial assistance to help apprentices with the cost of training, as well as interest-free loans until the apprentices complete their training.

2.1.13 COST TO CANADIAN-BASED BANKS OF USING EXCESS LIQUIDITY OF FOREIGN AFFILIATES

As mentioned in section 2.1.9 of this paper, the FAPI rules in the ITA are meant to discourage Canadian corporations from moving certain types of income to their foreign affiliates in an effort to defer or avoid paying Canadian taxes. The rules attribute "passive income," such as interest or royalties, to the related Canadian corporation so that the income is taxed in Canada when it is earned by the foreign affiliate.

The FAPI base erosion rules designate certain types of "active income" earned by a foreign affiliate through business activities, such as income from the sale of property or from the provision of certain services, as FAPI for the Canadian corporation. Under the base erosion rules, the amount of a loan received by a Canadian corporation from its foreign affiliate(s) is included as FAPI. These "upstream" loans have often been without interest and/or were not repaid.

Clauses 20, 25 and 40 of Bill C-43 amend the FAPI base erosion rules in sections 90, 95 and 125.3 of the ITA to allow foreign affiliates of Canadian banks to use their excess liquidity to make loans to their Canadian parent bank for use in the Canadian parent's operations without those loans being FAPI.

2.1.14 SECURITIES TRANSACTIONS AND BASE EROSION RULES

Because, as described in section 2.1.13 of this paper, the FAPI base erosion rules designate certain types of “active income” earned by a foreign affiliate through business activities, such as income earned from the sale of such property as government debt securities, to be FAPI for the Canadian corporation, income earned from the sale of government debt securities between foreign affiliates and their Canadian parent banks is FAPI for the Canadian bank.

Clause 25 of Bill C-43 amends the FAPI rules in section 95 of the ITA so that certain Canadian government debt securities transactions between foreign affiliates and their Canadian parent banks for arm’s-length customers are exempt from FAPI’s base erosion rules.

2.1.15 MODERNIZATION OF LIFE INSURANCE POLICY EXEMPTION TEST

Clauses 52, 79, 81, 82, 83, 84, 86 and 87 of Bill C-43 amend section 148 of the ITA, as well as sections 300, 306, 307, 308, 310, 1401 and 1403 of the *Income Tax Regulations*, to modernize the tax rules relating to the life insurance policy exemption test. The test is used to determine the extent to which an insurance policy is “savings-oriented” and thus a non-exempt policy that is taxed in the hands of the policyholder, or is “protection-oriented” and thus an exempt policy that is taxed in the hands of the insurer.

2.1.16 FOREIGN AFFILIATES

Clauses 19, 21 and 25 of Bill C-43 make a series of highly technical changes in order, among other things, to address certain gaps in the ITA respecting foreign affiliates.

Clause 19 of the bill adds section 87(8.3) to the ITA to prevent a taxpayer from using schemes that, in certain circumstances, circumvent the ITA in certain foreign merger transactions.

Clause 21 of the bill adds section 93.1 to the ITA to deem, in certain circumstances, a partnership to be a corporation and resident in a particular country, depending on the country of residence of the members of the partnership. This provision may, in some cases, allow income earned by the partnership to be included in the exempt earnings of a foreign affiliate.

Section 93.1 of the ITA provides that the ITA allow for tiered partnership structures. Section 93.1 of the ITA also stipulates that a dividend must be allocated to a member of a partnership based on the proportion of the member’s interest in the partnership relative to the fair market value of the partnership.

Clause 25 of the bill amends the definition of “foreign accrual tax” in section 95(1) of the ITA so that, in some cases, the foreign accrual tax of a foreign affiliate can be claimed for income tax purposes by another foreign affiliate.

2.1.17 INTERNATIONAL SHIPPING CORPORATIONS

Clauses 18, 71 and 74 of Bill C-43 amend the ITA to increase the flexibility of the tax rules for international shipping corporations. Clause 18 exempts from taxation the shipping income earned in Canada by certain non-resident taxpayers in certain circumstances. This tax exemption applies provided that, among other things, the home countries of these non-resident Canadian taxpayers offer a comparable exemption to resident Canadian taxpayers.

Clause 71 also adds a definition of “international shipping” to the ITA. This new definition lists the activities that are considered to be international shipping and those that are not. For example, the definition specifies that the operation of ships owned or leased by a person or partnership that are used, either directly or as part of a pooling arrangement, primarily in transporting passengers or goods constitutes international shipping under the ITA.

Lastly, clause 74 amends the ITA to allow interests in trusts or partnerships that engage in international shipping to be investments that enable an international shipping company to qualify for a tax exemption for its income from international shipping.

2.1.18 TAXATION OF TAXPAYERS INVESTING IN AUSTRALIAN TRUSTS

The use of a trust by businesses is common in certain foreign jurisdictions. For the purposes of foreign investment by Canadian branches of foreign-based multinational corporations, the ITA restricts such corporations from using their Canadian branches to invest in related foreign corporations through inter-corporate loans. These rules, which are known as the “foreign affiliate dumping” rules, generally deem interest on such loans to be dividends for tax purposes and subject to the withholding tax specified in Part XIII of the ITA.

Clause 22 of Bill C-43 adds section 93.3 to the ITA to deem an Australian-resident trust to be a non-resident corporation for income tax purposes if a foreign affiliate of a Canadian-resident corporation has a beneficial interest in the trust. As a consequence, the ITA’s rules preventing “foreign affiliate dumping” apply to investments in the trust by the Canadian-resident corporation. Additionally, certain reporting requirements are imposed on the Canadian-resident corporation regarding investments made in an Australian-resident trust. These rules apply to Canadian corporations that meet certain ownership requirements for foreign affiliates and that have filed an election with the Minister of National Revenue to be treated under a special regime for the treatment of foreign affiliates for taxation years after 2005 and before 12 July 2013.

2.1.19 FOREIGN AFFILIATE DUMPING RULES

As noted in section 2.1.18 of this paper, for purposes of foreign investment by Canadian branches of foreign-based multinational corporations, the ITA does not permit such corporations to use their Canadian branches to invest in related foreign corporations through inter-corporate loans. These rules, known as the “foreign

affiliate dumping” rules, generally deem interest on such loans to be dividends for tax purposes and subject to the withholding tax specified in Part XIII of the ITA.

As a means of facilitating the sale of shares and the transfer of debt between corporate entities, clauses 65, 66, 68, 76, 77, 88 and 91 of Bill C-43 amend sections 212.3, 219.1, 227, 256 and 261 of the ITA, and clause 88 amends section 5907 of the *Income Tax Regulations*, to provide a “safe harbour” from the foreign affiliate dumping rules during corporate takeovers. Various elections are permitted in respect of transactions that occurred in a previous taxation year. Clause 91 ensures that the Minister of National Revenue can make an assessment for a taxation year of a taxpayer’s tax, interest and penalties under the ITA, pursuant to section 152(4), after taking into account any retroactive coming into force of a provision in the ITA specified in clause 77 or any election permitted by clause 88.

2.1.20 NON-QUALIFYING COUNTRY AND THE BRITISH VIRGIN ISLANDS

The FAPI of a foreign affiliate includes the affiliate’s income for the year from a non-qualifying business. A business is non-qualifying if it is carried on by the affiliate through a permanent establishment in a “non-qualifying country.”

Clause 25(2) of Bill C-43 adds section 95(1)(a.1) to the ITA in order to amend the definition of “non-qualifying country.”

The amendment ensures that, after February 2014, a country or other jurisdiction will not be a non-qualifying country if the *Convention on Mutual Administrative Assistance in Tax Matters* is at that time in force and has effect for that country or jurisdiction. As a result of the amendment, a non-qualifying country is a country or other jurisdiction that meets all the following conditions:

- Canada does not have a tax treaty and has not signed an agreement that will be a tax treaty with the country or other jurisdiction;
- the *Convention on Mutual Administrative Assistance in Tax Matters* is neither in force nor has effect for the country or other jurisdiction;
- Canada does not have a comprehensive tax information exchange agreement with the country or other jurisdiction; and
- Canada has, more than 60 months earlier, begun negotiations for a comprehensive tax information exchange agreement with the country or other jurisdiction, or sought to do so by written invitation.

Clause 25(4) adds section 95(1.1) to the ITA to deem, for the purposes of paragraph (b) of the definition of “non-qualifying country,” the British Overseas Territory of the British Virgin Islands to have a comprehensive tax information exchange agreement with Canada that is in force and has effect after 2013 and before 11 March 2014. As a result, it is not a non-qualifying country during this period. An agreement between Canada and the British Virgin Islands came into force on 11 March 2014.

