Legislative Proposals, Draft Regulations and Explanatory Notes Relating to the Excise Tax Act

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Proposed Amendments to the Excise Tax Act

1. (1) The portion of subsection 2(1) of the *Excise Tax Act* before the definition "accredited representative" is replaced by the following:

Definitions

2. (1) In this Act, other than section 121, Part IX and Schedules V to X,

(2) The definition "this Act" in subsection 2(1) of the Act is replaced by the following:

"this Act"
« *présente loi* »

"this Act" means this Act except Part IX and Schedules V to X;

(3) Subsections (1) and (2) are deemed to have come into force on March 20, 1997.

2. (1) The definition "specified Crown agent" in subsection 123(1) of the Act is replaced by the following:

"specified Crown agent"
« *mandataire désigné* »

"specified Crown agent" means

(*a*) a prescribed agent of Her Majesty in right of Canada, or

(*b*) an agent of Her Majesty in right of a province

(i) that pays tax because of a reciprocal taxation agreement entered into by the government of the province under section 32 of the *Federal-Provincial Fiscal Arrangements Act*, or

(ii) in respect of which the government of the province or the agent has chosen to pay tax and not exercise any right under the *Constitution Act, 1867* that would entitle the agent to recover the tax;

(2) Subsection 123(1) of the Act is amended by adding the following in alphabetical order:

"secured creditor"
« *créancier garanti* »

"secured creditor" means

(*a*) a particular person who has a security interest in the property of another person, or

(*b*) a person who acts for or on behalf of the particular person with respect to the security interest and includes

(i) a trustee appointed under a trust deed relating to a security interest,

(ii) a receiver or receiver-manager appointed by the particular person or appointed by a court on the application of the particular person,

(iii) a sequestrator, or

(iv) any other person performing a function similar to that of a person referred to in any of subparagraphs (i) to (iii);

"security interest"
« *garantie* »

"security interest" means any interest in property that secures payment or performance of an obligation, and includes an interest created by or arising out of a debenture, mortgage, hypothec, lien, pledge, charge, deemed or actual trust, assignment or encumbrance of any kind whatever, however or whenever arising, created, deemed to arise or otherwise provided for;

(3) Subsection (1) is deemed to have come into force on the day after ANNOUNCEMENT DATE.

3. (1) The portion of subsection 136.1(1) of the French version of the Act before paragraph (*a*) is replaced by the following:

Bail ou licence visant un bien

136.1 (1) Pour l'application de la présente partie, lorsqu'un bien est fourni à une personne par bail, licence ou accord semblable pour une contrepartie qui comprend un paiement attribuable à une période (appelée « période de location » au présent paragraphe) qui représente tout ou partie de la période pendant laquelle l'accord permet la possession ou l'utilisation du bien, les règles suivantes s'appliquent :

(2) Subsection 136.1(1) of the Act is amended by striking out the word "and" at the end of paragraph (*b*), by adding the word "and" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(*d*) whether the supply of the property for the first lease interval under the arrangement is deemed to be made in or outside Canada shall be determined as if there were not separate supplies of the property for each lease interval under the arrangement and

(i) if the supply of the property for that first lease interval is deemed to be made in Canada, the supply of the property for each of the other lease intervals under the arrangement is deemed to be made in Canada, and

(ii) if the supply of the property for that first lease interval is deemed to be made outside Canada, the supply of the property for each of the other lease intervals under the arrangement is deemed to be made outside Canada.

(3) The portion of subsection 136.1(2) of the French version of the Act before paragraph (*a*) is replaced by the following:

Services continus

(2) Pour l'application de la présente partie, lorsqu'un service est fourni à une personne pour une contrepartie qui comprend un paiement attribuable à une période (appelée « période de facturation » au présent paragraphe) qui représente tout ou partie de la période pendant laquelle le service est rendu ou à rendre aux termes de la convention portant sur la fourniture, les règles suivantes s'appliquent :

(4) Subsection 136.1(2) of the Act is amended by striking out the word "and" at the end of paragraph (*b*), by adding the word "and" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(*d*) except in the case of a telecommunication service, whether the supply of the service for the first billing period under the agreement is deemed to be made in or outside Canada shall be determined as if there were not separate supplies of the service for each billing period under the agreement and

(i) if the supply of the service for that first billing period is deemed to be made in Canada, the supply of the service for each of the other billing periods under the agreement is deemed to be made in Canada, and

(ii) if the supply of the service for that first billing period is deemed to be made outside Canada, the supply of the service for each of the other billing periods under the agreement is deemed to be made outside Canada.

(5) Subsections (1) and (3) are deemed to have come into force on ANNOUNCEMENT DATE.

(6) Subsections (2) and (4) apply to any supply for a lease interval or billing period, as the case may be, made after ANNOUNCEMENT DATE.

4. (1) Section 149 of the Act is amended by adding the following after subsection (4):

Precious metals

(4.01) Despite clause 149(1)(*b*)(ii)(B), there shall be included in determining a total for a person under that clause the total of all consideration that became due to the person in the taxation year referred to in that clause, or that was paid to the person in that year without having become due, for supplies of financial services that are zero-rated supplies described by section 3 of Part IX of Schedule VI.

(2) Subsection 149(4.01) of the Act, as enacted by subsection (1), is replaced by the following:

Precious metals

(4.01) Despite clause 149(1)(*b*)(i)(B), there shall be included in determining a total for a person under that clause the total of all consideration that became due to the person in the taxation year referred to in that clause, or that was paid to the person in that year without having become due, for supplies of financial services that are zero-rated supplies described by section 3 of Part IX of Schedule VI.

(3) Subsection (1) is deemed to have come into force on December 17, 1990.

(4) Subsection (2) applies to taxation years beginning after April 23, 1996.

5. (1) Section 153 of the Act is amended by adding the following after subsection (4):

Sale-leaseback agreements

(4.1) If,

(*a*) under a sale-leaseback agreement, a person sells tangible personal property to another person for the purpose of immediately leasing the property back from the other person,

(*b*) the lessee is not required to collect tax in respect of the sale, and

(*c*) the supply by way of lease is made in the course of a commercial activity of the lessor,

the value of the consideration for that supply by the lessor is deemed, for the purposes of this Part, to be equal to the amount, if any, by which the value of the consideration for that supply as otherwise determined under this Part exceeds

(*d*) except where paragraph (*e*) applies, the amount credited to the lessee in respect of the sale, or

(*e*) if the lessor and lessee are not dealing with each other at arm's length at the time the agreement is entered into and the amount credited to the lessee in respect of the sale exceeds the fair market value of the property at the time ownership of it is transferred to the lessor, that fair market value.

(2) The portion of subsection 153(5) of the Act before paragraph (*a*) is replaced by the following:

Exception

(5) Subsections (4) and (4.1) do not apply

(3) Paragraph 153(5)(*c*) of the Act is replaced by the following:

(*c*) to any supply of a trade-in, or any supply by way of sale under a sale-leaseback agreement, if that supply is

(i) a zero-rated supply,

(ii) a supply made outside Canada, or

(iii) a supply in respect of which no tax is payable because of subsection 156(2) or paragraph 167(1.1)(*a*).

(4) Subsections (1) to (3) apply to sale-leaseback agreements entered into after 1998.

6. (1) The definition "coupon" in subsection 181(1) of the Act is replaced by the following:

"coupon"
« *bon* »

"coupon" includes a voucher, receipt, ticket or other device but does not include a gift certificate or a barter unit (within the meaning of subsection 181.3(1)).

(2) Subsection (1) applies for the purpose of applying section 181 of the Act on and after ANNOUNCEMENT DATE and also for the purpose of applying that section before that day in determining

(*a*) any rebate under subsection 261(1) of the Act for which an application is received by the Minister of National Revenue on or after that day; or

(*b*) any input tax credit or deduction claimed in a return received by the Minister on or after that day.

7. (1) The Act is amended by adding the following after section 181.2:

Definitions

181.3 (1) The definitions in this subsection apply in this section.

"administrator"
« *administrateur* »

"administrator" of a barter exchange network means the person who is responsible for administering, maintaining or operating a system of accounts, to which barter units may be credited, of members of the network.

"barter exchange network"
« *réseau de troc* »

"barter exchange network" means a group of persons each member of which has agreed in writing to accept as full or partial consideration for the supply of property or services by that particular member to any other member of that group one or more credits (in this section referred to as "barter units") on an account of the particular member

maintained or operated by a single administrator of all such accounts of the members, which credits can be used as full or partial consideration for supplies of property or services between members of that group.

Application for designation

(2) The administrator of a barter exchange network may make an application to the Minister, in prescribed form containing prescribed information and filed in prescribed manner, to have the network designated for the purposes of subsection (5).

