

EIFEL Rules For Corporate Entities - August 2023 Draft Legislation and Department of Finance Explanatory Notes

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Tab 1	ITA	Quick Notes
High-Level Concepts		See numbered Tabs for technical summaries (Quick Notes in red in Tabs reflect changes introduced in August 2023 Release)
Fixed Ratio Rules	s. 18.2	Consistent with OECD's BEPS Action 4 - EIFEL rules aimed principally (but not exclusively) at large multinational enterprises
(base case)		Applies mechanical earnings-stripping regime to taxable corporations (and certain trusts), including FAPI-related activities of controlled foreign affiliates (CFAs)
		Also applies in respect of partnerships - but directly at partner level (like existing thin cap rules)
		Basic concept: denies deduction for "interest and financing expenses" (IFEs) otherwise allowed under existing provisions of Act to extent
		that these IFEs exceed total of: [fixed ratio x "adjusted taxable income" (ATI)] + ["interest and financing revenues" (IFRs)] +
		[permitted carryover amounts from other years and permitted transfer amounts from other group entities], denied IFEs become Restricted IFEs
		ATI is broadly EBITDA but determined using tax concepts under ITA
		Fixed ratio = 40% if first year starts on or after October 1, 2023 and before January 1, 2024, otherwise 30% for years that start on or after October 1, 2023
		Three types of taxpayers excluded from these rules: (1) CCPC-groups with taxable capital in Canada < \$50M; (2) corporate groups with < \$1M in IFEs; and
		(3) Canadian-resident groups that carry on 90%+ of activities in Canada, provided certain conditions met concerning non-residents and
		and tax-indifferents
		Result is that many taxable corporations will be subject to these new rules
		ELECTION available to excludes IFEs between two Canadian group members, carves out (but not limited to) typical loss-consolidation transactions
		Extra deduction room in a year = (fixed ratio x ATI) + IFRs - IFEs = Excess Capacity, can be carried forward and used in following 3 years
		Excess Capacity subsequently used to permit deduction of IFEs is Absorbed Capacity
		"Cumulative unused excess capacity" (CUEC) can be transferred by ELECTION to another group member and becomes Received Capacity in transferee
		Restricted IFEs carried forward indefinitely, deductible to extent of Excess Capacity or Received Capacity in later year
		[Note: Use of Excess Capacity or Received Capacity for Restricted IFEs reduces Excess Capacity or Received Capacity first, i.e., ordering rule]
		Continuity for amalgamations and windups: Restricted IFEs and CUEC generally flow through
		But on acquisition of control: Restricted IFEs flow through only if same-or-similar buiness test for non-capital losses met, CUEC disappears
Group Ratio Rules	s. 18.21	If ELECTION filed - rules deny deduction of IFEs based on consolidated "group ratio" as opposed to fixed ratio in rules above (otherwise most fixed-ratio rules above apply)
(alternate)		Subject to a maximum deduction in Canadian group, boradly determined as group ratio x total ATI of Canadian group, then allocated to members of Canadian group
		Excess Capacity concept does not apply in group-ratio rules
Effective Date		Taxation years beginning after October 1, 2023, applies to existing and new borrowings, anti-avoidance rule if year end changed to defer application of these new rules
Transitional Rules		ELECTION for three-year carryforward of Excess Capacity for pre-regime years, included in eligible group member's CUEC first year regime applies
Special Rules		Selected rules for financial institution group entities
		Exemption for interest in respect of public private partnerships
Caution		Excel is summary only - intended to be helpful, but obviously cannot replace Draft Legislation or Department of Finance Explanatory Notes

EIFEL Rules For Corporate Entities (Quick Notes in red reflect changes in August 2023 Draft Legislation and Department of Finance Explanatory Notes)

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Tab 2	ITA	Quick Notes
Excluded Entities	s. 18.2(1)	Not subject to denial of deduction under s. 18.2(2), nor income inclusion under s. 12(1)(l.2) for partnerships, in respect of IFEs for the year
		Tax Policy - these entities do not pose significant base-erosion-profit-shifting risks targeted by EIFEL rules
		Any corporation that is not excluded entity is caught by the EIFEL rules
		Three types of excluded entities: (a), (b), and (c):
Small CCPCs	(a)	Entity is CCPC that, together with any associated corporations, has taxable capital employed in Canada < \$50M
		[Note: \$50M is top end of phase-out range for small business deduction]
Safe-Harbor IFEs	(b)	Entity is part of group whose Canadian members have total net IFEs (i.e., net of IFRs) for year of \$1M or less
		[Note: IFRs of financial institution group entity are excluded in computing group's net interest and financing expenses - see Tab 14]
		[Note: Exempt IFEs included in determining if group's if net IFEs exceed \$1M - see Tab 15]
Substantially-Canadian	(c)	Canadian-resident entity or part of group of Canadian resident entities, if 4 conditions are met:
		(i) Substantially-All-Activities Condition: Taxpayer and other group members carry on substantially all their businesses, if any, undertakings, and activities in Canada
		[Note: If activities not a business, still meet test if substantially all activities and undertakings carried on in Canada
		Holding of indebtedness or shares of FA is not undertaking or activity that is taken into consideration in applying this condition
		Example: Where a Canadian holding company's only activity is holding of shares or debt of FA, it will be considered
		to carry on substantially all of its businesses, undertakings, and activities in Canada
		(ii) Di-minimus-Foreign-Affiliates Condition: Greater of book cost of all FA shares held by group and FMV of assets of all FAs held by group not > \$5M
		[Note: For this purpose, book value is determined only by reference to taxpayer's (or taxpayer group's) ownership interest in the FA, and
		FMV of assets does not include shares of another FA]
		(iii) No-Specified-Non-Resident-Shareholder Condition: No person or partnership is:
		(A) a specified shareholder of taxpayer or group member, under s. 18(5), that is not resident in Canada, or
		(B) a partnership where more than 50% of FMV of interests in partnership held by non-residents, and
		property of partnership includes > 25% of equity in taxpayer or group member
		(iv) Tax-Indifferents Condition: Substantially all IFEs of taxpayer and each group member, payable to persons or partnerships that are not non-arm's length tax-indifferents
		[Note: Tax indifferent defined in s. 18.2(1) as person or partnership: (a) exempt from tax, (b) non-resident, or (c) partnership > 50% of interests are held by (a) or (b)]
		[Note: See s. 18.2(14) - anti-avoidance rule deems certain recipients of IFEs to be a non-arm's length tax-indifferent]

