Legislative Proposals Relating to the Excise Tax Act

Notice of Ways and Means Motion, Draft Regulations and Explanatory Notes

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The Honourable John Manley, P.C., M.P.,
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Table of Contents

Notice of
Ways and Means Motion

That it is expedient to amend the *Excise Tax Act* as follows:

1. (1) The Act is amended by adding the following after section 178.7:

Import Arrangements

Meaning of "specified supply"

178.8 (1) In this section, "specified supply" means a supply of goods that

(*a*) are to be imported; or

(*b*) have been imported in circumstances in which section 144 deems the supply to have been made outside Canada.

Deemed importer of goods

(2) Subject to subsections (4) and (7), if a specified supply of goods is made outside Canada and the goods are imported for consumption, use or supply by a person (in this section referred to as the "constructive importer") who is the last person to whom a supply of the goods is made outside Canada before their release, the goods are deemed to have been so imported, and any amount paid or payable as or on account of tax on the goods under Division III in respect of the importation is deemed to have been paid or payable, as the case may be, by or on behalf of the constructive importer and not by or on behalf of any other person.

Agreement to treat supply as made in Canada

(3) If a registrant makes a specified supply of goods outside Canada that is a taxable supply, the recipient of the supply is the constructive importer of the goods and an amount is, but for subsection (2), paid or payable by or on behalf of the registrant as or on account of tax on the goods under Division III in respect of the importation, the registrant and the recipient may at any time agree, in prescribed form containing prescribed information, to have subsection (4) apply in respect of the supply and importation.

Effect of agreement

(4) If a registrant and the constructive importer of goods have entered into an agreement under subsection (3) in respect of the supply and importation of the goods and the constructive importer has not entered into an agreement under subsection (5) in respect of any amount paid as or on account of tax on the goods under Division III in respect of the importation,

(*a*) the supply is deemed to have been made in Canada,

(i) in the case of a constructive importer who is an individual to whom the goods are shipped to a destination in Canada by another person, at the address to which the goods are sent by mail or courier by the shipper or at the destination that is specified in the contract for carriage of the goods or at which the shipper has directed a common carrier or consignee retained on behalf of the constructive importer to transfer physical possession of the goods, and

(ii) in any other case, at the place at which the goods are released;

(*b*) except if subsection 155(1) applies, the consideration for the supply is deemed to be equal to the amount otherwise determined for the purposes of this Part plus any amount (in this paragraph referred to as "additional consideration") not otherwise included in that consideration that the constructive importer at a particular time pays or is required to pay to the registrant in respect of duties or taxes payable on the goods under the *Customs Tariff*, the *Excise Act, 2001*, the *Special Import Measures Act*, this Act (other than this Part) or any other law relating to customs and, despite section 168, the tax in respect of the supply that is calculated on the additional consideration becomes payable at the particular time;

(*c*) the registrant is deemed to have imported the goods for the purpose of supply in the course of commercial activities of the registrant; and

(*d*) any amount paid or payable as or on account of tax on the goods under Division III in respect of the importation is deemed to have been paid or payable, as the case may be, by or on behalf of the registrant and not by or on behalf of any other person.

Agreement regarding rebates, abatements and refunds

(5) If the constructive importer of goods is deemed under subsection (2) to be the person by whom the goods are imported but another person (in this section referred to as the "specified importer") was identified, for the purposes of the *Customs Act*, as the importer of the goods when the goods were accounted for under section 32 of that Act and, in the absence of subsection (2), paid an amount as or on account of tax on the goods under Division III, the constructive importer and the specified importer may agree in writing to have subsection (7) apply in respect of that amount.

Restriction

(6) Subsection (5) does not apply to any amount in respect of which, because of section 263.01, the constructive importer of goods would not be entitled to a rebate referred to in that section if the constructive importer paid the amount as or on account of tax on the goods under Division III.

Effect of agreement

(7) If a constructive importer of goods and a specified importer have entered into an agreement under subsection (5) to have this subsection apply in respect of an amount paid as or on account of tax on the goods under Division III and the constructive importer has not entered into an agreement under subsection (3) with the supplier of the goods in respect of the importation,

(*a*) subsections 215.1(2) and (3) and 216(6) and (7) apply as if the specified importer and not the constructive importer were the person by whom the goods were imported and the amount was paid, provided that, within a reasonable time after any rebate under subsection 215.1(2) or 216(6) in respect of the amount is granted or any abatement or refund is, because of subsection 215.1(3) or 216(7), granted in respect of the amount, the specified importer issues to the constructive importer a note (in this subsection referred to as a "tax adjustment note"), in prescribed form containing prescribed information, indicating the amount of the rebate, abatement or refund;

(*b*) in applying subsection 215.1(2) or (3) in respect of the amount in accordance with paragraph (*a*), the subsection shall be read without reference to subparagraphs (*a*)(i) and (ii), and paragraph (*c*), of that subsection; and

(*c*) if the constructive importer receives a tax adjustment note indicating the amount of a rebate, abatement or refund,

(i) the amount that is rebated, abated or refunded is deemed to have been payable as tax and to have been recovered by the constructive importer and, except for the purposes of section 232, the tax adjustment note is deemed to be a credit note referred to in that section received by the constructive importer for the amount of the rebate, abatement or refund,

(ii) the amount of the rebate, abatement or refund shall be added in determining the net tax of the constructive importer for the reporting period in which the tax adjustment note is received, to the extent that the amount has been included in determining an input tax credit claimed by the constructive importer in a return filed for that or a preceding reporting period or the constructive importer is or was entitled to be compensated under a warranty for loss suffered because of any of the circumstances that gave rise to the rebate, abatement or refund by receiving a supply of replacement parts, or replacement property, that are goods included in section 5 of Schedule VII, and

(iii) if the amount rebated, abated or refunded has been included in determining a rebate under Division VI paid to, or applied to a liability of, the constructive importer before the particular day on which the tax adjustment note is received and the rebate so paid or applied exceeds the rebate under that Division to which the constructive importer would have been entitled if the amount rebated, abated or refunded had not been paid, the constructive importer shall pay to the Receiver General under section 264 the excess as if it were an excess amount of the rebate under that Division paid to the constructive importer

(A) if the constructive importer is a registrant, on the day on or before which the constructive importer's return for the reporting period that includes the particular day is required to be filed, and

(B) in any other case, on the last day of the calendar month immediately following the calendar month that includes the particular day.

Application

(8) Subject to subsection (9), subsections (2) to (7) apply for the purposes of this Part other than

(*a*) Division III except subsections 215.1(2) and (3) and 216(6) and (7);

(b) sections 220.07, 236.3 and 273.1;

(c) Schedule VII; and

(d) the *Non-taxable Imported Goods (GST/HST) Regulations* and the *Value of Imported Goods (GST/HST) Regulations*.

Application

(9) Subsections (2) to (7) do not apply in respect of goods imported in circumstances in which subsection 169(2) applies or in which section 180 deems a person to have paid tax in respect of the importation.

