Docket: 2013-4196(GST)G

BETWEEN:

FARM CREDIT CANADA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on May 3, 2016 at Calgary, Alberta

Before: The Honourable Justice Steven K. D'Arcy

Appearances:

Counsel for the Appellant:	Dan Misutka Nandini Somayaji
Counsel for the Respondent:	Marilyn Vardy Darren Prevost

JUDGMENT

In accordance with the attached Reasons for Judgment:

1. The appeals from reassessments made under the *Excise Tax Act*, notices of which are dated September 10, 2012, for the reporting periods ending on March 31, 2009 and March 31, 2010 are quashed;

2. The appeal from a reassessment made under the *Excise Tax Act*, notice of which is dated September 17, 2012, for the reporting period ending March 31, 2011 is dismissed; and

3. Costs are awarded to the Respondent.

Signed at Vancouver, British Columbia, this 24th day of February 2017.

"S. D'Arcy"

D'Arcy J.

Citation: 2017 TCC 29
Date: 20170224
Docket: 2013-4196(GST)G

BETWEEN:

FARM CREDIT CANADA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

D'Arcy J.

[1] The issue before the Court is whether, during the relevant reporting periods, the Appellant was a "loan corporation" for the purposes of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* (the "Attribution Regulations") adopted pursuant to Part IX of the *Excise Tax Act* (the "*GST Act*").

[2] Neither party called witnesses during the hearing. The parties filed a statement of agreed facts ("SAF") and a joint book of documents (Exhibit AR1). The parties agreed that the documents could be taken as proof of the truth of their contents. The Respondent provided additional evidence by way of read-ins.

I. Summary of Facts

[3] The Appellant's annual report for the fiscal period ending March 31, 2011 states that the Appellant "is a financially self-sustaining federal Crown

corporation reporting to Parliament through the Minister of Agriculture and Minister for the Canadian Wheat Board."[1]

[4] The SAF, attached as Appendix A to these Reasons for Judgment, provides information on the purpose and operations of the Appellant. The following paragraphs summarize this information.

[5] The Appellant's purpose is to enhance rural Canada by providing specialized and personalized financial services to farming operations and enterprises that are closely related to, or dependent on, farming.

[6] The principal business of the Appellant is the lending of money.

[7] The Appellant is a corporation continued under the *Farm Credit Canada Act*[2] (the "*FCCA*"). It is not incorporated or continued under the federal *Trust and Loan Companies Act*[3] or under the relevant trust and loan corporation legislation of any province. In addition, it is not registered or licensed to carry on business as a loan corporation under the relevant provincial trust and loan corporation legislation.

[8] The statement of agreed facts notes that the Appellant is subject to federal oversight and federal statutory requirements, as set out below:

- The Appellant may be subject to a special examination by the Superintendent of Financial Institutions from time to time. The last special examination was conducted in respect of the period between December 11, 2012 and March 31, 2013.

- The *FCCA* imposes a maximum leverage requirement. The aggregate direct and contingent liabilities of the Appellant cannot, at any time, exceed twelve times the capital of the Appellant, except by order of the Governor in Council.

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[1]Exhibit AR1, page 431.

[2]S.C. 1993, c.14.

[3]S.C. 1991, c.45.

- The Appellant provides its annual corporate plan and financial results to the Minister of Finance and the Minister of Agriculture and Agri-Food.

[9] The Appellant offers the following three product lines in its lending business:

1. primary production financing;

2. agribusiness and agri-food financing; and

3. FCC Alliances point-of-sale financing.

[10] Primary production financing is the making of loans to primary producers, such as grain farmers or dairy farmers, to purchase inputs such as land, equipment or supplies.

[11] Agribusiness and agri-food financing is the making of loans to suppliers or processors who do business with primary producers. Examples of the Appellant's customers in this category are equipment manufacturers and dealers, food processors (such as meatpackers) and input providers (such as seed wholesalers).

[12] FCC Alliances point-of-sale financing involves the Appellant entering into agreements with so-called alliance partners such as crop input suppliers, agricultural equipment dealers, and cattle dealers. In this form of financing, a primary producer seeks to make a purchase (or to lease) from an alliance partner. The primary producer seeks financing for the purchase from the Appellant, with the alliance partner operating as an intermediary.

[13] In addition to its lending activities, the Appellant has the following revenue-generating activities:

a. direct and indirect investment in commercialization-to-growth-stage businesses operating in various agricultural sectors;

b. the offering of loan, credit life, and accident insurance products administered by Sun Life Assurance Company of Canada; and

c. the sale of farm management software.

[14] The Appellant's annual reports for its fiscal years ending March 31, 2009, 2010 and 2011 evidence that the Appellant's net interest income after provision for credit losses comprises approximately 98% of its net income before administration expenses.[4]

[15] The statement of agreed facts does not state where in Canada the Appellant carries on its business. However, the Appellant's annual reports note that the Appellant operates from 100 offices located in each of Canada's ten provinces.[5]

II. Reporting Periods Before the Court

[16] The Respondent, in her written submissions, argues that I should quash the appeals in respect of the Appellant's GST reporting periods ending on March 1, 2009 and March 31, 2010. I agree, for the following reasons.

[17] The Appellant is an annual filer for the purposes of the *GST Act*. It is appealing reassessments in respect of its annual GST reporting periods ending on March 31, 2009, 2010 and 2011.

[18] The Minister assessed each of these reporting periods as follows:

- Annual reporting period ending on March 31, 2009, net tax of $224,131.74.
- Annual reporting period ending on March 31, 2010, net tax of $397,095.08.
- Annual reporting period ending on March 31, 2011, net tax of $2,537,716.99.

[19] The parties agree that, if the Court finds that the Appellant is a "loan corporation" under the Attribution Regulations, the Minister has assessed the correct amount of net tax for each of these reporting periods.[6]

[4]Exhibit AR1, pages 250, 382, and 512.

[5]Exhibit AR1, pages 164, 284, 291, 423, 431 and 559.

[6]SAF, paragraph 48.

[20] In addition, the parties agree[7] that, if the Court finds that the Appellant was a "general corporation" under the Attribution Regulations, the net tax of the Appellant for each of the reporting periods would be as follows:

- Annual reporting period ending on March 31, 2009, net tax of $267,611.74.

- Annual reporting period ending on March 31, 2010, net tax of $454,968.08.

- Annual reporting period ending on March 31, 2011, net tax of $2,022,265.99.

[21] The difficulty I have with the agreement reached by the parties is that the Appellant is not asking me to reduce the net tax assessed for its GST reporting periods ending on March 31, 2009 and on March 31, 2010. The Appellant and the Respondent are telling me that, if I find that the Appellant is a "loan corporation", the assessments for those two reporting periods are correct and if I find that the Appellant is a "general corporation", I should increase the assessments for those two reporting periods.

[22] While the Court can issue a judgment confirming the Minister's assessment of net tax for a reporting period (by dismissing the appeal), it cannot issue a judgment increasing the amount of net tax the Minister has assessed for a reporting period. The Respondent cannot appeal her own assessment, which would be the result if I increased the amount of the net tax assessed.

[23] As a result, the Appellant's appeals with respect to its reporting periods ending on March 31, 2009 and March 31, 2010 are quashed. The only reporting period properly before the Court is the Appellant's reporting period ending on March 31, 2011.

III. The Law

[24] The Attribution Regulations are part of what is generally referred to as the special attribution method (the "**SAM Rules**") that applies to certain financial institutions. As the Appellant noted in its written submissions, the SAM Rules are very complex. This complexity is exacerbated by the fact that

[7] SAF, paragraph 47.

the SAM Rules were amended during the reporting period at issue, with very unusual effective dates for the amendments.

[25] However, one must understand the various statutory provisions that comprise the SAM Rules in order to determine the meaning of the words "loan corporation" as those words are used in the Attribution Regulations.

[26] I will begin my discussion of the law by summarizing the general operation of the *GST Act.* This discussion is required in order to provide context for the SAM Rules. I will then discuss, in detail, the operation of the SAM Rules.

A. Imposition of Tax Under the *GST Act*

[27] The GST is levied under four separate and distinct divisions of the *GST Act*: Division II, Division III, Division IV, and Division IV.1.

[28] Division II tax is levied under subsections 165(1) and (2) of the *GST Act*. Those subsections read as follows:

> (1) Subject to this Part, every recipient of a taxable supply made in Canada shall pay to Her Majesty in right of Canada tax in respect of the supply calculated at the rate of 5% of the value of the consideration for the supply.
>
> (2) Subject to this Part, every recipient of a taxable supply made in a participating province shall pay to Her Majesty in right of Canada, in addition to the tax imposed by subsection (1), tax in respect of the supply calculated at the tax rate for that province on the value of the consideration for the supply.

[29] The effect of subsections 165(1) and (2) is to levy a single federal value added tax (the "GST") at multiple rates on the recipient of taxable supplies made in Canada: the 5% rate for supplies made in so-called non-participating provinces[8] (the "GST rate") and the various higher rates imposed on supplies made in so-called participating provinces that are subject to tax under both subsections 165(1) and (2) (the "HST rate(s)").

[8] 7% prior to July 2006 and 6% from July 2006 to the end of 2007.

[30] Schedule VIII to the *GST Act* contains the actual rates at which the tax is imposed under subsection 165(2) (the "Sch. VIII provincial tax rate(s)").

[31] Between April 1, 2009 and March 31, 2011 (the relevant period), the Division II tax was levied at the following rates:

- During all of the relevant period, the Division II tax was levied at the 5% GST rate on supplies that were determined to be made in Alberta, Saskatchewan, Manitoba, Quebec, and Prince Edward Island.

- During all of the relevant period, the Division II tax was levied at a 13% HST rate on supplies that were determined to be made in either New Brunswick or Newfoundland. The 13% HST rate was comprised of the 5% rate levied under subsection 165(1) and an 8% Sch. VIII provincial tax rate levied under subsection 165(2) on supplies made in New Brunswick and Newfoundland.

- Prior to July 2010, the Division II tax was levied at a 13% HST rate on supplies that were determined to be made in Nova Scotia; the rate increased to a 15% HST rate for supplies made after June 2010. The increase in the HST rate was a result of the Sch. VIII provincial tax rate for supplies made in Nova Scotia increasing from 8% to 10% effective July 1, 2010.

- Prior to July 2010, the Division II tax was levied at the 5% GST rate on supplies that were determined to be made in British Colombia; the rate increased to a 12% HST rate for such supplies made after June 2010. The increase was a result of the addition of British Columbia as a participating province under the *GST Act* on July 1, 2010, the Sch. VIII provincial tax rate for that province being 7%.

- Prior to July 2010, the Division II tax was levied at the 5% GST rate on supplies that were determined to be made in Ontario; the rate increased to a 13% HST rate for such supplies made after June 2010. The increase was a result of the addition of Ontario as a participating province under the *GST Act* on July 1, 2010, the Sch. VIII provincial tax rate for that province being 8%.

[32] The recipient of a taxable supply pays the Division II tax to the GST registrant who supplied the property or service. The supplier then remits the Division II tax to the government.

[33] Division III tax is levied under section 212 at the 5% GST rate on all goods imported into Canada. In addition, under section 212.1, a resident of a participating province will pay additional Division III tax at the relevant Sch. VIII provincial tax rate on non-commercial goods imported into Canada. The Canada Border Services Agency collects the Division III tax at the time the goods are imported into Canada.

[34] Division IV tax at the 5% GST rate is levied under section 218 on certain services and intangible personal property imported into Canada. Subsection 218.1(1) levies Division IV tax at the relevant Sch. VIII provincial tax rate on such supplies that a person imports for consumption or use or supply in one or more of the participating provinces.

[35] Division IV tax is also levied under section 218.01 at the 5% GST rate on certain financial institutions in respect of *internal charges*.[9] Subsection 218.1(1.2) levies the Division IV tax at the relevant Sch. VIII provincial rate on such financial institutions that are resident in a participating province. The rules with respect to the imposition of Division IV tax under sections 218.01 and 218.1(1.2) are extremely complex. The provisions apply in certain situations to financial institutions that carry on their activities inside and outside of Canada, normally through branches.

[36] Generally speaking, Division IV tax is only levied if the services or intangible personal property are not subject to tax under Division II and are imported for use wholly or partly in GST non-commercial activities. The recipient of the supply of the imported service or intangible personal property pays the Division IV tax on a self-assessing basis.

[37] Division IV.1 tax is levied on property and services brought into a participating province. The tax is levied at the relevant Sch. VIII provincial tax rate. Similar to Division IV tax, Division IV.1 tax, generally speaking, only applies to property and services brought into a participating province for use wholly or partly in GST non-commercial activities. The tax is paid on a self-assessing basis.

B. Input Tax Credits

[9]Defined in subsection 217.1(4).

[38] Subsection 169(1), contains the general rules for the claiming of input tax credits in respect of GST paid on the acquisition or importation of property or services, or on the bringing of the property or services into a participating province. The subsection applies to all tax imposed under any of the four Divisions of the *GST Act*.[10]

[39] Generally speaking, subsection 169(1) allows a GST registrant to claim an input tax credit for GST paid to the extent that the registrant acquired or imported the property or service, or brought it into a participating province, for consumption, use, or supply in the course of the person's GST commercial activities.

[40] For example, a GST registrant is entitled to claim a full input tax credit for the GST paid on the acquisition of property or a service if it acquired the property or service for use only in its GST commercial activities. However, if a registrant, such as a financial institution, acquired the property or service for use in the proportion of 30% in GST commercial activities and 70% in the course of making exempt supplies (a GST non-commercial activity), then it is only entitled to claim an input tax credit for 30% of the GST paid on the acquisition of the property or service.

C. Remittance of Tax by a GST Registrant

[41] A GST registrant is required to calculate and remit its net tax for each of its GST reporting periods. The net tax of a person for a specific reporting period is determined under subsection 225(1). Generally speaking, the net tax of a person for a specific reporting period is all amounts that became collectible and all other amounts collected by the person in the particular reporting period as or on account of Division II tax minus input tax credits claimed in the GST return filed by the person.

[42] The GST registrant is also required to remit any tax it is required to self-assess under Divisions IV and IV.1. The registrant remits the Division IV

[10]Tax is defined in subsection 123(1) as tax payable under Part IX of the *GST Act*, which includes Divisions II, III, IV and IV.1. As I will discuss, subsections 169(3) and 225.2(2) provide special rules for selected listed financial institutions.

and IV.1 tax with its net tax for the GST reporting period in which the Division IV and IV.1 tax became payable.[11]

[43] As discussed previously, the Canada Border Services Agency collects the Division III tax at the time the goods are imported into Canada.

D. The SAM Rules

[44] A significant portion of a financial institution's business is comprised of exempt activities. As a result, it is not entitled to recover, by way of input tax credits, all of the GST it pays on the acquisition or importation of property or services. The imposition of the GST at multiple rates raises issues for financial institutions that carry on business in both participating and non-participating provinces. Absent special rules, such financial institutions would be able to minimize the amount of non-recoverable GST they pay at the higher HST rate by purchasing and consuming goods and services in non-harmonized provinces at the lower 5% GST rate. This would potentially reduce investment in the participating provinces.

[45] The government recognized this issue at the time the first provinces elected to become participating provinces. As a result, it developed the SAM Rules for financial institutions that carry on business in both participating and non-participating provinces. The SAM Rules are intended to result in the location of a financial institution's purchases or importations of goods and services not affecting the amount of non-recoverable GST payable by the financial institution at the HST rate. The Department of Finance referred to this objective as being "to avoid the HST creating a bias in terms of where an SLFI [selected listed financial institution] sources its inputs".[12]

[46] There are four components of the SAM Rules. First, certain financial institutions are defined to be selected listed financial institutions ("**SLFI**"). Second, statutory adjustments are made to the tax payable by an SLFI under Divisions IV and IV.1 at the Sch. VIII provincial tax rate. Third, an SLFI is not entitled to claim input tax credits in respect of the portion of the GST paid at the

[11] See sections 219 and 220.09.

[12] *Regulatory Impact Analysis Statement*, Canada Gazette Part II, Vol. 135, No. 11, pages 971-80 at 972.

Sch. VIII provincial tax rate. Fourth, adjustments are made to the SLFI's net tax for a specific reporting period.

(1) First Component: What is an SLFI?

[47] The SAM Rules only apply to SLFIs. The term SLFI is defined in subsection 225.2(1). The definition was amended in respect of any reporting period of a person that ends on or after July 1, 2010 (the "July 1, 2010 Amendment"). The July 1, 2010 Amendment coincided with Ontario and British Columbia becoming participating provinces. I will refer to subsection 225.2(1) as it read prior to the July 1, 2010 Amendment as "old subsection 225.2(1)". I will refer to the subsection as it read after the July 1, 2010 Amendment as "new subsection 225.2(1)".

[48] As I will discuss, certain sections of the Attribution Regulations apply when determining whether a person is an SLFI. In addition to subsection 225.2(1) being amended upon Ontario and British Columbia becoming participating provinces, substantial changes were made to the Attribution Regulations. In fact new regulations were introduced (the "New Attribution Regulations") replacing the previous regulations (the "Old Attribution Regulations"). Any reference in these reasons for judgment to the Attribution Regulations is a reference to both the New Attribution Regulations and the Old Attribution Regulations.