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Tab 3	ITA	Quick Notes
Deduction Limit	s. 18.2(2)	Main operative rule
		Applies notwithstanding any other provision of ITA
		Applies to any taxpayer other than Excluded Entity (see Tab 2), "taxpayer" does not include natural person or partnership (see definition s. 18.2(1))
		Applies to any amount in paras. (a)-(g)&(i) of Quantity A in defintion of IFE that is otherwise deductible under ITA (excludes partnership and CFA amounts)
		Denies deduction to extent that such amount exceeds the proportion (%) of that amount that is determined by the formula (A – (B + C + D + E))/F
		Where:
		A is taxpayer's defined IFEs for the year (See Tab 5)
		B is
		(a) if s. 18.21 applies, amount under that section (the Tab 19)
		(b) otherwise, the amount produced by formula $G \times H$ (reflects earnings-stripping policy approach)
		Where:
		G is taxpayer’s ratio of permissible expenses for the year (40% for TYs beginning on or after October 1, 2023 and before January 1, 2024, otherwise 30%)
		H is taxpayer's ATI for year
		[Note: ATI is broadly taxable income after extracting items reflecting financing expenses & revenues, depreciation & recaptutre, certain tax credits
		see Tab 7]
		C is taxpayer’s IFRs for year (see Tab 6) (variable C reflects a policy to limit deduction in respect of "net" interest and financing expenses in year)
		D is received capacity (see Tab 11) less amount deductible under s. 111(1)(a.1) for prior-year RIFEs carried forward (see Tab 8)
		[Note: variable D reflects ordering rule, i.e., received capacity must be used to shelter prior-year RIFEs first, before being used against current year IFEs
		E is taxpayer’s absorbed capacity
		[Note: variable E reflects automatic use of Cumulative Unused Excess Capacity (CUEC) here, see Tab 10]
		[Note: variables C, D, and E reflect additional "room' to deduct interest and financing expenses of taxpayer for year, in addition allowed % of ATI
		F is denominator
		Represents total of otherwise deductible amounts included in variable A of IFEs
		Thus does not include any reductions under B of IFEs definition for income or gains that reduce cost of funding (whether of taxpayer or CFA)
Result		Rule in s. 18.2(2) results in an excess portion (denied %, when expressed as a %) to be applied to each IFE of taxpayer that is otherwise deductible
		Denied % of IFEs becomes RIFEs
		Highly mechanical computation

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Quick Notes		
Tab 4	ITA	
Excluded Interest	s. 18.2(1)	
		Excluded from IFEs and IFRs - thus not caputured by s. 18.2(2) limitation
		Two members of group can ELECT to exclude interest from these rules, excludes interest from payor's IFEs and payee's IFRs
		Primary purpose - allows loss-consolidation transactions to be unaffected by these rules (i.e., interest that merely shifts losses in Canadian group should not be restricted)
		Applies to interest on debt or lease finance amounts for a taxation year (TY) or fiscal period (FP) in respect of property
		Conditions:
		(a) & (b) paid or payable by a corporation or partnership (payer) to another corporation or partnership (payee) in respect of the debt or the property for TY or FP
		(c) payee is not financial institution group entity (FIGE) defined in s. 18.2(1) [see Tab 14]
		(d) payer and payee corporations are taxable Canadian corporations and eligible group entities (similar rule for partnerships)
		(e) the 2 coporations jointly elect and specify amount of interest treated as excluded interest for, and amount of debt at beginning and end of, TY or FP, filed
		on earliest of filing due date
	s. 18.2(1)	"Eligible group entity"
		In respect of a Canadian resident taxpayer
		Means corporation resident in Caanada related to taxpayer (other than because of a contingent rights referred to in s. 251(5)(b)), or affiliated with taxpayer
		if s. 251.1 read without reference to factual control in s. 251.1(3)
	s. 18.2(15)	Deems two taxpayers eligible group entities in respect of each other if they eligible group entities in respect of same third taxpayer
[Note: see also Tab 17]		
If no election made, could have equivilent result through transfer of excess capacity from payee to payer (see example in Department of Finance Technical Notes)		
Partnerships	s. 96(3)	Member of partnership that is payee or payer of interest can elect for all members of partnership to treat amount as excluded interest (if all other conditions met)

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Tab 5	ITA	Quick Notes
IFEs	s. 18.2(1)	Not just interest expense
		Does not include Exempt IFEs (generally financing expenses of certain public-private partnership infrastructure projects - see Tab 15 on Exempt IFEs)
		Total of amounts in paras. (a) to (j) of variable A, minus total of amounts in variable B
		Variable A (additions):
		(a) otherwise deductible interest, including deemed interest e.g., under s. 16(1) (see Finance Technical Notes), but not including interest captured in another para. below
		[Note: does not include excluded interest, i.e., where 2 Canadian members of corporate group jointly elect to treat as such - see Tab 4]
		(b) amounts deductible under s. (20(1)(e)(ii) to (ii.2) and s. 20(1)(e.1), (e.2) for financing-related expenses, and 20(1)(f) for original issuer discounts
		[Note: included even if amount also deductible under s. 9, see Finance Technical Notes]
		(c) financing expenses capitalized after Feb. 4, 2022 under s. 18(3.1) or s. 21(1)-(4), deductible as CCA or resource pools for CEE, CDE, FRE, FEDE, COGPE including successored pools
		[Note: contains a "reasonably be considered" test, generally corresponds proportion of CCA or pool deduction that the capitalized IFEs are of the UCC or resource pool balance]
		[Note: s. 18.2(3) reduces the UCC or resource pool by the denied deduction]
		(d) portion of terminal loss reasonably considered to represent capitalized financing expenses in (c)
		(e) amount or loss or capital loss reasonably considered part of an agreement or arrangement if three conditions met:
		(i) otherwise deductible in year or, if allowable capital loss, deductible against taxable cpaital gains (including allowable capital losses from prior years)
		[Note: equity financings not expected to produce these amounts, and amounts deductible under s. 20(1)(e) specifically excluded]
		(ii) the agreement or arrangement is, or is in relation to, a current or future borrowing or financing (includes any derivative contracts, i.e., swaps, forwards, futures, repos, options, etc.)
		(iii) reasonably considered to increase or be part of cost of funding (i.e., reasonably considered compensation for time value of money, see Finance Technical Notes)
		[Note: applicable accounting principles could provide guidance whether amount is financing expense, see Finance Technical Notes]
		(f) deductible transaction fees incurred in contemplation of, in the course of entering into, or in relation to, the agreement or arrangement in para. (e) above or B below
		(g) lease financing amount, definition in s. 18.2(1) imputes financing cost in respect of lease payments [Note: does not include excluded lease]
		(h) share of IFEs of partnership on source-by-source basis, see Quantities C & D (also includes the RAIFA of CFA held through partnership, para. (j) of variable A)
		[Note: Reduction if thin-cap rules in s. 18(4) already require income inclusion, see Quantity E under this para.]
		[Note: Reduction if at-risk already restrict deduction under s. 96(2.1), see Quantity F under this para.]
		(i) related to para. (h) above, limited partnership losses claimed under s. 111(1)(e) attributable to Quantity F from previous year
		(j) share of CFA's RAIFE for CFA's taxation year ending in taxpayer's year
		[Note: CFA's RAIFE is generally CFA's IFEs in computing its FAPI]
		[Note: share of CFA's RAIFE determined as the specified participating percentage defined in s. 18.2(1), see Tab 13]
		Variable B (reductions):
		(a) amounts receivable or a gain, in respect of agreement relating to financing, that hedges cost of funding or hedges the borrowing or financing
		[Note: excludes such amount to extent it is effectively sheltered from Canadian tax as result of foreign tax credit or deduction (other than foreign withholding taxes)]
		(b) share of para. (a) amounts of partnership on source-by-source basis