Designation of barter exchange network

(3) If the Minister receives an application of an administrator of a barter exchange network under subsection (2), the Minister may designate the barter exchange network for the purposes of subsection (5), in which case the Minister shall notify the administrator in writing of the designation and its effective date.

Notification by administrator

(4) Upon receipt of a notification by the Minister of a designation of a barter exchange network, the administrator of the network shall, within a reasonable time, notify each member of the network in writing of the designation and its effective date.

Exchange of barter unit

(5) If a member of a barter exchange network or the administrator of a barter exchange network gives, while a designation of the network under subsection (3) is in effect, property, a service or money in exchange for a barter unit, the value of that property, service or money as consideration for the barter unit is, for the purposes of this Part and despite section 155, deemed to be nil.

Deemed non-financial services

(6) For the purposes of this Part, each of the following is deemed not to be a financial service:

(*a*) the operation, maintenance or administration of a system of accounts, to which barter units can be credited, of members of a barter exchange network;

(*b*) the crediting of a barter unit to such an account;

(*c*) the supply, receipt or redemption of a barter unit; and

(*d*) the agreeing to provide, or the arranging for, any of the foregoing.

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

(3) If a designation of a barter exchange network under section 181.3 of the Act, as enacted by subsection (1), takes effect on the day on which this Act is assented to, that section applies to the giving of any property, service or money at any time before that day, by a member of the network or the administrator of the network, in exchange for a barter unit that could be used as full or partial consideration for supplies of property or services between members of the network as if the designation and that section had been in effect at that time, provided that no amount was collected as or on account of tax in respect of the supply of the barter unit.

8. (1) The definition "distributor" in subsection 188.1(1) of the Act is amended by striking out the word "or" at the end of paragraph (*a*) and by adding the following after paragraph (*b*):

(*c*) accepts, on behalf of the issuer, a bet on a game of chance conducted by the issuer, or

(*d*) makes a supply (in this section referred to as a "specified gaming machine supply") to the issuer in respect of a gaming machine and

(i) the supply is

(A) of the machine, or a site at which the machine is operated, made by way of lease, licence or similar arrangement, or

(B) of a service of repairing or maintaining the machine, performing functions necessary to ensure its proper operation or awarding, paying or delivering prizes won in the games of chance played by its operation, and

(ii) under the agreement for the supply, all or part of the consideration for the supply is determined as a percentage of the proceeds of the issuer from conducting those games;

(2) Subsection 188.1(1) of the Act is amended by adding the following in alphabetical order:

"gaming machine"
« *appareil de jeu* »

"gaming machine" means a machine by the operation of which by a person the person plays a game of chance in which the element of chance is provided by means of the machine, but does not include a machine that dispenses a ticket, token or other device evidencing the right to play or participate in, or receive a prize or winnings in, one or more games of chance unless the device is, for each of those games, sufficient evidence, and in the case of a printed device, contains sufficient information, to ascertain, without reference to any other information, whether the holder of the device is entitled to receive a prize or winnings;

(3) Subsection 188.1(4) of the Act is amended by striking out the word "and" at the end of paragraph (*a*) and by adding the following after that paragraph:

(*a*.1) supplies made to an issuer by a distributor of the issuer of a service in respect of the acceptance, on behalf of the issuer, of bets on games of chance conducted by the issuer, including supplies of a service of managing, administering and carrying on the day-to-day operations of the issuer's gaming activities that are connected with a casino of the issuer,

(*a*.2) specified gaming machine supplies made to an issuer by a distributor of the issuer, and

(4) Subsections (1) to (3) are deemed to have come into force on December 17, 1990.

9. (1) Clauses 217(*b*)(i)(A) and (B) of the Act are replaced by the following:

(A) made a supply in Canada of the property by way of sale, or a supply in Canada of a service of manufacturing or producing the property, to a non-resident person, or

(B) acquired physical possession of the property for the purpose of making a supply of a commercial service in respect of the property to a non-resident person,

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

10. (1) Paragraph 221(2)(*b*) of the Act is replaced by the following:

(*b*) the recipient is registered under Subdivision d and, in the case of a recipient who is an individual, the property is neither a residential complex nor supplied as a cemetery plot or place of burial, entombment or deposit of human remains or ashes.

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

11. (1) Subsection 222(1) of the Act is replaced by the following:

Trust for amounts collected

222. (1) Subject to subsection (1.1), every person who collects an amount as or on account of tax under Division II is deemed, for all purposes and notwithstanding any security interest in the amount, to hold the amount in trust for Her Majesty, separate and apart from the property of the person and from property held by any secured creditor of the person that, but for a security interest, would be property of the person, until the amount is remitted to the Receiver General or withdrawn under subsection (2).

(2) Subsection 222(3) of the Act is replaced by the following:

Extension of trust

(3) Notwithstanding any other provision of this Act (except subsection (4)), any other enactment of Canada (except the *Bankruptcy and Insolvency Act*), any enactment of a province or any other law, if at any time an amount deemed by subsection (1) to be held by a person in trust for Her Majesty is not remitted to the Receiver General or withdrawn in the manner and at the time provided under this Part, property of the person and property held by any secured creditor of the person that, but for a security interest, would be property of the person, equal in value to the amount so deemed to be held in trust, is deemed

(*a*) to be held, from the time the amount was collected by the person, in trust for Her Majesty, separate and apart from the property of the person, whether or not the property is subject to a security interest, and

(*b*) to form no part of the estate or property of the person from the time the amount was collected, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in the property or in the proceeds thereof and the proceeds of the property shall be paid to the Receiver General in priority to all security interests.

Meaning of security interest

(4) For the purposes of subsections (1) and (3), a security interest does not include a prescribed security interest.

12. (1) The Act is amended by adding the following after section 222:

Sale of account receivable

222.1 If, at any time, a person supplies by way of sale or assignment an account receivable in respect of a taxable supply made by the person, for the purposes of sections 222, 225, 225.1 and 227,

(*a*) the person is deemed to have collected, at that time, the portion of the tax in respect of the taxable supply that is equal to the amount, if any, by which the tax collectible by the person in respect of that supply exceeds the tax in respect of that supply that was collected by the person before that time; and

(*b*) any amount collected by any person after that time on account of the tax payable in respect of the taxable supply is deemed not to be an amount collected as or on account of tax.

(2) Subsection (1) applies to any supply of an account receivable the ownership of which is transferred under the agreement for the supply after ANNOUNCEMENT DATE.

13. (1) Section 223 of the Act is amended by adding the following after subsection 223(1.2):

Exception

(1.3) Subsection (1) does not apply to a registrant when the registrant is not required to collect the tax payable in respect of the taxable supply made by the registrant.

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

14. (1) Subsection 231(2) of the Act is repealed.

(2) The portion of subsection 231(3) of the Act before the formula is replaced by the following:

Recovery of bad debt

(3) If a person recovers all or part of a bad debt in respect of which the person has made a deduction under subsection (1), the person shall, in determining the net tax for the person's reporting period in which the bad debt or that part of it is recovered, add the amount determined by the formula

(3) Subsection (1) applies to any account receivable purchased at face value and on a non-recourse basis if ownership of the receivable is transferred to the purchaser after February 1999.

(4) Subsection (2) applies to the recovery by a person of any bad debt in respect of an account receivable the ownership of which was transferred to the person after February 1999.

15. (1) Subsection 232(3) of the Act is amended by striking out the word "and" at the end of paragraph (*b*), by adding the word "and" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(*d*) if all or part of the amount has been included in determining a rebate under Division VI paid to, or applied to a liability of, the other person before the particular day on which the credit note is received, or the debit note is issued, by the other person and the rebate so paid or applied exceeds the rebate to which the other person would have been entitled if the amount adjusted, refunded or credited by the particular person had never been charged to or collected from the other person, the other person shall pay to the Receiver General under section 264 the excess as if it were an excess amount of that rebate paid to the person

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

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

(2) Subsection (1) applies to any amount that is adjusted, refunded or credited to or in favour of any person for which a credit note is received, or a debit note is issued, by the person after ANNOUNCEMENT DATE.

16. (1) Paragraphs 249(2)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) the total of all consideration (other than consideration referred to in section 167.1 that is attributable to goodwill of a business) for taxable supplies (other than supplies of financial services, supplies by way of sale of real property that is capital property of the person and supplies included in Part V of Schedule VI) made in Canada by the person that became due to the person in the preceding fiscal quarters of the person ending in that year or that was paid to the person in those preceding fiscal quarters without having become due; and

(*b*) the total of all amounts each of which is an amount in respect of a person (in this paragraph referred to as the "associate") who was associated with the particular person at the beginning of the particular fiscal quarter equal to the total of all consideration (other than consideration referred to in section 167.1 that is attributable to goodwill of a business) for taxable supplies (other than supplies of financial services, supplies by way of sale of real property that is capital property of the associate and supplies included in Part V of Schedule VI), made in Canada by the associate that became due to the associate in the fiscal quarters of the associate that end in that fiscal year of the particular person and before the beginning of the particular fiscal quarter or that was paid to the associate in those fiscal quarters of the associate without having become due.