[49] Old subsection 225.2(1) read as follows, as it applied to financial institutions that were corporations:

> (1) For the purposes of this Part, a financial institution is a selected listed financial institution throughout a reporting period in a fiscal year that ends in a particular taxation year of the financial institution if the financial institution is a listed financial institution described in any of subparagraphs 149(1)(a)(i) to (x) during the particular year and the preceding taxation year and
>
> > (a) the financial institution is a corporation that, under the rules prescribed in any of sections 402 to 405 of the *Income Tax Regulations*, has or would, if it had taxable income for the particular year and the preceding taxation year, have taxable income earned in the particular year and the preceding taxation year in any of the participating provinces and taxable income earned in the particular year and the preceding taxation year in any of the non-participating provinces;
> >
> > . . .

(d) the financial institution is a prescribed financial institution.

[50] As a result, under old subsection 225.2(1) a financial institution that was a corporation had to satisfy the following two conditions before it was deemed to be an SLFI:

- It had to be a financial institution that was a listed financial institution described in any of subparagraphs 149(1)(a)(i) to (x), and

- It must either have been required, under the *Income Tax Regulations*, to allocate taxable income to both a participating and a non-participating province or be a prescribed institution. Section 2 of the Old Attribution Regulations provides that certain financial institutions are prescribed financial institutions for the purposes of old subsection 225.2(1).

[51] New subsection 225.2(1) reads as follows, as it applies to financial institutions that are corporations:

> For the purposes of this Part, a financial institution is a selected listed financial institution throughout a reporting period in a fiscal year that ends in a taxation year of the financial institution if the financial institution is
>
> (a) a listed financial institution described in any of subparagraphs 149(1)(a)(i) to (x) during the taxation year; and
>
> (b) a prescribed financial institution throughout the reporting period.

[52] New subsection 225.2(1) retains the first condition in old subsection 225.2(1), namely, that the financial institution be a listed financial institution under subparagraphs 149(1)(a)(i) to (x), but replaces the second condition in old subsection 225.2(1) - i.e., that the financial institution either be required to allocate income under the *Income Tax Regulations* or be a prescribed institution under section 2 of the Old Attribution Regulations - with the requirement that the financial institution be a prescribed financial institution. Section 9 of the new Attribution Regulations provides that certain financial institutions are prescribed financial institutions for the purposes of new subsection 225.2(1).

[53] With respect to the first condition, listed financial institution is defined in subsection 123(1) to mean a person referred to in paragraph

149(1)(a), which defines financial institution. Paragraph 149(1)(a) contains subparagraphs (i) to (xi). An SLFI is defined to only include the listed financial institutions mentioned in subparagraphs (i) to (x) of paragraph 149(1)(a), which are the following:

> (i) a bank,
>
> (ii) a corporation that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the business of offering to the public its services as a trustee,
>
> (iii) a person whose principal business is as a trader or dealer in, or as a broker or salesperson of, financial instruments or money,
>
> (iv) a credit union,
>
> (v) an insurer or any other person whose principal business is providing insurance under insurance policies,
>
> (vi) a segregated fund of an insurer,
>
> (vii) the Canada Deposit Insurance Corporation,
>
> (viii) a person whose principal business is the lending of money or the purchasing of debt securities or a combination thereof,
>
> (ix) an investment plan, [and]
>
> (x) a person providing services referred to in section 158.

[54] Paragraph 4 of the SAF states that the "principal business of the Appellant is the making of loans". As a result, the Appellant satisfies the first requirement of old subsection 225.2(1) and new subsection 225.2(1) since it is a financial institution that is a listed financial institution described in subparagraph 149(1)(a)(viii), being a person whose principal business is the lending of money.

[55] With respect to the second condition in subsection 225.2(1), I will first consider that condition as stated in old subsection 225.2(1).

[56] Under old subsection 225.2(1), a financial institution satisfied the second condition if it was required under sections 402 to 405 of the *Income Tax Regulations* to allocate taxable income to both a participating and a non-participating province or was a prescribed financial institution.

[57] Under section 402 of the *Income Tax Regulations*, the financial institution will only be required to allocate income to a particular province if it has a permanent establishment in the province. Subsection 400(2) of the *Income Tax Regulations* defines permanent establishment as, generally speaking, a fixed place of business.

[58] It is my understanding that the Appellant, as a Crown corporation, does not pay provincial income tax and therefore does not fall within sections 402 to 405 of the *Income Tax Regulations*. As a result, it did not satisfy the second condition contained in paragraph (a) of old subsection 225.2(1).

[59] However, the second condition would also be satisfied if the Appellant was a prescribed financial institution under the Attribution Regulations.

[60] Under section 2 of the Old Attribution Regulations, a financial institution is a prescribed financial institution for the purposes of paragraph (d) of old subsection 225.2(1), if the financial institution is named in Schedule III of the *Financial Administration Act* and, if it were required to pay tax under the *Income Tax Act*, it would be required to allocate income to a participating province and a non-participating province under the allocation rules in sections 402 to 405 of the *Income Tax Regulations*.[13]

[61] The Appellant is named in Schedule III of the *Financial Administration Act* and the Appellant conceded in its written argument that it was a prescribed person under section 2 of the Old Attribution Regulations.

[62] In summary, the Appellant satisfied the first and second conditions under old subsection 225.2(1) and was a selected listed financial institution under old subsection 225.2(1).

[63] I will now consider the second condition under the new subsection 225.2(1). The second condition is satisfied if the financial institution is a prescribed financial institution under section 9 of the New Attribution Regulations. Under section 9 of the New Attribution Regulations, a financial institution, such as the Appellant, is a prescribed financial institution for the

[13]See Appendix B to these reasons, which contains the provisions setting out the old rules. The corresponding provision with regard to the new rules are reproduced in Appendix C hereto.

purposes of the definition of SLFI if it has a permanent establishment in a participating province and a permanent establishment in any other province. That section reads as follows,

> Subject to sections 10 to 15 and for the purpose of paragraph 225.2(1)(b) of the Act, a financial institution is a prescribed financial institution throughout a reporting period in a particular fiscal year that ends in a taxation year of the financial institution if the financial institution
>
> (a) has, at any time in the taxation year, a permanent establishment in a participating province and has, at any time in the taxation year, a permanent establishment in any other province; or
>
> (b) is a qualifying partnership during the taxation year.

[64] Subsection 1(1) of the New Attribution Regulations defines permanent establishment of a person for the purposes of the New Attribution Regulations. That subsection defines permanent establishment of a corporation to mean any permanent establishment determined under subsection 400(2) of the *Income Tax Regulations* and any permanent establishment that entity is deemed to have under section 3 of the New Attribution Regulations. As a result, a selected listed financial institution that is a corporation will be deemed to have a permanent establishment in a province if it has a fixed place of business in the province (i.e., a permanent establishment under subsection 400(2) of the *Income Tax Regulations*) or is deemed to have a permanent establishment under section 3 of the New Attribution Regulations.

[65] Section 3 of the New Attribution Regulations contains rules that deem certain financial institutions to have a permanent establishment in a specific province. Paragraph 3(a) sets out a rule that deems a bank to have permanent establishments in certain provinces on the basis of where deposits held by the bank, property securing loans issued by the bank, or borrowers in respect of unsecured loans issued by the bank are located. Paragraph 3(b) deems an insurer to have permanent establishments in certain provinces by virtue of the location of property and persons insured by the insurer. Paragraph 3(c) contains a deeming rule for trust and loan corporations, trust corporations or loan corporations. The paragraph deems such entities to have a permanent establishment in certain provinces on the basis of where property securing loans issued by the entity, borrowers in respect of unsecured loans issued by the entity, or non-loan business carried on by the entity are located. Paragraphs 3(d), (e),

and (f) extend the meaning of permanent establishment for a segregated fund of an insurer, a distributed investment plan and a private investment plan.

[66] Section 3 of the New Attribution Regulations extends the meaning of permanent establishment by looking past the physical fixed place of business of an entity to see if the entity is earning income in provinces where it does not have a physical fixed place of business. For example, under paragraph 3(c) of the New Attribution Regulations a financial institution that is a trust and loan corporation, a trust corporation or a loan corporation will be deemed to have a permanent establishment in a province if a loan that was made by the financial institution is outstanding and is secured by land situated in the province, or, if not secured by land, is owing by a person resident in the province, or if the financial institution conducts business (other than business in respect of loans) in the province. The financial institution is deemed to have a permanent establishment in the province even if it does not have a fixed place of business in that province. As a result of these new provisions, financial institutions that only have a single fixed place of business may still be deemed to be SLFIs.

[67] The backgrounder issued by the Department of Finance with respect to the New Attribution Regulations explains that section 3 is being added to ensure that a financial institution that carries on business across Canada, including in one or more participating provinces, is an SLFI even if it only has one fixed place of business.

[68] The New Attribution Regulations have unusual effective dates. Section 9 applies in respect of a reporting period that ends on or after July 1, 2010. The definition of permanent establishment in subsection 1(1) applies in respect of reporting periods that end on or after July 1, 2010, except that references to investment plans in paragraphs (a) and (b) are to be ignored as is paragraph (c), for reporting periods in a fiscal year that ends in a taxation year of the financial institution that begins before May 3, 2013.

[69] Section 3 of the New Attribution Regulations has two effective dates. The deeming provisions with respect to banks, segregated funds of an insurer, distributed investment plans and private investment plans apply in respect of a reporting period of a person that ends on or after July 1, 2010. However, the deeming provisions with respect to insurers, trust and loan corporations, trust corporations and loan corporations only apply in respect of a reporting period in a fiscal year of a person that begins on or after July 1, 2010.

[70] The reporting period of the Appellant that is before the Court began on April 1, 2010 and ended on March 31, 2011. Since this reporting period ended after June, 2010, new subsection 225.2(1) applies when determining whether the Appellant was an SLFI during the reporting period. As I have already discussed, the Appellant satisfied the first condition of new subsection 225.2(1) since it is a listed financial institution described in paragraph 149(1)(a)(viii).

[71] The second condition of new subsection 225.2(1) is satisfied if the Appellant is a prescribed financial institution under section 9 of the New Attribution Regulations. The Appellant was a prescribed financial institution during the reporting period at issue if it had a permanent establishment in a participating province and a permanent establishment in a non-participating province.

[72] The determination of where the Appellant had a permanent establishment will be made under subsection 1(1) of the New Attribution Regulations, since paragraph (b) of the definition of permanent establishment applies to reporting periods that end after June, 2010. However, paragraph 3(c) of the New Attribution Regulations, which extends the meaning of permanent establishment for "loan corporations", will not apply to the Appellant even if I do determine that the Appellant was a "loan corporation" during the relevant period. This is the result since paragraph 3(c) of the New Attribution Regulations only applies to reporting periods of the Appellant that begin on or after July 1, 2010. The reporting period at issue began on April 1, 2010.

[73] Thus, the Appellant will satisfy the second condition as it had a fixed place of business in participating and non-participating provinces. The evidence before me is that the Appellant had fixed places of business in participating and non-participating provinces since it conducted its business through offices located in each of the 10 provinces.

[74] In summary, the Appellant was an SLFI during the reporting period before the Court.

(2) <u>Second and Third Components: Adjustments to tax payable and input tax credits</u>

[75] The second component of the SAM Rules, namely, adjustments to the tax payable by an SLFI, is set out in subsection 218.1(2) for Division IV tax and section 220.04 for Division IV.1 tax.

[76] Subsection 218.1(2) provides that SLFIs do not self-assess the Division IV tax imposed under subsections 218.1(1) and (1.2) at the Sch. VIII provincial tax rate.[14]

[77] Section 220.04 provides that SLFIs do not self-assess the tax imposed under Division IV.1 at the relevant Sch. VIII provincial tax rate.[15]

[78] The result of these two sections is that SLFIs pay GST under the various divisions of the *GST Act* as follows:

- SLFIs pay Division II tax under subsections 165(1) and 165(2) at either the 5% GST rate, or the relevant HST rate, depending on whether the supply is made in a participating province or a non-participating province;

- SLFIs pay Division III tax under section 212 at the 5% GST rate on goods imported in the commercial stream and, under sections 212 and 212.1, at the relevant HST rate on goods that are not imported in the commercial stream; and

- SLFIs self-assess Division IV tax under sections 218 and 218.01 at the 5% GST rate.

[79] As a result, an SLFI only pays tax at the HST rate under Division II and Division III. It is not required, under Division IV and Division IV.1, to self-assess tax at the Sch. VIII provincial tax rate.

[80] The third component of the SAM Rules is set out in subsection 169(3). The subsection provides that an SLFI is not entitled to claim input tax credits for the portion of the HST imposed at the Sch. VIII provincial tax rate

[14]Subject to special rules for certain prescribed amounts and amounts acquired for use outside of the SLFIs endeavour.

[15]Other than prescribed amounts of tax.

under Division II (subsection 165(2)) and under Division III (section 212.1).[16] As a result, an SLFI can only claim input tax credits at the 5% GST rate for any tax it has paid under Divisions II, III and IV.[17]

[81] In summary, when calculating its net tax under the general rules in subsection 225(1), the SLFI includes tax collected at both the GST rate and the HST rate,[18] however it only claims input tax credits for tax paid at the GST rate. This is the result even if it paid Division II and/or Division III tax at the higher HST rate. In addition, the SLFI is only required to self-assess Division IV tax at the GST rate, even if it imports intangible personal property or services for consumption in a participating province. Finally, the SLFI is not required to self-assess Division IV.1 tax on property and/or services it brings into a participating province for use in non-commercial activities.

(3) Fourth Component: The SAM calculation

[82] The fourth component of the SAM Rules, subsection 225.2(2), compensates for the departures from the "standard" GST rules with respect to Division IV and IV.1 tax payable and the claiming of input tax credits. It operates by adjusting the SLFI's net tax determined under the general rules in 225(1).

[83] Specifically, the SLFI, when determining its net tax for a specific reporting period, adds to or deducts from the amount determined under subsection 225 (1) the amount determined by the formula [(A-B) x C x (D/E)] - F + G.[19]

[84] The SLFI performs a separate subsection 225.2(2) calculation for each participating province. The following describes the calculation for a specific participating province.

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[16]Subject to special rules for certain deemed credits.

[17]A similar restriction is set out in section 263.01 in respect of rebates claimed by SLFIs.

[18]This is the correct result, since a registrant is required to remit all amounts it collects as or on account of tax.

[19]A different formula applies for certain investment plans.

[85] The first calculation is (A-B).

[86] A is defined as the total of all tax payable by the SLFI under subsection 165(1) and sections 212, 218 and 218.01 in the reporting period.[20] This is all the Division II, III and IV tax the SLFI paid at the 5% GST rate.

[87] B is defined as all of the input tax credits claimed by the SLFI in its GST return for the specific reporting period.[21] As discussed previously, the SLFI is only entitled to claim input tax credits for tax paid at the 5% GST rate.

[88] As a result, A-B represents the tax the SLFI paid at the 5% GST rate that is not recoverable by the claiming of an input tax credit (the Non-recoverable 5% Tax).

[89] C is a percentage determined in accordance with the relevant provisions of the Attribution Regulations. The percentage is determined for the specific participating province and represents the allocation of a portion of the SLFI's Non-recoverable 5% Tax to the specific participating province. I will refer to the percentage as the "Attribution Percentage".

[90] The next calculation is (D/E). D is the Sch. VIII provincial tax rate for the specific participating province and E is the rate set out in subsection 165(1). The effect of multiplying the portion of the Non-recoverable 5% Tax allocated to the specific participating province by D/E is to *grossup* the allocated Non-recoverable 5% Tax to the Sch. VIII provincial tax rate for the specific participating province. The result is the amount of non-recoverable tax the SLFI should pay at the Sch. VIII provincial tax rate for the specific province.

[91] F represents the amount of tax that became payable, or was paid by the SLFI without having become payable, under either subsection 165(2) (Division II tax) or under section 212.1 (Division III tax) at the Sch. VIII provincial tax rate for the specific participating province. F is intended to give the SLFI credit for the tax it became liable to pay, or that it did pay, during the

[20]This includes any tax the SLFI paid without it having become payable, but excludes prescribed taxes. Also, adjustments are made for the section 150 election.

[21]Adjusted for prescribed taxes and the effect of any section 150 election.

relevant reporting period at the relevant Sch. VIII provincial tax rate for the specific participating province.[22]

[92] G represents prescribed adjustments. It includes such things as section 232 price adjustments and recaptures of input tax credits under sections 235 and 236.

[93] In summary, the calculation operates as follows:

- A separate calculation is done for each participating province.

- The SLFI first determines its Non-recoverable 5% Tax, i.e., the amount of non-recoverable tax it has paid at the 5% GST rate on all of its purchases and importations of goods and services.

- It then allocates a portion of its Non-recoverable 5% Tax to the specific participating province using the Attribution Percentage.

- The amount of the allocated Non-recoverable 5% Tax is then *grossedup* to reflect the Sch. VIII provincial tax rate for the specific province. The grossed-up amount reflects the amount of non-recoverable tax the SLFI is required to pay at the Sch. VIII provincial tax rate for the specific province.

- The SLFI then reduces this amount by the amount of tax it has actually paid at the Sch. VIII provincial tax rate for the specific province.

- The result is then added or subtracted from its net tax determined under subsection 225(1), which only allows the SLFI to recover tax (i.e., claim input tax credits) at the 5% GST rate.

- If the result is positive, the SLFI must add the amount to its net tax determined under subsection 225(1), since it has not paid all of the non-recoverable tax it should pay at the Sch. VIII provincial tax rate for the specific province. If the result is negative, it will subtract the amount from its net tax determined under subsection 225(1), since it will have overpaid tax it should pay at the Sch. VIII provincial tax rate for the specific province.