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Tab 6	ITA	Quick Notes
IFRs	s. 18.1(2)	Not just interest income
		Total of amounts in paras. (a) to (g) of variable A, minus amounts in variable B
		Variable A (additions):
		does not include any amount already included under variable B of IFEs (to prevent double count)
		(a) interest income - other than excluded interest (see related Tab in this Excel) and any amount included in another para. below (to prevent double count)
		(b) deemed income under s. 12(9) (deemed accrual rules) or deemed interest under s. 17.1 (PLOI of CRIC) not included in (a) or para. below
		(c) guarantee or other credit support fee
		(d) converse of (e) in Variable A of IFEs, i.e., amount (other than a dividend) in respect of arrangement in relation to loan or financing
		(i) included in income (including taxable capital gain)
		(ii) reasonably considered to increase (or be part of) the return as a result of the financing
		[Example: return on derivative contract entered into to hedge risk (including currency, interest, and payment risk) in relation to loan or financing]
		(e) lease financing amount (other than on excluded lease or excluded interest)
		(f) share of IFRs of partnership
		(g) share of CFA's RAIFR for CFA's taxation year ending in taxpayer's year
		[Note: CFA's RAIFR is generally CFA's IFRs in computing its FAPI]
		[Note: share of CFA's RAIFR determined as the specified participating percentage defined in s. 18.2(1), see Tab 13]
		[Note: any deduction under s. 91(4) for FAT reduces RAIFR to which FAT relates (other than Canadian withholding tax), use a tracing approach - even in subsequent year]
		Variable B (reductions):
		(a) amounts payable, loss, or capital loss, in respect of agreement relating to financing, that hedges cost of funding or hedges the borrowing or financing
		(b) share of para. (a) amounts of partnership on source-by-source basis
		(c) any amount included in variable A to extent it is effectively sheltered from Canadian tax as result of foreign tax credit or deduction (other than foreign withholding taxes)
		[Example: Canadian parent borrows money and on-lends to foreign sub, which in turn pays interest to Canadian parent that is subject to foreign withholding tax
		i.e., reduction under this para. does not apply in respect of foreign withholding tax]

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Tab 7	ITA	Quick Notes
ATI	s. 18.2(1)	Determined by the formula: $A + B - C$
		Policy: measure of "earnings before interest, taxes, depreciation and amortization" (EBITDA), but determined based on tax concepts rather than accounting concepts
		Where:
		A is postive or negative amount determined as D-E
		D is taxable income if any (including deductions for intercorporate dividends under s. 112 and s. 113 and prior-year losses under s. 111)
		E is total of non-capital loss for the year if any, and any current year FAPLs of CFA to the extent of net RAIFE
		(...all determined without adjustments for denied IFEs, i.e., s. 18.2(2), s. 12(1)(l.2), and s. 111(1)(a.1) in respect of RIFEs from prior years)
		B reflects add-backs to reverse deductions for IFEs (interest) and CCA and other deductions (depreciation and amortization), notably but not exhaustively:
		(a) IFEs for year (includes RAIFE)
		(b) CCA and resource pool deductions (other than IFEs) for the year
		(c) teminal losses (other than IFEs) for the year
		(d) share of partnership CCA or terminal loss, unless denied under s. 96(2.1) at risk rules for the year
		(e) limited partnership losses to extent attributable to denied add-back in (d) above
		(f) deductions under s. 110(1)(k) (for grossed-up Part VI.1 tax)
		(g) trust distributions to beneficiaries under s. 104(6)
		(h) prior-year non-capital losses deducted under s. 111(1)(a) to extent those relate to prior net IFEs or other addbacks & reductions described in B & C here (simplified)
		[Note: If non-capital loss is for loss year that ends before February 4, 2022, taxpayer may elect to treat loss as "specified pre-regime loss" (by filing due-date for year)
		In this event, para. (h) does not apply and para. (i) will add back flat 25% of that loss (i.e., regardless whether loss relates to IFEs or other variable B amounts)
		Intended to ease compliance for years before release of the initial draft legislation for these EIFEL rules
		See definition of specified pre-regime loss in s. 18.1(2)]
		(i) 25% of amount deducted for specified pre-regime loss in the year under s. 111(1)(a)
		(j) prior FAPLs of CFA used to shelter FAPI in year, to only the extent of net RAIFE
		(k) loss, or share of partnership loss, reasonably considered to be derived from activities funded by borrowing that results in exempt IFEs
		(l) & (m) tax credits or government assistance that reduced cost of certain properties
		[Note: (l) & (m) ensure receipt of government assistance and deduction of certain tax credits do not erode deduction capacity under s. 18.2(2)]
		C reduces income inclusions (in taxable income) for:
		(a) IFRs for the year (includes RAIFRs)
		(b) recapture of CCA under s. 13
		(c) share of recapture of CCA in partnership under s. 13
		(d) income from sale of resource properties under s. 59 or s. 59.1
		(e) foreign-source income, to extent sheltered by foreign tax credits under s. 126
		(f) trust foreign-source income, to extent sheltered by foreign tax credits under s. 126
		(g) notional income under s. 110.5 (to use foreign tax credits)
		(h) taxable income of trust beneficiary under s. 104(13) (because its included in trust income above), with limited exceptions
		(i) income that is exempt
		(j) income of taxpayer or partnership from lending that results in exempt IFE of the borrower
		Note: ATI (as a whole) cannot be negative: s. 257 - unless a rule expressly overrides this

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Tab 8	ITA	Quick Notes
Restricted IFEs	s. 111(8)	Applies for s. 111(1)(a.1), which allows unlimited carry forward and deduction of Restricted IFEs for use in subsequent year to extent of excess capacity and received capacity, subject to possible restrictions under s. 111(3), s. 111(5)(a), and s. 256.1 (on acquisition of control)
		Includes amount by formula A + B + C
		Where:
		A is portion of otherwise deductible IFEs for the year denied under s. 18.2(2), i.e., the denied % of IFEs
		B is income inclusion under s. 12(1)(l.2) for share of denied % IFEs of a partnership
		C is share of CFA's denied % of RAIFEs denied under s. 95(2)(f.11)(ii)(D) in computing FAPI
		[Note: C also includes share of FAPI inclusion under s. 95(2)(f.11)(ii)(D) for CFA's share of IFEs of partnership of which CFA is member
		In both cases, share is determined by specified participating percentage in respect of the CFA]
Deduction	s. 111(1)(a.1)	Discretionary deduction for Restricted IFEs not exceeding formula A + B
		Where:
		A is excess capacity for year, assuming amount for C in para. (b) of excess capacity in s. 18.2(1) were nil (i.e., assuming no amount deductible under s. 111(1)(a.1) in the year)
		[Note: excess capacity for a year is applied first to deduct unused Restricted IFEs from prior years]
		B is received capacity for year
		Note: Restricted IFEs cannot be carried back, but excess capacity can be carried forward 3 years, thus provides comparable results to 3-year carry-back of Restricted IFEs
Ordering	s. 111(3)	Same first-in, first-out rules that apply to losses also apply to Restricted IFEs