2.1.21 RULES FOR THE CANADIAN FILM OR VIDEO PRODUCTION TAX CREDIT REGIME

Clauses 41 and 70 of Bill C-43 simplify the rules for calculating the Canadian Film or Video Production Tax Credit, which generally amounts to 25% of the qualified labour expenditures incurred by a qualified corporation. In addition, for a production to be eligible for the tax credit, a Canadian film or video production certificate must be obtained from the Minister of Canadian Heritage.

The amendments concern productions whose development work began after 13 November 2003 or whose earliest labour expenditures were incurred after 2003.

For productions whose development work began before 14 November 2003 and whose earliest labour expenditures were incurred during the 2003 tax year, the corporation can choose whether or not to use the new rules.

2.1.22 TRUST LOSS RESTRICTION EVENT RULES

The ITA prohibits a corporation or trust from using, for its own tax purposes, a loss or other tax attribute – such as a credit or deduction – of a corporation that it has acquired. Moreover, the ITA deems the taxation year of the purchaser corporation to end immediately before the acquisition, thus requiring it to file and pay its tax liability for the year. These rules are known as the “loss restriction event” rules.

Clause 75 of Bill C-43 amends section 251.2 of the ITA to provide a mutual fund trust with an exemption from these loss restriction event rules, with the result that the trust is not deemed to have a taxation year that ends before the acquisition of a corporation. This exemption is deemed to come into force on 21 March 2013 unless the trust elects for the exemption to come into force on 1 January 2014.

2.1.23 CHILDREN’S FITNESS TAX CREDIT

Clauses 32, 33, 39, 55, 59 and 89 make changes to the non-refundable Children’s Fitness Tax Credit, which is currently valued at \$500. Beginning in the 2014 tax year, the Children’s Fitness Tax Credit will increase to \$1,000, and beginning in the 2015 tax year, it will become a refundable tax credit.

The fitness expenses eligible for the Children’s Fitness Tax Credit must be incurred for a program that lasts at least eight consecutive weeks and is not part of a school’s program of study. Moreover, only the costs of such programs – not any other fitness-related costs such as accommodation and travel costs – are eligible expenses. The child must be under 16 years of age for the program to qualify for the tax credit.

2.1.24 WITHHOLDING OF INCOME TAX FROM PAYMENTS MADE TO CERTAIN INDIVIDUALS

Clause 78 amends section 102(6) of the *Income Tax Regulations* to expand the list of employers for whom income tax is not required to be withheld on payments made to certain employees. The list is expanded to include payments made by prescribed international organizations and by prescribed international non-governmental

organizations to employees who are neither Canadian citizens nor permanent residents of Canada.

2.2 PART 2: GOODS AND SERVICES TAX/HARMONIZED SALES TAX

2.2.1 GOODS AND SERVICES TAX/HARMONIZED SALES TAX TREATMENT OF POOLED REGISTERED PENSION PLANS

An employer that participates in a registered pension plan is required to account for the GST/HST levied on taxable goods and services that it provides to a pension trust or corporation.

Clauses 92, 93, 94 and 97 of Bill C-43 clarify that the provisions of the *Excise Tax Act* (ETA) that pertain to registered pension plans are applicable to pooled registered pension plans. Pooled registered pension plans are multi-employer defined contribution pension plans that federally regulated employers can offer to their employees. As well, self-employed persons can participate in a pooled registered pension plan for their own benefit.

2.2.2 GOODS AND SERVICES TAX/HARMONIZED SALES TAX AND RESIDENTIAL HOUSING

New residential housing and residential housing that has been substantially renovated are subject to the GST/HST when such housing is sold by the builder prior to it being occupied as a place of residence. That said, if this housing is rented out or occupied by the builder as a place of residence before it is sold, the builder is responsible for paying the GST/HST; if it is subsidized housing, the builder's GST/HST liability is equal to the input tax credits or rebates that the builder is entitled to claim with respect to the construction of the housing.

Clause 92 of Bill C-43 amends section 123(1) of the ETA so that the term "builder" includes persons who substantially renovate residential condominium units, and the term "substantial renovation" includes situations where only part of a residential complex has been renovated.

As well, clause 95 amends the tax rules regarding subsidized housing so that, if the GST/HST rate payable by the builder is different from the tax rate applied to the input tax credits or rebates, the tax rates are deemed to be the same. A difference between the rates can occur if the GST/HST rate is lowered or if materials used in the construction of the housing were acquired from outside the province where the housing is located.

2.2.3 GOODS AND SERVICES TAX/HARMONIZED SALES TAX PUBLIC SERVICE BODY REBATES

GST/HST rebates of different percentages are available to public service bodies, including municipalities, universities, hospitals, charities and certain not-for-profit organizations. Not-for-profit organizations that operate health care facilities are

eligible to claim a public service body rebate, as they are classified as charities for the purposes of the rebate.

Clause 96 of Bill C-43 amends section 259 of the ETA to clarify that a not-for-profit organization that is classified as a charity can claim a public service body rebate only for the GST/HST that it incurred during its operation of a health care facility.

2.2.4 GOODS AND SERVICES TAX/HARMONIZED SALES TAX AND THE REFINING OF PRECIOUS METALS FOR A NON-RESIDENT PERSON

Certain services provided to a non-resident person that are performed entirely or partially in Canada may be taxed at a rate of 0% for purposes of the GST/HST. An example is emergency repair services for railway cars.

Clause 98 of Bill C-43 adds a new section 6.3 to Schedule VI of the ETA so that the services of refining precious metals that are supplied to a non-resident person who is not registered with the Canada Revenue Agency for purposes of the GST/HST are taxed at a rate of 0%. Currently, precious metals that are imported into Canada for refining are exempt from the GST/HST pursuant to the *Non-Taxable Imported Goods (GST/HST) Regulations*.

2.3 PART 3: AMENDMENTS TO THE *EXCISE ACT, 2001*

The *Economic Action Plan 2014 Act, No. 1* adopted by Parliament in 2014 amended the *Excise Act, 2001* to introduce a tax on cigarette inventories. While most of those provisions came into force on 12 February 2014, others will come into force on 1 December 2019.

Clauses 100 and 101 of Bill C-43 further amend the *Excise Act, 2001*. In particular, clause 100 adds new sections 181(2) and 181(3) to provide – respectively – a refund of the inventory tax paid on domestic cigarettes that are destroyed or re-worked by a tobacco licensee, or imported cigarettes that are destroyed by a particular person. In order to receive the refund, certain time and other conditions must be met. These provisions are deemed to have come into force on 12 February 2014.

Through a provision that comes into force on 1 December 2019, an amended section 181(3) will provide that the refund given to a particular person who destroys imported cigarettes will occur in relation to taxed cigarettes other than those on which the special duty provided for in section 53 of the *Excise Act, 2001* has been imposed. This special duty is applied on imported manufactured tobacco that is delivered to a duty-free shop and is not stamped.

Similarly, clause 101 adds new section 181.1(2) to provide a duty-free shop licensee that is subject to the aforementioned special duty with a refund of the inventory tax paid on imported cigarettes that it destroys; certain time and other conditions must be met. The provision comes into force on 1 December 2019.

2.4 PART 4: AMENDMENTS TO SEVERAL ACTS TO IMPLEMENT VARIOUS MEASURES

2.4.1 DIVISION 1: INTELLECTUAL PROPERTY

On 27 January 2014, the Government of Canada tabled five international treaties regarding intellectual property in Parliament, each accompanied by an explanatory memorandum.⁷

A few days later, Budget 2014 proposed to “modernize Canada’s intellectual property framework to better align it with international practices.”⁸ According to the government, the planned harmonization will help Canadian businesses gain access to international markets, lower costs and attract foreign investment to Canada “by reducing the regulatory burden and red tape faced by business.”⁹

The *Economic Action Plan 2014 Act, No. 1*, which implemented some of the budget provisions, amended the *Trade-marks Act* to integrate into Canadian domestic law the three international treaties that had been tabled in Parliament that related to trademarks. The order in council to bring the trademarks provisions into force has not yet been published.

Division 1 of Part 4 of Bill C-43 seeks, among other things, to integrate into Canadian domestic law the other two international treaties that had been tabled: the *Geneva Act (1999)* of the *Hague Agreement Concerning the International Registration of Industrial Designs* (Geneva Act of the Hague Agreement) and the *Patent Law Treaty*.

Accordingly, this division amends, on the one hand, the *Industrial Design Act* (IDA) to make it consistent with the Geneva Act of the Hague Agreement and on the other hand, the *Patent Act* (PA) to make it consistent with the *Patent Law Treaty*.

The IDA deals with the industrial design component of the Canadian intellectual property regime. Industrial designs are distinctive product features that appeal to the eye.¹⁰ Among other measures, the amendments to the IDA expand the authority of the Governor in Council to make regulations under the IDA, including a new authority to implement the Geneva Act of the Hague Agreement, despite any other provisions in the IDA (clause 111). The bill also amends the provisions relating to the contents of an application for the registration of a design, requests for priority (notably in clause 105) and the term of an exclusive right for a design (clause 106), which through the bill, consists of the 10-year period following the date of registration of the design or, if it ends later, the 15-year period following the filing date of the application.