[22] F was amended, effective for reporting periods ending on or after July 1, 2010, to allow a two-year carry-forward for amounts that were not previously claimed by the SLFI.

- The SLFI then repeats the exercise for all participating provinces.

[94] The Department of Finance explained the effect of the net tax adjustment under subsection 225.2(2) as follows:

> The net tax adjustments provided for under the special attribution method serve as a proxy for the appropriate amount of provincial component of the HST that should be borne by an SLFI on property and services consumed by it in its exempt activities undertaken in relation to the HST provinces, while avoiding the complexity of detailed tracking.[23]

[95] In other words, the result of subsection 225.2(2) is that the amount of non-recoverable tax that the SLFI pays at the HST rates is not determined by where the SLFI purchases the goods or services, but rather by the various Attribution Percentages determined under the Attribution Regulations.

[96] The Attribution Percentage for a specific participating province is meant to be an estimate of the percentage of the total taxable goods and services that an SLFI acquired or imported into Canada in a specific reporting period and that it consumed in the participating province.

(4) The Attribution Percentages

[97] The issue before the Court is how the Appellant determines, under the Attribution Regulations, the Attribution Percentages.

[98] The Attribution Percentages are determined under Part 2 of the Attribution Regulations. The regulations provide separate rules for individuals, corporations and partnerships.

[99] I will first summarize the determination of the Attribution Percentages under the Old Attribution Regulations.

[100] With respect to corporations, the general rule is provided in section 8 of the Old Attribution Regulations. Sections 9, 10 and 11 provide special rules for insurance corporations, banks, trust and loan corporations, trust corporations and loan corporations.

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[23] *Regulatory Impact Analysis Statement*, footnote 12, *supra*, page 972.

[101] If the SLFI was a corporation that was not subject to the special rules in sections 9, 10 and 11, it determined its Attribution Percentage for a specific period and for a specific participating province in which the SLFI had a permanent establishment using the general rule in section 8 of the Old Attribution Regulations. Section 8 determined the Attribution Percentage using a formula that was based on the gross revenue of the corporation that was reasonably attributable to the permanent establishment of the SLFI and on the salaries and wages paid by the SLFI to employees of the permanent establishment.

[102] If the SLFI was an insurance company, its Attribution Percentage for a specific period for a specific participating province in which the insurance company had a permanent establishment was calculated under section 9 of the Old Attribution Regulations. The calculation was based upon net premiums in respect of insurance on property situated in the province and upon net premiums in respect of insurance, other than on property, from contracts with persons resident in the province.

[103] Under section 10 of the Old Attribution Regulations, an SLFI that was a bank calculated its Attribution Percentage for a specific participating province in which the bank had a permanent establishment, using a calculation based upon the salaries and wages it paid to employees of its permanent establishments located in that province and upon the loans and deposits of its permanent establishments in the participating province.

[104] Section 11 of the Old Attribution Regulations applied to trust and loan corporations, trust corporations and loan corporations. Such a corporation based its calculation of the Attribution Percentage for a specific participating province in which the corporation had a permanent establishment on gross revenue from loans secured by lands situated in the participating province, from loans, not secured by land, made to persons residing in the participating province, from certain loans administered by the permanent establishment, and from business conducted at the permanent establishment that did not relate to loans.

[105] Part 2 of The New Attribution Regulations provides new regulations for the determination of the Attribution Percentages. The rules in sections 8, 9, 10 and 11 of the Old Attribution Regulations are replaced by new rules in sections 23, 24, 25, and 26 of the New Attribution Regulations.

[106] Section 23 of the New Attribution Regulations contains the general rule for a corporation that is not subject to one of the special rules. Section 23 sets out a formula that is nearly identical to the formula contained in section 8 of the Old Attribution Regulations.

[107] The new formulas used to calculate the Attribution Percentage for insurance companies, banks, trust and loan corporations, trust corporations and loan corporations are contained in sections 24, 25 and 26 of the New Attribution Regulations. While the new formulas are different than the formulas contained in the Old Attribution Regulations, the criteria used in the formulas have, generally speaking, been retained.

[108] The Attribution Percentage for insurance companies is still based upon net premiums in respect of insurance on property situated in the participating province and net premiums in respect of insurance, other than on property, from contracts with persons resident in the province.[24] The Attribution Percentage for banks is still based upon the salaries and wages paid by a bank to employees of its permanent establishments located in the participating province and upon the loans and deposits of its permanent establishments in the participating province.[25] The Attribution Percentage for trust and loan corporations, trust corporations and loan corporations is still based upon gross revenue from loans secured by lands situated in the participating province, upon loans, not secured by land, made to persons residing in the participating province, upon certain loans administered by the permanent establishment, and upon business conducted at the permanent establishment that does not relate to loans.[26]

[109] The New Attribution Regulations add lengthy and complex new rules for determining the Attribution Percentages for investment plans, including separate rules for stratified investment plans, non-stratified investment plans, exchange-traded funds, and pension plans and private investment plans.[27]

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[24]Section 24 of the New Attribution Regulations.

[25]Section 25 of the New Attribution Regulations.

[26]Section 26 of the New Attribution Regulations.

[27]Sections 28 to 38 of the New Attribution Regulations.

[110] The provisions containing the new formulas for calculating the Attribution Percentages share the same unusual effective dates as the new provisions for permanent establishments. The new formula for corporations that are not subject to the special rules (section 23 of the New Attribution Regulations) and the new formula for banks (section 25 of the New Attribution Regulations) apply to reporting periods that end on or after July 1, 2010. However, the new formula for insurers (section 24 of the New Attribution Regulations) and the new formula for trust and loan corporations, trust corporations and loan corporations (section 26 of the New Attribution Regulations) apply to reporting periods that begin on or after July 1, 2010.

[111] As noted previously, the reporting period at issue began on April 1, 2010 and ended on March 31, 2011. As a result, the new formula for corporations contained in section 23 of the New Attribution Regulations applied during the reporting period, but the new formula for loan corporations contained in section 26 of the New Attribution Regulations did not apply.

IV. Positions of the Parties

[112] The parties agree that, if the Court finds that the Appellant is a "loan corporation" for the purposes of section 11 of the Old Attribution Regulations, its Attribution Percentage for the reporting period ending on March 31, 2011 is determined under that section, and was $2,537,716.99.[28]

[113] The parties also agree that, if the Court finds that the Appellant is not a "loan corporation" for the purposes of section 11 of the Old Attribution Regulations, then its Attribution Percentage is calculated under the general rule for corporations. In such a situation, its Attribution Percentage for the reporting period ending on March 31, 2011 is determined under subsection 23(2) of the New Attribution Regulations and is $2,022,265.99.[29]

[114] Section 11 of the Old Attribution Regulations reads as follows:

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[28]SAF, paragraph 48; Appellant's written submissions, paragraph 11; Respondent's written submissions, paragraph 17.

[29]SAF, paragraph 47; Appellant's written submissions, footnote 4; Respondent's written submissions, paragraph 18.

(1) Determination of the percentage - if a selected listed financial institution is a trust and loan corporation, a trust corporation or a loan corporation, the financial institution's percentage for a particular period for a participating province in which the financial institution has a permanent establishment is, despite subsection 8(2), the percentage that the gross revenue for the particular period of its permanent establishments in the participating province is of the total gross revenue for the particular period of its permanent establishments in Canada.

(2) Determination of gross revenue — In subsection (1), "gross revenue for the particular period of its permanent establishments in the participating province" means, in relation to a financial institution, the total of the gross revenue of the financial institution for the particular period arising from

(a) loans secured by lands situated in the participating province;

(b) loans, not secured by land, made to persons residing in the participating province;

(c) loans, other than loans secured by land situated in a province or country other than Canada in which the financial institution has a permanent establishment,

(i) made to persons residing in a province or country other than Canada in which the financial institution does not have a permanent establishment; and

(ii) administered by a permanent establishment in the participating province; and

(d) business conducted at its permanent establishments in the participating province, other than business that gives rise to revenue in respect of loans.

[115] Subsection 23(2) of the New Attribution Regulations reads as follows:

(2) Determination of percentage — Subject to this Part, if, in a particular period, a selected listed financial institution that is a corporation has a permanent establishment in a participating province, the financial institution's percentage for that province and for the particular period is

(a) except where paragraph (b) or (c) applies, 1/2 of the total of

(i) the percentage that its gross revenue for the particular period reasonably attributable to its permanent establishments in that province is of its total gross revenue for the particular period, and

> (ii) the percentage that the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in that province is of the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in Canada;
>
> (b) if its total gross revenue for the particular period is nil, the percentage that the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in the participating province is of the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in Canada; and
>
> (c) if the total of all salaries and wages paid in the particular period by the financial institution to employees of its permanent establishments in Canada is nil, the percentage that its gross revenue for the particular period reasonably attributable to its permanent establishments in that province is of its total gross revenue for the particular period.

[116] The Appellant summarizes its argument in its written submissions as follows:

> Based on a unified textual, contextual and purposive approach, the Appellant submits that the appropriate interpretation of "loan corporation" is a regulated entity that makes loans funded by deposits from the public. This is consistent with the established legal meaning across various federal and provincial statutes, and is supported by the context and purpose of the SLFI Regulations.[30]

[117] The Appellant places significant weight on the fact that the provincial legislation that regulates trust and loan corporations defines a "loan corporation" as being a corporation that is incorporated for the purpose of borrowing money from the public and then lending or investing such money.[31]

[118] The Respondent argues that the term "loan corporation" as used in the Attribution Regulations bears its ordinary meaning, which is a corporation whose principal business is making loans. The term loan corporation is not limited to entities incorporated and regulated under the federal *Trust and Loan Companies Act* or a provincial equivalent statute.

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[30]Appellant's Written Submissions, paragraph 47.

[31]Generally speaking, the provincial legislation excludes banks, insurance corporations, trust corporations and credit unions.

Meaning of "Loan Corporation"

[119] The general rule for interpreting statutes is the textual, contextual and purposive approach as confirmed by the Supreme Court of Canada in *Canada Trustco Mortgage Co. v. Canada*.[32] The Supreme Court explained this rule as follows:

> . . . The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play [*sic*] a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.[33]

[120] A literal interpretation of the words loan corporation is that they mean a corporation that makes loans. Nothing in the text suggests that the corporation must be regulated nor is there any reference to the extent to which it must make loans.

[121] In my view, a contextual and purposive analysis of section 11 of the Old Attribution Regulations leads to the conclusion that the words "loan corporation" as used in the Attribution Regulations, including section 11 of the Old Attribution Regulations, mean a corporation whose principal business is the making of loans. Further, in my view, a contextual and purposive analysis of section 26 of the New Attribution Regulations leads to the same conclusion.

[122] The Attribution Regulations derive their purpose from the overall purpose of the SAM Rules.

[123] As discussed previously, the purpose of the SAM Rules is to determine, in a way that does not discourage the SLFI from purchasing the goods and services in the participating province, the amount of non-refundable tax an SLFI should pay at the relevant Schedule VIII provincial tax rate on

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[32]2005 SCC 54, [2005] 2 S.C.R. 601.

[33]Ibid, at paragraph 10.

goods and services consumed or used in exempt activities in a participating province. The subsection 225.2(2) formula, particularly the Attribution Percentage, is the key component of the SAM Rules that is used to accomplish this goal.

[124] The subsection 225.2(2) formula and the Attribution Regulations, which determine the Attribution Percentage, only apply to the determination of the net tax for a particular reporting period of an SLFI.

[125] As a result, the statutory definition of SLFI is relevant when determining the context in which the words "loan corporation" are used in the Attribution Regulations.

[126] As discussed previously, an SLFI is defined to mean the listed financial institutions described in subparagraphs (i) to (x) of paragraph 149(1)(a). The relevant paragraphs for the purposes of subsection 11(1) of the Old Attribution Regulations are subparagraphs (ii) and (viii).[34]

[127] Pursuant to old and new subsection 225.2(1) and subparagraph 149(1)(a)(viii), a financial institution is an SLFI if the financial institution is "a person whose principal business is the lending of money or the purchasing of debt securities or a combination thereof". In other words, a financial institution that is in the business of lending money is only an SLFI if its principal business is the lending of money, the purchasing of existing debt instruments, such as loans, or a combination of these two activities.

[128] The Appellant argues first that the presumption of consistent expression supports the view that a financial institution contemplated under subparagraph 149(1)(a)(viii) is "something distinct from a 'loan corporation'. Had Parliament intended that 'loan corporation' be interpreted as a person whose principal business is lending money, it would have used the term 'loan corporation' in subparagraph 149(1)(a)(viii) or would have referred to a corporation whose 'principal business is the lending of money' in the SLFI Regulations [the Attribution Regulations]."[35]

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[34]The paragraphs are also relevant for the purposes of section 26 of the New Attribution Regulations.

[35]Appellant's Written Submissions, paragraph 35.

[129] I do not agree with the Appellant's argument on this point. The Appellant is suggesting that, under the Attribution Regulations, there are two groups of financial institutions whose principal business is the lending of money.

[130] One group receives deposits from the public and, as a result, is a loan corporation. This group would determine its Attribution Percentage under the special rules in section 11 of the Old Attribution Regulations and section 26 of the New Attribution Regulations. The second group does not receive deposits from the public and, even though their principal business is the lending of money, they are not "loan corporations". This group would determine its Attribution Percentage under section 23 of the New Attribution Regulations.[36]

[131] A contextual reading of the Attribution Regulations does not support such a conclusion. As I stated in *Club Intrawest v. The Queen*,[37]

> . . . it is a general rule of statutory interpretation that legislation is deemed to be well drafted and to express completely what the legislature wanted to say. As a result, when interpreting a particular section, the Court should not add words to the section. The Supreme Court of Canada explained this principle in *R v McIntosh*,[38] as follows:
>
> > Second, the contextual approach allows the courts to depart from the common grammatical meaning of words where this is required by a particular context, but it does not generally mandate the courts to read words into a statutory provision. It is only when words are "reasonably capable of bearing" a particular meaning that they may be interpreted contextually. I would agree with Pierre-André Côté's observation in his book *The Interpretation of Legislation in Canada* (2nd ed. 1991), at p. 231, that:
> >
> > Since the judge's task is to interpret the statute, not to create it, as a general rule, interpretation should not add to the terms of the law. Legislation is deemed to be well drafted, and to express completely what the legislator wanted to say. . .

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[36]If the Old Attribution Regulations were applicable, this group would have determined its Attribution Percentage under section 8 thereof.

[37]2016 TCC 149, paragraph 218.

[38][1995] 1 S.C.R. 686, page 701.

> The Crown is asking this Court to read words into s. 34(2) which are simply not there. In my view, to do so would be tantamount to amending s. 34(2), which is a legislative and not a judicial function. The contextual approach provides no basis for the courts to engage in legislative amendment.

[132] There are no provisions in the *GST Act* that state that a listed financial institution whose principal business is the lending of money is only a "loan corporation" for the purposes of the Attribution Regulations if it accepts deposits from the public. In my view, if Parliament had intended such a result it would have added that specific condition to the legislation. It is not the Court's role to create statutory conditions. As the Supreme Court of Canada noted in *McIntosh*, this is a legislative not a judicial function.

[133] Further, as I will discuss, the structure of Part II of the Attribution Regulations leads to the conclusion that the Attribution Regulations group together certain listed financial institutions together on the basis of the nature of the business they carried on during a relevant period. Those regulations group under one section, i.e., section 11 of the Old Attribution Regulations and section 26 of the New Attribution Regulations, which replaces section 11, SLFIs whose principal business is the lending of money.

[134] Second, the Appellant is arguing that the legislation places corporations whose principal business is the lending of money in two groups depending upon whether or not the corporations are regulated under federal or provincial legislation. In the Appellant's view only a regulated company is a "loan corporation". The regulatory legislation contains the requirement that loan corporations receive deposits.

[135] There are no provisions in the SAM Rules or the other provisions of the *GST Act* that define a loan corporation as being a regulated company under federal or provincial legislation. In fact, in a situation where Parliament wanted to restrict a specific type of SLFI to a regulated entity, it could do so through the provisions of subparagraphs 149(1)(a)(i) to (x) which define a listed financial institution.

[136] One example is subparagraph 149(1)(a)(ii), which is the paragraph that, in effect, includes trust corporations in the definition of SLFI.

[137] Subparagraph (ii) refers to "a corporation that is licensed or otherwise authorized under the laws of Canada or a province to carry on in Canada the

business of offering to the public its services as a trustee". In other words, a financial institution that carries on the business of providing trustee services is only an SLFI if it is regulated under either federal or provincial legislation. Therefore, the words trust corporation in subsection 11(1) of the Old Attribution Regulations only refer to a corporation that is licensed or otherwise authorized under federal or provincial legislation to carry on a trustee business.

[138] This is in contrast with subparagraph 149(1)(a)(viii), which does not require the corporation whose principal business is the lending of money or the purchase of existing debt instruments to be regulated in order for it to be a listed financial institution and an SLFI.

[139] I will now turn to the specific context in which the words "loan corporation" are used, namely the Attribution Regulations that calculate the Attribution Percentage for the purposes of the subsection 225.2(2) formula.

[140] As discussed previously, the subsection 225.2(2) formula begins by calculating the amount of non-refundable tax the SLFI has paid at the 5% GST rate on all of it purchases and importations of goods and services (i.e., the Non-recoverable 5% Tax). This represents the extent to which the 5% GST was paid on goods and services consumed in exempt activities in all provinces where the SLFI carries on business.