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Tab 9	ITA	Quick Notes
Excess Capacity	s. 18.2(1)	Excess capacity is relevant as follows:
		1) Under 111(1)(a.1), Restricted IFEs carried forward from previous years are deductible to extent of excess capacity for the year, which then
		automatically reduces that excess capacity for the year - i.e., this is a mandatory ordering rule
		2) Excess capacity for year is included in cumulative unused excess capacity (CUEC) for year and for 3 immediately following years
		[CUEC can be transferred to eligible group member for year by designating it as "received capacity" of transferee under s. 18.2(4)]
		3) Excess capacity allows deduction of IFEs for later year that otherwise denied under s. 18.2(2)
		[Note: CUEC is automatically applied to deduct amounts of IFEs that would otherwise have been denied in year,
		i.e., as "absorbed capacity" for year included in variable E of formula in s. 18.2(2)]
		If alternate group ratio rule in s. 18.21 applies, excess capacity is nil (that rule has no carry forward for excess room, see Tab 19)
		Excess capacity for year is determined by formula A – B – C
		Where:
		A is ratio of permissible expenses (e.g., 30%) x ATI, plus IFRs for year, but this is reduced if:
		(i) taxpayer has net IFRs for year and
		(ii) taxpayer would have negative ATI for year if s. 257 not apply
		... in which event, variable A is reduced by ratio of permissible expenses (i.e., 30%) x lesser of: (a) absolute value of such negative ATI and (b) such net IFRs
		[Note: purpose of this reduction is to ensure taxpayer does not have deduction capacity to extent it does not have net positive ATI across years where losses are used
		[Note: negative ATI is reflected as non-capital loss carryover, which reduces "positive" ATI that would otherwise arise in year loss used
		B is IFEs for year
		C is Restricted IFEs from previous years deductible under s. 111(1)(a.1)
CUEC	s. 18.2(1)	CUEC is total of taxpayer's unused excess capacity for year and 3 immediately preceding years
		This is the tax attribute that allows 3-year carry forward of unused excess capacity
		CUEC is reduced by:
		amounts of absorbed capacity under (b)(ii) (i.e., used to reduce or eliminate a denial under s. 18.2(2) of IFEs)
		amounts of transferred capacity under (b)(i) (i.e., taxpayer has previously transferred excess capacity to eligible group members under s. 18.2(4))
		[Note: resutling net balance can be transferred to eligible group members under s. 18.2(4)]
		[Note: reduction for absorbed capacity occurs in the year, reduction for net amount transferred to eligible group member occurs in following year]
		Note: Elective transitional rules for determining taxpayer's excess capacity for pre-EIFEL years (see Tab 20)

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Tab 10	ITA	Quick Notes
Absorbed Capacity	s. 18.2(1)	Is lesser of:
		(a) Cumulative Unused Excess Capacity (CUEC) for year, determined before reduction for Absorbed Capacity, and
		[Note: Excess Capacity for 3 immediately preceding taxation years is included CUEC for a year]
		(b) IFEs that would otherwise be denied in the year = IFEs - [permitted ratio x ATI + IFRs]
		Reflects a mandatory “ordering rule”:
		Required to use CUEC first to deduct own otherwise denied IFEs in a year
		Before using any remaining CUEC to transfer to another group member by election under s. 18.1(4)

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Tab 11	ITA	Quick Notes
Election to Transfer	s. 18.2(4)	ELECTION allows taxable Canadian corporation ("transferor") to transfer any portion of its CUEC to another Canadian corporation ("transferee") in same corporate group
		[Note: see definition of "eligible group entity" in Tab 4]
		Accommodates misalignments between net IFEs and ATI amoung group members
		Elected amount becomes transferred capacity of transferor and received capacity of transferee
		All of transferor's transfers for year invalid under s. 18.2(4)(e) if total of transferred capacity amounts in elections for year exceeds its CUEC for year
		[Note: s. 18.2(4)(d), (h) and (i) allow limited ability to amend elections where reassessment results in over-transfer]
		No election available for particular taxpayer under s. 18.2(9) if eligible group member status manipulated
		CRA has discretion to allow late or amended elections under s. 18.2(5) (reasonable efforts, filed as soon as circumstances permit, and if just and equitable)
		Financial institution group entities or financial holding corporations permitted to transfer only to other financial institution group entities, financial holding corporations,
		or special purpose loss corporations (see Tab 14)
		Joint election need only be filed by transferor
		intended to facilitate filing in cases where one transferor transfers CUEC to multiple transferees
Received Capacity	s. 18.2(1)	Applies with reference to transferee under s. 18.2(4) election for year, where all conditions of s. 18.2(4) met
		Amount designated in election is received capacity under s. 18.2(4)
		Can have multiple amounts of received capacity if multiple elections within eligible group
		Relevant for deduction of prior-year Restricted IFEs under s. 111(1)(a.1)(b), then for deduction "room" in variable D of s. 18.2(2) in a year
		[Note: can only be used in year of transfer, i.e., not included in transferee's excess capacity or CUEC, thus transferee cannot carry forward or transfer to others
		[Note: if over-transfer of capacity, the over-transferred amount is of no benefit]
Transferred Capacity		[Note: even though s. 111(1)(a.1) is discretionary, variable D of s. 18.2(2) is reduced for amounts "deductible" in the year under s. 111(1)(a.1), creates ordering rule
	s. 18.2(1)	Applies with reference to transferor under s. 18.2(4) election for year, where all conditions of s. 18.2(4) met
		Transferor's transferred capacity for year reduces its CUEC for following year
		Total of a taxpayer's amounts of transferred capacity for a year can never exceed its CUEC for that year
		Can have multiple amounts of transferred capacity for year, i.e., if it is transferor under multiple elections

EIFEL Rules For Corporate Entities (Quick Notes in red reflect changes in August 2023 Draft Legislation and Department of Finance Explanatory Notes)

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Tab 12	ITA	Quick Notes
Partnerships	s. 96	Under s. 96 income under s. 3 is calculated at partnership level as if it were a taxpayer and allocated partners (i.e., after deduction of IFEs)
		EIFEL rules do not apply in computing income of partnership (i.e., "taxpayer" in s. 18.21(1) does not include partnership or natural person)
		deductions for partnership's IFEs thus not directly denied at partner level under s. 18.2(2)
	s. 12(1)(l.2)	Includes in taxpayer's income same denied % as determined under s. 18.2(2), but applied to taxpayer's share of IFEs of partnership
		this equates to indirect denial of deduction under s. 18.2(2), i.e., has similar effect as if partnership IFEs were directly denied to extent of taxpayer's share
		analogous to s. 12(1)(l.1) in thin-capitalization rules
		Income inclusion is formula A x B
		Where:
		A is taxpayer's share of IFEs for year of all partnerships, i.e., included in para. (h) of IFEs in s. 18.2(1) after carve out for thin-cap rule under s. 12(1)(l.1)
		[Note: excluded interest and exempt IFEs carved out]
		B is denied % determined under s. 18.2(2)
		[Note: the denied % is generally used for the direct denial under s. 18.2(2), but this same denied % is also used here for the income inclusion under s. 12(1)(l.2)]
	s. 12(2.02)	Source rule: income under s. 12(1)(l.2) for non-resident partner taxable in Canada to same extent as other income earned through the partnership