Limitation period where retroactive agreement

(10) If a registrant and a constructive importer enter into an agreement under subsection (3) in respect of a previous importation of goods and the constructive importer had claimed an amount (in this subsection referred to as the "excess amount") as an input tax credit or a rebate that the constructive importer was not entitled to claim or that, because of the application of paragraph (4)(*d*), was in excess of the amount the constructive importer was entitled to claim, section 298 applies to any assessment, reassessment or additional assessment of an amount payable by the constructive importer that is determined without taking into account the excess amount but the Minister has until the day that is four years after the day the agreement under subsection (3) is entered into to make any assessment, reassessment, or additional assessment solely for the purpose of taking into account the excess amount.

(2) Subsection (1) applies to goods imported on or after ANNOUNCEMENT DATE and to goods imported before that day that were not accounted for under section 32 of the *Customs Act* before that day.

2. (1) Subsection 215.1(3) of the Act is replaced by the following:

Abatement or refund of tax as if it were duty

(3) Subject to section 263, sections 73, 74 and 76 of the *Customs Act* apply, with such modifications as the circumstances require, to an

amount paid by a person as tax under this Division as though the amount were duties paid under that Act, where

(*a*) the amount was paid as tax on goods that were imported

(i) for consumption, use or supply otherwise than exclusively in the course of a commercial activity of the person, or

(ii) for consumption, use or supply in the course of a commercial activity of the person, if the person was, at the time of the release of the goods, a small supplier who was not registered under Subdivision d of Division V;

(*b*) if the goods had been subject to duties paid under the *Customs Act*, an abatement or refund of the whole or part of the duties could have been granted under section 73, 74 or 76 of that Act because of circumstances described in paragraph 73(*a*) or (*b*), any of paragraphs 74(1)(*a*) to (*c*), or subsection 76(1), of that Act or in which an error was made in the determination under subsection 58(2) of that Act of the value of the goods and the determination has not been the subject of a decision under any of sections 59 to 61 of that Act;

(*c*) the person has not been and is not entitled to be compensated under a warranty for loss suffered because of any of those circumstances by receiving a supply of replacement parts, or replacement property, that are goods included in section 5 of Schedule VII; and

(*d*) within two years after the day the amount was paid as tax under this Division, the person files with the Minister an application, in prescribed form containing prescribed information, for a rebate of the amount.

(2) Subsection (1) is deemed to have come into force on January 1, 1998 except that, in applying subsection 215.1(3) of the Act, as enacted by subsection (1), in determining rebates under that subsection before October 20, 2000, paragraph (*c*) of the subsection shall be read as follows:

(*c*) the person has not been and is not entitled to be compensated under a warranty for loss suffered because of any of those circumstances by receiving a supply of replacement parts that are goods included in section 5 of Schedule VII; and

3. (1) Subsections 216(4) to (6) of the Act are replaced by the following:

Appeals of determination of tax status

(4) In applying the *Customs Act* to a determination of the tax status of goods, the references in that Act to the "Canadian International Trade Tribunal" and to the "Secretary of the Canadian International Trade Tribunal" shall be read as references to the "Tax Court of Canada" and to the "Registrar of the Tax Court of Canada" respectively.

Application of Part IX and *Tax Court of Canada Act*

(5) The provisions of this Part and of the *Tax Court of Canada Act* that apply to an appeal taken under section 302 apply, with such modifications as the circumstances require, to an appeal taken under subsection 67(1) of the *Customs Act* from a decision of the Commissioner made under section 60 or 61 of that Act in a determination of the tax status of goods as if the decision of the Commissioner were a confirmation of an assessment or a reassessment made by the Minister under subsection 301(3) or (4) as a consequence of a notice of objection filed under subsection 301(1.1) by the person to whom the Commissioner is required to give notice under section 60 or 61 of the *Customs Act*, as the case may be, of the decision.

Rebate resulting from appraisal or re-appraisal

(6) If, because of an appraisal, a re-appraisal or a further re-appraisal of the value of goods or a determination of the tax status of goods, it is determined that the amount that was paid as tax under this Division on the goods exceeds the amount of tax that is required under this Division to be paid on the goods and a refund of the excess would be given under paragraph 59(3)(*b*) or 65(1)(*b*) of the *Customs Act* if the tax under this Division on the goods were a customs duty on the goods levied under the *Customs Tariff*, a rebate of the excess shall, subject to section 263, be paid to the person who paid the excess, and the provisions of the *Customs Act* that relate to the payment of such refunds and interest on such refunds apply, with such modifications as the circumstances require, as if the rebate of the excess were a refund of duty.

(2) Subsection (1) is deemed to have come into force on January 1, 1998.

4. (1) Section 217 of the Act is amended by adding the following after paragraph (*b*.1):

(*b*.11) a particular taxable supply (other than a zero-rated supply) of property by way of lease, licence or similar arrangement that is deemed under subsection 143(1) to be made outside Canada to a recipient (in this paragraph referred to as the "lessee") who is resident in Canada, if

(i) a previous supply of the property to the lessee was made by way of lease, licence or similar arrangement (in this paragraph referred to as the "first lease") that was deemed under subsection 178.8(4) to be made in Canada,

(ii) the agreement for the particular supply is an agreement (in this subparagraph referred to as a "subsequent lease") that results from the assignment of, or that succeeds, upon the renewal or variation of, the first lease or a subsequent lease, and

(iii) the lessee is not a registrant who is acquiring the property for consumption, use or supply exclusively in the course of commercial activities of the lessee;

(2) Subsection (1) applies to any supply of property referred to in paragraph 217(*b*.11) of the Act, as enacted by subsection (1), as a particular supply if the recipient of that supply previously received a supply of the property by way of lease, licence or similar arrangement that was deemed under subsection 178.8(4) to be made in Canada.

5. (1) Paragraph 225.2(5)(*c*) of the Act is replaced by the following:

(*c*) be filed by the financial institution with the Minister in prescribed manner on or before

(i) the day on or before which a return under Division V for the reporting period of the financial institution in which the election is to become effective is required to be filed, or

(ii) such later day as the Minister may allow.

(2) Subsection (1) is deemed to have come into force on ANNOUNCEMENT DATE.

6. (1) The portion of the definition "multi-employer plan" in subsection 261.01(1) of the Act before paragraph (*a*) is replaced by the following:

"multi-employer plan"
« régime interentreprises »

"multi-employer plan", at any time in a particular calendar year, means a pension plan that is, at that time, a registered pension plan (as defined in subsection 248(1) of the *Income Tax Act*) having more than one participating employer but does not include a plan where

(2) Subsection 261.01(1) of the Act is amended by adding the following in alphabetical order:

"participating employer"
« enployeur participant »

"participating employer", in relation to a pension plan, means an employer that has made, or is required to make, contributions to the plan in respect of the employer's employees or former employees or payments under the plan to the employer's employees or former employees.

(3) Subsections (1) and (2) are deemed to have come into force on October 20, 2000.