(2) Subsection (1) applies in determining the threshold amount of a person for any fiscal quarter of the person beginning after ANNOUNCEMENT DATE.

17. (1) Paragraph 254.1(2)(*d*) of the Act is replaced by the following:

(*d*) the builder is deemed under subsection 191(1) or (3) to have made a supply of the complex as a consequence of giving possession of the complex to the particular individual under the agreement,

(2) Subsection (1) is deemed to have come into force on November 26, 1997.

18. (1) The portion of subsection 256.1(1) of the Act before paragraph (*a*) and paragraphs (*a*) and (*b*) of that subsection are replaced by the following:

Rebate to owner of land leased for residential purposes

256.1 (1) If an exempt supply of land described by section 6.1 of Part I of Schedule V is made to a particular lessee who is acquiring the land for the purpose of making a particular supply of property that includes the land or of a lease, licence or similar arrangement in respect of property that includes the land and the particular supply

(*a*) is an exempt supply described by paragraph 6(*a*) or section 7 of Part I of Schedule V, other than an exempt supply described by paragraph 7(*a*) of that Part made to a person described in subparagraph (ii) thereof, and

(*b*) will result in the particular lessee being deemed under any of subsections 190(3) to (5) and section 191 to have made a supply of the property at a particular time,

(2) The descriptions of A and B in subsection 256.1(1) of the Act are replaced by the following:

A is the total of all tax that, before the particular time, became or would, but for section 167, have become payable by the landlord in respect of the last acquisition of the land by the landlord and the tax that was payable by the landlord in respect of improvements to the land that were acquired, imported or brought into a participating province by the landlord after that last acquisition and that were used before the particular time in the course of improving the property that includes the land, and

B is the total of all other rebates and input tax credits that the landlord was entitled to claim in respect of any amount included in the total for A.

(3) Subsection (1) is deemed to have come into force on December 17, 1990.

(4) Subsection (2) is deemed to have come into force on ANNOUNCEMENT DATE and applies for the purpose of determining any rebate the application for which is received by the Minister of National Revenue on or after that day.

19. (1) Paragraph (*b*) of the definition "non-creditable tax charged" in subsection 259(1) of the Act is amended by striking out the word "or" at the end of subparagraph (i), by adding the word "or" at the end of subparagraph (ii) and by adding the following after subparagraph (ii):

(iii) is included in an amount adjusted, refunded or credited to or in favour of the person for which a credit note referred to in subsection 232(3) has been received by the person or a debit note referred to in that subsection has been issued by the person;

(2) Section 259 of the Act is amended by adding the following after subsection (4):

Restriction

(4.01) An amount shall not be included in determining the value of B in subsection (4) in respect of a claim period of a person to the extent that

(*a*) the amount is included in determining an input tax credit of the person;

(*b*) it can reasonably be regarded that the person has obtained or is entitled to obtain a rebate, refund or remission of the amount under any other section of this Act or under any other Act of Parliament; or

(*c*) the amount is included in an amount adjusted, refunded or credited to or in favour of the person for which a credit note referred to in subsection 232(3) has been received by the person or a debit note referred to in that subsection has been issued by the person.

(3) Section 259 of the Act is amended by adding the following after subsection (5):

Exception to limitation period

(5.1) Where

(*a*) tax in respect of a supply of property or a service became payable by a person in a particular claim period of the person,

(*b*) the supplier did not, before the end of the last claim period of the person that ends within four years after the end of the particular claim period, charge the tax in respect of the supply,

(*c*) the supplier discloses in writing to the person that the Minister has assessed the supplier for that tax, and

(*d*) the person pays that tax after the end of that last claim period and before that tax is included in determining a rebate under this section claimed by the person,

the following rules apply:

(*e*) for the purposes of this section, that tax is deemed to have become payable by the person in the person's claim period in which the person pays that tax and not to have become payable in the particular claim period,

(*f*) the portion of the rebate of the person under this section in respect of the property or service for the person's claim period in which the person pays that tax that is in excess of the amount of that rebate that would be determined without reference to this subsection

(i) may, despite subsection (6), be claimed in an application separate from the person's application for other rebates under this section for that claim period, and

(ii) shall not be paid to the person unless that portion is claimed in an application filed by the person on a day that is after the beginning of the person's fiscal year that includes that claim period and after the first day in that year that the person is a selected public service body, charity or qualifying non-profit organization and

(A) if the person is a registrant, not later than the day on or before which the person is required to file the return under Division V for that claim period, or

(B) if the person is not a registrant, within one month after the end of that claim period, and

(*g*) subsection (5) applies to the remaining portion of that rebate as if that remaining portion were in respect of a separate property or service.

(4) Subsection (1) is deemed to have come into force on ANNOUNCEMENT DATE and applies to any amount that is adjusted, refunded or credited to or in favour of any person for which a credit note is received, or a debit note is issued, by the person after that day.

(5) Subsection (2) is deemed to have come into force on November 26, 1997 and applies for the purpose of determining any rebate under section 259 of the Act the application for which is, but for subsection 334(1) of the Act, received by the Minister of National Revenue on or after that day, except that paragraph 259(4.01)(*c*) of the Act, as enacted by subsection (2), applies only to amounts that are adjusted, refunded or credited to or in favour of a person for

which a credit note is received, or a debit note is issued, by the person after ANNOUNCEMENT DATE.

(6) Subsection (3) is deemed to have come into force on December 17, 1990.

20. (1) Section 263 of the Act is amended by striking out the word "or" at the end of paragraph (*b*), by adding the word "or" at the end of paragraph (*c*) and by adding the following after paragraph (*c*):

(*d*) a credit note referred to in subsection 232(3) has been received by the person, or a debit note referred to in that subsection has been issued by the person, for an adjustment, refund or credit that includes the amount.

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

21. Subsections 316(4) to (10) of the Act are replaced by the following:

Charge on property

(4) A document issued by the Federal Court evidencing a certificate in respect of a debtor registered under subsection (2), a writ of that Court issued pursuant to the certificate or any notification of the document or writ (such document, writ or notification in this section referred to as a "memorial") may be filed, registered or otherwise recorded for the purpose of creating a charge, lien or priority on, or a binding interest in, property in a province, or any interest in such property, held by the debtor in the same manner as a document evidencing

(*a*) a judgment of the superior court of the province against a person for a debt owing by the person, or

(*b*) an amount payable or required to be remitted by a person in the province in respect of a debt owing to Her Majesty in right of the province

may be filed, registered or otherwise recorded in accordance with or pursuant to the law of the province to create a charge, lien or priority on, or a binding interest in, the property or interest.

Creation of charge

(5) If a memorial has been filed, registered or otherwise recorded under subsection (4),

(*a*) a charge, lien or priority is created on, or a binding interest is created in, property in the province, or any interest in such property, held by the debtor, or

(*b*) such property or interest in the property is otherwise bound,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (4)(*a*) or an amount referred to in paragraph (4)(*b*), and the charge, lien, priority or binding interest created shall be subordinate to any charge, lien, priority or binding interest in respect of which all steps necessary to make it effective against other creditors were taken before the time the memorial was filed, registered or otherwise recorded.

Proceedings in respect of memorial

(6) If a memorial is filed, registered or otherwise recorded in a province under subsection (4), proceedings may be taken in the province in respect of the memorial, including proceedings

(*a*) to enforce payment of the amount evidenced by the memorial, interest and penalty on the amount and all costs and charges paid or incurred in respect of

(i) the filing, registration or other recording of the memorial, and

(ii) proceedings taken to collect the amount,

(*b*) to renew or otherwise prolong the effectiveness of the filing, registration or other recording of the memorial,

(*c*) to cancel or withdraw the memorial wholly or in respect of any of the property or interests affected by the memorial, or

(*d*) to postpone the effectiveness of the filing, registration or other recording of the memorial in favour of any right, charge, lien or priority that has been or is intended to be filed, registered or otherwise recorded in respect of any property or interest affected by the memorial,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (4)(*a*) or an

amount referred to in paragraph (4)(*b*), except that, if in any such proceeding or as a condition precedent to any such proceeding, any order, consent or ruling is required under the law of the province to be made or given by the superior court of the province or by a judge or official of the court, a like order, consent or ruling may be made or given by the Federal Court or by a judge or official of the Federal Court and, when so made or given, has the same effect for the purposes of the proceeding as if it were made or given by the superior court of the province or by a judge or official of the court.