The PA deals with the patents component of the Canadian intellectual property regime. Patents provide a legally protected exclusive right to an invention that prevents its manufacture, use or sale by unauthorized persons.¹¹

Among other measures, the amendments to the PA expand the authority of the Governor in Council to make rules or regulations governing certain aspects of the patent system, including the authority to implement the *Patent Law Treaty* (clause 118). The PA already provides that any rule or regulation made by the Governor in Council has the same force and effect as if it had been enacted in the PA (section 12(2) of

the PA). The bill also amends the requirements for obtaining a filing date for a patent application (clause 121) and requests for priority (clause 125). It also adds new provisions, such as those providing that applicants be sent a notice of the expiration of the deadline for meeting a requirement (clause 121), those concerning the reinstatement of a patent application (clause 137) and those ensuring the validity of a patent even if it was granted on the basis of an application that did not meet certain requirements (clause 138).

2.4.2 DIVISION 2: AMENDMENTS TO THE *AERONAUTICS ACT*

Division 2 adds new sections to the *Aeronautics Act* respecting the development of new aerodromes and the expansion or change in operations of existing aerodromes. Clause 143 of the bill adds new section 4.31 to the Act, permitting the Minister of Transport to make an order to prohibit a proposed development, expansion or operational change if it is likely to adversely affect aviation safety or if it is not in the public interest. The ministerial order is exempted from the general requirements to examine, register and publish legislation contained in the *Statutory Instruments Act*. Clause 144 of the bill adds new sections 4.9(k.1) and 4.9(k.2) to the Act, permitting the Governor in Council to make regulations respecting:

- the prohibition to develop a new aerodrome, or to expand or change the operations of an existing aerodrome; and
- the consultations that must be carried out by those who wish to build a new aerodrome or to expand the infrastructure or change the operations at existing aerodromes.

These amendments to the Act are intended to improve the federal government's ability to accommodate air traffic growth, to protect aerodromes from obstacles (e.g., wind farms) and to balance the social, economic and environmental impacts that aerodrome development has on local communities. Currently the federal government lacks legislative authority in these areas, and there are no formal consultation requirements.

2.4.3 DIVISION 3: ENACTMENT OF THE CANADIAN HIGH ARCTIC RESEARCH STATION ACT

Clause 145 of Bill C-43 enacts the Canadian High Arctic Research Station Act (CHARSA), which provides for the operation of the Canadian High Arctic Research Station (CHARS), to be built in Cambridge Bay, Nunavut. The purpose of CHARS, a departmental corporation, is to establish a hub for scientific research in the Canadian Arctic with a view to advancing knowledge of the area in order to improve economic opportunities, environmental stewardship and quality of life.

Under the CHARSA, CHARS is to undertake scientific research and develop technology, publish and disseminate studies, and promote the commercialization of technology, among other things (section 6 of the CHARSA). Its powers include the ability to:

- construct, manage and operate facilities;

- provide services;
- spend money it receives through its operations;
- enter into contracts and agreements;
- acquire and invest money;
- acquire, dispose of or license real property subject to the *Federal Real Property and Federal Immovables Act*; and
- make available and receive payment for any patents or other similar property right held by CHARS.

A board of directors, to be appointed by the Governor in Council, will oversee CHARS. The nine members of the board must have knowledge or experience that will assist CHARS in fulfilling its mandate, having regard to the ethnic, linguistic and regional diversity of Canada's Arctic (section 8).

Clause 169 of Bill C-43 repeals the *Canadian Polar Commission Act* (CPCA) and appoints the current members of the board of directors of the Commission to the CHARS board of directors as a transitional provision. Persons occupying a position in Aboriginal Affairs and Northern Development Canada's Arctic Science and Technology Directorate will be transferred to CHARS when clause 149 of Bill C-43 comes into force.

There are two notable distinctions between the new CHARSA and the repealed CPCA. Under the CHARSA, the Minister may require CHARS to provide him or her with reports on its operations, and may make such reports available to the public (section 7). In contrast, section 21 of the CPCA requires the Commission to submit to the Minister reports on its activities, including the financial statements, and to make annual reports available for public scrutiny. The CPCA also obliges the Minister to table the Commission's reports in Parliament.

The second noteworthy distinction relates to the interpretation of the term "knowledge." Section 2 of the CPCA explicitly defines knowledge as including traditional and aboriginal knowledge. In the new CHARSA, there is no definition of knowledge.

2.4.4 DIVISION 4: LOTTERIES FOR A CHARITABLE OR RELIGIOUS PURPOSE

Under section 207(1)(b) of the *Criminal Code*, a charitable or religious organization may conduct and manage a lottery in a province if the proceeds from the lottery are used for a charitable or religious purpose. However, section 207(4)(c) of the Code prohibits, among other things, certain lotteries operated on or through a computer.

Consequently, clause 171 of Bill C-43 amends section 207 of the Code by adding new section (4.1) to permit charitable or religious organizations to use a computer to sell tickets, select a winner or distribute prizes in a provincially licensed raffle or 50/50 draw.

2.4.5 DIVISION 5: AMENDMENTS TO THE *FEDERAL–PROVINCIAL FISCAL ARRANGEMENTS ACT*

Clauses 172 and 173 of Bill C-43 amend, respectively, sections 24.3(1)(b) and 25.1 of the *Federal–Provincial Fiscal Arrangements Act* to limit the application of the national standard for eligibility for social assistance. The standard currently prohibits the provinces and territories from requiring that their residents satisfy a minimum period of residence to be eligible for social assistance. If a province or territory fails to comply, it loses some of its share of the Canada Social Transfer. Under Bill C-43, the standard will apply only to certain residents of the provinces and territories: Canadian citizens, permanent residents, victims of human trafficking who hold a temporary resident permit and protected persons.

These changes will enable the provinces and territories to require that persons who are not covered by the new national standard for eligibility for social assistance – primarily refugee claimants in Canada awaiting a decision – satisfy a minimum period of residence to be eligible for social assistance.

These changes are similar to those proposed in Bill C-585, An Act to amend the Federal–Provincial Fiscal Arrangements Act (period of residence), which was introduced in the House of Commons on 4 April 2014 by Member of Parliament Corneliu Chisu.¹²

2.4.6 DIVISION 6: AMENDMENTS TO THE *RADIOCOMMUNICATION ACT*

Division 6 amends the *Radiocommunication Act*, which governs the manufacture and use of radiocommunication apparatuses in Canada. Such apparatuses include radio transmitters and receivers, cellular telephones and devices – large or small – equipped with wireless communications technology (Wi-Fi, Bluetooth, etc.).

In essence, Division 6 strengthens and clarifies the enforcement powers in the Act by:

- introducing an administrative monetary penalty regime that enables the Minister to impose penalties on individuals (\$25,000 to \$50,000) and companies (\$10 million to \$15 million) that contravene the Act without the involvement of the courts (clause 182);
- making the rules for competitive bidding for radiocommunication licences mandatory and making non-compliance with these rules an offence under the Act (clauses 176 and 180(1));
- explicitly prohibiting the use, possession, manufacture and sale of jamming devices in Canada (clauses 174, 175, 179 and 181 and 180(2));
- modernizing the provisions of the Act relating to the powers of inspectors and adding provisions that enable inspectors to require a person to provide them with information in that person's possession regarding compliance or non-compliance with the Act and to seize devices that are non-compliant with the Act (clause 178); and

- adding to the Act provisions that authorize the Minister of Industry to share information in the Minister's possession with federal, provincial, municipal or foreign law enforcement agencies if the Minister believes that the information may be relevant for the enforcement of the Act or the law of a foreign state (clause 177).

2.4.7 DIVISION 7: AMENDMENTS TO THE *REVOLVING FUNDS ACT*

The *Revolving Funds Act* attributes accountability for expending funds for the purpose of passport and other travel documents services. Amendments that came into force on 2 July 2013 transferred this accountability from the Department of Foreign Affairs and International Trade (DFAIT) to the Department of Citizenship and Immigration (CIC).¹³ One of the reasons identified for this move was that passport and travel documents services were better aligned with the duties of CIC. Another reason was that CIC had superior and more sustaining information technology (IT) capacities, including security features, which offered a cost-effective alternative to the aging IT passport system managed by DFAIT.¹⁴

However, while sections 4(1) and 4(2) of the Act were amended to replace “Minister of Foreign Affairs” with “Minister of Citizenship and Immigration,” the heading before section 4, by error, remained the same. Clause 183 of Bill C-43 corrects the heading to read, “Minister of Citizenship and Immigration.”