(4) If a trust that is not governed by a multi-employer plan, as defined in subsection 8500(1) of the *Income Tax Regulations*, is entitled to a rebate under section 261.01 as amended by subsections (1) and (2) of the Act in respect of an amount that, before this Act is assented to, became payable or was paid without having become payable by the trust during a claim period of the trust, or would be so entitled in the absence of subsection 261.01(4) of the Act, the trust shall, despite that subsection, have until the day that is two years after the later of the day of the assent and the day referred to in paragraph 261.01(4)(*a*) or (*b*) of the *Excise Tax Act*, whichever of those paragraphs apply in respect of the period, to file an application for the rebate.

7. (1) Part II of Schedule V to the Act is amended by adding the following after section 7.1:

7.2 A supply of a service rendered in the practise of the profession of social work where

(*a*) the service is rendered to an individual within a professional-client relationship between the supplier and the individual and is provided for the prevention, assessment or remediation of, or to assist the individual in coping with, a physical, emotional, behavioural, or mental disorder or disability of the individual or of another person to whom the individual is related or to whom the individual provides care or supervision otherwise than in a professional capacity; and

(*b*) either

(i) if the supplier is required to be licensed or otherwise certified to practise the profession of social work in the province in which the service is supplied, the supplier is so licensed or certified, or

(ii) if the supplier is not required to be licensed or otherwise certified to practise that profession in that province, the supplier has the qualifications equivalent to those necessary to be licensed or certified to practise that profession in a province in which such requirement exists.

(2) Subsection (1) applies to supplies made after ANNOUNCEMENT DATE.

8. (1) Paragraph 1(*d*) of Part V.1 of Schedule V to the Act is replaced by the following:

(*d*) tangible personal property <u>(other than property supplied by way of lease, licence or similar arrangement in conjunction with an exempt supply by way of lease, licence or similar arrangement by the charity of real property)</u> that was acquired, manufactured or produced by the charity for the purpose of making a supply of the property and was neither donated to the charity nor used by another person before its acquisition by the charity, or any service supplied by the charity in respect of such property, other than such property or such a service supplied by the charity under a contract for catering;

(2) Subsection (1) applies to supplies for which consideration becomes due after 1996 or is paid after 1996 without having become due but does not apply to any supply in respect of which tax under Part IX of the Act was charged or collected on or before ANNOUNCEMENT DATE.

(3) If under Part IX of the Act as amended by subsection (1) a charity is considered to have ceased at any time to use capital property of the charity primarily in commercial activities of the charity and is deemed under subsection 200(2) of the Act to have made, immediately before that time, a supply of the property and to have collected tax in respect of that supply, and that cessation would not be considered to have occurred at that time if subsection (1) were not enacted,

(*a*) the charity is not required to include that tax in determining its net tax for any reporting period; and

(*b*) for the purpose of determining the basic tax content (as defined in subsection 123(1) of the Act) of the property, the charity is deemed to have been entitled to recover an amount equal to that tax as a rebate of tax included in the description of A in that definition.

Draft Regulations Amending the Games of Chance (GST/HST) Regulations

AMENDMENTS

1. (1) Paragraph (*a*) of the definition "non-taxable reimbursement" in subsection 5(1) of the *Games of Chance (GST/HST) Regulations* is replaced by the following:

(*a*) consideration (other than interest) for a supply made to the distributor (other than a supply that would be deemed under subsection 188.1(4) of the Act not to be a supply if it were made to the authority instead of to the distributor) that is

(i) an exempt supply of personal property or a service,

(ii) a zero-rated supply, or

(iii) a taxable supply all or part of the consideration for which is, because of section 166 of the Act, not included in calculating the tax payable in respect of the supply; or

(2) Subsection 5(1) of the Regulations is amended by adding the following in alphabetical order:

"lease interval"
« période de location »

"lease interval", in respect of a supply by way of lease of property, means a period to which a payment forming part of the consideration for the supply is attributable and that is the whole or part of the period during which possession or use of the property is provided under the agreement for the supply.

"period cost"
« coût imputable »

"period cost" for a particular period, in respect of a supply to a provincial gaming authority of tangible personal property, or real property, made by way of lease, means the total of

(*a*) the total of all amounts each of which is the portion of the capital cost of the property to the supplier that is reasonably allocated to a lease interval for which a payment forming part of the consideration for the supply becomes due in the particular period or is paid in the particular period without having become due;

(*b*) the total of all amounts each of which is an amount not included in paragraph (*a*) that is a cost to the supplier reasonably attributable to the making of the supply for a lease interval referred to in that subparagraph other than, in the case of a supply to which section 16 applies, the portion, if any, of that cost that is deducted from the value of the consideration for the supply in determining under that section the amount deemed to be the tax payable in respect of the supply;

(*c*) any capital loss on the disposition of the property by the supplier that is recovered from the authority during the particular period; and

(*d*) an amount that, at any time in the particular period, the supplier recognizes in the supplier's books of account as an unrecoverable loss, being the amount by which the unamortized capital cost of the property exceeds its fair market value at that time.

2. (1) The description of A_1 in subsection 7(7) of the Regulations is amended by adding the following after paragraph (*b*):

(*b*.1) an amount (other than an amount described in subparagraph (*d*)(ii)) of tax in respect of a supply deemed under subsection 143(1) to have been made outside Canada (other than a supply described in subsection 178.8(2) of the Act) that would have become payable by the authority during the particular period if the supply had been made in Canada by a registrant,

(2) Paragraph (*d*) of the description of A_1 in subsection 7(7) of the Regulations is amended by striking out the word "or" at the end of subparagraph (ii) and by replacing subparagraph (iii) with the following:

(iii) the amount by which

(A) the total of all amounts each of which is tax that would have become payable by the authority during the particular period under Division II of Part IX of the Act in respect of a supply (other than a supply referred to in subparagraph (iv) or (v)) made to the authority that is a taxable supply of property or a service for consideration less than fair market value, or an exempt supply by way of lease of tangible personal property or real property, if the supply had been a taxable supply made for consideration equal to fair market value,

exceeds

(B) the total amount of tax under that Division that became payable by the authority during the particular period in respect of supplies included in clause (A),

(iv) the amount of tax that would have become payable by the authority during the particular period under Division II of Part IX of the Act in respect of an exempt supply of real property made to the authority by way of lease by a wholly-owned subsidiary of the authority that had acquired the property for consideration equal to fair market value if the supply had been a taxable supply and if the amount of consideration for the supply that had become due in the period or was paid in the period without having become due were equal to the greater of the period cost of the supply for the period and the total of any amounts of consideration for the supply, as otherwise determined for the purposes of Part IX of the Act, that became due in the period or were paid in the period without having become due, or

(v) the amount, if any, by which

(A) the amount of tax that would have become payable by the authority during the particular period under Division II of Part IX of the Act in respect of a taxable supply of property made to the authority by way of lease by a wholly-owned subsidiary of the authority that had acquired the property for consideration equal to fair market value if consideration for the supply, equal to the period cost of the supply for the period, became due in the period and if that were the only consideration for the supply that became due in the period or was paid in the period without having become due,

exceeds

(B) the total amount of tax under that Division that became payable by the authority during the particular period in respect of the supply, and