Presentation of documents

(7) If

(*a*) a memorial is presented for filing, registration or other recording under subsection (4), or a document relating to the memorial is presented for filing, registration or other recording for the purpose of any proceeding described in subsection (6), to any official in the land, personal property or other registry system of a province, or

(*b*) access is sought to any person, place or thing in a province to make the filing, registration or other recording,

the memorial or document shall be accepted for filing, registration or other recording or the access shall be granted, as the case may be, in the same manner and to the same extent as if the memorial or document relating to the memorial were a document evidencing a judgment referred to in paragraph (4)(*a*) or an amount referred to in paragraph (4)(*b*) for the purpose of a like proceeding, except that, if the memorial or document is issued by the Federal Court or signed or certified by a judge or official of the Court, any affidavit, declaration or other evidence required under the law of the province to be provided with or to accompany the memorial or document in the proceedings is deemed to have been provided with or to have accompanied the memorial or document as so required.

Sale, etc.

(8) Notwithstanding any law of Canada or of a province, a sheriff or other person shall not, without the written consent of the Minister, sell or otherwise dispose of any property or publish any notice or otherwise advertise in respect of any sale or other disposition of any property pursuant to any process issued or charge, lien, priority or binding interest created in any proceeding to collect an amount certified in a certificate made under subsection (1), interest or penalty on the amount or costs, but if that consent is subsequently given, any property that would have been affected by such a process, charge, lien, priority or

binding interest if the Minister's consent had been given at the time the process was issued or the charge, lien, priority or binding interest was created, as the case may be, shall be bound, seized, attached, charged or otherwise affected as it would be if that consent had been given at the time the process was issued or the charge, lien, priority or binding interest was created, as the case may be.

Completion of notices, etc.

(9) If information required to be set out by any sheriff or other person in a minute, notice or document required to be completed for any purpose cannot, because of subsection (8), be so set out without the written consent of the Minister, the sheriff or other person shall complete the minute, notice or document to the extent possible without that information and, when that consent of the Minister is given, a further minute, notice or document setting out all the information shall be completed for the same purpose, and the sheriff or other person, having complied with this subsection, is deemed to have complied with the Act, regulation or rule requiring the information to be set out in the minute, notice or document.

Application for an order

(10) A sheriff or other person who is unable, because of subsection (8) or (9), to comply with any law or rule of court is bound by any order made by a judge of the Federal Court, on an *ex parte* application by the Minister, for the purpose of giving effect to the proceeding, charge, lien, priority or binding interest.

Deemed security

(10.1) When a charge, lien, priority or binding interest created under subsection (5) by filing, registering or otherwise recording a memorial under subsection (4) is registered in accordance with subsection 87(1) of the *Bankruptcy and Insolvency Act*, it is deemed

(*a*) to be a claim that is secured by a security and that, subject to subsection 87(2) of that Act, ranks as a secured claim under that Act; and

(*b*) to also be a claim referred to in paragraph 86(2)(*a*) of that Act.

22. Subsection 317(4) of the Act is repealed.

23. (1) Section 6.1 of Part I of Schedule V to the Act is replaced by the following:

6.1 A supply of real property that is

(*a*) land, or

(*b*) a building, or that part of a building that consists solely of residential units,

made to a particular person by way of lease, licence or similar arrangement for a period during which the supply by the particular person, or by any other person

(*c*) of the property, or a lease, licence or similar arrangement in respect of the property, or

(*d*) of all or substantially all of the

(i) residential units in the building, or leases, licences or similar arrangements in respect of residential units in the building, or

(ii) parts of the land, or leases, licences or similar arrangements in respect of parts of the land,

is exempt under section 6 or 7 or this section.

(2) Section 6.1 of Part I of Schedule V to the Act, as enacted by subsection (1), is replaced by the following:

6.1 A supply of property that is

(*a*) land,

(*b*) a building, or that part of a building, that forms part of a residential complex or that consists solely of residential units, or

(*c*) a residential complex,

made by way of lease, licence or similar arrangement for a lease interval (within the meaning assigned by subsection 136.1(1) of the Act) throughout which the lessee or any sub-lessee makes, or holds the property for the purpose of making, one or more supplies of the property, parts of the property or leases, licences or similar arrangements in respect of the property or parts of it and all or substantially all of those supplies

(*d*) are exempt supplies described by section 6 or 7, or

(*e*) are supplies that are made, or are reasonably expected to be made, to other lessees or sub-lessees described in this section.

(3) Subsection (1) is deemed to have come into force on December 17, 1990.

(4) Subsection (2) is deemed to have come into force on January 1, 1993 except that, in applying section 6.1 of Part I of Schedule V to the Act, as enacted by subsection (2), after 1992 and before April 1, 1997, the reference therein to "subsection 136.1(1)" shall be read as a reference to "subsection 136(2.1)".

24. (1) The portion of section 8 of Part I of Schedule V to the Act before paragraph (*b*) is replaced by the following:

8. A supply by way of sale of a parking space situated within the boundaries of a condominium or strata lot plan or description, or similar plan or description, registered under the laws of a province made by a supplier to a person where

(*a*) the supplier, at the same time or as part of the same supply, makes a supply, included in any of sections 2 to 4, by way of sale to the person of a residential condominium unit described by that plan or description; and

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

25. (1) Paragraph 8.1(*b*) of Part I of Schedule V to the Act is replaced by the following:

(*b*) to the owner, lessee or person in occupation or possession of a residential condominium unit described by a condominium or strata lot plan or description, or similar plan or description, registered under the laws of a province, where the space is situated within the boundaries of that plan or description; or

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

26. (1) Section 13 of Part I of Schedule V to the Act is replaced by the following:

13. A supply of property or a service, made by a condominium corporation established by the registration, under the laws of a province, of a condominium or strata lot plan or description or similar plan or description, to the owner or lessee of a residential condominium unit described by that plan or description if the property or service relates to the occupancy or use of the unit.

(2) Subsection (1) applies to supplies for which consideration becomes due after ANNOUNCEMENT DATE or is paid after that day without having become due.

27. (1) The portion of the definition "practitioner" in section 1 of Part II of Schedule V to the Act before paragraph (*b*) is replaced by the following:

"practitioner", in respect of a supply of optometric, chiropractic, physiotherapy, chiropodic, podiatric, osteopathic, audiological, occupational therapy, psychological or dietetic services, means a person who

(*a*) practises the profession of optometry, chiropractic, physiotherapy, chiropody, podiatry, osteopathy, audiology, occupational therapy, psychology or dietetics, as the case may be,

(2) The definition "practitioner" in section 1 of Part II of Schedule V to the Act is amended by adding the word "and" at the end of paragraph (*b*), by striking out the word "and" at the end of paragraph (*c*) and by repealing paragraph (*d*).

(3) Subsection (1) is deemed to have come into force on January 1, 1997 except that, in relation to supplies made on or after that day and before 2001, the portion of the definition "practitioner" in section 1 of Part II of Schedule V to the Act before paragraph (*b*), as enacted by subsection (1), shall be read as follows:

"practitioner", in respect of a supply of optometric, chiropractic, physiotherapy, chiropodic, podiatric, osteopathic, audiological, speech therapy, occupational therapy, psychological or dietetic services, means a person who

(*a*) practises the profession of optometry, chiropractic, physiotherapy, chiropody, podiatry, osteopathy, audiology, speech therapy, occupational therapy, psychology or dietetics, as the case may be,

(4) Subsection (2) is deemed to have come into force on May 1, 1999 and the definition "practitioner" in section 1 of Part II of Schedule V to the Act, as amended by subsection (2), applies in relation to supplies made on or after that day.

28. (1) Section 2 of Part II of Schedule V to the Act is replaced by the following:

2. A supply of an institutional health care service made by the operator of a health care facility if the service is rendered to a patient or resident of the facility, but not including a supply of a service related to the provision of a surgical or dental service that is performed for cosmetic purposes and not for medical or reconstructive purposes.

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

29. (1) Section 7 of Part II of Schedule V to the Act is amended by adding the following after paragraph (*g*):

(*h*) speech therapy services;

(2) Subsection (1) applies to supplies made after 1997 and before 2001.

30. (1) Section 11 of Part III of Schedule V to the Act is replaced by the following:

11. A supply of a service of instructing individuals in, or administering examinations in respect of, language courses that form part of a program of second-language instruction in either English or French, if the supply is made by a school authority, a vocational school, a public college or a university or in the course of a business established and operated primarily to provide instruction in languages.