[141] For example, the Appellant carries on business in all provinces. The figure resulting from the A – B calculation, that is the Non-recoverable 5% Tax amount, represents the portion of the total tax the Appellant paid at the 5% GST rate that relates to goods and services consumed in all of the exempt activities carried on by the Appellant.

[142] The formula then applies the Attribution Percentage to allocate a portion of this Non-recoverable 5% Tax to a specific participating province. As discussed previously, the Attribution Percentage is calculated under various sections in Part 2 of the Attribution Regulations.

[143] These sections contain criteria that are intended to be a reasonable proxy for the SLFI's consumption or use of goods and services in its exempt activities in a specific participating province. The criteria for a specific SLFI are based on the nature of the business carried on by the SLFI.

[144] As was noted in the Regulatory Impact Analysis Statement issued by the Department of Finance at the time the Old Attribution Regulations were introduced: "These Regulations ensure that certain financial institutions that operate in an HST participating province account for the appropriate amount of the provincial component of the HST attributable to that province. The rules for determining the attribution percentage assist in this process by providing an objective basis on which to establish *the extent of an SLFI's business within and outside the participating provinces* . . ."[39] [emphasis added].

[145] The Regulatory Impact Analysis Statement accompanying the New Attribution Regulations states the following:

> . . . These amendments generally provide that . . . the methods for determining an SLFI's provincial attribution percentages, which the SLFI uses to determine its liability for the provincial component of the HST for each of the HST participating provinces, *reflect the consumption of the SLFI's financial services by residents of the province*.[40]
>
> [Emphasis added.]

[146] During the relevant period, SLFIs that were not subject to the special rules used the general rule in section 23 of the New Attribution Regulations to calculate their Attribution Percentages. This section estimates consumption in a participating province on the basis of gross revenue generated from the business carried on in the specific province and salary and wages paid to employees who work in the business in the province.[41]

[147] The Attribution Regulations recognize that the criteria in the general rule do not provide a reasonable consumption proxy for all types of SLFIs. As a result, sections 9 to 11 of the Old Attribution Regulations and sections 24 to 38 of the New Attribution Regulations provide different criteria for various types of SLFIs.

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[39] *Regulatory Impact Analysis Statement*, footnote 12 *supra*, page 978.

[40] *Regulatory Impact Analysis Statement*, Canada Gazette Part II, Vol. 147, No. 10, pages 1165 – 71 at 1166 and 1167.

[41] The same criteria were used in the general rules contained in section 8 of the Old Attribution Regulations.

[148] The special rules in sections 9 to 11 of the Old Attribution Regulations and sections 24 to 38 of the New Attribution Regulations look at the unique nature of the business carried on by the relevant entity. As discussed previously, the formula for insurance companies, contained in section 9 of the Old Attribution Regulations and section 24 of the New Attribution Regulations, is based upon premium revenue generated from certain insurance business in the specific province. The formula for banks, contained in section 10 of the Old Attribution Regulations and section 25 of the New Attribution Regulations, is based primarily on the amount of loans and deposits generated by the business in the specific participating province, but also considers salary and wages paid to employees who work in the business in the province. The formula for trust and loan corporations, loan corporations and trust corporations, contained in section 11 of the Old Attribution Regulations and section 26 of the New Attribution Regulations, is based upon gross revenue from certain loans made in the course of the business carried on in the specific participating province.

[149] The drafters of the regulations clearly felt that the criteria used in the general rule in section 8 of the Old Attribution Regulations and section 23 of the New Attribution Regulations did not, for certain entities, provide a reasonable proxy for consumption. They determined that these entities required special criteria.

[150] It is clear from the wording of the relevant sections of Part 2 of the Attribution Regulations that the criteria chosen reflect the unique nature of the business carried on by the entity. For insurance companies it was felt that revenue from premiums was a better indication of consumption than a combination of total gross revenue and salary and wages. For banks it was felt that the location of deposits and loans, rather than the source of the bank's revenue, was the best indication of consumption, provided an adjustment was made for salary and wages.

[151] For the entities covered by section 11 of the Old Attribution Regulations and section 26 of the New Attribution Regulations, which include "loan corporations", the decision was made that the proxy for consumption in a participating province should not be based on gross revenue and salary and wages. Rather it should be based primarily on the revenue from certain loans. The loans chosen were those that had a direct connection with the province: loans secured by land in the participating province; loans, not secured by land, made to residents of the province; and certain loans administered by the entity`s employees in the province.

[152] Clearly, section 11 of the Old Attribution Regulations (and section 26 of the New Attribution Regulations) is attempting to estimate consumption for entities whose principal business is the lending of money.

[153] In my view, the foregoing textual, contextual and purposive analysis, particularly the examination of the definition of SLFI in paragraphs 149(1)(a)(i) to (x), of the wording of section 11 of the Old Attribution Regulations and of the structure of Part II of the Attribution Regulations, leads to the conclusion that the words "loan corporation" as used in section 11 of the Old Attribution Regulations (and section 26 of the New Attribution Regulations) refer to a corporation whose principal business is the lending of money.

[154] An entity such as the Appellant is only included in the SAM Rules because its principal business is the lending of money. Further, the Attribution Regulations provide special rules for determining the consumption of such an entity in a participating province. The calculation of consumption under section 11 of the Old Attribution Regulations and section 26 of the New Attribution Regulations is based primarily on revenue from the making of loans. In my view, on a contextual analysis of Part II of the Attribution Regulations, these sections are intended to apply to financial institutions that are deemed to be SLFIs because their principal business is the lending of money. This result will only arise if the words "loan corporation" as used in section 11 of the Old Attribution Regulations and section 26 of the New Attribution Regulations are interpreted to mean any financial institution whose principal business is the lending of money.

[155] My conclusion is consistent with the purpose of the Attribution Percentage, which is to provide a proxy for consumption in a specific participating province.

[156] Although the new definition of permanent establishment in section 3 of the New Attribution Regulations does not apply to the reporting period in front of me, it does apply to future reporting periods of the Appellant. The new definition represents a fundamental change in the application of the SAM Rules. The old definition was based solely on the location of a fixed place of business. The new definition looks past any fixed places of business and sees where the SLFI is actually carrying on its business.

[157] This change was made in recognition of the growth of e-commerce. The Department of Finance backgrounder issued on May 19, 2010 with the draft

of the New Attribution Regulations explains, as follows, the reason for the change as it applies to banks:

> The current fixed place of business requirement in the SLFI test for banks generates inappropriate tax results where a bank has customers across Canada, but is not an SLFI under the existing rules because it does not have fixed places of business both in any of the participating provinces and in any of the non-participating provinces. *This case could arise, for example, where a bank has a fixed place of business in only one province but provides loan and deposit-related financial services to customers in all provinces using internet and telephone banking portals*. In such a case, the appropriate GST/HST result is that the bank be subject to SLFI rules and be required to calculate PVAT in respect of each participating province where its customers reside.[42]
>
> [Emphasis added.]

[158] The comment with respect to the provision of loans applies equally to a corporation whose principal business is the lending of money.

[159] Regardless of whether an SLFI is subject to the general rule under section 8 of the Old Attribution Regulations or one of the special rules in sections 9, 10 and 11, if the SLFI does not have a permanent establishment in a specific participating province, then its Attribution Percentage for the province is nil.

[160] If an entity such as the appellant, whose principal business is the lending of money, is not a "loan corporation" then it will only be deemed to have a permanent establishment in a participating province in which it has a fixed place of business. As a result, it will not be required to calculate an adjustment to its net tax under subsection 225.2(2) for any participating province where it does not have a fixed place of business, even if it makes loans to residents of the province.

[161] However, if such an entity is a "loan corporation" then, as a result of the application of section 3 of the New Attribution Regulations, it will be required to calculate an adjustment under subsection 225.2(2) for any participating province where the financial institution has outstanding loans secured by land located in the province or, if not secured by land, made to

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[42] *Backgrounder, Financial Institution Rules for the Harmonized Sales Tax (HST)*, Department of Finance, May 19, 2010.

residents of the province, even if it does not have a fixed place of business in the province.

[162] In my view, section 3 of the New Attribution Regulations provides additional contextual support for my conclusion that a "loan corporation", as that term is used in the Attribution Regulations, means a corporation whose principal business is the making of loans.

V. Conclusion

[163] The Appellant admitted in the SAF that its principal business is the lending of money. As a result, it was a loan corporation during the relevant period for the purposes of the SAM Rules.

[164] For the foregoing reasons, the appeal is dismissed with costs to the Respondent.

Signed at Vancouver, British Columbia, this 24th day of February 2017.

"S. D'Arcy"

D'Arcy J.

APPENDIX A

JUDGE'S COPY

2013-4196(GST)G

TAX COURT OF CANADA

BETWEEN:

FARM CREDIT CANADA

Appellant

and

HER MAJESTY THE QUEEN

Respondent

STATEMENT OF AGREED FACTS

The parties to this proceeding admit, for the purposes of these proceedings only, the truth of the following facts and to the authenticity of the documents referred to in this Statement of Agreed Facts ("**Agreed Statement**"), subject to the caveats below.

A. THE APPELLANT

1. Farm Credit Canada (the "**Appellant**") is a corporation continued by the *Farm Credit Canada Act*, S.C. 1993, c. 14 (the "*FCCA*").

2. The Appellant is a federal Crown corporation that is wholly-owned by the Government of Canada.

3. The Appellant's purpose is to enhance rural Canada by providing specialized and personalized financial services to farming operations and enterprises that are closely related to or dependant on farming.

4. The principal business of the Appellant is the making of loans.

5. The Appellant is not incorporated or continued under the *Trust and Loan Companies Act*, S.C. 1991, c. 45.

6. The Appellant does not have routine reporting obligations to the Superintendent of Financial Institutions, pursuant to the *Office of the Superintendent of Financial Institutions Act*, R.S.C. 1985, c. 18 (3rd Supp.), Part I. The Appellant may, however, be subject to a special examination by the Superintendent of Financial Institutions from time to time. The last special examination was conducted in respect of the period between December 11, 2012 and March 31, 2013. There were no special examinations in respect of the years in issue.

7. The Appellant is not incorporated or continued under the relevant trust and loan corporation legislation of any province, nor is it registered or licensed to carry on business as a loan corporation under the relevant trust and loan corporation legislation of any province.

8. The Appellant is not authorized under the *FCCA* to accept deposits from the public.

9. The Appellant does not have deposit insurance under the *Canada Deposit Insurance Corporation Act*, R.S.C. 1985, c. C-3.

10. The Appellant is not subject to minimum capital or capital adequacy requirements under the *FCCA*. The Appellant uses the capital adequacy guidelines issued by the Office of the Superintendent of Financial Institutions to assess its total capital, minimum regulatory capital and risk-weighted assets.

11. The *FCCA* imposes a maximum leverage requirement. The aggregate direct and contingent liabilities of the Appellant cannot, at any time, exceed twelve times the capital of the Appellant, except by order of the Governor in Council. No such order has been issued.

12. As of April 21, 2008, the Appellant began borrowing directly from the federal government under the Crown Borrowing Program. The Appellant continues to carry capital market debt that was raised prior to that date but has not issued any retail or institutional notes into the market since.

13. The Appellant provides its annual corporate plan and financial results to the Minister of Finance and the Minister of Agriculture and Agri-Food.

14. At all relevant times, the Appellant had a March 31 taxation year end.

B. THE APPELLANT'S BUSINESS ACTIVITIES

a) Appellant's Lending Lines of Business

15. The Appellant offers three product lines in its lending business:

    a. primary production financing;

    b. agribusiness and agri-food financing; and,

    c. FCC Alliances point-of-sale financing.

16. Primary production financing is the making of loans to primary producers, such as grain farmers or dairy farmers, to purchase business inputs, such as land, equipment, or supplies.

17. Agribusiness and agri-food financing is the making of loans to suppliers or processors who do business with primary producers. Some examples of the Appellant's customers in this category are equipment manufacturers and dealers, food processors (such as meatpackers), and input providers (such as seed wholesalers).

18. The types of loans that the Appellant originates in the primary production financing or agribusiness and agri-food financing categories are summarized in a product platform map, a copy of which is at Tab I of the Joint Book of Documents.

19. FCC Alliances point-of-sale financing involves the Appellant entering into agreements with Alliance Partners, such as crop input suppliers, agricultural equipment dealers, and cattle dealers. In this form of financing, a primary producer seeks to make a purchase (or lease) from an Alliance Partner. That primary

producer may seek financing for that purchase (or lease) from the Appellant, with the Alliance Partner operating as an intermediary.

b) Loan Origination Process

1) Loan Origination Process for Primary Production Financing and Agribusiness and Agri-food Financing

20. Primary production financing or agribusiness and agri-food financing loans are originated using the same process.

21. The process begins with a visit to one of the Appellant's offices or a telephone call to the Appellant.

22. During that first visit or call, the terms of the loan (interest rate, fixed or variable interest, length of repayment, secured or unsecured, etc.) are negotiated and the Appellant requests relevant credit information.

23. The Appellant determines an applicant's eligibility for a loan according to its eligibility policy. A copy of the Appellant's eligibility policy[1] is at Tab 2 of the Joint Book of Documents.

24. A "traditional" loan is reviewed at the Appellant's customer service centre on the basis of a simple scorecard, which is an expedited way of determining creditworthiness.

25. A larger loan is reviewed by a senior relationship manager, approval must be obtained from the Appellant's credit department or, in the case of the largest loans, from the Appellant's Credit Committee at the corporate office, and requires a detailed credit application. The Appellant's policy describing both simple scorecard and detailed credit application lending is at Tab 3 of the Joint Book of Documents.

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[1] Although this document and other policy documents have an effective date after the periods under appeal, the parties agree that these documents, or a substantially identical version of these documents, were in force during the periods under appeal.

26. The Appellant's decision whether to approve a loan is made in accordance with more specific lending policies. A copy of two such policies, titled "Scorecard and detailed lending policy" and "Prospecting the Syndicate", are at Tab 4 of the Joint Book of Documents.

2) Loan Origination Process for FCC Alliance Point-of-Sale Financing

27. The process for originating FCC Alliance point-of-sale financing loans are described in two manuals. A copy of the first such manual, titled "Equipment Financing Program Instructions", is at Tab 5 of the Joint Book of Documents. A copy of the second such manual, titled "Direct Referral Crop Input Program Instructions", is at Tab 6 of the Joint Book of Documents.

3) Loan Agreement Templates

28. The Appellant maintains loan template documents, which are used as the starting point for drafting new loan agreements. Three such loan template documents are attached:

a. a copy of a basic loan agreement template, used for smaller traditional loans, is at Tab 7 of the Joint Book of Documents;

b. a copy of a standard credit facility terms and conditions template, used for larger loans, is attached at Tab 8 of the Joint Book of Documents; and

c. a copy of a terms and conditions of FCC financing document, used by FCC Alliance partners to obtain loans, is attached at Tab 9 of the Joint Book of Documents.

c) Credit Monitoring Procedures

29. The Appellant engaged in general credit quality monitoring by reviewing the health of the Canadian economy as a whole and of particular agricultural sectors.

30. The Appellant also engaged in monthly risk scoring on a loan-by-loan basis.

31. The Appellant would generate monthly reports for loans in arrears and provide those reports to its relationship managers.

32. The Appellant considers a loan to be in arrears when a payment of $500 or more has been missed.

33. An example of a monthly report for loans in arrears is at Tab 10 of the Joint Book of Documents.

34. The Appellant's relationship managers monitor individual loans and are responsible for dealing with loans in arrears. Those relationship managers may contact borrowers and propose certain interventions, such as extending the maturity period of the loan.

35. The Appellant separately monitors impaired loans above a value through its special credit department (though the special department may also monitor certain non-impaired loans where there is some concern with repayment).

36. The Appellant considers a loan to be impaired when a loan has been in arrears for 90 days or more, and there is insufficient security to cover the missed payment.

37. The Appellant's special credit department regularly monitors loans already in arrears on a loan-by-loan basis. That department works with borrowers to arrange repayment, to renegotiate loan terms, and to realize on security where appropriate.

d) Appellant's Non-Lending Activities

38. In addition to its lending activities, the Appellant has the following revenue-generating activities:

    a. direct and indirect investing in commercialization-to-growth stage businesses operating in various agricultural sectors;

    b. offering loan, creditor life, and accident insurance products administered by SunLife Assurance Company of Canada, and

c. selling farm management software.

39. The Appellant also conducts information and learning programs directed to primary producers and agribusiness operators. These programs are offered at no cost.

e) Operational and Financial Performance

40. The Appellant publishes an Annual Report each year highlighting, among other things, its operational and financial performance. Copies of the Annual Reports for the 2008-09, 2009-10 and 2010-11 reporting periods are at Tabs 11, 12, and 13, respectively, of the Joint Book of Documents.