(3) The descriptions of B_4 and B_5 in subsection 7(7) of the Regulations are replaced by the following:

B_4 is a particular amount of salaries, wages or other remuneration (other than an amount described in the description of B_6) paid or payable by the distributor, or by a person (in this description

and in the description of B_6 referred to as the "distributor's subsidiary") who is a wholly-owned subsidiary of the distributor, to an employee of the distributor or of the distributor's subsidiary, and

B_5 is the extent (expressed as a percentage) to which the particular amount is

(i) a cost to the distributor of supplying the casino operating service to the authority, or

(ii) a cost to the authority of the management, administration and carrying on of the day-to-day operations of the authority's gaming activities that are connected with a casino of the authority, and

(4) The descriptions of B_6 and B_7 in subsection 7(7) of the Regulations are replaced by the following:

B_6 is a particular amount that is paid by, or is in respect of a supply of property or a service made by, the distributor or the distributor's subsidiary to an employee of the distributor or of the distributor's subsidiary or to a person related to such an employee, and that the employee is required under section 6 of the *Income Tax Act* to include in computing the employee's income for a taxation year of the employee, and

B_7 is the extent (expressed as a percentage) to which the particular amount is

(i) a cost to the distributor of supplying the casino operating service to the authority, or

(ii) a cost to the authority of the management, administration and carrying on of the day-to-day operations of the authority's gaming activities that are connected with a casino of the authority;

3. Paragraph 9(1)(*a*) of the Regulations is replaced by the following:

(*a*) was acquired or imported, or brought into a participating province, by the authority for consumption or use in gaming activities of the authority, in improving capital property used in gaming activities of the authority, in making promotional supplies or in making supplies of financial services that relate to gaming activities of the authority;

4. The Regulations are amended by adding the following heading and section after section 14:

Provincial Gaming Authority as Distributor

14.1 If a provincial gaming authority, other than the Interprovincial Lottery Corporation, (in this section referred to as the "reporting authority") is a distributor of another provincial gaming authority in relation to a game of chance conducted by or on behalf of the other authority,

(*a*) in applying subsection 7(7), sections 8 and 9 and Part IX of the Act in determining the imputed tax payable on gaming expenses and the input tax credits of the reporting authority and of the other authority, any amount paid or payable by the reporting authority on behalf of the other authority in respect of the acquisition or importation, or bringing into a participating province, of property or a service for consumption, use or supply in relation to the conduct of the game shall be taken into account as if

(i) the game were conducted by the reporting authority as part of the gaming activities of the reporting authority and not of the other authority,

(ii) the property or service were acquired or imported, or brought into the participating province, and the amount were paid or payable, by the reporting authority on its own account and not by the other authority,

(iii) the rights to play or participate in the game were rights of the reporting authority and not of the other authority, and

(iv) persons, other than the reporting authority, acting as distributors of the other authority in relation to the game were distributors of the reporting authority, and not of the other authority, in relation to the game;

(*b*) no amount that would, but for subsection 188.1(4), be consideration for a supply by the reporting authority to the other authority in relation to the game shall be included in the total for C_1 in subsection 7(7); and

(*c*) no amount of a reimbursement paid or payable by the other authority to the reporting authority in respect of an expense incurred or to be incurred by the reporting authority that is attributable to the game shall be included in the amount determined for A_3 or C_1 in subsection 7(7).

COMING INTO FORCE

5. (1) Subsection 1(1) is deemed to have come into force on ANNOUNCEMENT DATE.

(2) Subsections 1(2) and 2(2) and sections 3 and 4 are deemed to have come into force on December 31, 1990 except that, in respect of any supply made on or before ANNOUNCEMENT DATE,

(*a*) the definition "period cost" in subsection 5(1) of the Regulations, as enacted by subsection 1(2), shall be read without reference to subparagraphs (iii) and (iv);

(*b*) the reference to "tangible personal property or real property" in clause (*d*)(iii)(A) of the description of A_1 in subsection 7(7) of the Regulations, as enacted by subsection 2(2), shall be read as a reference to "real property"; and

(*c*) section 3 does not apply to an input tax credit or an imputed input tax credit claimed by a provincial gaming authority in a return filed under Division V of Part IX of the *Excise Tax Act* before ANNOUNCEMENT DATE.

(3) Subsection 2(1) applies to supplies made after ANNOUNCEMENT DATE.

(4) Subsections 2(3) and (4) apply for the purpose of determining under subsection 7(7) of the Regulations the imputed tax payable by a provincial gaming authority on gaming expenses for reporting periods of the authority ending after January 1, 1996.

Explanatory Notes

These explanatory notes are provided to assist in an understanding of the proposed amendments to the *Excise Tax Act*. These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

Section 1

Import Arrangements

ETA
178.8

New section 178.8 addresses circumstances in which a person (referred to as the "constructive importer") is the last recipient of a supply made outside Canada of goods that are imported into Canada for that person's consumption, use or re-supply, but is not the person by or on whose behalf the goods are accounted for under the *Customs Act* at the time of their entry. For example, the supplier of the goods might effect the importation and pay any applicable taxes on the supplier's own account.

New section 178.8 applies to goods imported on or after Announcement Date and to goods imported before that day that were not accounted for under section 32 of the *Customs Act* before that day.

Subsection 178.8(1) - Meaning of "specified supply"

Subsection 178.8(1) defines the term "specified supply" for purposes of new section 178.8. The rules under section 178.8 apply only to circumstances in which a "specified supply" of goods has been made.

A supply is a "specified supply" if the goods that are the subject of the agreement for the supply are goods that are, at the time the agreement is entered into, intended to be imported into Canada. Alternatively, the goods that are the subject of the agreement might have already been imported into Canada but the agreement was entered into after that importation and before the release of the goods. In that case as well, the supply would qualify as a "specified supply".

Subsection 178.8(2) - Deemed Importer of Goods

Section 178.8 deals with circumstances in which imported goods are for the consumption, use or supply in Canada by the person who is defined to be the "constructive importer". Since it is the constructive importer's activities for which the goods are immediately destined

after they are imported into Canada, it is those activities that should determine eligibility for any recovery of tax on the importation of the goods. However, in some cases, in the absence of new subsection 178.8(2), the constructive importer would not meet all of the conditions for achieving such recovery.

To address this problem, new subsection 178.8(2) deems imported goods that have been supplied outside Canada to be imported by the constructive importer of the goods and not by any other person. The subsection further deems any amount paid or payable as or on account of tax under Division III on the goods to be paid or payable by the constructive importer and not by any other person.

The constructive importer is the last person to whom a supply of the goods outside Canada is made before the goods are released under the *Customs Act*. That last supply may be considered to be made outside Canada either by virtue of where the legal delivery of the goods to the constructive importer takes place or by virtue of section 143, which deems a supply of goods to be made outside Canada, despite their delivery in Canada, if the supplier is a non-resident person who is not registered for GST/HST purposes and does not make the supply in the course of a business carried on in Canada. For example, if such a non-resident supplier enters into an agreement to sell goods that are then located outside Canada but are to be imported for delivery in Canada to the recipient of the supply, and that is the last agreement for a supply of the goods made outside Canada that is entered into before the goods are released, that supply qualifies as a "specified supply" and the recipient of that supply is the constructive importer of the goods.