2.4.8 DIVISION 8: AMENDMENTS TO THE *ROYAL CANADIAN MINT ACT*

The Royal Canadian Mint was incorporated in 1969 under the *Royal Canadian Mint Act* “to mint coins in anticipation of profit and to carry out other related activities.”¹⁵ Clause 185 of Bill C-43 amends section 3 of the *Royal Canadian Mint Act* in order to eliminate the anticipation of profit by the Royal Canadian Mint with respect to the provision of goods and services to the federal government. Following this amendment, the Royal Canadian Mint is no longer entitled to a profit on its production of Canadian circulation coins. In turn, the cost to the Department of Finance for Canadian circulation coins will be lower and the seigniorage¹⁶ earned by the federal government will increase.

According to the Royal Canadian Mint's *Annual Report 2013*, revenue earned by the Royal Canadian Mint from the Department of Finance related to the production, management and delivery of Canadian circulation coins was approximately \$104 million for the year ended 31 December 2013.¹⁷

2.4.9 DIVISION 9: AMENDMENTS TO THE *INVESTMENT CANADA ACT*

The *Investment Canada Act* (ICA) obliges foreign investors to give notice when they acquire control of a Canadian business. However, the Act does not apply in certain circumstances, including acquisitions in connection with the realization of security granted for a loan or other financial assistance and not for any purpose related to the provisions of the Act (section 10(1)(c)). Clause 186(1) of Bill C-43 amends section 10(1)(c) by adding the condition that the ICA does not apply if the acquisitions are subject to approval under certain Acts.¹⁸

Bill C-43 states as well that Part IV of the ICA (which deals with investments subject to review) does not apply to the acquisition of control of a Canadian business in connection with the realization of security granted for a loan or other financial assistance if the acquisition is made for a purpose other than that related to the provisions of the ICA and if the acquisition is not subject to approval under certain Acts.¹⁹

Clause 187 amends the ICA to authorize public disclosure by the Minister of Industry of certain information related to national security. However, clause 187 also requires the Minister of Industry to inform the Canadian or non-Canadian in question before communicating or disclosing any information. If the Canadian or non-Canadian satisfies the Minister that communication or disclosure of the information would prejudice her or him, the Minister must not communicate or disclose the information.

2.4.10 DIVISION 10: AMENDMENTS TO THE *BROADCASTING ACT*

Division 10 amends the *Broadcasting Act* by adding section 34.1 to the Act, making it an offence for a broadcaster to charge its subscribers a fee for providing a paper bill (as opposed to an electronic version of the same bill).

This clause also adds section 34.2 to the Act, which outlines the penalties for individuals (\$25,000 for a first offence; \$50,000 thereafter) and corporations (\$250,000 for a first offence; \$500,000 thereafter) found to have contravened section 34.1. Lastly, this clause states that no proceedings related to such offences may be brought more than two years after the time when a contravention of section 34.1 is alleged to have taken place.

Clauses 191(1) and 191(2) of the bill add a reference to new section 34.1 (also introduced through this bill) and clarify the authority of the Canadian Radio-television and Telecommunications Commission.

2.4.11 DIVISION 11: AMENDMENTS TO THE *TELECOMMUNICATIONS ACT*

Division 11 amends the *Telecommunications Act*, with the aim of providing more competition in the telecommunications industry and giving consumers lower prices, uniform services from whomever provides telecommunications and more security with respect to telecommunications apparatus.

Division 11 affects the operations of the Canadian Radio-television and Telecommunications Commission (CRTC) in four ways.

- Clause 193 adds new section 24.1 to the Act, enabling the CRTC to ensure that all providers of telecommunications services other than Canadian carriers (who are already covered by section 24), including resellers, are subject to certain conditions, such as the need to provide information to customers about a regulatory measure or telecommunications services.
- Clause 194 adds a new section to the Act dealing with “pay-to-pay” billing practices that prohibit providers of telecommunications services from charging subscribers for the provision of paper bills.

- Clause 195 amends section 39 to allow for some information sharing by the CRTC with the Competition Bureau, if that information is required to deal with potential anti-competitive practices.
- Clauses 201 to 208 broaden the powers of the CRTC to impose administrative monetary penalties on individuals and companies that violate any provisions of the Act and its regulations, as well as decisions made by the CRTC under the Act. For a corporation, maximum penalties under the new regime would be \$10 million for a first violation and \$15 million for subsequent violations. For an individual, maximum penalties would be \$25,000 for a first violation and \$50,000 for subsequent violations.

Clauses 196 to 200 provide the Minister of Industry with new authorities to deal with telecommunications devices, such as telephone sets for individuals and businesses, fax machines and modems. They allow the Minister to establish a registration system and update existing procedures, including inspection powers, to assess conformity with technical requirements for telecommunications apparatus.

2.4.12 DIVISION 12: AMENDMENTS TO THE *BUSINESS DEVELOPMENT BANK OF CANADA ACT*

Division 12 amends the *Business Development Bank of Canada Act* to clarify the financial and management services that the Business Development Bank of Canada (BDC) is authorized to provide. Clause 211 amends section 2 to include joint ventures in the definition of the term “person.”

Clause 217 amends section 14 of the *Business Development Bank of Canada Act* to allow the BDC to extend credit, and provide liquidity, to a person through certain types of transactions prescribed by regulations. These services are to complement, rather than compete with, those services provided by commercial financial institutions; the services can be provided through intermediaries. The clause further amends the section to permit the BDC to provide loans to a person that is engaged – or is about to be engaged – in an enterprise outside Canada, and to make investments in persons outside Canada. The person must be an entity with at least one-third of its voting interests held by Canadians or with at least 50% Canadian membership, and at least one of these Canadians must be engaged – or about to be engaged – in a Canadian business. Furthermore, clause 217 allows the BDC to invest in foreign venture capital funds that meet certain criteria related to management.

Clause 218 amends section 17 to allow the BDC to conduct research, to mentor and to provide any other management services prescribed in the regulations. These services are complementary to those provided by private-sector businesses that provide management services.

Clauses 211 through 215 amend sections 2, 6, 7, 9 and 11 to:

- repeal the definition of “Executive Committee”;
- to allow a director to act as chairperson – or an officer or employee to act as president – for no more than 180 days without the approval of the Governor in Council;

- to delete the role of the BDC's executive committee in establishing committees of the board, maintaining this as a prerogative of the BDC's board of directors; and
- to require certain individuals associated with any BDC subsidiary to take an oath or make a solemn affirmation of office.

2.4.13 DIVISION 13: AMENDMENTS TO THE *NORTHWEST TERRITORIES ACT*

Clause 224 of Bill C-43 amends section 65 of the new *Northwest Territories Act*²⁰ by renumbering section 65 as 65(1) and adding a new subsection 65(2). This amendment is intended to ensure that the election period for the first general election to take place under the *Northwest Territories Act* will not overlap with the election period for a federal general election. Under section 9(3) of the old version of the *Northwest Territories Act*, an election had to take place within a maximum of every four years from the date of the return of the writs from the last general election. Section 65 of the new *Northwest Territories Act* maintains that time period, but provides no recourse in the case of an overlap with a federal general election. New section 65(2) provides that the period during which members of the Northwest Territories Legislative Assembly may continue in office as members may be extended until five years from the date fixed for the return of writs at the last general election under the older repealed version of the *Northwest Territories Act* should the territorial general election period overlap with that of a federal general election.²¹

2.4.14 DIVISION 14: AMENDMENTS TO THE *EMPLOYMENT INSURANCE ACT*

Clause 225 of Bill C-43 amends the *Employment Insurance Act* by adding section 96(8.97), which introduces an Employment Insurance premium credit for small businesses whose premiums are \$15,000 or less in 2015 and 2016. This measure was announced on 11 September 2014.²² It will effectively lower the premium rate from 1.88% to 1.60%, a reduction of 0.28%. Because the employer premium is 1.4 times the employee premium (section 68 of the *Employment Insurance Act*), the actual employer premium will decline from 2.63% to 2.24%, a decrease of 0.39%. The Canada Revenue Agency will automatically calculate the credit and include it on a business's income tax return.²³ The bill also replaces section 96(13.1) of the *Employment Insurance Act* to provide that no interest is owed on the refunds paid under this new measure.

Clause 226 of the bill amends the *Employment Insurance Act* by adding section 112.1, which provides that decisions made by the Employment Insurance Commission under section 56 of the *Employment Insurance Regulations* respecting the writing off of any penalty owing, amount payable or interest accrued on any penalty owing or amount payable are not subject to review.

2.4.15 DIVISION 15: AMENDMENTS TO THE *CANADA-CHILE FREE TRADE AGREEMENT IMPLEMENTATION ACT*

Division 15 amends the *Canada-Chile Free Trade Agreement Implementation Act*. Clause 227 removes a reference to Article N-09 in section 14 of the Act and adds section 14(2) to authorize the Minister of International Trade to appoint a panellist,

and to propose candidates to serve as the chair of or select the chair of, an arbitral panel established under Chapter N of the *Canada–Chile Free Trade Agreement*.