41. The Appellant's operational and financial performance for the 2008-09, 2009-10 and 2010-11 reporting periods can be summarized as follows:

Operational Highlights

	2011	2010	2009
Loans receivable portfolio			
Number of loans	120,070	114,439	106,867
Loans receivable ($millions)***	21,401.3	19,816.2	17,130.3
Net portfolio growth (%)	7.9	15.6	14.1
Loans receivable in good standing (%)	97.9	97.7	97.5
New Lending			
Number of loans disbursed	42,021	41,418	31,037
Net disbursements ($ millions)	6,153.2	6,585.6	5,068.4
Average size of loans disbursed ($)	146,432	159,003	163,302

Financial Highlights

	2011	2010	2009
Consolidated balance sheet ($ millions)			
Total assets	21,870.7	20,286.3	17,802.7
Total liabilities	19,189.3	17,941.2	15,519.2
Equity	2,681.4	2,345.1	2,283.5
Consolidated statement of operations ($ millions)			
Net interest income	750.1	609.9	508.0
Provision for credit losses	35.6	91.4	79.0
Other income	16.0	10.3	6.2
Administration expenses	273.8	255.2	231.4
Fair value adjustment	3.5	6.6	(1.7)
Net income	460.2	280.2	211.1

C. GST/HST ASSESSMENTS

42. The Appellant has appealed the reassessments of three of its annual reporting periods:

    a. the reporting period from April 1, 2008 to March 31, 2009 (the "**2008-09 Reporting Period**");

    b. the reporting period from April 1, 2009 to March 31, 2010 (the "**2009-10 Reporting Period**"); and,

    c. the reporting period from April 1, 2010 to March 31, 2011 (the "**2010-11 Reporting Period**") (collectively, the "**Reporting Periods**").

43. The Appellant filed its GST/HST returns for the Reporting Periods on the basis that it was a "general corporation"[2] during those periods.

44. The Minister initially assessed the Appellant's Reporting Periods as filed.

45. The Minister reassessed the Appellant's Reporting Periods to make various adjustments. One of those adjustments was to re-determine the Appellant's Special Attribution Method ("**SAM**") calculation on the basis that the Appellant was a "loan corporation"[3] during those periods.

46. The Appellant objected to and appealed from the reassessments for the Reporting Periods within the time permitted in the *Excise Tax Act*.

---

[2] The term "general corporation" is not used or defined in the *Excise Tax Act* or in the regulations. In this Agreed Statement, that term is used to describe a corporation to which section 8 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* applied for the 2008-09 Reporting and 2009-10 Reporting Period, and to which section 23 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* applied for the 2010-11 Reporting Period.

[3] In this Agreed Statement, the term "loan corporation" is used to describe a corporation to which section 11 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* applied, as those regulations applied to the Reporting Periods.

D. QUANTUM OF TAX IN DISPUTE

47. If this Court determines that the Appellant was a "general corporation" during the Reporting Periods, then the Appellant's net tax[4] was:

    a. $267,611.74 for the 2008-09 Reporting Period;

    b. $454,968.08 for the 2009-10 Reporting Period; and.

    c. $2,022,265.99 for the 2010-11 Reporting Period.

48. If this Court determines that the Appellant was a "loan corporation" during the Reporting Periods, then the Appellant's net tax was:

    a. $224,131.74 for the 2008-09 Reporting Period;

    b. $397,095.08 for the 2009-10 Reporting Period; and,

    c. $2,537,716.99 for the 2010-11 Reporting Period.

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[4] For greater certainty, the term "net tax" does not include the Appellant's self-assessed GST/HST on imported goods and services, which are not in dispute in this appeal.

The appellant and the respondent agree that this Agreed Statement does not preclude either party from calling evidence to supplement the facts agreed to herein. However, the parties agree that they are precluded from calling evidence which would contradict the facts agreed to herein.

DATED: April 25, 2016.

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APPENDIX B

Relevant provisions effective to the 2008-09 and 2009-10 reporting periods

Excise Tax Act

Selected listed financial institutions

225.2 (1) For the purposes of this Part, a financial institution is a selected listed financial institution throughout a reporting period in a fiscal year that ends in a particular taxation year of the financial institution if the financial institution is a listed financial institution described in any of subparagraphs 149(1)(*a*)(i) to (x) during the particular year and the preceding taxation year and

(*a*) the financial institution is a corporation that, under the rules prescribed in any of sections 402 to 405 of the *Income Tax Regulations*, has or would, if it had taxable income for the particular year and the preceding taxation year, have taxable income earned in the particular year and the preceding taxation year in any of the participating provinces and taxable income earned in the particular year and the preceding taxation year in any of the non-participating provinces;

(*b*) the financial institution is an individual, the estate of a deceased individual or a trust that, under the rules prescribed in section 2603 of the *Income Tax Regulations*, has or would, if it had income for the particular year and the preceding taxation year, have income earned in the particular year and the preceding taxation year in any of the participating provinces and income earned in the particular year and the preceding taxation year in any of the non-participating provinces;

(*c*) the financial institution is a specified partnership during the particular year and the preceding taxation year; or

(*d*) the financial institution is a prescribed financial institution.

Adjustment to net tax

(2) In determining the net tax for a particular reporting period in a fiscal year that ends in a taxation year of a selected listed financial institution of a prescribed class, the financial institution shall add all positive amounts, and may deduct all negative amounts, each of which is determined, for a participating province, by the formula

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

where

A

is the total of

(*a*) all tax (other than a prescribed amount of tax) that became payable under any of subsection 165(1) and sections 212, 218 and 218.01 by the financial institution during the particular reporting period or that was paid by the financial institution during the particular reporting period without having become payable,

(*b*) all amounts each of which is tax under subsection 165(1) in respect of a supply (other than a supply to which paragraph (*c*) applies) made by a person other than a selected listed financial institution to the financial institution that would, in the absence of an election made under section 150, have become payable by the financial institution during the particular reporting period, and

(*c*) all amounts each of which is an amount, in respect of a supply made during the particular reporting period of property or a service to which the financial institution and another person have elected to have this paragraph apply, equal to tax calculated on the cost to the other person of supplying the property or service to the financial institution excluding any remuneration to employees of the other person, the cost of financial services and tax under this Part;

B

is the total of

(*a*) all input tax credits (other than input tax credits in respect of an amount of tax that is prescribed for the purposes of paragraph (*a*) of the description of A) of the financial institution for the particular reporting period or preceding reporting periods of the financial institution claimed by the financial institution in the return under this Division filed by the financial institution for the particular reporting period, and

(*b*) all amounts each of which would be an input tax credit of the financial institution for the particular reporting period of the financial institution in respect of property or a service if tax became payable during the particular reporting period in respect of the supply of the property or service equal to the amount included for the particular reporting period under paragraph (*b*) or (*c*) of the description of A in respect of the supply;

C

is the financial institution's percentage for the participating province for the taxation year, determined in accordance with the prescribed rules that apply to financial institutions of that class;

D

is the tax rate for the participating province;

E

is the rate set out in subsection 165(1);

F

is the total of

(*a*) all tax (other than a prescribed amount of tax) under subsection 165(2) in respect of supplies made in the participating province to the financial institution or under section 212.1 in respect of goods imported by the financial institution for use in the participating province that became payable by the financial institution during the particular reporting period or that was paid by the financial institution during the particular reporting period without having become payable, and

(*b*) all amounts each of which is an amount, in respect of a supply made during the particular reporting period of property or a service to which the financial institution and another person have elected to have paragraph (*c*) of the description of A apply, equal to tax payable by the other person under any of subsection 165(2), 212.1, 218.1 or Division IV.1 that is included in the cost to the other person of supplying the property or service to the financial institution; and

G
is the total of all amounts each of which is a positive or negative prescribed amount.

…

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations

Interpretation

Meaning of *Act*

1 In these Regulations, *Act* means the *Excise Tax Act*.

PART 1
Prescribed Financial Institutions

Conditions

2 For the purpose of paragraph 225.2(1)(*d*) of the Act, a financial institution is a prescribed financial institution throughout a reporting period in a fiscal year that ends in a particular taxation year of the financial institution if the financial institution is a corporation that

(a) during the particular year and the preceding taxation year, is named in Schedule III to the *Financial Administration Act*; and

(b) under the rules prescribed in any of sections 402 to 405 of the *Income Tax Regulations*, would, if subsection 124(3) or paragraph 149(1)(*d*) of the *Income Tax Act* did not apply and the financial institution had taxable income for the particular year and the preceding taxation year, have taxable income earned in the particular year and the preceding taxation

year in any of the participating provinces and taxable income earned in the particular year and the preceding taxation year in any of the non-participating provinces.

PART 2
Percentage for a Participating Province

Interpretation

Definitions

3 The definitions in this section apply in this Part.

gross revenue of a selected listed financial institution for a period means the amount that would be the gross revenue of the financial institution for the period for the purposes of the *Income Tax Act* if the financial institution were a taxpayer under that Act and if every reference in that Act to a taxation year of the financial institution were read as a reference to that period. (*recettes brutes*) (*recettes brutes*)

individual includes the estate of a deceased individual or a trust. (*particulier*) (*particulier*)

particular period means

(a) in applying this Part for the purpose of the description of C in subsection 225.2(2) of the Act (other than in determining the amount for C in that subsection for the purpose of subsection 228(2.2) of the Act) and for the purposes of the description of D in subparagraph 363(2)(*a*)(ii), the description of D in paragraph 363(2)(*b*), the description of F in subparagraph 363(2)(*c*)(ii) and the description of F in paragraph 363(2)(*d*) of the Act, a taxation year;

(b) in applying this Part in determining the amount for C in subsection 225.2(2) of the Act for the purpose of subsection 228(2.2) of the Act, a reporting period; and

(c) in applying this Part for the purpose of the description of D in subparagraph 237(5)(*b*)(ii) of the Act, a fiscal quarter. (*période donnée*) (*période donnée*)

permanent establishment

(a) in respect of a corporation, has the meaning assigned by subsection 400(2) of the *Income Tax Regulations*;

(b) in respect of an individual, has the meaning assigned by subsection 2600(2) of the *Income Tax Regulations*;

(c) in respect of a specified partnership all the members of which are individuals, means a permanent establishment that would be the permanent establishment of the specified

partnership under subsection 2600(2) of the *Income Tax Regulations* if the specified partnership were an individual; and

(d) in respect of a specified partnership to which paragraph (*c*) does not apply, means a permanent establishment that would be the permanent establishment of the specified partnership under subsection 400(2) of the *Income Tax Regulations* if the specified partnership were a corporation. (*établissement stable*) (*établissement stable*)

specified partnership has the meaning assigned by subsection 225.2(8) of the Act. (*société de personnes déterminée*) (*société de personnes déterminée*)

total gross revenue of a selected listed financial institution for a period means the portion of the gross revenue of the financial institution that is reasonably attributable to the permanent establishments of the financial institution in Canada for the period. (*recettes brutes totales*) (*recettes brutes totales*)

Rule of interpretation

4 Unless a contrary intention appears, words and expressions used in this Part have the same meanings as in Parts IV and XXVI of the *Income Tax Regulations*.

Determination of the Attribution Percentage

Basic rules

5 For the purposes of the description of C in subsection 225.2(2), the description of D in subparagraph 237(5)(*b*)(ii), the description of D in subparagraph 363(2)(*a*)(ii), the description of D in paragraph 363(2)(*b*), the description of F in subparagraph 363(2)(*c*)(ii) and the description of F in paragraph 363(2)(*d*) of the Act, a financial institution's percentage for any participating province for a particular period is determined in accordance with this Part.

Member of a partnership

6 For the purposes of this Part, if part of the operations of a selected listed financial institution that is a member of a partnership were conducted in partnership with one or more other persons during a particular period, the following rules apply:

(a) the financial institution's gross revenue for the particular period shall not include any portion of the total gross revenue of the partnership; and

(b) the salaries and wages paid in the particular period by the financial institution shall not include any portion of the salaries and wages paid to employees of the partnership.

Rules for Individuals

No permanent establishment in a participating province

7 (1) If, in a particular period, a selected listed financial institution that is an individual does not have a permanent establishment in a particular participating province, the financial institution's percentage for that province for the particular period is nil.

Determination of the percentage

(2) If, in a particular period, a selected listed financial institution that is an individual has a permanent establishment in a participating province, the financial institution's percentage for the participating province for the particular period is 1/2 of the total of

> **(a)** the percentage that the gross revenue of the financial institution for the particular period reasonably attributable to the permanent establishments of the financial institution in the participating province is of the total gross revenue of the financial institution for the particular period, and
>
> **(b)** the percentage that the total of all salaries and wages paid by the financial institution in the particular period to employees of the permanent establishments of the financial institution in the participating province is of the total of all salaries and wages paid by the financial institution in the particular period to employees of the permanent establishments of the financial institution in Canada.

Special rules for attribution of gross revenue

(3) For the purpose of applying subsection (2), and the definition "total gross revenue", in relation to a financial institution that is an individual, gross revenue for a particular period of the financial institution is reasonably attributable to a particular permanent establishment if that gross revenue would be attributable to that permanent establishment under the rules set out in subsection 2603(4) of the *Income Tax Regulations* if the financial institution were a taxpayer under the *Income Tax Act* and if the references in that subsection to a year and to gross revenue for the year were read as references to the particular period and to gross revenue for the particular period, respectively.

Fees

(4) For the purpose of subsection (2), if a financial institution pays a fee to another person under an agreement pursuant to which that other person or employees of that other person perform services for the financial institution that would normally be performed by employees of the financial institution, the fee so paid is deemed to be salary paid by the financial institution and that part of the fee that may reasonably be regarded as payment in respect of services rendered at a permanent establishment of the financial institution is deemed to be salary paid to an employee of the permanent establishment.

Commissions

(5) For the purpose of subsection (4), a fee paid by a financial institution does not include a commission paid to a person who is not an employee of the financial institution.

General Rules for Corporations

No permanent establishment in a participating province

8 (1) If, in a particular period, a selected listed financial institution that is a corporation does not have a permanent establishment in a particular participating province, the financial institution's percentage for the province for the particular period is nil.

Determination of the percentage

(2) Subject to this Part, if, in a particular period, a selected listed financial institution that is a corporation has a permanent establishment in a participating province, the financial institution's percentage for the participating province for the particular period is

(a) except where paragraph (*b*) or (*c*) applies, 1/2 of the total of

(i) the percentage that its gross revenue for the particular period reasonably attributable to its permanent establishments in the participating province is of its total gross revenue for the particular period, and

(ii) the percentage that the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in the participating province is of the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in Canada;

(b) if the total gross revenue for the particular period of the financial institution is nil, the percentage that the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in the participating province is of the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in Canada; and

(c) if the total of all salaries and wages paid in the particular period by the financial institution to employees of its permanent establishments in Canada is nil, the percentage that its gross revenue for the particular period reasonably attributable to its permanent establishments in the participating province is of its total gross revenue for the particular period.

Special rules for attribution of gross revenue

(3) For the purpose of applying subsection (2) and the definition *total gross revenue* in relation to a financial institution other than an individual, gross revenue for a particular period of the financial institution is reasonably attributable to a particular permanent establishment if that gross revenue would be attributable to that permanent establishment under the rules set out in subsections 402(4) and (4.1) and 413(1) of the *Income Tax Regulations* if the financial institution

were a taxpayer under the *Income Tax Act* and if the references in those subsections to "taxation year" and "year" were read as references to "particular period".

Interest on various instruments

(4) For the purpose of subsection (2), "gross revenue" does not include interest on bonds, debentures or mortgages, dividends on shares of capital stock, or rentals or royalties from property that is not used in connection with the principal business operations of the financial institution.

Fees

(5) For the purpose of subsection (2), if a financial institution pays a fee to another person under an agreement pursuant to which that other person or employees of that other person perform services for the financial institution that would normally be performed by employees of the financial institution, the fee so paid is deemed to be salary paid in the particular period by the financial institution and that part of the fee that may reasonably be regarded as payment in respect of services rendered at a particular permanent establishment of the financial institution is deemed to be salary paid to an employee of that permanent establishment.

Commissions

(6) For the purpose of subsection (5), a fee paid by a financial institution does not include a commission paid to a person who is not an employee of the financial institution.

Insurance Corporations

Net premiums

9 (1) In this section, "net premiums" of a selected listed financial institution for a particular period means the total of the gross premiums received by the financial institution in the particular period (other than consideration received for annuities) minus the total for the particular period of

(a) premiums paid by the financial institution for reinsurance,

(b) dividends or rebates paid or credited by the financial institution to policy-holders, and

(c) rebates or returned premiums paid by the financial institution in respect of the cancellation of policies.

Determination of the percentage

(2) If a selected listed financial institution is an insurance corporation, the financial institution's percentage for a participating province for a particular period in which it has a permanent establishment in the province is, despite subsection 8(2), the percentage that

(a) the total of its net premiums for the particular period in respect of insurance on property situated in the province and of its net premiums for the particular period in respect of insurance, other than on property, from contracts with persons resident in the province

is of

(b) the total of its net premiums for the particular period in respect of insurance on property situated in Canada and of its net premiums for the particular period in respect of insurance, other than on property, from contracts with persons resident in Canada that are included in computing its income for the purposes of Part I of the *Income Tax Act*.

Attribution of net premiums to a participating province

(3) For the purpose of subsection (2), if a selected listed financial institution does not have a permanent establishment in a particular period in a particular participating province,

(a) each net premium for the particular period in respect of insurance on property situated in the particular province is deemed to be a net premium in respect of insurance on property situated in the province in which the permanent establishment of the financial institution to which the net premium is reasonably attributable is situated; and

(b) each net premium for the particular period in respect of insurance, other than on property, from contracts with persons resident in the particular province is deemed to be a net premium in respect of insurance, other than on property, from contracts with persons resident in the province in which the permanent establishment of the financial institution to which the net premium is reasonably attributable is situated.