(2) Subsection (1) applies to supplies made after April 1999.

31. (1) Paragraphs 2(*c*) and (*d*) of Part I of Schedule VI to the Act are replaced by the following:

(*c*) a drug or other substance included in the schedule to Part G of the *Food and Drug Regulations*,

(*d*) a drug that contains a substance included in the schedule to the *Narcotic Control Regulations*, other than a drug or mixture of drugs that may be sold to a consumer without a prescription pursuant to the *Controlled Drugs and Substances Act* or regulations made under that Act,

(2) Subsection (1) is deemed to have come into force on May 14, 1997.

32. (1) Section 34 of Part II of Schedule VI to the Act is replaced by the following:

34. A supply of a service (other than a service the supply of which is included in any provision of Part II of Schedule V except section 9 of that Part and a service related to the provision of a surgical or dental service that is performed for cosmetic purposes and not for medical or reconstructive purposes) of installing, maintaining, restoring, repairing or modifying a property described in any of sections 2 to 32 and 37 to 40 of this Part, or any part for such a property where the part is supplied in conjunction with the service.

(2) Subsection (1) applies to supplies made after April 23, 1996.

33. (1) Section 12 of Part V of Schedule VI to the Act is replaced by the following:

12. A supply of tangible personal property (other than a continuous transmission commodity that is being transported by means of a wire, pipeline or other conduit) if the supplier

(*a*) ships the property to a destination outside Canada that is specified in the contract for carriage of the property;

(*b*) transfers possession of the property to a common carrier or consignee that the supplier has retained on behalf of the recipient to ship the property to a destination outside Canada; or

(*c*) sends the property by mail or courier to an address outside Canada.

(2) Subsection (1) applies to supplies made after August 7, 1998 except that, in respect of supplies made before May 1999, section 12 of Part V of Schedule VI to the Act, as enacted by subsection (1), shall be read as follows:

12. A supply of tangible personal property (other than a continuous transmission commodity that is being transported by means of a wire, pipeline or other conduit) if the supplier delivers the property to a common carrier, or mails the property, for export.

34. (1) Section 5 of Schedule VII to the Act is replaced by the following:

5. Goods that are imported by a particular person where the goods are supplied to the particular person by a non-resident person for no consideration, other than shipping and handling charges, as replacement parts or as replacement property under a warranty.

(2) Subsection (1) applies to goods imported after ANNOUNCEMENT DATE.

35. (1) Paragraph 3(*a*) of Part II of Schedule IX to the French version of the Act is replaced by the following:

(*a*) il expédie le bien à une destination dans la province donné, précisée dans le contrat de factage visant le bien, ou en transfère la possession à un transporteur public ou un consignataire qu'il a chargé, pour le compte de l'acquéreur, d'expédier le bien à une telle destination;

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

36. (1) Part II of Schedule IX to the Act is amended by adding the following after section 3:

4. If a supply of tangible personal property is made by way of lease, licence or similar arrangement and, under the arrangement, continuous possession or use of the property is provided for a period of no more than three months but during which there is more than one lease interval (within the meaning of subsection 136.1(1) of the Act), the supply of the property for each lease interval in the period is made in the province in which the supply of the property for the first lease interval in the period is made.

(2) Subsection (1) applies in determining the province in which a supply made after ANNOUNCEMENT DATE is made.

37. (1) Section 14 of Part I of Schedule X to the Act is replaced by the following:

14. Property that is brought into a participating province by a person where it is supplied to the person for no consideration, other than shipping and handling charges, as a replacement part or as replacement property under a warranty.

(2) Subsection (1) applies to property brought into a participating province after ANNOUNCEMENT DATE.

Draft Regulations

DRAFT REGULATIONS AMENDING THE FEDERAL BOOK REBATE (GST/HST) REGULATIONS

AMENDMENTS

1. The schedule to the *Federal Book Rebate (GST/HST) Regulations* is amended by adding the following in alphabetical order:

L’ABC Communautaire / Péninsule du Niagara

Metro Toronto Movement for Literacy

Yukon Learn Society

COMING INTO FORCE

2. Section 1 is deemed to have come into force on October 24, 1996.

DRAFT REGULATIONS AMENDING THE GAMES OF CHANCE (GST/HST) REGULATIONS

AMENDMENTS

1. Paragraph 3(*m*) of the *Games of Chance (GST/HST) Regulations* is replaced by the following:

(*m*) a corporation that is a wholly-owned subsidiary of a registrant referred to in any paragraph of this section (other than paragraph (*g*) and this paragraph) and that is referred to in section 15.

2. The portion of the definition "reimbursement" in subsection 5(1) of the Regulations before paragraph (*a*) is replaced by the following:

"reimbursement"
« *montant de remboursement* »

"reimbursement" means an amount of consideration (as defined in subsection 123(1) of the Act) that

3. (1) The portion of the description of C_1 in subsection 7(7) of the Regulations before paragraph (*a*) is replaced by the following:

C_1 is the total of all amounts each of which is an amount that, but for subsection 188.1(4) of the Act, would be consideration (other than charitable proceeds from Superstar Bingo) for a supply (other than a supply of a casino operating service) by a distributor of the authority to the authority or would be a reimbursement paid or payable by the authority to a distributor of the authority (other than a reimbursement that is a non-taxable reimbursement, a reimbursement of the cost to the distributor of a right to play or participate in a game of chance given away free of charge by the distributor or a reimbursement of salaries, wages or other remuneration paid or payable by the distributor to an employee of the distributor to the extent that that remuneration is a cost to the distributor of supplying a casino operating service to the authority), where

(2) The description of E_2 in subsection 7(7) of the Regulations is replaced by the following:

E_2 is the extent (expressed as a percentage) to which the benefit amount is a cost to the authority of making non-gaming supplies other than the supply referred to in clause (i)(B) of the description of E_1, and

4. The portion of section 11 of the English version of the Regulations before the formula is replaced by the following:

Presumption concerning tax on supply

11. For the purposes of this Part and for the purposes of applying Part IX of the Act in determining the net tax of the Interprovincial Lottery Corporation, where the Corporation makes a supply of property or a service to a provincial gaming authority, the tax payable in respect of the supply is deemed to be the tax that would be payable in respect of the supply if the value of the consideration for the supply were the amount determined by the formula

COMING INTO FORCE

5. These Regulations are deemed to have come into force on December 31, 1990.

Railway rolling stock

5. (1) A supply of railway rolling stock otherwise than by way of sale is made in a province if the supplier delivers the rolling stock or makes it available to the recipient of the supply in the province.

Place of supply for lease interval

(2) If a supply of railway rolling stock by way of lease, licence or similar arrangement for the first lease interval (within the meaning of subsection 136.1(1) of the *Excise Tax Act*) in the period during which possession or use of the rolling stock is provided under the arrangement is made in a province, the supply of the rolling stock for each of the other lease intervals in that period is, despite subsection (1), made in that province.

Renewal of agreement

(3) Subject to subsection (4), for the purposes of this section, if continuous possession or use of railway rolling stock is given by a supplier to a recipient throughout a period under two or more successive leases, licences or similar arrangements entered into between the supplier and the recipient, the rolling stock is deemed to have been delivered or made available to the recipient under each of those arrangements at the location at which it is delivered or made available to the recipient under the first of those arrangements.

Agreements entered into before April 1, 1997

(4) Where a supply of railway rolling stock otherwise than by way of sale is made under a particular agreement that is in effect on April 1, 1997 and, under the particular agreement, the rolling stock was delivered or made available to the recipient before that day,

(*a*) the rolling stock is deemed to have been delivered or made available to the recipient under the particular agreement outside the participating provinces; and

(*b*) if the recipient retains continuous possession or use of the rolling stock under an agreement (in this paragraph referred to as the "renewal agreement") with the supplier that immediately succeeds the particular agreement, subsection (3) applies as if the renewal agreement were the first arrangement between the supplier and the recipient for the supply of the rolling stock.

Explanatory Notes

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

PREFACE

These explanatory notes relate to proposed amendments to the *Excise Tax Act* and certain regulations made under that Act. These notes describe the proposed amendments, clause by clause, for the assistance of Members of Parliament and Senators, as well as taxpayers and their professional advisors.

It should be noted that amendments that are proposed to come into force on December 17, 1990 or December 31, 1990, the date of enactment of the legislation governing the Goods and Services Tax and of related regulations respectively, are described in these notes as having effect as of January 1, 1991, the day on which the tax was implemented.

The Honourable Paul Martin
Minister of Finance

Proposed Amendments to the Excise Tax Act

Clause 1

Definitions for Purposes other than Part IX

ETA
2(1)

Subsection 2(1) of the *Excise Tax Act* contains definitions of terms used in the Act that apply for purposes other than Part IX of the Act and the Schedules to that Part. The definitions of terms used in Part IX and the related Schedules are found in subsection 123(1).