EIFEL Rules For Corporate Entities (Quick Notes in red reflect changes in August 2023 Draft Legislation and Department of Finance Explanatory Notes)

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Tab 13A	ITA	Quick Notes
CFAs		
Basic Scheme		If CFA has foreign accrual property income (FAPI) or foreign accrual property loss (FAPL), and has IFEs or IFRs related to that FAPI or FAPL (RAIFEs or RAIFRs), then the RAIFEs and RAIFRs are elevated and included in taxpayer's IFEs (para. (j)) and IFRs (para. (g)) based on taxpayer's specified participating percentage in CFA (SPP)
		[Note: s. 18(2) generates a denied % for taxpayer, which denied % is then applied to deny deductions in computing CFA's FAPI and FAPL under s. 95(2)(f.11)(ii)(D) below]
Main Rules	s. 95(2)(f.11)(ii)(A)	CFA's FAPI (computed under Part I as though CFA were resident in Canada) must FIRST be computed without reference to s. 18.2(2)
		[Note: effect of this is to compute FAPI of CFA without any separate determination of denied % of IFE of CFA under s. 18.2(2), which means:
		s. 12(1)(L.2) not apply at CFA level in respect of IFEs of partnership
		No determination of CFA's excess capacity or CUEC
		No transfers between CFA's under s. 18.2(4), but see relevant inter-affiliate interest (RIAI) below
		Deduction room stemming from the CFA's FAPI or RAIFR is reflected in deduction room or CUEC under s. 18.2 of taxpayer,
		to extent of taxpayer's specified participating percentage in respect of CFA
	s. 95(2)(f.11)(ii)(D)	(I) If taxpayer has denied % of IFE's for year under s. 18.2(2), that same denied % THEN applies to CFA's RAIFEs in computing its FAPI for its year ending in that year
		(II) Also, CFA's FAPI deemed to include amount equal to same denied % of IFEs of partnerships of which CFA is member
	s. 95(2)(f.11)(ii)(E)	Allows ELECTION to forgo FAPL of CFA, to avoid including CFA's RAIFEs in taxpayer's IFEs under s. 18.2
		[Note: CFA's FAPL can only apply against its FAPI, and not against the Canadian taxpayer's own income, which means there could be
		cases where FAPL may never be used to reduce subsequent FAPI (and thus indirectly Canadian taxable income), thus
		absent this election, CFA's RAIFE that generated the FAPL included in the taxpayer's IFEs could add to a denied % of all taxpayer's IFEs under s. 18.2(2)]
		Taxpayer elects in respect of all or part of one or more items of CFA's RAIFEs otherwise deductible in computing FAPI (each an "elected amount")
		Each elected amount becomes not deductible in computing CFA's FAPI (FAPL)
		Two effects:
		Each elected amount not included in CFA's RAIFE, and thus not included in taxpayer's IFE's under s. 18.2
		CFA's FAPL reduced to extent of total elected amounts
		To ensure above result, total of elected amonnts cannot exceed lesser of CFA's FAPL and its RAIFEs for year
RAIFEs	s. 18.2(1)	Amount that would be CFA IFEs if CFA were a taxpayer resident in Canada and subject to s. 18.2, but only in computing CFA's FAPI
		[Note: amounts in para. (j) of variable A of IFEs are excluded, which
		ensures lower-tier CFA's RAIFEs are not, in effect, double-counted by also being included in those of upper-tier CFA]
		Special rule for determining RAIFE applies under s. 18.2(19)(a) if CFA has "relevant inter-affiliate interest" (RIAI) - see below
		To avoid circularity, para. (a) ensures that RAIFEs determined without regard to deductions denied, or income inclusions, under s. 95(2)(f.11)(ii)(D)
		Only amounts deductible in computing FAPI are included in RAIFE, as a result:
		excludes amounts deductible in computing active business income or loss under s. 95(2)(a)
		also excludes amounts paid or payable under s. 95(2)(a)(ii)(D) financing structures, and treated as nil under variable A or D of FAPI in s. 95(1)
RAIFRs	s. 18.2(1)	Amount that would be CFA IFRs if CFA were a taxpayer resident in Canada and subject to s. 18.2, but only in computing CFA's FAPI
		[Note: amounts in para. (g) of variable A of IFRs are excluded, which
		ensures lower-tier CFA's RAIFRs are not, in effect, double-counted by also being included in those of upper-tier CFA]
		Special rule for determining RAIFR applies under s. 18.2(19)(a) if CFA has "relevant inter-affiliate interest" (see below)

		Only amounts included in computing FAPI are included in RAIFR. As a result:
		Excludes amounts included in computing active business income or loss under s. 95(2)(a) and (2.44)(b)
SPP	s. 18.2(1)	Taxpayer's specified participating percentage (SPP) for CFA is relevant for taxpayer's share of CFA RAIFE and RAIFR, which is included in taxpayer's IFEs and IFRs
		Means percentage that is taxpayer's aggregate participating percentage in respect of a CFA,
		ignoring any deductions or income under s. 95(2)(f.11)(ii)(D)
		definition ensures taxpayer has SPP even where CFA's FAPI less than \$5,000 or CFA has FAPL

EIFEL Rules For Corporate Entities (Quick Notes in red reflect changes in August 2023 Draft Legislation and Department of Finance Explanatory Notes)