The deeming rules in subsection 178.8(2) ensure that it is only the constructive importer of goods that is considered to have been the person by whom tax in respect of the importation of the goods was paid or payable for purposes of claiming any input tax credit or rebate in respect of the tax, or any tax relief that may be available as a result of the application of subsection 215.1(2) or (3) or 216(6) or (7). However, to be entitled to make such a claim, the constructive importer would still have to satisfy the documentation requirements. Therefore, where another person accounts for the goods on their importation, that other person would have to pass on to the constructive importer to substantiate any subsequent input tax credit, rebate, abatement or refund claim made by the constructive importer.

It is important to note that the deeming rules in subsection 178.8(2) do not apply for purposes of determining liabilities or obligations of any person with respect to the payment of tax in accordance with Division III of Part IX of the *Excise Tax Act* and the *Customs Act*. Therefore, if a person, such as the supplier of the imported goods, accounts for the goods as the importer for purposes of the *Customs Act*, that person remains liable to pay any tax on the goods in accordance with the *Customs Act*, despite the fact that subsection 178.8(2) deems the constructive importer to be the only person by whom the tax is payable for other purposes.

The rules under subsection 178.8(2) constitute the default rules in the circumstances to which they apply. However, the subsection is subject to new subsections 178.8(4) and (7), which provide for elective alternative treatments in certain circumstances.

Subsections 178.8(3) and (4) – Agreement to Treat Supply as Made in Canada

New subsections 178.8(3) and (4) provide a mechanism whereby a GST/HST registrant, who has made a taxable supply of goods outside Canada to the constructive importer of the goods and who accounts for the goods at the time of their entry into Canada, can avoid the need to pass on the import documentation to the constructive importer for purposes of recovering the tax paid on the goods. Under this proposed exception, the supplier and the constructive importer of the goods have the option of entering into an agreement that has the effect of permitting the supplier to claim an input tax credit for the GST/HST payable on the importation. In that case, the supplier would have to charge the constructive importer GST/HST under Division II of Part IX of the Act on the supply of the goods to the constructive importer as if it had been made in Canada. The constructive importer would, in turn, be entitled to claim an input tax credit or rebate for that tax, provided, of course, the constructive importer met all other conditions for claiming the input tax credit or rebate.

Under these rules, the deemed place of supply in Canada of the goods is generally the place at which the goods are released. However, in the case of a constructive importer that is an individual and to whom the goods are shipped, the place of supply is the Canadian destination to which the goods are shipped by mail or courier or other carrier. This rule is relevant for purposes of determining whether the supply

is subject to tax at the rate of 7 per cent or whether it is subject to the HST at the rate of 15 per cent.

If the constructive importer has paid, or has agreed to pay, the supplier the amount of any customs duties or excise tax or duties on the goods that is levied at the time of importation, that amount is added to the consideration for the supply that is deemed to be made in Canada. This is consistent with the fact that such duties or taxes form part of the value on which the GST/HST is imposed in respect of the importation of the goods. However, as in the case of any other supply, subsection 155(1) may apply to determine the value on which the GST/HST on the supply is calculated in the circumstances of a non-arms length supply described in that subsection.

Paragraphs 178.8(4)(*c*) and (*d*) deem the circumstances that ensure that a registrant-supplier of goods, having entered into an agreement under subsection 178.8(3) with the constructive importer of the goods, is the only person that is in a position to claim an input tax credit in respect of the tax payable on the importation of the goods.

It should be noted that, where a constructive importer of goods has acquired the goods under a lease from the supplier with whom they have entered into an agreement under subsection 178.8(3), the constructive importer may subsequently be required to self-assess tax under Division IV in respect of the goods. The constructive importer may become so liable in the event that they cease to be charged tax under Division II on their lease payments due to the circumstance that, while the constructive importer remains the lessee of the goods, the lease is sold or assigned to a new supplier who is an unregistered non-resident person whose supply is deemed to be made outside Canada under subsection 143(1). In that case, the supply to the constructive importer under the new lease, and any succeeding lease that is similarly deemed to be made outside Canada, is defined to be an imported taxable supply by new paragraph 217(*b*.11) if the lessee is not acquiring the goods for consumption, use or supply exclusively in the course of a commercial activity of the lessee (see commentary on new paragraph 217(*b*.11)).

Subsection 178.8(5) to (7) – Agreement Regarding Rebates, Abatements and Refunds

Subsection 178.8(5) deals with importations described in subsection 178.8(2) where the constructive importer and the supplier of the goods have not opted under subsection 178.8(3) to treat the supply of the goods to the constructive importer as if it were made in Canada. The general rules under subsection 178.8(2) dictate that the constructive importer is the only person entitled to any rebate, abatement or refund to recover amounts paid or payable as or on account of tax in respect of the importation of the goods. This includes amounts paid in error as tax, such as excess amounts resulting from an error in the determination of the value of the goods for GST/HST purposes.

As an alternative, subsection 178.8(5) provides for a mechanism whereby, in the circumstances to which one of the specified tax relieving provisions of Division III of Part IX of the Act apply, the person (referred to as the "specified importer"), who is identified as the importer of the goods for purposes of the *Customs Act* when the goods are accounted for under that Act, can claim the rebate, abatement or refund that is provided for under that provision, instead of the constructive importer having to do so. Again, this arrangement between the specified importer and the constructive importer may be made only if the constructive importer has not agreed to have the supply of the goods treated as if it were made in Canada.

Subsection 178.8(6) ensures that the specified importer is not able to recover any amount that the constructive importer would not have been entitled to recover because of the restriction under section 263.01, in the case of a constructive importer that is a selected listed financial institution.

By virtue of subsection 178.8(7), if the specified importer and constructive importer so agree under subsection 178.8(5), the specified importer may claim any rebate, abatement or refund that may be available as a result of the application of subsection 215.1(2) or (3) or 216(6) or (7), provided that the specified importer issues to the constructive importer a "tax adjustment note", indicating the amount of the rebate, abatement or refund. The consequences for the constructive importer who receives a tax adjustment note are similar to those that result from a person receiving a credit note issued under

section 232 by a supplier for a tax adjustment in respect of a domestic supply. If the constructive importer had already claimed an input tax credit or rebate for the amount, the constructive importer would have to add back the amount to their net tax or repay the amount as if it were an overpayment of a rebate received by the constructive importer.

The amount that is rebated, abated or refunded is deemed to have been tax that was properly payable in the first instance by the constructive importer. This ensures that there is no nullification of any entitlement to an input tax credit or rebate in respect of the amount that the constructive importer may have already claimed. Instead, the rules under subparagraphs 178.8(7)(*c*)(ii) and (iii) ensure the appropriate recapture of the previous amount claimed.