Subsection 2(1) is amended by adding references to the Schedules to Part IX that were added as a consequence of the introduction of the Harmonized Sales Tax (HST). These amendments to subsection 2(1) come into force on March 20, 1997, the day on which the HST legislation received Royal Assent.

Clause 2

Definitions for Purposes of Part IX

ETA
123(1)

Subsection 123(1) contains definitions of terms used in Part IX of the Act relating to the Goods and Services Tax and Harmonized Sales Tax (GST/HST).

Subclause 2(1)

Definition “specified crown agent”

ETA
123(1)

The existing definition “specified Crown agent” in subsection 123(1) encompasses only federal Crown agents that are prescribed by

regulation. The definition is relevant to provisions such as subsections 200(4) and 209(1), dealing with capital and real property transactions.

The amended definition includes provincial Crown agents that pay the GST/HST and recover it only to the extent to which they are entitled to input tax credits or rebates under the Act according to the same rules that apply to federal Crown agents that pay the tax.

This amendment is effective on the day after Announcement Date.

Subclause 2(2)

Definitions “secured creditor” and “security interest”

The existing definitions “secured creditor” and “security interest” are found in subsection 317(4). As these terms are also to be used in amended section 222, their definitions are added to subsection 123(1) so that they apply to Part IX of the Act generally. A concurrent amendment is made to repeal subsection 317(4).

The amendment under subclause 2(2) also restructures the definition “secured creditor” for clarification purposes only to avoid the use of the defined term in the definition itself.

These amendments come into force on Royal Assent.

Clause 3

Lease, etc. of Property and Ongoing Services

ETA
136.1

Section 136.1 deems separate supplies to be made for each period to which a periodic payment is attributable under a lease, licence or similar arrangement or a service contract covering more than one billing period. The amendments to this section are made to provide greater certainty as to the interaction between these deeming rules and the rules of Part IX for determining when a supply is made in or outside Canada.

The amendments apply to supplies for lease intervals or billing periods, as the case may be, that are made after Announcement Date. It should be noted that paragraphs 136.1(1)(*b*) and 136.1(2)(*b*) determine when a supply for a lease interval or billing period is made. The supply is made on the earliest of the first day of the lease interval or billing period, the day on which the payment attributable to the interval or billing period becomes due and the day that payment is made.

Subclauses 3(1) and (2)

Lease Intervals

ETA
136.1(1)

New paragraph 136.1(1)(*d*) is added to provide, for greater certainty, that whether the supply of property under a lease, licence or similar arrangement is deemed to be made in or outside Canada under Part IX is to be determined, for the first lease interval under the arrangement, as if there were not separate supplies of the property for each interval.

Therefore, in the case of tangible personal property, whether the place of supply for the first lease interval is deemed to be made in Canada or outside Canada is determined based on where possession or use of the property is first given or made available to the recipient. The new paragraph goes on to provide that if it is so determined that the supply is deemed to be made in Canada (i.e., possession or use of the property is given or made available in Canada), each supply for a lease interval under the arrangement is considered to be made in Canada and *vice versa* if the possession or use is first given or made available outside Canada.

The place of supply as in or outside Canada for the second and subsequent lease intervals is unaffected by where the property might be made available during those lease intervals. For example, if possession of the property is given to the recipient outside Canada in the first lease interval and the property is imported in the second lease interval, the supplies for the second and subsequent lease intervals will, nevertheless, be considered to be made outside Canada.

Consequently, in this example, none of the lease payments would be taxable under Division II of Part IX of the Act.

Similarly, a change in the registrant status of a non-resident supplier in the second or subsequent lease intervals will not affect the tax status of the lease. Therefore, if at the time the lease agreement is entered into, the supplier is a non-resident non-registrant whose supplies are deemed to be made outside Canada, none of the lease payments will be subject to tax under Division II, even if the supplier later becomes a registrant.

A related amendment is made to Schedule IX for purposes of determining whether a supply made in Canada of tangible personal property under a lease, licence or similar arrangement covering a period of three months or less is made in a particular province (see commentary on clause 36). In the case of supplies in Canada of such property made under arrangements of longer duration, the province in which each of the supplies for a lease interval is made is determined separately, generally on the basis of the ordinary location of the property during that particular lease interval.

In the case of intangible personal property supplied by way of lease, licence or similar arrangement for more than one lease interval, the general place of supply rule is based on where the property may be used. The amendment to subsection 136.1(1) ensures that it is the use over the entire period under the arrangement that must be taken into account in determining whether each supply for a lease interval is made in or outside Canada, as opposed to just the use over the lease interval in question (since the determination is made as if there were not a separate supply for each lease interval).

The amendment to the preamble of the French version of subsection 136.1(1) replaces, as of Announcement Date, the existing reference to deeming rules with a reference simply to the rules that follow.

Subclauses 3(3) and (4)

Billing Periods for Ongoing Services

ETA
136.1(2)

The general rule for determining whether a supply of a service is deemed to be made in or outside Canada is based on where the service is or is to be performed. The amendment to subsection 136.1(2) ensures that that determination is based on the performance of the service over the entire period that includes all billing periods under the service contract. Further, it provides that, if, based on that determination, the supply of the service for the first billing period is deemed to be made in Canada, then the supply of the service for each of the billing periods is deemed to be made in Canada. Telecommunication services are an exception to this rule because special place of supply rules apply in that case that are not based on where the service is performed.

As is the case for subsection 136.1(1), an amendment is also made to the preamble of the French version of subsection 136.1(2) to replace, as of Announcement Date, the existing reference to deeming rules with a reference simply to the rules that follow.

Clause 4

Financial Institutions

ETA
149(4.01)

Existing paragraph 149(1)(*b*) provides for a "*de minimis*" test, which serves to determine whether persons earning significant amounts of investment income or income from separate fees or charges for financial services are considered to be financial institutions (referred to as "*de minimis* financial institutions") for purposes of the GST/HST. For the most part, *de minimis* financial institutions are subject to the same GST/HST rules as are traditional financial institutions such as banks, trust companies and insurance companies.

One aspect of the *de minimis* test involves comparing the amount of a person's financial revenue to the person's total revenue, which includes revenue from supplies of property or services other than financial services. Given that supplies of precious metals (such as gold) are defined to be supplies of financial services (since a "financial instrument" includes a precious metal), a refiner's revenue from supplies of precious metals is excluded from the total revenue from supplies of property or services other than financial services. This has the effect of increasing the ratio of financial revenue to total revenue for a refiner and can thereby result in the refiner satisfying the test of being a *de minimis* financial institution.

The effect of being considered a *de minimis* financial institution for a refiner of precious metals is that the refiner is denied input tax credits for costs incurred in connection with making supplies of exempt financial services such as are involved in its capital raising activities. This is an inappropriate result because supplies of precious metals made by a refiner, or by a person on whose behalf the precious metals are refined, are zero-rated (under section 3 of Part IX of Schedule VI) to avoid tax applying to the financial instrument at that stage.

New subsection 149(4.01) has the effect of including zero-rated supplies of precious metals in the total revenue from the making of supplies by the refiner. This results in a more accurate picture of what percentage of the refiner's total revenue is comprised of income from true financial activities and what percentage is comprised of income from other activities.

The amendment is retroactive to January 1, 1991. However, given that new subsection 149(4.01) is a rule about how to compute a total under paragraph 149(1)(*b*), the subsection is added and amended to coincide with how that paragraph read for taxation years beginning on or before April 23, 1996 and taxation years beginning after that day (the coming into force of a previous amendment to the paragraph).

Clause 5

Sale-leaseback Agreements

ETA
153(4.1)

New subsection 153(4.1) treats certain sale-leaseback arrangements in a manner similar to how trade-ins are treated under subsection 153(4). Specifically, where a lessor purchases tangible personal property from another person who is not required to collect tax on the sale and it is the intention of the parties that the lessor will immediately lease the property back to that other person, GST/HST will be charged only on the difference between the value of the lease and the amount credited to the other person in respect of the sale.

For example, if, under a sale-leaseback agreement, a leasing company purchased medical equipment from a physician and immediately leased it back to the physician, the company would be required to charge tax only on the difference between the value of the lease and the amount credited to the physician with respect to the sale of the equipment.

Similar conditions as apply to the application of subsection 153(4) also apply to the application of new subsection 153(4.1). These conditions are set out in amended subsection 153(5).

New subsection 153(4.1) and the related amendment to subsection 153(5) apply to sale-leaseback agreements entered into after 1998.