Ian J. Gamble, Thorsteinssons LLP

Tab 13B	ITA	Quick Notes
CFAs		
RIAI	s. 18.2(1)	Relevant inter-affiliate interest (RIAI)
		Interest paid or payable by CFA to – or received or receivable by CFA from – another CFA taxpayer or of eligible group entity in respect of taxpayer (i.e., group member)
		must be interest that, absent s. 18.2(19), would otherwise be deductible in computing FAPI of payer CFA and otherwise included FAPI of recipient CFA
		Relevant for s. 18.2(19) below
	s. 18.2(19)	Highly technical rules - see detailed example in Department of Finance Technical Notes
		Rules to determine portion of RIAI included in payer CFA's RAIFEs and recipient CFA's RAIFRs (i.e., only these portions)
		Similar to election to exclude interest between 2 Canadian group members, but differs in several ways:
		applies automatically
		does not provide a full exclusion in all cases
		does not necessarily provide symmetrical treatment for payer and recipient CFAs (and not necessarily intuitive result)
		Para. (a) determines amount included in payer CFA's RAIFE, as formula A + B
		Where:
		A is that portion of RIAI seen as "eroding" FAPI for taxpayer and group members (i.e., actual erosion, not just shifting to another CFA)
		occurs only where total SPP (ignoring the RIAI) in respect of payer CFA (of taxpayer and group members)
		exceeds total of SPP in respect of the recipient CFA (of taxpayer and group members)
		[Note: variable A cannot be nil: s. 257]
		B includes portion of the RIAI determined as:
		amount equal to net RAIFRs of payer CFA allocable to the RIAI (i.e., character preservation rule, reflects shifting of net RAIFRs to another CFA via RIAI)
		[Note: variable B ensures payer CFA must treat the RIAI as RAIFEs only to extent the RIAI offsets that CFA's net RAIFRs]
		[Note: for this purpose net RAIFRs are determined as the RAIFRs less what would be the RAIFEs for the payer CFA determined without regard to RIAI for the year]
		[Note: portion of net RAIFR is allocated to each RIAI payment based on proportion of the RIAI payment to total of all RIAI payments that absent s. 18.2(19)
		would be included in RAIFEs]
		Para. (b) determines portion of RIAI that is included in recipient CFA's RAIFRs (reflects character preservation of net RAIFRs shifted from payer CFA above)
		If payer CFA does not have net RAIFRs (as above), none of RIAI is included in recipient CFA's RAIFRs (i.e., no shifting of net RAIFRs has occurred)
		If payer CFA has net RAIFRs, then portion of RIAI included in recipient CFA's RAIFRs equals the portion of payer CFA's net RAIFRs allocated the RIAI under variable B of
		para. (a) above (to preserve character of shifted net RAIFRs), then adjusted to reflect total SPPs of taxpayer and relevant group members in payer CFA and recipient CFA
		[Note: these rules ensure that RIAI does not change character of payer CFA's net RAIFRs in the recipient CFA's hands, as a result of the RIAI]
		[Note: Would have been helpful if Department of Finance Technical Notes also included simpler example of RIAI within 100% CFA group]
Other Rules	s. 91(1.2)	Existing rules for stub-period FAPI on acquisition of control or reduction of equity interest in CFA
		Amended to refer to new s. 95(2)(f.11)(ii)(D) - makes stub-period FAPI rules applicable for new EIFEL rules in respect of CFA
	s. 92(1)	Existing rules adjust ACB of share of FA
		Amended to ensure ACB adjustments determined without regard to expense denial in CFA under s. 95(2)(f.11)(ii)(D)(I) or income inclusion in CFA under 95(2)(f.11)(ii)(D)(II)
		[Note: this reflects presumed underlying cash available to distribute before operation of s. 95(2)(f.11)(ii)(D)]

		[Note: Similar results under s. 91(5) and r. 5907(1) "net earnings"]
	r. 5907(1)	(a)(iii) of "earnings" amended to ignore 18.2(2)
		(b) of "net earnings" amended to ignore 95(2)(f.11)(ii)(D)
		(b) of "net loss" to ignore 95(2)(f.11)(ii)(D) and any election under 95(2)(f.11)(ii)(E)
		[Note: same policy as above]

EIFEL Rules For Corporate Entities (Quick Notes in red reflect changes in August 2023 Draft Legislation and Department of Finance Explanatory Notes)

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Tab 14	ITA	Quick Notes
FIGEs	s. 18.2(1)	"financial institution group entity" (FIGE) defined as a taxpayer that at any time in year is
		(a) bank
		(b) credit union
		(c) insurance corporation
		(d) public trustee
		(e) entity whose principal business is
		(i) lending money to arm's length persons
		(ii) purchasing debt obligations of arm's length persons
		(iii) earning (a) to (d) amounts in IFRs with arm's length persons
		(f) eligible group entity in respect of (a) to (e) above, and is provincially-licensed securities dealer or fund manager
		(g) eligible group entity (other than financial holding company) in respect of (a) to (f) above, and
		substantially all its activities are ancillary to activities of eligible group entities in (a) to (f) above
Four Restrictions	Excluded entity	1. IFRs of FIGE excluded in computing group's net IFEs for para. (b) of "excluded entity" in s. 18.2(1) (i.e. groups with net IFEs of \$1,000,000 or less)
	s. 18.2(4)	2. FIGE can only transfer its CUEC to another FIGE or, subject to certain limitations, to financial holding corporation (FHC) or special purpose loss corporation (SPLC)
	s. 18.2(13)	3. Payments received by taxpayer that is not FIGE or financial holding corporation from
		non-arm's length FIGE or FHC are excluded from taxpayer's IFRs (and also do not reduce taxpayer's IFEs)
	Transitional rules	4. Pre-EIFEL regime "group net excess capacity" determined without reference to income or expense of FIGEs (see Tab 20)
FHC	s. 18.2(1)	Financial holding corporation (FHC) is corporation (other than one in (a) to (f) of FIGE definition) where
		(a) FMV of its shares primarily attributable to any combination of shares or debt in one or more FIGEs controlled by the corporation, or
		(b) its incorporated under Insurance Companies Act and listed on designated stock exchange
SPLC	s. 18.2(1)	Special purpose loss corporation (SPLC) is eligible group entity in respect of FHC that pays interest to FHC and generates loss expected to be used by FIGE in group
Tax Policy		Nature of regular business activities of FIGE (interest income and expenses) more appropriately considered as operating amounts (not merely financing)
		Interest income of FIGEs often exceeds their interest expense
		Restrictions ensure FIGE's net interest income not used to shelter IFEs of taxpayers in group that do not carry on similar financial institution business

EIFEL Rules For Corporate Entities (red entries reflect changes in the August 2023 release of Draft Legislation and Department of Finance Explanatory Notes)

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Tab 15	ITA	Quick Notes
Exempt IFEs	Purpose	Exempts IFEs of Canadian public-private partnership (PPP) infrastructure projects where economic cost of financing borne by public sector
		[Note: PPPs do not pose significant base erosion / profit shifting risks targeted by EIFEL rules]
	s. 18.2(1)	Vairiable A of IFEs definition - Exempt IFEs not included in taxpayer's IFEs, thus not subject to denial under s. 18.2(2) or income under s. 12(1)(l.2)
	s. 18.2(1)	No addback in ATI for Exempt IFEs, except there is add-back for income or losses in respect of borrowing that results in Exempt IFEs [see Tab 7 discussing ATI]
	s. 18.2(1)	Exempt IFEs definition
		(a) taxpayer or partnership enters agreement with "public sector authority" to design, build, finance, design, maintain, operate property that the authority interest in
		(b) borrowing in respect of the agreement
		(c) substantially all of Exempt IFEs directly or indirectly borne by a public sector authority
		(d) paid (directly or indirectly) to arm's length lender

EIFEL Rules For Corporate Entities (Quick Notes in red reflect changes in August 2023 Draft Legislation and Department of Finance Explanatory Notes)