Also, the amount rebated, abated or refunded is deemed to be an amount of tax that is recovered by the constructive importer, which is to ensure that the amount is appropriately taken into account in applying other provisions of Part IX that reference amounts of tax recovered by a person, such as the definition, in subsection 123(1), of the basic tax content of goods. Further, the tax adjustment note is deemed to be a credit note issued under section 232 for all purposes of Part IX (except section 232 itself). An example of one of the consequences of this deeming is that paragraph 263(*d*) would disallow the constructive importer from claiming a rebate under Part IX in respect of the amount to which the constructive importer might otherwise have been entitled if the constructive importer received the tax adjustment note for the amount before making the application for the rebate.

Subsections 178.8(8) and (9) - Application

New section 178.8 does not apply for any purpose of Division III other than the rebate and abatement provisions under subsections 215.1(2) and (3) and 216(6) and (7). Therefore, the deeming rules in section 178.8 do not alter in any way the liabilities and obligations in relation to the payment of tax under Division III.

Similarly, the deeming rules in section 178.8 do not apply for purposes of sections 220.07, 236.3 or 273.1, Schedule VII or the *Non-taxable Imported Goods (GST/HST) Regulations* or the *Value of Imported Goods (GST/HST) Regulations*, all of which relate to the

calculation of tax under Division III. For example, in some cases, whether an imported good is exempt from tax under Division III pursuant to a provision of Schedule VII or the Regulations, or whether the good is subject to tax calculated on a reduced value, depends, among other things, on the status of the importer and the purposes for which the importer brings the goods into Canada. The conditions of those relieving provisions must be met without regard to the deeming rules under section 178.8. In most cases, those conditions are only met by the person for whose consumption, use or supply in Canada the goods are imported and therefore that person must also be the importer in order for the relieving provision to apply.

Section 178.8 also does not apply in circumstances in which subsection 169(2) or section 180 apply. Those provisions already provide for mechanisms for the recovery of tax imposed under Division III in limited specified circumstances by a person who has paid that tax but who is not the person to consume, use or supply the goods in Canada (in the case of subsection 169(2)) or by a person other than the one who paid the tax (in the case of section 180). New section 178.8 is not intended to interfere with the operation of those existing mechanisms.

Subsection 178.8(10) – Limitation Period where Retroactive Agreement

Subsection 178.8(10) extends the limitation period for making an assessment or reassessment to take into account an input tax credit or rebate claimed by a constructive importer of goods in respect of tax imposed under Division III on the importation of the goods where the claim was made before the constructive importer entered into an agreement under subsection 178.8(3) with the supplier of the goods that has the effect of allowing the supplier to claim an input tax credit for that same tax. The limitation period is extended solely for this purpose to the day that is four years after the agreement under subsection 178.8(3) is entered into. This extension is necessary because the agreement can be entered into at any time to apply to past transactions.

Section 2

Abatement or Refund of Tax as if it were Duty

ETA
215.1(3)

Subsection 215.1(3) applies to certain persons who have paid GST/HST under Division III on goods in circumstances in which the goods were not subject to customs duty but the persons would have been entitled to claim an abatement or refund of duty under section 73, 74 or 76 of the *Customs Act* if the tax had been a duty paid under that Act. Such circumstances include where the goods have suffered damage or shrinkage between the time that the tax was paid and the time the goods were released (e.g., while in a bonded warehouse). In the specified circumstances, the cross-referenced sections of the *Customs Act* may be applied to obtain a refund of the GST/HST as if it had been paid as duty on the goods.

First, subsection 215.1(3) is re-structured and minor wording changes are made for greater consistency with the provision in the French version of the Act and with the wording of the related customs legislation. Second, changes are made as a consequence of amendments that have been made to subsection 74(1) of the *Customs Act*. Specifically, paragraph 215.1(3)(*b*) is amended by adding a general reference to any circumstance in which an error was made in the determination under subsection 58(2) of the *Customs Act* of the value of imported goods (i.e., a self-determination of value by the person who accounts for the goods under the *Customs Act*) since that is now among the circumstances described in subsection 74(1) of the *Customs Act* that may give rise to a refund of duty under that subsection. Subsection 74(1) applies in respect of the value so determined only if that determination has not been the subject of a decision made under any of sections 59 to 61 of the *Customs Act*, in which event, for GST/HST purposes, subsection 216(6) would apply to provide for a corresponding GST/HST refund.

The amendments to subsection 215.1(3) generally come into force on January 1, 1998, when the related changes to section 74 of the *Customs Act* came into force. However, in applying subsection 215.1(3) in determining rebates under that subsection prior to October 20, 2000, paragraph 215.1(3)(*c*) is to be read without reference to the words "replacement property", which were added only as of that date.

Section 3

Determinations, Appeals and Refunds in relation to Tax under Division III

ETA
216(4) to (6)

Subsections 216(4) to (6) provide for the application of administrative and enforcement rules under the *Customs Act* in relation to certain determinations, appeals and refunds that relate to tax that is imposed on imported goods under Division III of the *Excise Tax Act*. The purpose of the amendments to these subsections is to update them as a consequence of the re-numbering of related or cross-referenced provisions of the *Customs Act*. These amendments do not change the substance of the provisions.

These amendments come into force on January 1, 1998, when the related changes to the *Customs Act* came into force.

Section 4

Definition of "imported taxable supply"

ETA
217

This amendment adding another type of supply to the definition "imported taxable supply" for purposes of the tax imposed under Division IV of the Act is related to the addition of new subsections 178.8(3) and (4) (see commentary on those subsections). Those subsections provide for a mechanism whereby a registrant that has supplied goods outside Canada and then imported the goods for the recipient (referred to as the "constructive importer") can claim a full

input tax credit for the tax imposed in respect of the importation but must, at the same time, charge tax under Division II to the recipient as if the supply had been made in Canada. This mechanism ensures that tax is ultimately borne on the goods if, after being imported, they are not intended for consumption, use or supply in the course of commercial activities.

However, the objective of new subsections 178.8(3) and (4) could be thwarted in the case of a supply by way of lease if, after the importation of the goods, the lease is sold or assigned and the new supply by way of lease to the constructive importer is made by a non-resident unregistered person whose supply is deemed under subsection 143(1) to be outside Canada. The new supplier would not have to continue charging tax under Division II on the lease payments payable by the constructive importer. To address this situation, the new supply that is deemed to be made outside Canada is defined, under new paragraph 217(*b*.11), to be an imported taxable supply on which the constructive importer must self-assess tax under Division IV unless the constructive importer is acquiring the goods exclusively for consumption, use or supply in the course of commercial activities.

New paragraph 217(*b*.11) applies to any supply of goods by way of lease by a non-resident unregistered person in the circumstances in which subsection 143(1) deems the supply to be made outside Canada where the original supply by way of lease to the recipient had been deemed under new subsection 178.8(4) to be made in Canada. New subsection 178.8(4) applies to goods imported on or after Announcement Date and to goods imported before that day that were not accounted for under section 32 of the *Customs Act* before that day.