Clause 6

Coupons

ETA
181(1)

The definition “coupon” in subsection 181(1) is amended to exclude a barter unit within the meaning of new subsection 181.3(1) (see commentary on clause 7).

This amendment applies for the purpose of applying section 181 on and after Announcement Date and also for the purpose of applying that section before that day in determining any rebate under subsection 261(1), or any input tax credit or deduction, claimed on or after that day.

Clause 7

Barter Exchanges

ETA
181.3

A barter transaction occurs when two persons agree to a reciprocal exchange of goods or services. The practice of bartering has evolved into an industry that consists of member-only barter clubs or "network" businesses. In order to facilitate trading among their members, most networks use what is commonly referred to as "barter units" like a medium of exchange. Barter units, however, do not fit the definition of "money". Therefore, the provision of a barter unit is a supply of an intangible personal property.

New section 181.3 provides for the designation of barter exchange networks and the GST/HST treatment of transactions involving the provision of barter units.

Subsection 181.3(1) - Definitions

Subsection 181.3(1) defines terms that are used in new section 181.3.

The "administrator" of a barter exchange network is defined to be the person who is responsible for administering, maintaining or operating, for members of the network, a system of accounts to which barter units may be credited.

A "barter exchange network" is defined as a group of persons who have agreed in writing to accept credits (referred to as "barter units") on accounts of the group members in exchange for property or services traded among the members. Note that the criterion that the barter unit "can" be used as consideration for property or services supplied by other members of the network does not preclude the

possibility that the barter units may also be used in trades with members of another barter group.

Each barter group that has its own administrator is a separate barter exchange network within the definition of that term. In other words, if a group of persons having a particular administrator agree to trade property or services for barter units, not only among themselves, but also with members of another group having a different administrator, the two groups are treated as separate barter exchange networks for the purposes of section 181.3. Therefore, each administrator would have to apply for a separate designation.

Subsections 181.3(2) to (4) – Designation of Barter Exchange Network

Subsection 181.3(2) permits the administrator of a barter exchange network to apply in prescribed form and manner to have the network designated for the purposes of applying the rule in subsection 181.3(5) to the network members' transactions involving barter units. The requirement to apply to be designated is provided for the purposes of clearly establishing the intention of the group to be treated as a barter exchange network under subsection 181.3(5) since barter exchange networks are not otherwise clearly defined nor legal entities in themselves.

Where the Minister of National Revenue designates a barter exchange network, the Minister must notify the administrator of the network in writing of the designation and its effective date. The administrator is then obligated to notify the members of the network.

Subsection 181.3(5) - Exchange of Barter Unit

The effect of new subsection 181.3(5) is to relieve members of designated barter exchange networks from having to pay tax on barter units accepted in exchange for their supplies of property or services. Of course the members, if registrants, would continue to have to charge tax on their taxable supplies of the property or services provided for the barter units. The tax on such property or services would be calculated on the exchange value of the barter units accepted as consideration.

For example, if a registrant who is a member of a designated barter exchange network provides another registrant who is also a member of the network professional legal services in exchange for barter units having an exchange value of $100, the member supplying the service would have to charge tax calculated on the $100. The member receiving the services would not have to charge tax on the provision of the barter units since subsection 181.3(5) deems the barter units to be supplied for nil consideration. When the member accepting the barter units as consideration in turn uses them as consideration for property or services acquired from another member, the barter units themselves will again be free of tax but tax will be payable on the supply of the property or service acquired provided it is a taxable supply made by a registrant.

New subsection 181.3(5) also relieves any person (such as an out-going member) from having to collect tax on "cashing in" a barter unit by supplying it for money to a member or administrator of a designated network.

The only time that a member of a designated network would have to charge tax on a supply of a barter unit would be if the barter unit were supplied to any person that is not a member, or administrator, of a designated barter exchange network.

It should be noted that this provision applies to the exchange of barter units that "can" be used as consideration for property or services traded among members of a particular designated barter exchange network. Such a barter unit still qualifies for the treatment under subsection 181.3(5) even if it is ultimately given as consideration for property or services supplied by a member of another network.

Subsection 181.3(6) - Deemed Non-financial Services

For greater certainty, subsection 181.3(6) deems the following not to be financial services:

(a) the operation, maintenance or administration of a system of accounts, to which barter units can be credited, of members of a barter exchange network,

(b) the crediting of a barter unit to such an account,

(c) the supply, receipt or redemption of a barter unit, and

(d) the agreeing to provide, or the arranging for, any of the foregoing.

It should be noted that the deeming under subsection 181.3(6) applies whether or not the barter exchange network referred to therein is designated under section 181.3.

Coming Into Force

New section 181.3 comes into force on Announcement Date. Therefore, the deeming rule under new subsection 181.3(6) has practical effect as of that day, since that subsection does not depend on the designation of a barter exchange network. In contrast, in the absence of a special transitional rule, new subsection 181.3(5) does not have practical effect until a designation of a barter exchange network takes effect. Therefore, a special transitional rule is provided under subclause 7(3).

Subclause 7(3) contemplates that the earliest effective date of any designation under new section 181.3 would be the date of Royal Assent. The subclause applies the new section before that day to barter exchange networks whose designations are given effect only as of that day. In that case, the transitional rule permits a supply of a barter unit at an earlier time (even before Announcement Date) to be treated as if the designation and section 181.3 had been in effect at that earlier time, provided that no amount as or on account of tax was actually collected on that supply of the barter unit.

Clause 8

Gaming

ETA
188.1

Section 188.1 sets out rules that apply to transactions involving prescribed provincial gaming authorities (referred to as “issuers”) who conduct games of chance and to supplies by their distributors. The amendments to this section simply confirm the policy and administrative practice in relation to the application of these rules to

casino gaming and the operation of gaming machines such as video lottery terminals. The amendments therefore apply as of January 1, 1991.

Subclause 8(1)

Definition of “distributor”

ETA
188.1(1)

The definition “distributor” in subsection 188.1(1) is amended to include a person who accepts, on behalf of an issuer, a bet on a game of chance conducted by the issuer. This clarifies that casino operators are considered distributors for the purposes of section 188.1.

The definition “distributor” is also amended to include persons who make supplies (referred to as “specified gaming machine supplies”) relating to a “gaming machine”, as newly defined in subsection 188.1(1) (see commentary on subclause 8(2)). This would include, for example, a bar owner who supplies a site in the owner's establishment for a video poker machine where the proceeds from the operation of the machine are shared on a percentage basis between the bar owner and the provincial gaming authority that conducts the game.

Another example of a person included in the definition “distributor” is a person who contracts with a provincial gaming authority to lease or license the use of a gaming machine for a percentage share of the proceeds from the operation of the machine. Alternatively, a person might contract with a provincial gaming authority to repair, maintain, or ensure the operation of a gaming machine (perhaps by emptying and refilling the machine) or to award or deliver prizes won by playing the game. Again, to qualify as a distributor in these cases, the consideration for the supply by the contractor must be determined at least in part as a percentage of the proceeds from the operation of the machine.

Under amended subsection 188.1(4), distributors are not required to collect tax on supplies to provincial gaming authorities of specified gaming machine supplies (see commentary on subclause 8(3)).

Subclause 8(2)

Definition of “gaming machine”

ETA
188.1(1)

The new definition “gaming machine” is added to subsection 188.1(1). To be included in this definition, the machine must be capable of being operated by the person playing the game of chance. Further, the element of chance in the game must be provided by means of the machine or the machine must dispense tickets or tokens evidencing “instant win” games. This definition is intended to encompass video lottery terminals and other gaming machines where the player can instantly determine whether a prize or winnings is due to him or her (e.g., it is not dependant on a draw).

The definition “gaming machine” is relevant to the amended definition “distributor” in this subsection, particularly the description therein of “specified gaming machine supplies”. Specified gaming machine supplies are referred to in amended subsection 188.1(4) (see commentary on subclause 8(3)).

Subclause 8(3)

Deemed Non-supplies

ETA
188.1(4)

New paragraph 188.1(4)(*a*.1) deems a distributor's supply to an issuer of a service in respect of the acceptance, on behalf of the issuer, of bets on games of chance conducted by the issuer not to be a supply. This paragraph specifically includes a supply of a casino operating service. Similarly, new paragraph 188.1(4)(*a*.2) deems “specified gaming machine supplies” (as described by new paragraph 188.1(1)(*d*)) made to an issuer by a distributor of the issuer not to be supplies.

Paragraphs (*a*.1) and (*a*.2) relieve a distributor of having to collect tax from the issuer on supplies of a casino operating service and specified gaming machine supplies respectively. Instead, under the *Games of Chance (GST/HST) Regulations*, the issuer is required to include an amount equal to tax calculated on these supplies in determining the issuer's "imputed tax on gaming expenses" determined under subsection 7(7) of the Regulations.