These amendments reflect the changes made in 2013 to the state-to-state dispute settlement mechanism of the *Canada–Chile Free Trade Agreement*.

2.4.16 DIVISION 16: AMENDMENTS TO THE *CANADA MARINE ACT*

Division 16 amends the *Canada Marine Act*. The Act provides for the establishment of Canada port authorities²⁴ and sets out their powers and their governance.

Clauses 229 to 231 of the bill grant new regulatory powers to the federal government. New sections 64.1 to 64.93 of the Act allow the Governor in Council to make regulations with respect to the development, use and environmental protection of ports governing undertakings situated in a port. Specifically, these regulations provide for the application of provincial Acts or regulations or municipal by-laws to these undertakings. Moreover, the new provisions allow the Minister to delegate the enforcement of these regulations to a province, municipality or any other body.

Clause 228 amends section 46 of the *Canada Marine Act* to authorize Canadian port authorities to acquire federal real property.

2.4.17 DIVISION 17: AMENDMENTS TO THE *DNA IDENTIFICATION ACT*

Division 17 amends the *DNA Identification Act* to create new indices in the National DNA Data Bank²⁵ that will contain DNA profiles from missing persons, from their relatives and from human remains to assist in finding missing persons and identifying human remains (clause 236(1), amending section 5(1) of the *DNA Identification Act*). The amendments also create a new index that will contain DNA profiles from victims of designated offences,²⁶ which will be used with the existing crime scene index and convicted offenders index to assist in investigating designated offences.

In addition, there will be a new index containing DNA profiles voluntarily submitted by individuals to assist in either the investigation of a missing person or of a designated offence. The new provisions set out the criteria for adding DNA profiles in the new indices, as well as those for both retaining and removing such profiles. Rules are also set out by which DNA profiles in the various indices will be compared with each other. The profiles in the relatives of missing persons index may only be compared to the missing persons index and the human remains index (clause 238, adding section 5.5(2) to the *DNA Identification Act*). The purposes for which the results of comparisons of DNA profiles may be communicated are specified, as are the uses to which the results of those comparisons may be put.

Finally, existing provisions requiring the removal of access to information that is in the convicted offenders index and the destruction of stored bodily substances where there has been an absolute or conditional discharge are repealed (clauses 241 and 243, amending sections 9(2) and 10(7) of the *DNA Identification Act*).

2.4.18 DIVISION 18: AMENDMENTS TO THE *PROCEEDS OF CRIME (MONEY LAUNDERING) AND TERRORIST FINANCING ACT*

Division 18 amends section 11.41 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. In particular, clause 250 adds to the definition of the term “foreign entity” certain foreign entities that are engaged in money services businesses, or that carry out services similar to money services businesses.

The definition of the term “money services businesses” was expanded by the first budget implementation bill adopted by Parliament in 2014 to include businesses dealing in virtual currencies. This provision is not yet in force, and regulations that would define the term “virtual currencies” have not yet been introduced.

2.4.19 DIVISION 19: AMENDMENTS TO THE *DEPARTMENT OF EMPLOYMENT AND SOCIAL DEVELOPMENT ACT*

Division 19 amends some of the provisions regarding the members of the Social Security Tribunal (SST), which hears appeals related to the Canada Pension Plan, disability benefits and Employment Insurance and Old Age Security. Currently, section 45(1) of the *Department of Employment and Social Development Act* limits the number of full-time members of the Social Security Tribunal (SST) to a maximum of 74. Section 45(3) also limits the number of hours that part-time members of the SST can dedicate to their duties as follows: “the combined time devoted to their functions and duties [must] not exceed the combined time that would be devoted by 11 full-time members.”

The SST case-processing backlog has been a matter of concern in Parliament.²⁷ Clause 252 of Bill C-43 amends section 45(1) of the *Department of Employment and Social Development Act* to eliminate the limit on the number of full-time members of the SST. In addition, it repeals section 45(3) so that part-time members are no longer limited in the number of hours they can devote to their SST duties.

2.4.20 DIVISION 20: AMENDMENTS TO THE *PUBLIC HEALTH AGENCY OF CANADA ACT*

Division 20 amends the *Public Health Agency of Canada Act* (PHACA) to create a new position of “President” within the Public Health Agency of Canada and implements certain modifications to the existing status of the Agency’s “Chief Public Health Officer.”

Clause 253 introduces the term “President,” while clause 254 creates the position, specifying that the person holding the position is the chief executive officer of the Agency with the rank of deputy head of a department. The Governor in Council is to appoint the President and set the amount of remuneration for the position. The President holds office during pleasure for a renewable maximum term of five years.

Clause 255 amends section 6 of the PHACA to change the rank and status of the Chief Public Health Officer from deputy head to an officer of the Agency. Clause 256 adds to the existing roles and functions of the Chief Public Health Officer that of

providing science-based advice to the Minister of Health and the Agency's President on public health matters.

Clause 257 repeals section 9 of the PHACA, which granted the rank and status of deputy head of a department to the Chief Public Health Officer. Clause 258 repeals section 10(2) of the Act, which allowed for reimbursement of the Chief Public Health Officer's travel, living and other expenses during absences from his or her usual workplace.

Clause 259 makes a consequential amendment to the *Financial Administration Act* to replace "Chief Public Health Officer" with "President" as the Agency's accounting officer.

Finally, clause 260 specifies that the amendments to the Act will come into force on a date fixed by order of the Governor in Council.

2.4.21 DIVISION 21: REORGANIZATION OF FEDERAL CROWN CORPORATIONS RESPONSIBLE FOR INTERNATIONAL BRIDGES

Division 21 amends the provisions in Division 8 of the *Economic Action Plan 2013 Act, No. 2* in order to ensure that they apply to any corporation resulting from the amalgamation of two or more of the following four federal Crown corporations: the Federal Bridge Corporation Limited, the St. Mary's River Bridge Company, the Seaway International Bridge Corporation, Ltd. and the Blue Water Bridge Authority. These corporations operate international bridge crossings between Canada and the United States. The St. Mary's River Bridge Company and the Seaway International Bridge Corporation, Ltd. are both fully owned subsidiaries of the Federal Bridge Corporation Limited, whereas the Blue Water Bridge Authority is an autonomous parent Crown corporation.

Section 252 of the *Economic Action Plan 2013 Act, No. 2* sets out that any corporation resulting from the amalgamation of two or more of these four Crown corporations will operate under the direction of the chief executive officer and the members of the board of directors of the Federal Bridge Corporation Limited. Bill C-43 repeals sections 253 to 260 of the Act (clause 263) and replaces them with new provisions (clause 264) that clarify, among other things, that any amalgamated corporation will have the power to collect tolls and other fees for the crossings it operates, and issue debt to finance its operations up to a total amount of \$130 million.

Clause 262 also adds section 250.1 to the Act to ensure that certain provisions of the *Blue Water Bridge Authority Act* will continue to apply to the Blue Water Bridge Authority in the event that it applies for continuance under the *Canada Business Corporations Act*.

2.4.22 DIVISION 22: CENTRAL COOPERATIVE CREDIT SOCIETIES AND FEDERAL CREDIT UNIONS

Division 22 amends several acts to eliminate tools for federal intervention in relation to provincial cooperative credit societies.

In particular, clause 267 amends the *Bank of Canada Act* to allow the Bank of Canada to make loans to central or local cooperative credit societies when a province has agreed to indemnify the Bank of Canada for any potential loss that the Bank could incur as a result of the loan, or if the loan is made to a participant in a clearing and settlement system as defined in the *Payment Clearing and Settlement Act*.

Clause 268 repeals section 39 of the *Canada Deposit Insurance Corporation Act*, which stipulates that the Corporation may extend short-term loans to provincial institutions that guarantee or insure deposits. Pursuant to clause 292, the provisions of the *Cooperative Credit Associations Act* pertaining to loans made to associations by the Canada Deposit Insurance Corporation are repealed.²⁸

Clause 278 amends the *Cooperative Credit Associations Act* (CCAA) to create a distinction between a federal league and a provincial league. This change makes it possible to distinguish between the CCAA provisions applicable to the two types of cooperative corporations.

Clause 291, which repeals Part XVI of the *Cooperative Credit Associations Act*, discontinues supervision of provincial central cooperative credit societies by the Office of the Superintendent of Financial Institutions under the *Cooperative Credit Associations Act* on application of an order. As a result of this change, reference to section 473(1) of Part XVI of the *Cooperative Credit Associations Act* is removed from the following Acts: the *Bank Act*, the *Office of the Superintendent of Financial Institutions Act*, the *Trust and Loan Companies Act* and the *Insurance Companies Act*.