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Tab 16		
Tab 16	ITA	Quick Notes
Reorganizations	s. 87(2.1)	Paras. (a) and (b) amended to provide similar "continuity" on amalgamation for unused Restricted IFEs of each predecessor, see s. 111(1)(a.1)
	s. 87(2.1)(a.1)	(i) continuity for amounts relevant in computing new corporation's CUEC on amalgamation
		[Note: if new s. 111(5.01) applies on loss restriction event (acquisition of control) to restrict CUEC of predecessor, this restriction will apply to new corporation]
		[Note: Similar to existing loss-streaming rules on acquisition of control]
		(ii) continuity where non-capital loss of predecessor attributable to deductions in respect of net IFEs, i.e., to extent new corporation deducts that loss in post-amalgamation year
		[Note: this rule ensures amount for portion of loss deriving from net IFEs is added back in new corporation's ATI for the year]
	s. 87(2.1)(d)	Rule amended to clarify amount of IFEs are deductible post-amalgamation where new corporation has CUEC under s. 87(2.1)(a.1)
	s. 88(1.1)	Provides similar carry-forward to parent for wound-up subsidiary's unused Restricted IFEs (allocated to each business and other source in subsidiary on reasonable basis)
	s. 88(1.1)(d.2)	Restricted IFEs of subsidiary's business deemed to be Restricted IFEs of parent's business, but similar to losses, only applies for parent's years starting after commencement of wind-up
	s. 88(1.1)(d.3)	Restricted IFEs of subsidiary's other sources - similar to losses, these disappear on acquisition of control under s. 88(1.1)(e)
	s. 88(1.1)(g)	Applies the concept in s. 88(1.1)(f) to Restricted IFEs of subsidiary
		[Note: s. 88(1.1)(f) allows parent to elect to deem loss of subsidiary that otherwise would be loss of parent for a year starting after commencement of wind up to be loss of parent for immediately preceding year - see CRA Document for 2012-0447961E5 for useful explanation of s. 88(1.1)(f)]
	s. 88(1.11)	Provides continuity for parent in respect of subsidiary's CUEC by attributing to parent principal amounts relevant in determining subsidiary's CUEC
		i.e., absorbed capacity, excess capacity, transferred capacity of subsidiary for a year deemed to be absorbed capacity, excess capacity, transferred capacity of parent for its year
		in which subsidiary's year ends
		[Note: new s. 111(5.01) can restrict CUEC of subsidiary or parent for years ending after acquisition of control]
	r. 5903(5)	Existing rule permits flow-through of FAPLs on certain foreign mergers or liquidations of Fas
		Amended to refer to s. 18.2
		[Note: Ensures add-back in ATI of taxpayer in respect of CFA still works after foreign merger or liquidation]

EIFEL Rules For Corporate Entities (Quick Notes in red reflect changes in August 2023 Draft Legislation and Department of Finance Explanatory Notes)

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Quick Notes		
Tab 17	ITA	Quick Notes
Anti-Avoidance Rules		
	s. 18.2(9)	Manipulation of eligible group member status to obtain a tax benefit - deemed not to be eligible group member
	s. 18.2(13)	Exclude from taxpayer's IFRs and do not reduce taxpayer's IFE for:
		Para. (a) amounts deductible in computing FAPI of FA (but not CFA) of taxpayer or of a person NAL with taxpayer (i.e., asymmetry)
		Para. (b) amounts from NAL person that is excluded entity or natural person, or from NAL FIGE or FHC (where taxpayer is not FIGE or FHC)
		Para. (c) one of main purposes of any transaction is to include amount in variable A of taxpayer's IFRs or variable B of taxpayer's IFEs (other asymmetries)
		[Example 1: asymmetry in treatment of amount paid (say, from excluded entity) and amount received under EIFEL regime]
		[Example 2: transaction that results in service or royalty income is effectively replaced with interest income in recipient, creating room under EIFEL rules]
		GAAR caution: Department of Finance Explanatory Notes says GAAR "may apply" if other inappropriate results arise as matter of tax policy
	s. 18.2(14)	deems person or partnership to be NAL tax-indifferent
		where one of main purposes is to avoid amount being paid to NAL tax indifferent (i.e., back-to-back or interest-stripping transactions)
	s. 18.2(16)-(17)	Entities not deemed related or affiliated solely because of control by Crown or municipalities or Crown corporations
	s. 111(5)(a)	Amended to restrict, in a manner similar to non-capital losses, deductibility of taxpayer's Restricted IFEs for years ending before acquisition of control
	s. 111(5.01)	Taxpayer's excess capacity for years ending before acquisition of control cannot be used by any taxpayer in a year ending after that time
		[Note: would apply to an amalgamated entity notwithstanding s. 87(2.1)]

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Tab 18	ITA	Quick Notes
Ancilliary Rules	s. 80(1)	"commercial debt obligation" amended to ensure s. 18.2 does not change test, interest deductibility determined without reference to s. 18.2(2)
	s. 18.2(18)	Requires taxpayers to file in tax return prescribed form containing prescribed information on deductibility of IFEs
	s. 152(4)(b.9)	CRA can reassess taxpayer outside of normal reassessment period if taxpayer fails to file, or files incomplete, forms under s. 18.2(18)
		Rule delays the start of normal reassessment period until all required information is provided under s. 18.2(18)
	s. 216	Existing rule allows non-resident taxpayers who receive rent on Canadian real estate to elect to pay net tax under Part I rather than gross withholding tax under Part XIII
		Non-resident corporations that elect into s. 216 are subject to EIFEL rules in computing net income under s. 216(1)(a) to (d)
		Existing s. 216(1)(c) will prevent deduction of Restricted IFEs under s. 111(1)(a.1)
		Amended to add new para. (e) such that s. 216 filers cannot be excluded entities or eligible group entities, and alternate (group ratio) rule in s. 18.21 cannot apply
		These rules may cause non-residents to reconsider investment in Canadian real estate - i.e., by investing through a Canadian resident sub

EIFEL Rules For Corporate Entities (Quick Notes in red reflect changes in August 2023 Draft Legislation and Department of Finance Explanatory Notes)