Section 5

Selected Listed Financial Institution Election

ETA
225.2(5)

Subsection 225.2(4) of the Act allows a “selected listed financial” (as defined in subsection 225.2(1)) to elect with a closely related supplier to use a cost-based method of determining the value of certain

supplies made between them for purposes of the financial institution's net tax calculation under the HST. Existing subsection 225.2(5) requires the election to be filed with the Minister of National Revenue by a specified time, with no provision for late-filed elections. The amendment gives the Minister discretion to accept an election filed on such later day as the Minister may allow.

This amendment comes into force on Announcement Date.

Section 6

Rebate for Multi-Employer Pension Plan

ETA
261.01(1)

Section 261.01 provides for a rebate to a trust governed by a multi-employer pension plan. Subsection 261.01(1) defines the term "multi-employer plan" for the purposes of the rebate and provides that, among other things, in order for a pension plan to qualify as a multi-employer plan, it must fall within the definition of that term as set out in subsection 8500(1) of the *Income Tax Regulations*.

The definition of "multi-employer plan" under the *Income Tax Regulations* excludes a pension plan in which more than 95% of the plan members are employed by a related group of employers. The purpose for that exclusion is to treat such plans as single-employer plans for the purposes of the relevant income tax legislation. However, that purpose is not relevant to the GST rebate. The cross-reference to the income tax definition of "multi-employer plan" in subsection 261.01(1) therefore inadvertently results in trusts governed by related-employer plans being excluded from claiming the rebate under section 261.01.

To correct this problem, the definition "multi-employer plan" in subsection 261.01(1) is amended to include all registered pension plans that have more than one participating employer. Consequently, a trust governed by a pension plan in which more than 95% of the members of the plan are employed by a related group of employers is no longer precluded from claiming the rebate under section 261.01. The definition of "multi-employer plan" in subsection 261.01(1) continues to exclude plans in which listed financial institutions made

10% or more of the employer contributions in the preceding calendar year.

Subsection 261.01(1) is also amended to add the definition "participating employer", which defines who is an employer for the purposes of determining if a pension plan is a "multi-employer pension plan".

Section 261.01 came into effect on October 20, 2000 and entitles eligible trusts to claim the rebate under that section in respect of tax that became payable by them after 1998. Trusts generally have up to two years from the end of a claim period to file their application for a rebate for that period. As these amendments to subsection 261.01(1) are necessary in order to ensure that the original policy objective of the rebate is achieved, the amendments are made retroactive to October 20, 2000 and apply for the purpose of determining rebates in respect of tax that became payable after 1998. A special transitional rule is provided that ensures that an eligible trust that is governed by a related-employer plan has at least until the day that is two years after the day these amendments receive Royal Assent to claim its rebate in respect of any amount that became payable by the trust before the date of assent.

Section 7

Social Workers' Services

ETA
Schedule V, Part II, section 7.2

The amendment adds new section 7.2 to Part II of Schedule V to the *Excise Tax Act*. It adds to the list of exempt supplies of healthcare services the supply of a service of counselling individuals for the prevention or treatment of physical or mental disorders or to assist afflicted individuals or their caregivers in coping with such conditions, where the service is rendered in the practise of the profession of social work.

The exemption of this service under new section 7.2 does not depend on whom the service is supplied to (i.e., it is not dependant on who the recipient of the supply is within the meaning of subsection 123(1)). For instance, a social worker may counsel an individual for

an alcohol dependency, but that service may be paid for by an aid organization. In this case, even though the supply is made to the organization, and not the individual, it is an exempt supply because the service is rendered to an individual. In addition, in order for the service to be exempt, it must be rendered within a professional-client relationship between the social worker and the individual to whom the service is rendered. Thus, if an organization hired a social worker to give a talk on alcohol dependency at a seminar open to the general public, the social worker's service would not be provided in the context of a professional-client relationship between the social worker and each of the individuals attending the seminar. Therefore, the social worker's charge to the organization would not be exempt.

The exemption applies not only to services rendered to the individual who is afflicted with a physical or mental disorder, but also to any other individual who is a relative or caregiver of the individual suffering from the disorder. The exemption does not, however, cover services provided by a social worker to another professional, such as another social worker, in relation to a client of the other professional.

A final condition of the exemption is that the social worker must be licensed or otherwise certified to practise the profession of social work in the province in which the services are supplied. If that province has no such certification requirements, the social worker must possess the qualifications equivalent to those necessary to be licensed or certified to practise in another province in which such requirements exists.

New section 7.2 applies to supplies made after Announcement Date.

Section 8

Goods Supplied by a Charity in Conjunction with Real Property

ETA
Schedule V, Part V.1, section 1

Section 1 of Part V.1 of Schedule V to the Act provides for a general exemption for supplies made by charities. However, supplies that are included in any of paragraphs 1(*a*) to (*m*) are carved out of this general exemption.

As part of a package of measures to simplify GST/HST compliance for charities, previous amendments were made (which were generally applicable to supplies for which consideration became due after 1996) to provide that supplies by charities of real property under short-term leases and licenses are exempt under the general exemption for supplies by charities. The exemption was intended to also extend to any goods supplied together with such real property, such as audio-visual equipment rented with a meeting room. However, the exclusion under paragraph 1(*d*) prevents that exemption from applying as intended when the goods supplied together with the real property have been acquired, manufactured or produced by the charity for the purpose of being supplied.

The amendment to paragraph 1(*d*) corrects this problem to ensure that the exemption for goods supplied together with exempt real property applies as it was intended.

This amendment applies retroactively in the same manner as the earlier amendment that added the exemption for short-term leases and licences by charities, which is generally for supplies for which consideration became due after 1996. However, the exemption for goods supplied together with exempt real property will not apply where the charity has already treated the supply of the goods as taxable and charged or collected tax on them. Further, as was the case when the exemption for the short-term leases and licences of real property was added, a special transitional rule is provided to ensure that the enactment of the amendment does not trigger any change-in-use liability for the charity.

Draft Amendments to the Games of Chance (GST/HST) Regulations

The *Games of Chance (GST/HST) Regulations* set out special rules for determining the net tax of prescribed provincial gaming authorities.

Section 1

Definitions

Games of Chance Regulations
5(1)

Subsection 5(1) contains definitions used in Part 3 of the Regulations relating to the net tax of prescribed registrants.

Subsection 1(1)

Definition of “non-taxable reimbursement”

Games of Chance Regulations
5(1)

The term “non-taxable reimbursement” is defined in subsection 5(1) of the Regulations to distinguish certain reimbursements (as defined in subsection 5(1) of the Regulations) in respect of certain expenses incurred by a distributor of a provincial gaming authority that operates a casino of the authority from other reimbursements. Under the existing rules, a gaming authority does not have to include in the authority's imputed tax on gaming expenses, an amount of tax in respect of a “non-taxable reimbursement” paid to a distributor of the authority in relation to an expense incurred by the distributor in connection with supplying a casino operating service. These expenses include consideration for exempt supplies of personal property or a service or a zero-rated supply made to the distributor.

The amendment extends that treatment to payments made by casino operators to small suppliers, which are not subject to tax. The amendment comes into force on Announcement Date.