Banks

Determination of the percentage

10 (1) If a selected listed financial institution is a bank, the financial institution's percentage for a particular period for a participating province in which the financial institution has a permanent establishment is, despite subsection 8(2), 1/3 of the total of

(a) the percentage that the total of all salaries and wages paid in the particular period by the financial institution to employees of its permanent establishments in the participating province is of the total of all salaries and wages paid in the particular period by the financial institution to employees of its permanent establishments in Canada, and

(b) twice the percentage that the total amount of loans and deposits of its permanent establishments in the participating province for the particular period is of the total amount of all loans and deposits of its permanent establishments in Canada for the particular period.

Amount of loans

(2) For the purpose of subsection (1), the amount of loans for a particular period is the amount determined by the formula

A/B

where

A
: is the total of the amounts outstanding, on the loans made by the selected listed financial institution, at the close of business on the last day of each month that ends in the particular period, and

B
: is the number of months that end in the particular period.

Amount of deposits

(3) For the purpose of subsection (1), the amount of deposits for a particular period is the amount determined by the formula

A/B

where

A
: is the total of the amounts on deposit with the selected listed financial institution at the close of business on the last day of each month that ends in the particular period, and

B
: is the number of months that end in the particular period.

Exclusion from loans and deposits

(4) For the purposes of subsections (2) and (3), loans and deposits do not include bonds, stocks, debentures, items in transit or deposits in favour of Her Majesty in right of Canada.

Trust and Loan Corporations

Determination of the percentage

11 (1) If a selected listed financial institution is a trust and loan corporation, a trust corporation or a loan corporation, the financial institution's percentage for a particular period for a participating province in which the financial institution has a permanent establishment is, despite subsection 8(2), the percentage that the gross revenue for the particular period of its permanent establishments in the participating province is of the total gross revenue for the particular period of its permanent establishments in Canada.

Determination of gross revenue

(2) In subsection (1), "gross revenue for the particular period of its permanent establishments in the participating province" means, in relation to a financial institution, the total of the gross revenue of the financial institution for the particular period arising from

(a) loans secured by lands situated in the participating province;

(b) loans, not secured by land, made to persons residing in the participating province;

(c) loans, other than loans secured by land situated in a province or country other than Canada in which the financial institution has a permanent establishment,

(i) made to persons residing in a province or country other than Canada in which the financial institution does not have a permanent establishment, and

(ii) administered by a permanent establishment in the participating province; and

(d) business conducted at its permanent establishments in the participating province, other than business that gives rise to revenue in respect of loans.

Specified Partnerships

Determination of the percentage

12 Where a selected listed financial institution is a specified partnership, the financial institution's percentage for a participating province for a particular period is

(a) if all the members of the specified partnership are individuals, the percentage that would be determined under section 7 for the participating province for the particular period if the specified partnership were an individual; and

(b) in any other case, the percentage that would be determined under section 8 for the participating province for the particular period if the specified partnership were a corporation.

Divided Businesses

Agreement with the Minister — weighted average

13 If a particular selected listed financial institution is a corporation other than a financial institution described in any of sections 9 to 11 and one or more parts of its business for a particular period consist of operations normally conducted by any of the types of financial institutions referred to in those sections, the particular financial institution and the Minister may agree that the particular financial institution's percentage for a participating province for the particular period is the weighted average of the percentages determined

(a) by applying to each such part of the business whichever of those sections refers to the type of financial institution that normally conducts the operations comprising that part of the business; and

(b) by applying section 8 to the remainder of the business that does not consist of operations normally conducted by any of the types of financial institutions referred to in those sections.

APPENDIX C

Relevant provisions effective to the 2010-11 reporting period

Excise Tax Act

Selected listed financial institutions

225.2 (1) For the purposes of this Part, a financial institution is a selected listed financial institution throughout a reporting period in a fiscal year that ends in a taxation year of the financial institution if the financial institution is

(a) a listed financial institution described in any of subparagraphs 149(1)(a)(i) to (x) during the taxation year; and

(b) a prescribed financial institution throughout the reporting period.

Adjustment to net tax

(2) In determining the net tax for a particular reporting period in a fiscal year that ends in a taxation year of a selected listed financial institution of a prescribed class, the financial institution shall add all positive amounts, and may deduct all negative amounts, each of which is determined, for a participating province, by the formula

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

where

A

is the total of

(a) all tax (other than a prescribed amount of tax) that became payable under any of subsection 165(1) and sections 212, 218 and 218.01 by the financial institution during the particular reporting period or that was paid by the financial institution during the particular reporting period without having become payable,

(b) all amounts each of which is tax under subsection 165(1) in respect of a supply (other than a supply to which paragraph (c) applies) made by a person (other than a prescribed person or a person of a prescribed class) to the financial institution that would, in the absence of an election made under section 150, have become payable by the financial institution during the particular reporting period, and

(c) all amounts each of which is an amount, in respect of a supply made during the particular reporting period of property or a service to which the financial institution and another person have elected to have this paragraph apply, equal to tax calculated on the cost to the other person of supplying the property or service to the financial institution excluding any remuneration to employees of the other person, the cost of financial services and tax under this Part;

B

is the total of

(a) all input tax credits (other than input tax credits in respect of an amount of tax that is prescribed for the purposes of paragraph (a) of the description of A) of the financial institution for the particular reporting period or preceding reporting periods of the financial institution claimed by the financial institution in the return under this Division filed by the financial institution for the particular reporting period, and

(b) all amounts each of which would be an input tax credit of the financial institution for the particular reporting period of the financial institution in respect of property or a service if tax became payable during the particular reporting period in respect of the supply of the property or service equal to the amount included for the particular reporting period under paragraph (b) or (c) of the description of A in respect of the supply;

C

is the financial institution's percentage for the participating province for the taxation year, determined in accordance with the prescribed rules that apply to financial institutions of that class;

D

is the tax rate for the participating province;

E

is the rate set out in subsection 165(1);

F

is the total of

(a) all amounts of tax (other than a prescribed amount of tax) under subsection 165(2) in respect of supplies made in the participating province to the financial institution, or under section 212.1 calculated at the tax rate for the participating province, that

(i) became payable, or were paid without having become payable, by the financial institution during

(A) the particular reporting period, or

(B) any other reporting period of the financial institution that precedes the particular reporting period, provided that

(I) the particular reporting period ends within two years after the end of the financial institution's fiscal year that includes the other reporting period, and

(II) the financial institution was a selected listed financial institution throughout the other reporting period,

(ii) were not included in determining the positive or negative amounts that the financial institution is required to add, or may deduct, under this subsection in determining its net tax for any reporting period of the financial institution other than the particular reporting period, and

(iii) are claimed by the financial institution in a return under this Division filed by the financial institution for the particular reporting period, and

(b) all amounts each of which is an amount, in respect of a supply made during the particular reporting period of property or a service to which the financial institution and another person have elected to have paragraph (c) of the description of A apply, equal to tax payable by the other person under any of subsection 165(2), 212.1, 218.1 or Division IV.1 that is included in the cost to the other person of supplying the property or service to the financial institution; and

G
is the total of all amounts each of which is a positive or negative prescribed amount.

…

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations

Interpretation

Definitions

1 (1) The following definitions apply in these Regulations.

Act means the *Excise Tax Act*. (*Loi*)

defined benefits pension plan means the part of a pension plan that is in respect of benefits under the plan that are determined in accordance with a formula set forth in the plan and under which the employer contributions are not determined in accordance with a formula set forth in the plan. (*régime de pension à prestations déterminées*)

defined contribution pension plan means the part of a pension plan that is not a defined benefits pension plan. (*régime de pension à cotisations déterminées*)

distributed investment plan means an investment plan that is

(a) a corporation (other than a pension entity) exempt from tax under the *Income Tax Act* by reason of paragraph 149(1)(*o.2*) of that Act;

(b) an investment corporation;

(c) a mortgage investment corporation;

(d) a mutual fund corporation;

(e) a mutual fund trust;

(f) a non-resident-owned investment corporation;

(g) a segregated fund of an insurer; or

(h) a unit trust. (*régime de placement par répartition*)

employer resource has the same meaning as in subsection 172.1(1) of the Act. (*ressource d'employeur*)

exchange-traded fund means a distributed investment plan, any unit of which is listed or traded on a stock exchange or other public market. (*fonds coté en bourse*)

exchange-traded series of a stratified investment plan means a series of the plan, any unit of which is listed or traded on a stock exchange or other public market. (*série cotée en bourse*)

individual includes the estate or succession of a deceased individual. (*particulier*)

investment plan means a person referred to in subparagraph 149(1)(*a*)(vi) or (ix) of the Act other than a trust governed by a registered retirement savings plan, a registered retirement income fund or a registered education savings plan. (*régime de placement*)

manager of an investment plan means

(a) in the case of a pension entity of a pension plan, the administrator, as defined in subsection 147.1(1) of the *Income Tax Act*, of the pension plan; and

(b) in any other case, the person that has ultimate responsibility for the management and administration of the assets and liabilities of the investment plan. (*gestionnaire*)

non-stratified investment plan means a distributed investment plan that is not a stratified investment plan. (*régime de placement non stratifié*)

permanent establishment of a person means any permanent establishment that the person is deemed to have under section 3 and

(a) in the case of a corporation other than an investment plan, any permanent establishment of the corporation as determined under subsection 400(2) of the *Income Tax Regulations*;

(b) in the case of an individual or a trust other than an investment plan, any permanent establishment of the individual or trust as determined under subsection 2600(2) of the *Income Tax Regulations*;

(c) in the case of a partnership all the members of which are individuals or trusts, any permanent establishment that would be a permanent establishment of the partnership under subsection 2600(2) of the *Income Tax Regulations* if the partnership were an individual; and

(d) in the case of a partnership to which paragraph (*c*) does not apply, any permanent establishment that would be a permanent establishment of the partnership under subsection 400(2) of the *Income Tax Regulations* if the partnership were a corporation. (*établissement stable*)

plan member of an investment plan that is a private investment plan or a pension entity of a pension plan means an individual who has a right, either immediate or in the future and either absolute or contingent, to receive benefits under

(a) in the case of an employee life and health trust, the investment plan;

(b) in the case of a pension entity of a pension plan, the pension plan; and

(c) in any other case, the deferred profit sharing plan, the employee benefit plan, the employee trust, the employees profit sharing plan, the registered supplementary unemployment benefit plan or the retirement compensation arrangement, as the case may be, that governs the investment plan. (*participant*)

private investment plan means an investment plan other than

(a) a distributed investment plan; or

(b) a pension entity. (*régime de placement privé*)

provincial series for a fiscal year of a stratified investment plan means a series of the stratified investment plan that meets the following conditions throughout the fiscal year in respect of a particular province:

(a) under the laws of Canada or a province, units of the series are permitted to be sold or distributed in the particular province and are not permitted to be sold or distributed in any other province;

(b) under the terms of the prospectus, registration statement or other similar document for the series, or under the laws of Canada or a province, the conditions for a person owning or acquiring units of the series include the following:

(i) that the person be resident in the particular province when the units are acquired, and

(ii) that the units are required to be sold, transferred or redeemed within a reasonable time after the person ceases to be resident in the particular province; and

(c) the stratified investment plan's percentage for the series, for the particular province and for the taxation year in which the preceding fiscal year ends, or the percentage that would be the stratified investment plan's percentage for the series, for the particular province and for that taxation year if the particular province were a participating province, is 90% or more. (*série provinciale*)

series means

(a) in respect of a trust, a class of units of the trust; and

(b) in respect of a corporation,

(i) a class of the capital stock of the corporation that has not been issued in one or more series, and

(ii) a series of a class of the capital stock of the corporation that has been issued in one or more series. (*série*)

specified resource means a specified resource within the meaning of subsection 172.1(5) of the Act. (*ressource déterminée*)

stratified investment plan means a distributed investment plan whose units are issued in two or more series. (*régime de placement stratifié*)

unit means

(a) in respect of a trust, a unit of the trust;

(b) in respect of a series of a trust, a unit of the trust of that series;

(c) in respect of a corporation, a share of the capital stock of the corporation;

(d) in respect of a series of a corporation, a share of the capital stock of the corporation of that series; and

(e) in respect of a segregated fund of an insurer, an interest of a person, other than the insurer, in the segregated fund. (*unité*)

Further definitions — *Income Tax Act*

(2) For the purposes of these Regulations, *deferred profit sharing plan*, *employee benefit plan*, *employee life and health trust*, *employee trust*, *employees profit sharing plan*, *investment corporation*, *mortgage investment corporation*, *mutual fund corporation*, *mutual fund trust*, *non-resident-owned investment corporation*, *registered disability savings plan*, *registered education savings plan*, *registered retirement income fund*, *registered retirement savings plan*, *registered supplementary unemployment benefit plan*, *retirement compensation arrangement*, *TFSA* and *unit trust* have the same meanings as in subsection 248(1) of the *Income Tax Act*.

Application of definitions to adaptations

(3) For greater certainty, the definitions in this section apply in subsection 225.2(2) of the Act as adapted by these Regulations.

Meaning of *qualifying partnership*
2 For the purposes of these Regulations, a partnership is a *qualifying partnership* during a taxation year of the partnership if, at any time in the taxation year, the partnership has

> **(a)** a member that has, at any time in the taxation year of the member in which the taxation year of the partnership ends, a permanent establishment in a particular participating province through which a business of the partnership is carried on or that is deemed under section 3 to be a permanent establishment of the member; and
>
> **(b)** a member (including a member referred to in paragraph (*a*)) that has, at any time in the taxation year of the member in which the taxation year of the partnership ends, a permanent establishment in a province other than the particular participating province through which a business of the partnership is carried on or that is deemed under section 3 to be a permanent establishment of the member.

Permanent establishment in province

3 For the purposes of these Regulations,

> **(a)** if a financial institution is a bank and if, at any time in a taxation year of the financial institution, the financial institution maintains a deposit or other similar account that is in the name of a person resident in a province or, at any time in that year, a loan that was made by the financial institution is outstanding and is secured by land situated in a province or, if not secured by land, is owing by a person resident in a province, the following rules apply:
>
> > **(i)** the financial institution is deemed to have a permanent establishment in the province throughout the taxation year, and
> >
> > **(ii)** the following loans made by the financial institution and deposit and other similar accounts maintained by the financial institution are deemed to be loans and deposits of the permanent establishment referred to in subparagraph (i) and not of any other permanent establishment of the financial institution:

(A) outstanding loans secured by land situated in the province,

(B) outstanding loans, not secured by land, owing by persons resident in the province, and

(C) deposit and other similar accounts in the name of a person resident in the province;

(b) if a financial institution is an insurer that, at any time in a taxation year of the financial institution, is insuring a risk in respect of property ordinarily situated in a province or in respect of a person resident in a province, the financial institution is deemed to have a permanent establishment in the province throughout the taxation year;

(c) if a financial institution is a trust and loan corporation, a trust corporation or a loan corporation and if, at any time in a taxation year of the financial institution, the financial institution conducts business (other than business in respect of loans) in a province or, at any time in that year, a loan that was made by the financial institution is outstanding and is secured by land situated in a province or, if not secured by land, is owing by a person resident in a province, the financial institution is deemed to have a permanent establishment in the province throughout the taxation year;

(d) if a financial institution is a segregated fund of an insurer, the financial institution is deemed to have a permanent establishment in a particular province throughout a taxation year of the financial institution if, at any time in the taxation year,

(i) the insurer is qualified, under the laws of Canada or a province, to sell units of the financial institution in the particular province, or

(ii) a person resident in the particular province holds one or more units of the financial institution;

(e) if a financial institution is a distributed investment plan (other than a segregated fund of an insurer), the financial institution is deemed to have a permanent establishment in a particular province throughout a taxation year of the financial institution if, at any time in the taxation year,

(i) the financial institution is qualified, under the laws of Canada or a province, to sell or distribute units of the financial institution in the particular province, or

(ii) a person resident in the particular province holds one or more units of the financial institution; and

(f) if a financial institution is a private investment plan or an investment plan that is a pension entity of a pension plan and, at any time in a taxation year of the financial institution, a plan member of the financial institution is resident in a province, the financial

institution is deemed to have a permanent establishment in the province throughout the taxation year.

Permanent establishment throughout taxation year

4 For the purposes of these Regulations, a financial institution has a permanent establishment in a province throughout a taxation year of the financial institution if the financial institution has a permanent establishment in the province at any time in the taxation year.

Residence of person

5 For the purposes of these Regulations, and despite subsection 132.1(1) of the Act, a person resident in Canada is resident in the province

(a) if the person is an individual, where the person's principal mailing address in Canada is located;

(b) if the person is a corporation or a partnership, where the person's principal business in Canada is located;

(c) if the person is a trust governed by a registered retirement savings plan, a registered retirement income fund, a registered education savings plan, a registered disability savings plan or a TFSA, where the principal mailing address in Canada of the annuitant of the registered retirement savings plan or registered retirement income fund, of the subscriber of the registered education savings plan or of the holder of the registered disability savings plan or TFSA is located;

(d) if the person is a trust, other than a trust described in paragraph (*c*), where the trustee's principal business in Canada is located or, if the trustee is not carrying on a business, where the trustee's principal mailing address in Canada is located; and

(e) in any other case, where the person's principal business in Canada is located or, if the person is not carrying on a business, where the person's principal mailing address in Canada is located.

Definitions — section 225.3 of Act

6 (1) For the purpose of section 225.3 of the Act, *exchange-traded fund*, *exchange-traded series*, *non-stratified investment plan* and *stratified investment plan* have the same meanings as in subsection 1(1).