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Tab 19	ITA	Quick Notes
Group Ratio Rules	s. 18.21	May reduce a taxpayer's limitation on IFEs under s. 18.2(2)
		Allow taxpayer to deduct IFEs in excess of fixed ratio in base-case rules where group ratio exceeds fixed ratio
		Computes total deductible amount of IFEs based on consolidated group ratio x ATIs of Canadian group members (subject to limitations)
		Group ratio is group net interest expense (GNIE) over group accounting net book income (GANBI) x 1.1
		Canadian group then allocates total deductible amount among Canadian group members in election form
		Allocated group ratio amount (AGRA) then effectively replaces fixed ratio amount in variable B of formula in s. 18.2(2)
		Special rules apply if group members have negative book EBITDA, or group has negative book EBITDA
Operative Rule	s. 18.21(2)	Taxpayer and each eligible group entity can jointly ELECT (each a Canadian group member, or single taxpayer if there is no group) to allocate amounts under s. 18.2(2) if
		(a) consolidated group has audited financial statements
		(b) election specifies amount allocated to each Canadian group member (AGRA) for each relevant year and timely filed by one of the Canadian group members
		(c) Total AGRA subject to limits (cannot exceed these, or AGRA is nil) - limit is the least of
		(i) total ATI of Canadian group members x group ratio
		(ii) total group net interest expense (GNIE)
		(iii) total ATI, determined without reference to s. 257, of each Canadian group member (override of s. 257 intended capture any losses of Canadian group members)
Group Ratio	s. 18.21(1)	Contemplates two scenarios
		(a) if GANBI is positive, group ratio is ratio of GNIE to GANBI, multiplied by 1.1
		[Note: For example, taxpayer with GNIE of \$50 and GANBI of \$100 would have group ratio of 0.55 (1.1 x 50/100)]
		Formula includes 10% up-lift to mitigate against book-tax timing differences
		GNIE and GANBI are based on accounting income and expenses, while fixed ratio rules in s. 18.2 is based on tax rules
		This 10% up-lift recommended in the BEPS Action 4 Report
		(b) if GANBI is not positive, group ratio is nil
GNIE	s. 18.2(1)	In essence, the consolidated group's net third-party interest expense for relevant period, formula A-B
		Where
		A is amount by which "specified interest expense" (SIE) of group exceeds "specified interest income" (SII) of group
		B backs out net interest paid to "specified non-members", essentially entities that not members of consolidated group but have significant connection with group
SIE	s. 18.2(1)	Generally includes interest and similar financing expenses for financial reporting purposes, determined as Formula A – B
		Where
		A is interest and financing expenses referred to paras (a) to (d) of this variable
		B is dividends (for tax purposes) included in variable A amounts above (i.e., some actual dividends treated as interest for financial reporting)
SII	s. 18.2(1)	The income analogue to SIE above and structured in similar manner (except capitalized interest has no income analogue)
GANBI	s. 18.21(1)	In essence, consolidated group's EBITDA adjusted for certain items, based on consolidated financial statements of group for relevant period
		i.e., interest, tax, depreciation, amortization added back to net profit or loss of the group to obtain adjusted net profit or loss of group

		Amount is determined by formula A (additions) - B (deductions)
		Where A is formula C + D + E + F + G
		C is group's net income in consolidated financial statements (CFS)
		D is group's income tax expense in CFS
		E is group's interest expense (excludes capitalized interest, as this is part of amortization)
		F is depreciation & amortization of assets, impairment or write-off of fixed asset, loss from disposition of fixed asset
		any negative net fair value amount in s. 18.21(4), and expenses, charges, deductions, losses similar to these items
		G is addback for tax expense and amortization-depreciation in equity-accounted entities in group
		Where B is formula H + I + J + K + L + M + N
		H is any net losses reported in CFS
		I to M essentially mirror addbacks in C to G above, but reflect income items rather than expense items in computation of group's net profit or loss
		N is any portion of net income in CFS reasonably considered as derived from activities funded by borrowing that results in exempt interest
		Note: if GANBI formula is negative, s. 257 would make GANBI nil
Consolidated Group	s. 18.21(1)	Two or more entities in respect of which CFS required to be prepared or would be so required if entities were subject to IFRS
		Member of consolidated group, each entity of group including ultimate parent
		Equity-accounted entity not considered member of the group
Ultimate Parent	s. 18.21(1)	Refers to top entity in group's organizational structure
		Entity in respect of which CFS of group are prepared
		Where top entity is Crown or Crown corporation or municipality, ultimate parent is highest-level entity that is not one of those
	s. 18.21(6)	AGRA determined largely by accounting concepts
		However, exception for "dividend" where appears in "specified interest expense" and "specified interest income"
		Here "dividend" has tax meaning in the Act (see above)
Anti-avoidance	s. 18.21(8)	Back-to-back or interest-stripping transactions to avoid rule in GNIE that carves out interest paid to "specified non-members"
		Rule deems the interest to be paid to specified non-members

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Tab 20	ITA	Quick Notes
Coming-into-Force		s. 18.2 (fixed-ratio rules) and s. 18.21 (alternate group-ratio rules) apply for taxation years that begin on or after October 1, 2023
		Anti-avoidance rule:
		Accelerates s. 18.2 and s. 18.21 to year that begins before 2023 and ends in 2023
		Applies if any of taxpayer's 3 taxation years immediately preceding 1st year that begins on or after January 1, 2023 is a short year as a result of a transaction, and
		reasonable to consider one of the purposes of transaction was:
		(i) to defer application of EIFEL rules, or
		(ii) to increase excess capacity under transitional rules below for a pre-regime year
Transitional Rules		Two main transitional rules
		First is anti-avoidance rule that denies 40% fixed ratio otherwise applicable for years that begin on or after October 1, 2023 and before January 1, 2024
		Applies where taxpayer undertakes transaction to extend period for which the 40% ratio applies
		Second are rules that allow taxpayer to ELECT to determine excess capacity for 3 pre-regime years to include in CUEC in first year EIFEL rules apply (pre-regime rules)
		Must jointly elect to have pre-regime rules apply, one eligible pre-regime group entity can file election for entire group
		Election allocates "group net excess capacity" (GNEC) for pre-regime years among eligible group entities
		GNEC intended to approximate (in administrable way) what unused excess capacity would have been had EIFEL rules applied in pre-regime years
		Thus GNEC nets any excess IFEs of pre-regime group entities for pre-regime years against excess capacity for those pre-regime group entities for those years
		Three main steps to determine taxpayer's excess capacity for each pre-regime year
		First step: determine "excess capacity" or "excess interest" of each group member - assuming EIFEL rules applied to them for pre-regime year (including group ratio if elect)
		If acquisition of control in pre-regime year - these amounts are nil for years preceding acquisition of control
		Fixed ratio (i.e., 40% or 30%) to determine pre-regime amounts is ratio that applies for year CUEC being determined (thus could require 2 pre-regime computations)
		Can elect to use group ratio for one or more pre-regime years if meet 18.21 conditions (election by filing date for year CUEC is being determined)
		Second step: determine GNEC
		Total excess capacity and excess interest for eligible group entities for all pre-regime years (financial institution group entity is excluded)
		Third step: allocate in election the total GNEC among eligible group entities for specific pre-regime years
		Amount allocated is deemed excess capacity of group entity for that pre-regime year - included in CUEC for the first year of EIFEL rules
		Allocations must meet 3 other requirements (if not met, excess capacity for pre-regime years deemed nil)
		(i) Total excess capacity allocated to taxpayer for all pre-regime years cannot exceed its own net excess capacity for all pre-regime years
		(Thus total GNEC can only be allocated to eligible pre-regime group entities that have own net excess capacity for the pre-regime years)
		(ii) excess capacity allocated to taxpayer for given pre-regime year cannot exceed own excess capacity for that pre-regime year
		(iii) total excess capacity allocated to pre-regime group entities for all pre-regime years cannot exceed total GNEC for pre-regime years