Lastly, clauses 270 to 277 of Bill C-43 amend the *Bank Act* to facilitate the entry of provincial cooperative credit societies into the federal credit union system by simplifying the process for continuation and amalgamation that applies to them.

2.4.23 DIVISION 23: AMENDMENTS TO THE *FINANCIAL ADMINISTRATION ACT*

Clause 304 of Bill C-43 amends the *Financial Administration Act* by adding new section 155.2 related to “small amounts” owing to, or payable by, Her Majesty in right of Canada. The amendment permits a Minister to neither pay nor collect certain low-value amounts, except for amounts owed by Crown corporations to persons other than Her Majesty in right of Canada, amounts payable to Crown corporations by such persons, amounts owed or payable under the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Excise Tax Act*, the *Income Tax Act* or the *Softwood Lumber Products Export Charge Act, 2006*, and amounts related to the public debt or to interest on the public debt.

In addition, the amendment authorizes the Treasury Board to establish low-value thresholds and to specify circumstances for the accumulation or the exclusion of certain amounts in determining low-value amounts. According to the *Public Works and Government Services Canada 2013–14 Departmental Performance Report*, the Receiver General for Canada managed “the operations of the federal treasury through the issuance and settlement of more than 315 million federal and provincial payments and the collection of revenue for all government departments.”²⁹ According to the *2013–14 Departmental Performance Report*, the average cost per payment is \$0.32.³⁰

2.4.24 DIVISION 24: AMENDMENTS TO THE *IMMIGRATION AND REFUGEE PROTECTION ACT*

Division 24 amends the *Immigration and Refugee Protection Act* (IRPA) to implement aspects of the Temporary Foreign Worker Program announced in July 2014³¹ with respect to changes to terminology, fees and penalties, more precision for data collection and the sharing of information.

Unless otherwise specified under the *Immigration and Refugee Protection Regulations*, an employer seeking to hire a temporary foreign worker must obtain an assessment of the labour market need for this worker from Employment and Social Development Canada (ESDC). This assessment, known as the Labour Market Impact Assessment, is made with different criteria and has replaced the Labour Market Opinion. Clauses 307 and 310 amend sections 30(1.43), 30(1.44), 30(1.6) and 89(1.1) of the IRPA to incorporate the new terminology.

Clauses 311 and 312 allow for new regulations to be made explicitly authorizing fees to be charged for an assessment by ESDC and for the compliance regime, whose users include employers who do not need a labour market impact assessment when hiring a foreign national. These regulations will stipulate electronic and alternate means for fee payment and instances in which the fees can be waived. The *User Fees Act* does not apply to these fees.

Clauses 306, 308 and 309(1) extend the scope of the government to place employers on a blacklist. The addition of sections 30.1 and 32(b.1) to the IRPA provide the possibility for either the Minister of Citizenship and Immigration or the Minister of Employment and Social Development to publish a list of employers who have been found guilty of an offence that may be designated in regulations or under any federal or provincial law regulating employment or recruitment. The original list set out in the regulations only provided for employers that had been found non-compliant with temporary foreign worker conditions.

Clauses 309(2) and 309(3) allow for regulations that specify who may be targeted for inspection and how employers may respond to requests for information about a foreign national's authorization to work in Canada. Social insurance numbers are to be collected and regulations will determine how they may be used by the Minister of Employment and Social Development in relation to the employment of foreign nationals and permanent residents (clauses 313(1) and 313(2)).

Clause 313(3) expands information-sharing provisions in the IRPA by allowing regulations to provide for the Government of Canada to disclose information to the provinces for the purpose of cooperation.

2.4.25 DIVISION 25: PROTHONOTARIES OF THE FEDERAL COURT

Division 25 amends the *Judges Act* and the *Federal Courts Act* to implement the Government's response to the report of the Special Advisor on Federal Court Prothonotaries' Compensation.³² Prothonotaries are judicial officers of the Federal Court³³ who are presently deemed to be public servants for the purposes of the *Public Service Superannuation Act* (PSSA).

Clause 318 of Bill C-43 adds section 10.1 to the *Judges Act*, setting prothonotaries' salaries at 76% of that of a Federal Court judge, and clause 317 includes prothonotaries in the *Judges Act* for purposes of *Judges Act* administration (new section 2.1 of the *Judges Act*). The salary payable to prothonotaries is effective 1 April 2012 (clause 333). Clause 317 also sets out that current prothonotaries may opt to remain covered by the PSSA and continue to accrue service, and disability coverage, as currently provided.

The adequacy of prothonotaries' compensation will now be determined by the Judicial Compensation and Benefits Commission,³⁴ rather than by a separate process. Complaints about prothonotaries' conduct will be dealt with under the established discipline processes for superior court judges that are administered by the Canadian Judicial Council³⁵ (clause 326, amending section 69(1)(a) of the *Judges Act*). The overall day-to-day administration of prothonotaries' compensation, as well as travel and related expenses, will be assumed by the Office of the Commissioner for Federal Judicial Affairs³⁶ (clause 328, amending section 12(4) of the *Federal Courts Act*).

2.4.26 DIVISION 26: AMENDMENTS TO THE *CANADIAN PAYMENTS ACT*

Division 26 amends the *Canadian Payments Act* with regard to the governance structure and administrative obligations of the Canadian Payments Association.

Currently, the Canadian Payments Association may create an executive committee consisting of the chairperson and directors. Clauses 334(1) and 347 of the bill repeal this provision, and establish a nominating committee whose role is to propose suitable and qualified candidates for election to the board of directors.

Clause 335 allows for a mandatary of Her Majesty in right of a province to be a member of the association, and clause 335 provides that a quorum at a meeting will be constituted if the members present represent a majority of the members.

Clauses 337 to 339 of the bill change the composition of the board of directors of the association, along with the process for selecting its chairperson and deputy chairperson. Clause 337 also specifies who is eligible and ineligible to serve on the board.

Clause 341 of the bill adds the duty of care that all directors and officers of the Association must follow in carrying out their responsibilities, such as to act in good faith and to exercise reasonable skill, diligence and care.

Clause 346 of the bill authorises the Minister of Finance to issue a written directive to the association to make, amend or repeal a by-law, rule or standard. In such cases, the Minister shall consult the board of directors prior to issuing such a directive; in cases relating to the operation of a clearing and settlement system, the Minister shall also consult with the Governor of the Bank of Canada.

Clause 350 of the bill mandates the chairperson of the Stakeholder Advisory Council to submit an annual report to the board of directors. This clause also establishes and

provides a mandate for a Member Advisory Council consisting of persons appointed by the board who broadly represent the diversity of the Association's membership.

Clause 351 of the bill outlines additional reporting requirements of the board, as regards proposed capital expenditures and other matters for the corporate plan and annual report.

Clauses 358(1) to 358(8) include various transitional provisions related to the coming into force of the provisions of Bill C-43.

2.4.27 DIVISION 27: AMENDMENTS TO THE *PAYMENT CLEARING AND SETTLEMENT ACT*

Division 27 amends the *Payment Clearing and Settlement Act* to expand and enhance the oversight powers of the Bank of Canada regarding the risks to the Canadian economy resulting from disruption to, or failure of, systems for the clearing and settlement of payment obligations and other financial transactions. As well, it amends the Act to allow the Governor of the Bank of Canada to issue directives to clearing houses and participants in the clearing and settlement systems.

Clause 360 amends section 2 to broaden the definition of the term "systemic risk" and to add the definition of the term "payments system risk." This latter risk becomes a risk overseen by the Bank of Canada.

Clauses 362, 364, 368, 369, 370, 371 and 373 amend sections 4, 5, 6, 12, 13, 14 and 22 to broaden the Bank of Canada's powers in the following ways:

- expand the types of risk that the Governor may consider when designating a clearing and settlement system, or when revoking the designation of a clearing and settlement system, for purposes of Part 1 of the Act, to include those that may pose a payments system risk;
- broaden the scope of the Governor's authority to issue directives to clearing houses and participants of designated clearing and settlement systems to address systemic and payments system risks, with certain constraints in relation to directives issued to participants in a clearing system;
- clarify that the Bank may act as a custodian and settlement agent for a clearing house without the requirement that these custodial and settlement services be for a clearing and settlement system;
- allow the Bank to enter into agreements with clearing houses of non-designated clearing house systems, and into oversight and information-sharing agreements with government authorities and regulatory bodies;
- enable the Bank to obtain certain information from a clearing house for a non-designated clearing and settlement system;
- provide the Bank with the ability to apply to a superior court for an order directing a clearing house, participant or person to comply with a prohibition or condition imposed under the Act; and

- broaden the Bank's ability to obtain information from foreign banks and foreign institutions with respect to the application of foreign laws, and to prohibit or place conditions on its participation in a clearing and settlement system.