Definitions — section 225.4 of Act
(2) For the purpose of section 225.4 of the Act,

(a) *exchange-traded fund*, *exchange-traded series*, *individual*, *investment plan*, *non-stratified investment plan*, *plan member*, *private investment plan*, *series*, *stratified investment plan* and *unit* have the same meanings as in subsection 1(1); and

(b) *specified investor* has the same meaning as in section 16.

PART 1
Prescribed Financial Institutions

Meaning of *unrecoverable tax amount*

7 (1) For the purposes of this section, *unrecoverable tax amount* for a reporting period of a person means the amount determined by the formula

A – B

where

A

is the total of all amounts, each of which is

(*a*) an amount that would be included in the total for A in subsection 225.2(2) of the Act, read without reference to any adaptation made under Part 5, for the reporting period, if the person were a selected listed financial institution throughout the reporting period and no election under subsection 55(1) were in effect throughout the reporting period,

(*b*) an amount of tax that the person would be deemed to have paid under subparagraph 172.1(5)(*d*)(ii) or (6)(*d*)(ii) or paragraph 172.1(7)(*d*) of the Act during the reporting period, if the person were a selected listed financial institution throughout the reporting period, or

(*c*) an amount that the person would be required by paragraph 232.01(5)(*b*) or 232.02(4)(*b*) of the Act to include in its determination of net tax for the reporting period, if the person were a selected listed financial institution throughout the reporting period; and

B

is the total of all amounts, each of which is

(*a*) an amount that would be included in the total for B in subsection 225.2(2) of the Act, read without reference to any adaptation made under Part 5, for the reporting period, if the person were a selected listed financial institution throughout the reporting period and no election under subsection 55(1) were in effect throughout the reporting period,

(*b*) the federal component amount, within the meaning of section 232.01 of the Act, of a tax adjustment note issued under subsection 232.01(3) of the Act to the person during the reporting period, or

(*c*) the federal component amount, within the meaning of section 232.02 of the Act, of a tax adjustment note issued under subsection 232.02(2) of the Act to the person during the reporting period.

Qualifying small investment plan

(2) For the purposes of this Part, an investment plan (other than a distributed investment plan) is a qualifying small investment plan for a particular fiscal year of the investment plan where

(a) if, in the absence of section 57, the particular fiscal year is the first fiscal year of the investment plan, the amount determined by the following formula for each reporting period of the investment plan included in the particular fiscal year is equal to or less than $10,000:

$$A \times (365/B)$$

where

A
is the unrecoverable tax amount for the reporting period, and

B
is the number of days in the reporting period; and

(b) in any other case, the amount determined by the following formula is equal to or less than $10,000:

$$A \times (365/B)$$

where

A
is the total of all amounts, each of which is an unrecoverable tax amount for a reporting period of the investment plan included in the fiscal year of the investment plan (in this paragraph referred to as the "preceding fiscal year") that precedes the particular fiscal year, and

B
is the number of days in the preceding fiscal year.

Prescribed person — paragraph 149(5)(*g*) of Act

8 For the purposes of paragraph 149(5)(*g*) of the Act, an employee life and health trust is a prescribed person.

Prescribed financial institution — paragraph 225.2(1)(*b*) of Act

9 Subject to sections 10 to 15 and for the purpose of paragraph 225.2(1)(*b*) of the Act, a financial institution is a prescribed financial institution throughout a reporting period in a particular fiscal year that ends in a taxation year of the financial institution if the financial institution

(a) has, at any time in the taxation year, a permanent establishment in a participating province and has, at any time in the taxation year, a permanent establishment in any other province; or

(b) is a qualifying partnership during the taxation year.

Exception — qualifying small investment plans

10 Section 9 does not apply in respect of a reporting period in a particular fiscal year of a financial institution that is a qualifying small investment plan for the particular fiscal year if

(a) the financial institution was a qualifying small investment plan for the fiscal year of the financial institution that precedes the particular fiscal year and was not a selected listed financial institution throughout that preceding fiscal year;

(b) the financial institution was a selected listed financial institution throughout the three fiscal years of the financial institution that precede the particular fiscal year; or

(c) the particular fiscal year is the first fiscal year of the financial institution.

Exception — provincial investment plan

11 Section 9 does not apply in respect of a reporting period in a fiscal year that ends in a taxation year of a financial institution that is a non-stratified investment plan and that meets the following conditions throughout the fiscal year in respect of a particular province:

(a) under the laws of Canada or a province, units of the financial institution are permitted to be sold or distributed in the particular province but are not permitted to be sold or distributed in any other province;

(b) under the terms of the prospectus, registration statement or other similar document for the financial institution, or under the laws of Canada or a province, the conditions for a person owning or acquiring units of the financial institution include

(i) that the person be resident in the particular province when the units are acquired, and

(ii) that the units are required to be sold, transferred or redeemed within a reasonable time after the person ceases to be resident in the particular province; and

(c) the financial institution’s percentage for the particular province and for the taxation year in which the preceding fiscal year ends, or the percentage that would be the financial

institution's percentage for the particular province and for that taxation year if the particular province were a participating province, is 90% or more.

Exception — investment plan with provincial series

12 Section 9 does not apply in respect of a reporting period in a fiscal year of a financial institution that is a stratified investment plan if each series of the financial institution is a provincial series for the fiscal year.

Exception — pension and private investment plans

13 Section 9 does not apply in respect of a reporting period in a fiscal year that ends in a taxation year of a financial institution that is a private investment plan or a pension entity of a pension plan if

(a) throughout the preceding taxation year, less than 10% of the total number of plan members of the financial institution are resident in the participating provinces; and

(b) throughout the preceding fiscal year, the following amount is less than $100,000,000:

(i) in the case of a pension entity of a pension plan, part of which is a defined contribution pension plan and the remaining part of which is a defined benefits pension plan, the amount determined by the formula

$$A + B$$

where

A
is the total value of the assets of the defined contribution pension plan that are reasonably attributable to the plan members of the financial institution resident in the participating provinces, and

B
is the total value of the actuarial liabilities of the defined benefits pension plan that are reasonably attributable to the plan members of the financial institution resident in the participating provinces,

(ii) in the case of a pension entity of a defined benefits pension plan, other than a pension entity described in subparagraph (i), the amount that is the total value of the actuarial liabilities of the pension plan that are reasonably attributable to the plan members of the financial institution resident in the participating provinces, and

(iii) in any other case, the amount that is the total value of the assets of the private investment plan or pension plan that are reasonably attributable to the plan members of the financial institution resident in the participating provinces.

Election — qualifying small investment plan

14 (1) If an investment plan is, or reasonably expects to be, a qualifying small investment plan for a fiscal year of the investment plan, if section 13 does not apply in respect of a reporting period in the fiscal year and if no application by the investment plan under subsection 15(1) in respect of the fiscal year has been approved by the Minister, the investment plan may make an election to be a prescribed financial institution for the purpose of paragraph 225.2(1)(*b*) of the Act that is effective from the first day of the fiscal year.

Effect of election
(2) For the purpose of paragraph 225.2(1)(*b*) of the Act, if an election made under subsection (1) by an investment plan is in effect throughout a reporting period of the investment plan, the investment plan is a prescribed financial institution throughout the reporting period.

Form of election
(3) An election made under subsection (1) by an investment plan is to

(a) be made in prescribed form containing prescribed information;

(b) set out the first fiscal year of the investment plan during which the election is to be in effect; and

(c) be filed with the Minister in prescribed manner on or before the first day of that first fiscal year or any later day that the Minister may allow.

Cessation
(4) An election made under subsection (1) by a person ceases to have effect on the day that is the earliest of

(a) the first day of a fiscal year that ends in the first taxation year of the person for which the person does not meet the requirement set out in paragraph 9(*a*);

(b) the first day of the fiscal year of the person in which the person ceases to be an investment plan; and

(c) the day on which a revocation of the election becomes effective.

Revocation
(5) An investment plan that has made an election under subsection (1) may revoke the election, effective on the first day of a fiscal year of the investment plan that begins at least three years after the election became effective, or on the first day of any earlier fiscal year as the Minister may allow on application by the investment plan, by filing in prescribed manner a notice of revocation with the Minister in prescribed form containing prescribed information on or before the day on which the revocation is to become effective or any later day that the Minister may allow.

Effect of early revocation

(6) If the Minister allows an investment plan to revoke an election made under subsection (1) on the first day of a fiscal year that begins less than three years after the election became effective and the investment plan is a qualifying small investment plan for the fiscal year, section 9 does not apply in respect of any reporting period in the fiscal year.

Application for small investment plan status

15 (1) An investment plan may apply to the Minister to not have section 9 apply in respect of any reporting period in a particular fiscal year of the investment plan and in respect of any reporting period in the fiscal year of the investment plan following the particular fiscal year.

Authorization

(2) On receipt of an application made by an investment plan under subsection (1) in respect of a particular fiscal year of the investment plan and the fiscal year of the investment plan following the particular fiscal year, the Minister must, within 90 days of that receipt, consider the application and, if it is reasonable, based on the information in the possession of the Minister, to expect that the investment plan will be a qualifying small investment plan for those two fiscal years, approve the application or, in any other case, refuse the application, and must, within that time limit, notify the investment plan in writing of the decision.

Effect of authorization

(3) If the Minister approves an application made by an investment plan under subsection (1) in respect of a particular fiscal year of the investment plan and the fiscal year of the investment plan following the particular fiscal year,

> **(a)** if the investment plan is a qualifying small investment plan for the particular fiscal year, section 9 does not apply in respect of any reporting period in the particular fiscal year; and
>
> **(b)** if the investment plan is a qualifying small investment plan for the following fiscal year, section 9 does not apply in respect of any reporting period in the following fiscal year.

Form and manner of application

(4) An application made by an investment plan under subsection (1) is to be made in prescribed form containing prescribed information and is to be filed with the Minister in prescribed manner on or before the particular day that is 90 days before the first day of the first fiscal year to which the application applies or on or before any day after the particular day that the Minister may allow.

PART 2

Percentage for a Participating Province

Interpretation

Definitions

16 (1) The following definitions apply in this Part.

attribution point means, in respect of a particular series of a stratified investment plan, or in respect of a particular investment plan other than a stratified investment plan, and for a taxation year in which a fiscal year of the stratified investment plan or the particular investment plan, as the case may be, ends,

(a) in the case of a particular series,

(i) if the particular series is an exchange-traded series, each of September 30 of the calendar year (in this definition referred to as the "particular calendar year") in which the fiscal year ends and

(A) one or more of March 31, June 30 and December 31 of the particular calendar year, as determined by the stratified investment plan, or

(B) March 31 of the particular calendar year, in the absence of such a determination by the stratified investment plan, and

(ii) in any other case, September 30 of the particular calendar year; and

(b) in the case of a particular investment plan,

(i) if the particular investment plan is a distributed investment plan other than an exchange-traded fund, September 30 of the particular calendar year,

(ii) if the particular investment plan is an exchange-traded fund, each of September 30 of the particular calendar year and

(A) one or more of March 31, June 30 and December 31 of the particular calendar year, as determined by the particular investment plan, or

(B) March 31 of the particular calendar year, in the absence of such a determination by the particular investment plan, and

(iii) if the particular investment plan is a pension entity of a defined benefits pension plan, the day that is the last day for which calculations of the actuarial liabilities of the plan have been completed and that is in the period that includes the particular calendar year and the three preceding calendar years or, if no such day exists, September 30 of the particular calendar year, and

(iv) if the particular investment plan is a pension entity of a defined contribution pension plan or if the particular investment plan is not described in subparagraphs (i) to (iii), the day that is the last day for which the particular investment plan has, or can reasonably be expected to have, all or substantially all of the data required to calculate the particular investment plan's percentage for each participating province and for the taxation year and that is in the period that includes the particular calendar year and the preceding calendar year or, if no such day exists, September 30 of the particular calendar year. (*moment d'attribution*)

gross revenue of a selected listed financial institution for a particular period means the amount that would be the gross revenue of the financial institution for the particular period for the purposes of the *Income Tax Act* if the financial institution were a taxpayer under that Act and if every reference in that Act to a taxation year of the financial institution were read as a reference to the particular period. (*revenu brut*)

particular period means

(a) in applying this Part for the purpose of the description of C in subsection 225.2(2) of the Act (other than for the determination of the amount for C in that subsection for the purpose of subsection 228(2.2) of the Act) and for the purpose of the description of A_6 in subsection 225.2(2) of the Act, as adapted by subsection 48(1), a taxation year;

(b) in applying this Part for the determination of the amount for C in subsection 225.2(2) of the Act for the purpose of subsection 228(2.2) of the Act, a reporting period; and

(c) in applying this Part for the purpose of the description of D in subparagraph 237(5)(*b*)(ii) of the Act, a fiscal quarter. (*période donnée*)

plan merger means the merger or combination of two or more trusts or corporations, each of which was, immediately before the merger or combination, a distributed investment plan and each of which is referred to in this definition as a "predecessor", to form one trust or corporation (referred to in this definition as the "continuing plan") in such a manner that

(a) the continuing plan is a predecessor and is, immediately after the merger or combination, a distributed investment plan;

(b) for each predecessor other than the continuing plan, all or substantially all of the outstanding units of the predecessor are converted, by any means, into units of the continuing plan or are cancelled; and

(c) the merger or combination is otherwise than as a result of the acquisition of property of one trust or corporation by another trust or corporation, pursuant to the purchase of that property by the other trust or corporation or as a result of the distribution of that property to the other trust or corporation on the winding-up of the trust or corporation. (*fusion de régimes*)

specified investor in a particular distributed investment plan for a fiscal year of the particular investment plan that ends in a calendar year means a person (other than an individual or a distributed investment plan) that holds units of the particular investment plan as of September 30 of the calendar year and that meets the following criteria:

(a) if the person is an investment plan,

(i) the person holds units of the particular investment plan with a total value of less than $10,000,000 as of September 30 of the calendar year,

(ii) on or before December 31 of the calendar year, the person has not notified the particular investment plan that the person is a qualifying investor (as defined in subsection 52(1)) in the particular investment plan for the calendar year, and

(iii) the particular investment plan neither knows nor ought to know that the person is a qualifying investor (as defined in subsection 52(1)) in the particular investment plan for the calendar year; and

(b) in any other case, as of September 30 of the calendar year,

(i) if the particular investment plan is a stratified investment plan, for each series of the particular investment plan in which the person holds units, the person holds units of the series with a total value of less than $10,000,000, and

(ii) if the particular investment plan is a non-stratified investment plan, the person holds units of the particular investment plan with a total value of less than $10,000,000. (*investisseur déterminé*)

specified transaction means

(a) in relation to an attribution point in respect of a non-stratified investment plan for a taxation year of the investment plan, the acquisition of units of the investment plan by a person, or by a group of persons, from the investment plan if

(i) the acquisition by the person, or each acquisition by a member of the group of persons, occurs less than 31 days before the attribution point,

(ii) the units are disposed of, within the meaning of subsection 248(1) of the *Income Tax Act*, by the person, or by each member of the group of persons, within 30 days after the attribution point,

(iii) in the case of the acquisition of the units by a group of persons, each member of the group is related to every other member of the group,

(iv) the total value of the units as of the attribution point is greater than the lesser of

(A) $10,000,000, and

(B) 10% of the total value of all of the units of the investment plan on the attribution point,

(v) the investment plan's percentage for any participating province and for the taxation year, determined without reference to subsection 32(3), is less than the amount that would be that percentage if that percentage were determined without reference to the units, and

(vi) the acquisition by the person, or any acquisition by a member of the group of persons, does not meet one or more of the following conditions:

(A) the acquisition is undertaken by the person or member and the investment plan in good faith as part of the normal business practice of the investment plan,

(B) the person or member and the investment plan deal with each other at arm's length,

(C) the acquisition is made for consideration equal to or greater than the total value of the units at the time of the acquisition,

(D) neither the investment plan nor the manager of the investment plan provide any guarantees or indemnities to the person or member with respect to gains or losses in the value of the units during the period beginning on the particular day the acquisition occurred and ending on the day that is 30 days after the particular day, and

(E) any fees charged by the investment plan to the person or member in respect of the units are similar to fees charged by the investment plan to other persons holding units of the investment plan; and

(b) in relation to an attribution point in respect of a series of a stratified investment plan for a taxation year of the investment plan, the acquisition of units of the series by a person, or by a group of persons, from the investment plan if

(i) the acquisition by the person, or each acquisition by a member of the group of persons, occurs less than 31 days before the attribution point,

(ii) the units are disposed of, within the meaning of subsection 248(1) of the *Income Tax Act*, by the person, or by each member of the group of persons, within 30 days after the attribution point,

(iii) in the case of the acquisition of the units by a group of persons, each member of the group is related to every other member of the group,

(iv) the total value of the units as of the attribution point is greater than the lesser of

(A) $10,000,000, and

(B) 10% of the total value of all of the units of the series on the attribution point,

(v) the investment plan's percentage for the series, for any participating province and for the taxation year, determined without reference to subsection 30(3), is less than the amount that would be that percentage if that percentage were determined without reference to the units, and

(vi) the acquisition by the person, or any acquisition by a member of the group of persons, does not meet one or more of the following conditions:

(A) the acquisition is undertaken by the person or member and the investment plan in good faith as part of the normal business practice of the investment plan,

(B) the person or member and the investment plan deal with each other at arm's length,

(C) the acquisition is made for consideration equal to or greater than the total value of the units at the time of the acquisition,

(D) neither the investment plan nor the manager of the investment plan provide any guarantees or indemnities to the person or member with respect to gains or losses in the value of the units during the period beginning on the particular day the acquisition occurred and ending on the day that is 30 days after the particular day, and

(E) any fees charged by the investment plan to the person or member in respect of the units are similar to fees charged by the investment plan to other persons holding units of the series. (*opération déterminée*)

total gross revenue of a selected listed financial institution for a particular period means the portion of the gross revenue of the financial institution for the particular period that is reasonably attributable to the permanent establishments of the financial institution in Canada. (*revenu brut total*)

References to individual

(2) For the purposes of sections 22, 23 and 27, a reference to an individual includes a reference to a trust that is not an investment plan.