Subsection 1(2)

Definition of “lease interval” and of “period cost”

Games of Chance Regulations
5(1)

“lease interval”

The new definition “lease interval” is relevant for the purposes of the new definition “period cost” in subsection 5(1) of the Regulations that is used in amended paragraph (*d*) of the description of A_1 in subsection 7(7) of the Regulations. The “lease interval” of a supply by way of lease of property refers to a period to which a payment forming part of the consideration for the supply is attributable. This period is the whole or part of the period during which possession or use of the property is provided under the agreement for the supply.

The definition “lease interval” comes into force on December 31, 1990, the date the Regulations came into force.

“period cost”

The new definition “period cost” is relevant for the purposes of paragraph (*d*) of the description of A_1 in subsection 7(7) of the Regulations. The “period cost” for a period in respect of a supply to a provincial gaming authority of property made by way of lease refers to the cost to the supplier of making the supply and is equal to the total of four amounts.

- First, the total of all amounts each of which is the portion of the capital cost of the property to the supplier that is reasonably allocated to a lease interval (as defined in subsection 5(1) of the Regulations) for which a payment forming part of the consideration for the supply becomes due in the particular period or is paid in the particular period without having become due.

- Second, the total of all amounts each of which is an amount (that is not a capital cost included above) that is a cost to the supplier reasonably attributable to the making of the supply for that lease interval. In the case of the supply of property that an authority acquires for use as the authority's head office, certain amounts do

not have to be included similar to the amounts that are deducted from the value of the consideration for such supplies in determining, under section 16 of the Regulations, the amount deemed to be the tax payable in respect of such supplies.

- Third, any capital loss on the disposition of the property by the supplier that is recovered from the authority during the particular period is also included in the "period cost".

- And finally, an amount that, at any time in the particular period, the supplier recognizes in the supplier's books of account as an unrecoverable loss, being the amount by which the unamortized capital cost of the property exceeds its fair market value at that time.

The definition "period cost" comes into force on December 31, 1990, the date the Regulations came into force except that, in respect of any supply made on or before Announcement Date, the last two amounts referred to above do not have to be included in the "period cost".

Section 2

Imputed Tax on Gaming Expenses

Games of Chance Regulations
7(7)

The imputed tax on gaming expenses payable by a provincial gaming authority on gaming expenses is an amount that reduces the special credit to which authorities are entitled in determining their net tax under the Regulations. This amount by which their net tax is reduced is effectively what the authorities are required to remit.

Subsection 2(1)

Supply by non-resident

Games of Chance Regulations
Element A of Formula in 7(7)

Under the Regulations, gaming authorities must, in general, include in their imputed tax on gaming expenses, the amount of tax paid or payable by the authority in respect of all property or services that were acquired or imported by the authority. Also, gaming authorities are denied input tax credits to the extent to which the inputs are for use in gaming activities.

The amendment provides for an additional amount to be included in the determination of the imputed tax on gaming expenses of a gaming authority where an unregistered non-resident person imports property and subsequently makes a supply of the property to the authority. In this case, if the supply were not made in the course of a business of the supplier carried on in Canada, the supply would be deemed to be made outside Canada. Therefore, under the existing rules, no amount in respect of the property would be included in the gaming authority's imputed tax on gaming expenses. The amendment ensures that an amount similar to the tax that would be payable if the supply were made in Canada is included in the authority's imputed tax on gaming expenses.

The amendment applies to supplies made after Announcement Date.

Subsection 2(2)

Supplies by Wholly-Owned Subsidiary of Authority

Games of Chance Regulations
Element A of Formula in 7(7)

Where a gaming authority is the recipient of an exempt supply of real property made by way of lease, or a taxable supply of property or a service made at less than fair market value, the gaming authority must, in certain circumstances, include in the authority's imputed tax on gaming expenses, an amount in respect of the tax that would have become payable if the supply had been a taxable supply made at fair

market value. The amendments extend that treatment to exempt supplies of tangible personal property made by way of lease in respect of any supply made after Announcement Date.

The amendments also introduce a new rule in respect of the amount that must be included in the authority's imputed tax on gaming expenses for a period based on the cost to the subsidiary of making the supply. These amendments apply only in the case of supplies of property made by a wholly-owned subsidiary of the authority that acquired the property at fair market value,

In the case of an exempt supply of real property, that amount is based on the greater of the “period cost” (as defined in subsection 5(1) of the Regulations) of the supply for the period and the amount of consideration that is charged by the subsidiary for the supply. In the case of a taxable supply of property made to the authority by way of lease, that amount is based on the excess of the “period cost” of the supply for the period over the amount of consideration that is charged by the subsidiary for the supply.

These amendments come into force on December 31, 1990, the date the Regulations came into force. However, the definition of “period cost” is expanded in respect of any supply made after Announcement Date.

Subsection 2(3) and (4)

Remuneration of Casino Operators' Employees

Games of Chance Regulations
Element B of Formula in 7(7)

Under the existing Regulations, an amount must be included in the imputed tax on gaming expenses of a gaming authority in respect of tax on amounts payable by the authority to a distributor of the authority for a supply of a casino operating service. However, the authority is allowed to deduct from these amounts salaries and other remuneration payable by a distributor of the authority to employees of the distributor where these amounts are a cost to the distributor of supplying a casino operating service to the authority.

The amendments ensure that the same amount must be included in the net tax remittance of a gaming authority whether the salaries and other remunerations are paid to employees of the distributor or to employees of a wholly-owned subsidiary of the distributor.

The amendments apply for reporting periods of an authority ending after January 1, 1996.

Section 3

Restriction on Input Tax Credits

Games of Chance Regulations
9(1)

Subsection 9(1) of the Regulations sets out restrictions on the amounts that a provincial gaming authority can deduct as input tax credits (or imputed input tax credits) in determining its net tax. Generally, the credit is denied to the extent to which the input is for use in gaming activities, in improving capital property used in gaming activities or in making promotional supplies.

However, section 185 of the Excise Tax Act generally provides for input tax credits for non-financial institutions in respect of inputs acquired for use in financial activities that relate to commercial activities. The amendment denies a gaming authority the input tax credits where the commercial activity to which the financial services relate is a gaming activity since the general intent is that no input tax credits be available for expenses relating to gaming activities.

The amendment comes into force on December 31, 1990, the date the Regulations came into force, but does not apply to any input tax credit or imputed input tax credit claimed in a return filed before Announcement Date.

Section 4

Provincial Gaming Authority as Distributor

Games of Chance Regulations
14.1

Generally, provincial gaming authorities are relieved from having to pay tax to their distributors on certain services supplied by the distributors relating to the games of chance conducted by the authorities. Instead, amounts in respect of that tax are included in the "imputed tax on gaming expenses" of the authorities, which is effectively what the authorities are required to remit.

The amendment ensures that there is no double counting of inputs by two gaming authorities in circumstances where a gaming authority is the distributor of another gaming authority in relation to certain gaming supplies. In this case, the proposed amendment provides that the distributor should account for tax in respect of these gaming activities under the special rules set out in the Regulations as if the supplies were made in the course of games of chance conducted by the distributor and not by the other authority.

The amendment comes into force on December 31, 1990, the date the Regulations came into force.