Clause 372 amends section 18 to require the Bank of Canada to enter into an arrangement or agreement regarding the terms of disclosure; this arrangement must be concluded before providing information to a foreign government authority or regulatory body.

Consequential amendments are made to the *Bank of Canada Act*.

Following the release of the final report of the Task Force for the Payments System Review in March 2012, the federal government committed to reviewing the governance framework for the payments sector. The amendments proposed in Division 27 are a result of the review conducted by the Department of Finance and the Bank of Canada.

2.4.28 DIVISION 28: ENACTMENT OF THE EXTRACTIVE SECTOR TRANSPARENCY MEASURES ACT

Clause 376 of Bill C-43 enacts the Extractive Sector Transparency Measures Act (ESTMA), with the stated purpose of implementing Canada's international commitments to participate in the fight against corruption³⁷ by implementing measures applicable to the extractive sector, including those that enhance transparency and others that impose reporting obligations with respect to payments made by entities.³⁸ The ESTMA establishes a legislative basis for Canada to join the Extractive Industries Transparency Initiative (EITI)³⁹ (an international system of payment reporting, verification and publication involving industry, government and non-governmental organizations) by incorporating a number of the EITI's reporting requirements into Canadian law.

The ESTMA requires entities, as defined in section 2, to report certain payments⁴⁰ made to the following payees (also as defined in section 2):

- (a) any government in Canada or in a foreign state;
- (b) a body that is established by two or more governments;
- (c) any trust, board, commission, corporation or body or authority that is established to exercise or perform, or that exercises or performs, a power, duty or function of government for a government referred to in paragraph (a) or a body referred to in paragraph (b); or
- (d) any other prescribed payee.

Unless otherwise prescribed, entities are required to keep records of payments for seven years (section 13 of the ESTMA) and to take steps to make the information in them available to the public (section 12). Sections 14 to 28 include audit, enforcement and compliance mechanisms. Finally, under section 15, the Minister may designate persons or classes of persons for the purpose of administering and enforcing the Act.

Section 29 provides that the Act will apply to Aboriginal governments in Canada and certain other organizations controlled by Aboriginal governments two years after the definitions section of the ESTMA (section 2) comes into force.

2.4.29 DIVISION 29: AMENDMENTS TO THE *JOBS AND ECONOMIC GROWTH ACT*

Clauses 378 to 381 of Bill C-43 make amendments to the *Jobs and Economic Growth Act* to facilitate the restructuring of management of the nuclear laboratories of Atomic Energy of Canada Limited (AECL). These amendments are in response to a February 2013 announcement by the federal government that it was seeking to implement a “Government-owned, Contractor-operated (GoCo) model” for Canadian Nuclear Laboratories (CNL) to bring “private sector rigor and efficiency” to CNL.⁴¹

Clauses 378 to 381 amend sections 2147 and 2148 of the *Jobs and Economic Growth Act* to provide for the transition of public service pension funds in the event that CNL becomes a GoCo entity. Clause 378(1) states that CNL is an agent of the Crown but will cease to be an agent on the day on which AECL sells or disposes of CNL’s shares. Clause 379 replaces section 2148 to provide that if that sale occurs, CNL will continue to be part of the public service and must make payments under the pension fund established under the *Public Service Superannuation Act* for a period of three years after the date of the sale. During that three-year time frame, employees of CNL may, but are not required to, contribute to the public service pension fund. At the end of that transitional period, CNL employees will no longer be allowed to contribute to the public service pension fund.

Clause 381(2) sets out that clauses 378(2) and 380 will come into force on the day on which AECL disposes of CNL, notice of which must be published in the *Canada Gazette* as soon as possible thereafter.

2.4.30 DIVISION 30: PUBLIC SERVICE LABOUR RELATIONS

Division 30 makes certain changes to the *Economic Action Plan 2013 Act, No. 2* respecting public service labour relations.

Clause 382 of the bill repeals section 333(1) of the *Economic Action Plan 2013 Act, No. 2*. This section amended the powers of the adjudicator in relation to matters referred to adjudication under the *Public Service Labour Relations Act*.

Clause 383 makes certain changes and corrections to the complaint process for unsuccessful candidates in an advertised internal appointment process.

- Regarding the grounds for complaint for unsuccessful candidates who meet the essential qualifications of the position, an abuse of authority by the deputy head is added as a ground for complaint (section 77 of the *Public Service Employment Act*).
- Regarding the grounds for complaint for unsuccessful candidates who do not meet the essential qualifications of the position, certain clarifications are made, and the number of grounds for complaint is increased from two to four, implicating both the deputy head and the Public Service Commission (section 78 of the *Public Service Employment Act*).

Clause 384 of the bill extends the scope of section 83 of the *Public Service Employment Act*, which allows an individual to make a complaint where the Public Service Commission has made an appointment in implementing corrective action ordered by the Public Service Staffing Tribunal. This provision will apply to individuals who made a complaint or who were the subject of a proposed appointment not only, as in the past, under section 77 of the *Public Service Employment Act*, but now also under section 78.

Clause 385 is a coordinating amendment concerning the coming into force of provisions of the *Economic Action Plan 2013 Act, No. 2*. This clause corrects an incorrect reference to section 422 of the *Budget Implementation Act, 2009*. This provision is deemed to have come into force on 12 December 2013 (clause 386).

2.4.31 DIVISION 31: ROYAL CANADIAN MOUNTED POLICE PENSION PLAN

The overall objective of clauses 387 to 401 of Bill C-43 is to transfer the pensionable service of certain members of the Royal Canadian Mounted Police (RCMP), governed by the *Royal Canadian Mounted Police Superannuation Act* (RCMPSA), to the Public Service Pension Plan. The bill also deems contributors to the RCMP Pension Plan to be Group 1 contributors to the Public Service Pension Plan (clause 388).

The *Public Service Superannuation Act* provides that Group 1 contributors are persons who were contributing to the Public Service Pension Plan on or before 31 December 2012. Such contributors are eligible for an unreduced pension at age 60 with at least two years of pensionable service or at age 55 with 30 years of pensionable service.⁴² Bill C-43 sets the conditions for transferring pensions from one system to the other under various circumstances.

However, only some contributors to the RCMP Pension Plan will have their contributions transferred to the Public Service Pension Plan. The Treasury Board determines which categories of members of the RCMP will be deemed to be appointed under the *Public Service Employment Act* and will be able to transfer their pensions (clause 387).⁴³ This determination has not yet been made.

The bill also repeals sections 11(7) to 11(10) and 11(12) of the RCMPSA, which concern the members of the RCMP who do not hold a rank in the Force (clause 397). These sections concern the payment of retirement benefits to these members in case of retirement due to disability and dismissal for misconduct, among other things.

Finally, clause 400 of the bill provides a transitional measure that allows RCMP officers and members who work for the Canadian Security Intelligence Service, pursuant to the 28 June 1984 version of the *Canadian Security Intelligence Service Act*,⁴⁴ and RCMP members not holding a rank who retired before the published date, to remain part of the RCMP and to benefit from the application of the repealed provisions of the RCMPSA.⁴⁵

NOTES

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- Julie Bécharé Section 2.4.24
- Maxime Charron-Tousignant Sections 2.4.14 and 2.4.30
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Shauna Troniak Section 2.4.31
- Raphaëlle Deraspe Sections 2.1.8, 2.1.12, 2.1.21 and 2.1.23
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- Mathieu Frigon Sections 2.4.9 and 2.4.22
- Sandra Gruescu Sections 2.4.4 and 2.4.7
- Isabelle Lafontaine-Émond Section 2.4.19
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- Alexandre Lavoie and
Allison Padova Section 2.4.2
- Dara Lithwick Section 2.4.13
- Mark Mahabir Sections 2.1.5, 2.1.6, 2.1.11, 2.1.18, 2.1.19, 2.1.22 and 2.1.24
- Lindsay McGlashan Sections 2.4.8 and 2.4.23
- Robin McKay Sections 2.4.17 and 2.4.25
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- Pascal Tremblay Section 2.4.15
- Adriane Yong Sections 2.1.1, 2.1.7, 2.1.9, 2.1.10, 2.1.13–2.1.15 and 2.2
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1. In determining whether a trust or estate exists, reference must be made to common law and civil law principles, such as the civil law definition of the term “succession.” For a review of the types of trusts, see Canada Revenue Agency, [Types of trusts](#).
2. Clause 38 amends section 122 of the *Income Tax Act* to retain graduated rate taxation for a “qualified disability trust.”
3. As specified in section 149.1(1) of the *Income Tax Act*, a qualified donee includes the following entities:
 - a registered charity, including a registered national arts service organization;
 - a registered Canadian amateur athletic association;
 - a listed housing corporation resident in Canada constituted exclusively to provide low-cost housing for the aged;
 - a listed Canadian municipality;
 - a listed municipal or public body performing a function of government in Canada;
 - a listed university outside Canada that is prescribed to be a university, the student body of which ordinarily includes students from Canada;
 - a listed charitable organization outside Canada to which Her Majesty in right of Canada has made a gift;
 - Her Majesty in right of Canada, a province or a territory; and
 - the United Nations and its agencies.