Rule of interpretation
17 Unless a contrary intention appears, words and expressions used in this Part have the same meanings as in Parts IV and XXVI of the *Income Tax Regulations*.

Attribution Point Election

Election — series

18 (1) A stratified investment plan that is a selected listed financial institution may make an election in respect of a series of the investment plan to have attribution points for the purposes of this Part for the series that are quarterly, monthly, weekly or daily, and that election is to be effective from the first day of a fiscal year of the investment plan.

Election — investment plan

(2) An investment plan (other than a stratified investment plan) that is a selected listed financial institution may make an election in respect of the investment plan to have attribution points for the purposes of this Part for the investment plan that are quarterly, monthly, weekly or daily, and that election is to be effective from the first day of a fiscal year of the investment plan.

Effect of election

(3) For the purposes of this Part, and despite the definition *attribution point* in subsection 16(1), if an election made under subsection (1) in respect of a series of an investment plan, or an election under subsection (2) in respect of an investment plan, is in effect throughout a fiscal year of the investment plan,*attribution point* in respect of the series or in respect of the investment plan, as the case may be, and for the taxation year in which the fiscal year ends means

> **(a)** if the election specifies that attribution points are to be quarterly, the last business day in each of March, June and September of the particular calendar year in which the fiscal year ends and December of the preceding calendar year, or any four days of the particular calendar year, each of which is in a different fiscal quarter in the fiscal year, that the Minister may allow on application by the investment plan;
>
> **(b)** if the election specifies that attribution points are to be monthly, each of the last business day of each month, or any other day of each month that the Minister may allow on application by the investment plan, in the 12-month period ending on September 30 of the calendar year in which the fiscal year ends;
>
> **(c)** if the election specifies that the attribution points are to be weekly, each of the last business day of each week, or any other day of each week that the Minister may allow on application by the investment plan, in the 12-month period ending on September 30 of the calendar year in which the fiscal year ends; and

(d) if the election specifies that the attribution points are to be daily, each business day in the 12-month period ending on September 30 of the calendar year in which the fiscal year ends.

Restriction

(4) An election made under subsection (1) in respect of a series of an investment plan is not to become effective if, on the day on which the election is to come into effect, an election under subsection 49(1) or section 64 in respect of the series is in effect.

Restriction

(5) An election made under subsection (2) in respect of an investment plan is not to become effective if, on the day on which the election is to come into effect, an election under subsection 49(2) or section 61 in respect of the investment plan is in effect.

Form of election

(6) An election made under subsection (1) or (2) by an investment plan is to

(a) be made in prescribed form containing prescribed information;

(b) set out the first fiscal year of the investment plan during which the election is to be in effect; and

(c) specify whether the attribution points in respect of the series or investment plan are to be quarterly, monthly, weekly or daily.

Cessation

(7) An election made under subsection (1) or (2) by a person that is an investment plan ceases to have effect on the earlier of

(a) the first day of the fiscal year of the person in which the person ceases to be an investment plan or a selected listed financial institution, and

(b) the day on which a revocation of the election becomes effective.

Revocation

(8) An investment plan that has made an election under subsection (1) or (2) may, in prescribed form containing prescribed information, revoke the election, effective on the first day of a fiscal year of the investment plan that begins at least three years after the election became effective.

Restriction

(9) If a particular election made under subsection (1) or (2) ceases to have effect on a particular day, any subsequent election under subsection (1) or (2) is not a valid election unless the first day of the fiscal year set out in the subsequent election is at least three years after the particular day.

Determination of the Attribution Percentage

Basic rules

19 (1) For the purposes of these Regulations, the description of C in subsection 225.2(2) of the Act and the description of D in subparagraph 237(5)(*b*)(ii) of the Act, a financial institution's percentage for any participating province and for a particular period is determined in accordance with this Part.

Basic rules — real-time

(2) For the purposes of these Regulations and the description of A_3 in subsection 225.2(2) of the Act, as adapted by subsection 48(1) or (2), a financial institution's percentage for any participating province as of a particular day, or a financial institution's percentage for any series and for any participating province as of a particular day, as the case may require, is determined in accordance with this Part.

Basic rules — series

(3) For the purposes of these Regulations and the description of A_6 in subsection 225.2(2) of the Act, as adapted by subsection 48(1), a financial institution's percentage for any series, for any participating province and for a particular period is determined in accordance with this Part.

Member of partnership

20 For the purposes of this Part, if a selected listed financial institution is a member of a partnership during a particular period, the following rules apply:

> **(a)** the financial institution's gross revenue for the particular period is not to include any portion of the total gross revenue of the partnership; and
>
> **(b)** the salaries and wages paid in the particular period by the financial institution is not to include any portion of the salaries and wages paid to employees of the partnership.

Central paymaster

21 (1) For the purposes of this Part, if an individual is employed by a person (referred to in this section as the "employer") and performs a service in a particular province for the benefit of or on behalf of a person (referred to in this section as the "labour recipient") that is not the employer, an amount that may reasonably be regarded as equal to the amount of salary or wages (referred to in this section as the "particular salary") earned by the individual for the service is deemed to

be salary paid by the labour recipient to an employee of the labour recipient in the particular period of the labour recipient in which the particular salary is paid if

(a) at the time the service is performed,

(i) the labour recipient and the employer do not deal at arm's length, and

(ii) the labour recipient has a permanent establishment in the particular province;

(b) the service

(i) is performed by the individual in the ordinary course of the individual's employment by the employer,

(ii) is performed for the benefit of or on behalf of the labour recipient in the ordinary course of a business carried on by the labour recipient, and

(iii) is of a type that could reasonably be expected to be performed by employees of the labour recipient in the ordinary course of the business referred to in subparagraph (ii); and

(c) the amount is not otherwise included in the aggregate, determined for the purposes of this Part, of the salaries and wages paid by the labour recipient.

Deemed payments — permanent establishment

(2) For the purposes of this Part, an amount deemed under subsection (1) to be salary paid by a labour recipient to an employee of the labour recipient for a service performed in a particular province is deemed to have been paid,

(a) if the service was performed at one or more permanent establishments of the labour recipient in the particular province, to an employee of the permanent establishment or establishments; or

(b) in any other case, to an employee of any other permanent establishment (as is reasonably determined in the circumstances) of the labour recipient in the particular province.

Particular salaries paid not included

(3) For the determination under this Part of the amount of salaries and wages paid in a particular period by an employer, the total of all amounts each of which is a particular salary paid by the employer in the particular period is to be deducted.

Arm's length transactions

(4) Despite subparagraph (1)(*a*)(i), this section applies to a labour recipient and an employer that deal at arm's length if the Minister determines that the labour recipient and the employer have entered into an arrangement the purpose of which is to reduce, through the provision of services as described in subsection (1), the net tax for a reporting period of the employer, the net tax for a reporting period of the labour recipient or an amount required to be paid to the Receiver General under section 237 of the Act.

General Rules for Individuals

No permanent establishment in participating province

22 (1) Subject to this Part, if, in a particular period, a selected listed financial institution that is an individual does not have a permanent establishment in a participating province, the financial institution's percentage for that province and for the particular period is nil.

Determination of percentage

(2) Subject to this Part, if, in a particular period, a selected listed financial institution that is an individual has a permanent establishment in a participating province, the financial institution's percentage for that province and for the particular period is 1/2 of the total of

> **(a)** the percentage that its gross revenue for the particular period that is reasonably attributable to its permanent establishments in that province is of its total gross revenue for the particular period, and
>
> **(b)** the percentage that the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in that province is of the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in Canada.

Special rules for attribution of gross revenue

(3) For the purposes of applying subsection (2) and the definition *total gross revenue* in subsection 16(1) in relation to a financial institution that is an individual, gross revenue for a particular period of the financial institution is reasonably attributable to a particular permanent establishment if that gross revenue would be attributable to that permanent establishment under the rules set out in subsection 2603(4) of the *Income Tax Regulations*, if the financial institution were a taxpayer under the *Income Tax Act* and if the references in that subsection to a year and to gross revenue for the year were read as references to the particular period and to the gross revenue for the particular period, respectively.

Fees

(4) For the purpose of subsection (2), if a financial institution pays a fee to another person under an agreement under which that other person or employees of that other person perform services for the financial institution that would normally be performed by the financial institution's

employees, the fee is deemed to be salary paid by the financial institution and the part of the fee that may reasonably be regarded as payment in respect of services rendered at a permanent establishment of the financial institution is deemed to be salary paid to an employee of the permanent establishment.

Commissions

(5) For the purpose of subsection (4), a fee paid by a financial institution does not include a commission paid to a person that is not an employee of the financial institution.

General Rules for Corporations

No permanent establishment in participating province

23 (1) Subject to this Part, if, in a particular period, a selected listed financial institution that is a corporation does not have a permanent establishment in a participating province, the financial institution's percentage for that province and for the particular period is nil.

Determination of percentage

(2) Subject to this Part, if, in a particular period, a selected listed financial institution that is a corporation has a permanent establishment in a participating province, the financial institution's percentage for that province and for the particular period is

(a) except where paragraph (*b*) or (*c*) applies, 1/2 of the total of

(i) the percentage that its gross revenue for the particular period reasonably attributable to its permanent establishments in that province is of its total gross revenue for the particular period, and

(ii) the percentage that the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in that province is of the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in Canada;

(b) if its total gross revenue for the particular period is nil, the percentage that the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in the participating province is of the total of all salaries and wages paid by the financial institution in the particular period to employees of its permanent establishments in Canada; and

(c) if the total of all salaries and wages paid in the particular period by the financial institution to employees of its permanent establishments in Canada is nil, the percentage that its gross revenue for the particular period reasonably attributable to its permanent establishments in that province is of its total gross revenue for the particular period.

Special rules for attribution of gross revenue

(3) For the purposes of applying subsection (2) and the definition *total gross revenue* in subsection 16(1) in relation to a financial institution that is not an individual, gross revenue for a particular period of the financial institution is reasonably attributable to a particular permanent establishment if that gross revenue would be attributable to that permanent establishment under the rules set out in subsections 402(4) and (4.1) and 413(1) of the *Income Tax Regulations*, if the financial institution were a taxpayer under the *Income Tax Act* and if the references in those subsections to a taxation year and to a year were read as references to the particular period.

Interest on various instruments

(4) For the purpose of subsection (2), gross revenue does not include interest on bonds, debentures or mortgages, dividends on shares of capital stock, or rentals or royalties from property that is not used in connection with the principal business operations of the financial institution.

Fees

(5) For the purpose of subsection (2), if a financial institution pays a fee to another person under an agreement under which that other person or employees of that other person perform services for the financial institution that would normally be performed by the financial institution's employees, the fee is deemed to be salary paid by the financial institution and the part of the fee that may reasonably be regarded as payment in respect of services rendered at a permanent establishment of the financial institution is deemed to be salary paid to an employee of that permanent establishment.

Commissions

(6) For the purpose of subsection (5), a fee paid by a financial institution does not include a commission paid to a person that is not an employee of the financial institution.

Insurers

Definition of *net premiums*

24 (1) In this section, *net premiums* of a selected listed financial institution for a particular period means the total of the gross premiums received by the financial institution in the particular period (other than consideration received for annuities) minus the total for the particular period of

(a) premiums paid by the financial institution for reinsurance,

(b) dividends or rebates paid or credited by the financial institution to policy-holders, and

(c) rebates or returned premiums paid by the financial institution in respect of the cancellation of policies.

Determination of percentage

(2) If a selected listed financial institution is an insurer, the financial institution's percentage for a participating province and for a particular period in which it has a permanent establishment in that province is the amount, expressed as a percentage, determined by the formula

A/B

where

A

is the total of its net premiums for the particular period in respect of the insurance of risk in respect of property situated in the province and of its net premiums for the particular period in respect of the insurance of risk in respect of persons resident in that province, that are included in computing its income for the purposes of Part I of the *Income Tax Act* or that would be included in computing its income for the purposes of Part I of that Act if the financial institution were an insurance corporation; and

B

is the total of its net premiums for the particular period in respect of the insurance of risk in respect of property situated in Canada and of its net premiums for the particular period in respect of the insurance of risk in respect of persons resident in Canada, that are included in computing its income for the purposes of Part I of the *Income Tax Act* or that would be included in computing its income for the purposes of Part I of that Act if the financial institution were an insurance corporation.

Exclusions from net premiums

(3) For the purposes of subsections (1) and (2), no amounts that relate to an insurance policy issued by a selected listed financial institution are to be included in the determination of the net premiums of the financial institution to the extent that

(a) if the policy is a life or accident and sickness insurance policy (other than a group policy), the policy is issued in respect of an individual who at the time the policy becomes effective, is a non-resident individual;

(b) if the policy is a group life or accident and sickness insurance policy, the policy relates to non-resident individuals who are insured under the policy;

(c) if the policy is a policy in respect of real property, the policy relates to real property situated outside Canada; and

(d) if the policy is a policy of any other kind, the policy relates to risks that are ordinarily situated outside Canada.

Banks

Determination of percentage

25 (1) If a selected listed financial institution is a bank, the financial institution's percentage for a particular period and for a participating province in which the financial institution has a permanent establishment is 1/5 of the total of

(a) the percentage that the total of all salaries and wages paid in the particular period by the financial institution to employees of its permanent establishments in that province is of the total of all salaries and wages paid in the particular period by the financial institution to employees of its permanent establishments in Canada, and

(b) four times the percentage that the total amount of loans and deposits of its permanent establishments in that province for the particular period is of the total amount of all loans and deposits of its permanent establishments in Canada for the particular period.

Amount of loans

(2) For the purpose of subsection (1), the amount of loans for a particular period is the amount determined by the formula

A/B

where

A

is the total of the amounts outstanding on the loans made by the selected listed financial institution at the close of business on the last day of each calendar quarter that ends in the particular period; and

B

is the number of calendar quarters that end in the particular period.

Amount of deposits

(3) For the purpose of subsection (1), the amount of deposits for a particular period is the amount determined by the formula

A/B

where

A

is the total of the amounts on deposit with the selected listed financial institution at the close of business on the last day of each calendar quarter that ends in the particular period; and

B
is the number of calendar quarters that end in the particular period.

Exclusion from loans and deposits

(4) For the purposes of subsections (2) and (3), loans and deposits do not include

(a) bonds, stocks, debentures, items in transit and deposits in favour of Her Majesty in right of Canada; and

(b) any loan made to a non-resident person and any deposit held by a non-resident person, unless the loan or deposit is a debt or financial instrument included in any of paragraphs 1(*a*) to (*e*) of Part IX of Schedule VI to the Act.

Exclusion from salaries and wages

(5) For the purposes of subsection (1), salaries and wages paid by a financial institution do not include salary or wages paid to an employee of the financial institution to the extent that the salary or wages are reasonably attributable to the rendering by the employee of services, the supply of which are zero-rated supplies.

Trust and Loan Corporations

Determination of percentage

26 (1) If a selected listed financial institution is a trust and loan corporation, a trust corporation or a loan corporation, the financial institution's percentage for a particular period and for a participating province in which the financial institution has a permanent establishment is the percentage that the gross revenue for the particular period of its permanent establishments in the participating province is of the total gross revenue for the particular period of its permanent establishments in Canada.

Determination of gross revenue

(2) In subsection (1), *gross revenue for the particular period of its permanent establishments in the participating province* means, in relation to a financial institution, the total of the gross revenue of the financial institution for the particular period arising from

(a) loans secured by land situated in the participating province;

(b) loans, not secured by land, made to persons residing in the participating province;

(c) loans, other than loans secured by land situated in a country other than Canada in which the financial institution has a permanent establishment,

(i) made to persons residing in a country other than Canada in which the financial institution does not have a permanent establishment, and

(ii) administered by a permanent establishment in the participating province; and

(d) business conducted at its permanent establishments in the participating province, other than business that gives rise to revenue in respect of loans.

Qualifying Partnerships

Determination of percentage

27 If a selected listed financial institution, other than an insurer, is a qualifying partnership, the financial institution's percentage for a participating province for a particular period is

(a) if all the members of the qualifying partnership are individuals, the percentage that would be determined under section 22 for the participating province for the particular period if the qualifying partnership were an individual; and

(b) in any other case, the percentage that would be determined under section 23 for the participating province for the particular period if the qualifying partnership were a corporation.

Divided Businesses

Agreement with the Minister — weighted average

39 If one or more parts of the business of a particular selected listed financial institution, other than a financial institution described in any of sections 24 to 26, for a particular period consist of operations normally conducted by any of the types of financial institutions referred to in any of sections 24 to 26 and 29 to 38, the particular financial institution and the Minister may agree that the particular financial institution's percentage for a participating province and for the particular period is the weighted average of the percentages determined

(a) by applying to each of those parts of the business whichever of those sections refers to the type of financial institution that normally conducts the operations comprising that part of the business; and

(b) by applying section 23 to the remainder of the business that does not consist of operations normally conducted by any of the types of financial institutions referred to in those sections.

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