4. “Water-current energy equipment” is “equipment used to generate electricity using kinetic energy of flowing water, otherwise than by diverting or impeding the natural flow of the water or by using physical barriers or dam-like structures.” See Department of Finance Canada, [Explanatory Notes Relating to the Income Tax Act, Excise Tax Act and Related Legislation](#), August 2014.
5. “Eligible waste” is used in the production of producer gas, as described in a new definition added to section 1104(13) of the *Income Tax Regulations*:

fuel the composition of which, excluding its water content, is all or substantially all non-condensable gases that is generated primarily from eligible waste fuel using a thermo-chemical conversion process and that is not generated using any fuels other than eligible waste fuel or fossil fuel.

See Department of Finance Canada (August 2014).
6. For a review of thin capitalization rules and multinational corporations, see Jennifer Blouin et al., [Thin Capitalization Rules and Multinational Firm Capital Structure](#), International Monetary Fund Working Paper no.WP/14/12, January 2014.
7. The treaties are the [Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks](#), adopted at Madrid on 27 June 1989 and amended on 3 October 2006 and 12 November 2007; the [Singapore Treaty on the Law of Trademarks](#), adopted at Singapore on 27 March 2006; the [Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks](#), adopted at Nice on 15 June 1957 and revised at Stockholm on 14 July 1967 and at Geneva on 13 May 1977 and amended on 20 September 1979; the [Geneva Act \(1999\) of the Hague Agreement Concerning the International Registration on Industrial Designs](#), adopted at Geneva on 2 July 1999; and the [Patent Law Treaty](#), adopted at Geneva on 1 June 2000.
8. Department of Finance Canada, [Economic Action Plan 2014 – The Road to Balance: Creating Jobs and Opportunities](#), 11 February 2014, p. 108.
9. Ibid.
10. Canadian Intellectual Property Office, [What are industrial designs?](#).
11. Canadian Intellectual Property Office, [What are patents?](#).
12. [Bill C-585: An Act to amend the Federal–Provincial Fiscal Arrangements Act \(period of residence\)](#). The bill is at the first reading stage.
13. [Order Amending the Canadian Passport Order](#), SI/2013-57.
14. Passport Canada, [Annual Report 2012–2013](#), 2013.
15. [Royal Canadian Mint Act](#), R.S.C., 1985, c. R-9.
16. The “seigniorage” for Canadian circulation coins is generated at the time of their sale by the Royal Canadian Mint and represents the difference between the face value of the coin and the cost of production for that coin.
17. Royal Canadian Mint, [Global Leadership: Annual Report 2013](#), pp. 81–82.
18. These Acts are the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* and the *Trust and Loan Companies Act*.
19. Ibid.

20. Bill C-15, the Northwest Territories Devolution Act, received Royal Assent on 25 March 2014, and a number of its provisions came into force on 1 April 2014 (see [Order in Council PC 2014-0305](#)). This legislation gives effect to the *Northwest Territories Land and Resources Devolution Agreement* and streamlines the territory's regulatory regime in accordance with commitments set out in the federal government's 2010 *Action Plan to Improve Northern Regulatory Regimes*. Part 1 of the Act creates a new *Northwest Territories Act* and amends numerous pieces of federal and territorial legislation in order to implement the Devolution Agreement: [Northwest Territories Devolution Act, S.C. 2014, c. 2](#).
21. Of note, the relevant provisions specify as well that the Commissioner may dissolve the Legislative Assembly before the maximum period is reached.
22. Canada's Economic Action Plan, [Small Business Job Credit](#).
23. Department of Finance Canada, "[Harper Government Introduces Small Business Job Credit](#)," News release, 11 September 2014.
24. The Canada port authorities are shared-governance corporations (see Treasury Board of Canada Secretariat, [Overview of Institutional Forms and Definitions](#)) that manage 18 Canadian ports and their federal properties.
25. The National DNA Data Bank currently has two categories of DNA profiles, known as indices. The Convicted Offender Index is the electronic index that has been developed from DNA profiles collected from offenders convicted of designated primary and secondary offences identified in section 487.04 of the *Criminal Code*. The Crime Scene Index is a separate electronic index composed of DNA profiles obtained from crime scene investigations of the same designated offences addressed in the Act.
26. Designated offences are defined in section 487.04 of the *Criminal Code*. These are the offences for which a warrant for the taking of bodily substances for forensic DNA analysis may be issued. Conviction for a designated offence also forms the basis for a DNA sample to be taken for the Convicted Offenders Index.
27. See, for example, House of Commons, *Debates*, 2nd Session, 41st Parliament, [9 October 2014, 1750](#), [29 September 2014, 2050](#) and [16 June 2014, 1445](#).
28. The term "association" refers here to associations incorporated or formed under the *Cooperative Credit Associations Act*.
29. Public Works and Government Services Canada, [2013–14 Departmental Performance Report](#), 2014, p. 41.
30. Ibid.
31. Employment and Social Development Canada, "Overhauling the TFWP," [Improving Clarity](#).
32. On 26 July 2013, the Special Advisor appointed to study issues surrounding prothonotaries' compensation released his report, making recommendations on a number of topics, including prothonotaries' salaries and pensions. On 27 February 2014, the government released its response: Department of Justice, [Response of the Minister of Justice to the Report of the Special Advisor on Federal Court Prothonotaries' Compensation](#).
33. As judicial officers, prothonotaries enjoy the protections established by the *PEI Judges Case*, which set out a requirement that the compensation of judges and judicial officers must be subject to periodic review by an "independent, objective and effective" commission. (See *Reference Re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3.)
34. The Judicial Compensation and Benefits Commission was created under the *Judges Act* to examine, at least every four years, the adequacy of the salaries and other amounts payable to federally appointed judges under the Act, and inquire into the adequacy of judges' benefits generally.

35. The Canadian Judicial Council is a federal body created under the *Judges Act*. It is chaired by the Chief Justice of Canada. There are 38 other Council members, who are the chief justices and associate chief justices of Canada's superior courts, the senior judges of the territorial courts, and the Chief Justice of the Court Martial Appeal Court of Canada. It has a mandate to review complaints made against any superior court judge.
36. The Office of the Commissioner for Federal Judicial Affairs provides federally appointed judges with administrative services, including with respect to salaries and benefits.
37. The measures included in the Extractive Sector Transparency Measures Act are designed to “deter and detect corruption including any forms of corruption under any of sections 119 to 121 and 341 of the *Criminal Code* and sections 3 and 4 of the *Corruption of Foreign Public Officials Act*” (section 6).
38. “Entity” refers to
 - a corporation or a trust, partnership or other unincorporated organization
 - (a) that is engaged in the commercial development of oil, gas or minerals in Canada or elsewhere; or
 - (b) that controls a corporation or a trust, partnership or other unincorporated organization that is engaged in the commercial development of oil, gas or minerals in Canada or elsewhere” (Extractive Sector Transparency Measures Act, s. 2).
39. [Extractive Industries Transparency Initiative](#).
40. “Payment” refers to
 - a payment – whether monetary or in kind – that is made to a payee in relation to the commercial development of oil, gas or minerals and that falls within any of the following categories of payment:
 - (a) taxes, other than consumption taxes and personal income taxes;
 - (b) royalties;
 - (c) fees, including rental fees, entry fees and regulatory charges as well as fees or other consideration for licences, permits or concessions;
 - (d) production entitlements;
 - (e) bonuses, including signature, discovery and production bonuses;
 - (f) dividends other than dividends paid as ordinary shareholders;
 - (g) infrastructure improvement payments; or
 - (h) any other prescribed category of payment (Extractive Sector Transparency Measures Act, s. 2).

Furthermore, section 9 mandates the reporting of all payments over \$100,000 and other payment categories that will be prescribed in regulations.
41. Natural Resources Canada, [“The Harper Government Announces New Direction for Nuclear Laboratories,”](#) News release, 28 February 2013.
42. Government of Canada, [Your Public Service Pension and Benefits](#).
43. See [Royal Canadian Mounted Police Act](#), s. 20.1; and [Enhancing Royal Canadian Mounted Police Accountability Act](#), s. 86(1).
44. See *Canadian Security Intelligence Service Act* (28 June 1984 version), s. 66(4).
45. The “published date” is defined in clause 387 of the bill as the date on which the Treasury Board will have determined which members will not be part of any category of members and will be deemed to be appointed under the *Public Service Employment Act*.