Clause 9

Imported Taxable Supplies

ETA
217

Paragraph 217(*b*) includes in the definition "imported taxable supply" certain supplies of goods by unregistered non-resident persons to registrants who are not acquiring the goods for consumption, use or supply exclusively in the course of commercial activities and are therefore subject to self-assessed tax under Division IV. The circumstance in which such a supply falls into this paragraph is where the registrant acquiring the goods obtains physical possession of them from another registrant and provides that other registrant with a drop-shipment certificate referred to in section 179. That other registrant must have earlier supplied a service in respect of the goods or sold the goods to a non-resident person.

Under the existing wording of paragraph 217(*b*), the other registrant who is accepting the drop-shipment certificate must have earlier sold the goods or supplied the service to the same non-resident person as is supplying the goods to the registrant who must self-assess tax. However, the drop-shipment rules in section 179 also apply where the first registrant's supply was to a different non-resident person. The amendment therefore replaces the references in clauses 217(*b*)(i)(A) and (B) to "the" non-resident person with references to "a" non-resident person.

This amendment applies to supplies made after Announcement Date.

Clause 10

Sale of Real Property

ETA
221(2)(*b*)

Subsection 221(1) generally requires a person making a taxable supply to collect the tax payable in respect of the supply as agent for Her Majesty in right of Canada. Subsection 221(2), however, provides an exception for certain supplies of real property. In those exceptional circumstances, the supplier is not required to collect the tax on the supply. Instead, the recipient is required to remit the tax payable directly to Revenue Canada.

One of the circumstances in which the recipient remits the tax directly to Revenue Canada is where the recipient is an individual registered for GST/HST purposes and the property is not a residential complex. As a result of the latter rule, a registered individual receiving a taxable supply by way of sale of a cemetery plot or similar site would have to remit the tax directly to Revenue Canada. On the other hand, individuals who are not registered for GST/HST purposes would simply pay the tax to the supplier as they would for any other taxable purchase.

The effect of the amendment to paragraph 221(2)(*b*) is to exclude taxable sales of cemetery plots and similar sites from the exception so that the supplier would have to collect tax from the recipient whether or not the recipient were an individual registered for GST/HST purposes.

This amendment applies to supplies made after Announcement Date.

Clause 11

Deemed Trust

ETA
222

Section 222 generally deems amounts of GST/HST collected to be held in trust for Her Majesty in Right of Canada.

Subclause 11(1)

Trust for Amounts Collected

ETA
222(1)

Subsection 222(1) deems any amounts collected as or on account of tax to be held in trust for Her Majesty until remitted or withdrawn under subsection 222(2). Subsection 222(1) is amended, effective on Royal Assent, to clarify that the Crown's claim to the amounts held in trust takes precedence over any other security interest in those amounts (other than a security interest prescribed under new subsection 222(4)). However, subsection 222(1) remains subject to the exception described in subsection (1.1) in the case of a bankruptcy.

Further, subsection 222(1) is also amended, effective on Royal Assent, to incorporate the concept found under existing subsection 222(3) that the amounts in trust are considered to be held separate and apart. The reference to the liquidation, assignment, receivership or bankruptcy of or by a person is deleted since the amounts deemed to be held in trust under subsection (1) are intended to be considered to be so held separate and apart from the time the amounts form part of the deemed trust.

These changes parallel amendments made to the comparable subsection 227(4) of the *Income Tax Act* (by S.C., 1994, c. 21 and S.C., 1998, c. 19).

Subclause 11(2)

Extension of Trust and Meaning of "security interest"

ETA
222(3) and (4)

Subsection 222(3) - Extension of Trust

Existing subsection 222(3) is replaced, effective on Royal Assent, with a rule that the deemed trust applies only to property of the person equal in value to the amounts deemed to be held in trust and not paid to Her Majesty as and when required. In addition, it clarifies that the Crown's claim over the deemed trust amounts takes priority over any security interest of a secured creditor (other than a security interest prescribed under new subsection 222(4)). Again, to the extent that, under subsection (1.1), the deemed trust does not apply to certain amounts in the case of bankruptcy, this priority likewise does not apply to those amounts.

The amendments to section 222 respond to the decision of the Supreme Court of Canada in Her Majesty the Queen v. Royal Bank of Canada, which held that the then existing rules in the *Income Tax Act* creating a deemed trust did not give priority to the Crown over certain assignments of inventory and that clearer language was required to assign absolute priority to the Crown. The amendments under subclause 11(2) parallel similar amendments made previously to section 227 of that Act (by S.C., 1998, c. 19).

Subsection 222(4) - Meaning of "security interest"

New subsection 222(4), effective on Royal Assent, excludes from the rules in subsections (1) and (3) a prescribed security interest. This is intended to include certain mortgage interests in real property as proposed in the Department of Finance Press Release of April 7, 1997.

Clause 12

Sale of Account Receivable

ETA
222.1

Subsection 222(1) deems amounts collected as or on account of tax to be held in trust for Her Majesty until remitted or withdrawn under subsection 222(2). As a result, a person who is the purchaser or assignee of an account receivable can be found to be holding the tax component of the receivable in trust for the Crown to the extent that it is collected by the person as or on account of tax. Furthermore, the existing legislation requires any person collecting amounts as or on account of tax to include those amounts in the person's net tax. It would be inappropriate for the purchaser/assignee to include the tax component of the receivable in net tax given that the vendor/assignor who made the original supply that gave rise to the account receivable was liable to include the tax component in determining that vendor's net tax.

New section 222.1 has the effect of relieving the purchaser/assignee of an account receivable from any potential liability for the tax component of the account receivable. The obligation to remit the tax component of an account receivable rests with the vendor who made the original supply giving rise to the account receivable.

New section 222.1 accomplishes this by deeming the original vendor to have collected, at the time of the sale/assignment, all tax not already collected by the vendor on the original supply that gave rise to the account receivable. The effect of this provision is that the amounts so deemed to have been collected on account of tax at the time of the sale of the receivable are included in the amounts deemed, under section 222, to be held in trust by the vendor from that time until remitted or withdrawn. The amounts will also have to be taken into account as tax collected when calculating the vendor's net tax unless the amounts were previously included in the vendor's net tax as amounts of tax collectible. Any amounts collected after that time by a person who purchases the receivable (including the original vendor if the vendor buys back the receivable) are deemed not to be amounts collected as or on account of tax. As a result, they are not included at that later time in any deemed trust.

New subsection 222.1 applies to any supply of an account receivable the ownership of which is transferred under the agreement for the supply after Announcement Date.

Clause 13

Disclosure of Tax

ETA
223(1.3)

Section 223 requires a registrant who makes a taxable supply to disclose the amount of tax payable on the supply or the fact that the total amount charged includes tax, whether or not the supplier was required to collect that tax payable. The November 26, 1997 Notice of Ways and Means Motion to amend the *Excise Tax Act* proposed to add new subsections (1.1) and (1.2).

Clause 13 adds an additional new subsection, 223(1.3), which provides that subsection (1) does not apply to a registrant when the registrant is not required to collect the tax in respect of the supply. For example, if because of subsection 221(2), (3) or (3.1), the supplier is not required to collect tax, the tax payable in respect of the supply is not required to be disclosed in the invoice, receipt or agreement for the supply.

This amendment applies to supplies made after Announcement Date.

Clause 14

Bad Debts

ETA
231

Section 231 deals with the treatment of bad debts. Subsection 231(1) entitles a supplier to claim, in determining the supplier's net tax, a deduction in respect of a bad debt written off by the supplier relating to an arm's-length taxable supply. The deduction is contingent on the supplier having reported the tax collectible on the supply in a return

and remitted the net tax, if any, reported in that return. Existing subsection 231(2) allows a financial institution that is a member of the same closely related group of which the supplier is a member to instead claim a net tax deduction if the financial institution has purchased the account receivable relating to the bad debt at face value and on a non-recourse basis and the financial institution writes off the debt.

The amendment repeals subsection 231(2). As a result, bad debt relief is available only to the registrant who makes the supply. A consequential amendment is also made to subsection 231(3) to remove the reference to subsection (2).

The repeal of subsection 231(2) applies to any account receivable purchased in the circumstances described by existing subsection 231(2), where the ownership of the receivable is transferred after February 1999. The amendment to subsection 231(3), which deals with the recovery of a bad debt, applies to the recovery of a bad debt in respect of an account receivable purchased after February 1999.

Clause 15

Refund or Adjustment of Tax

ETA
232

Section 232 sets out the rules relating to refunds or adjustments of tax. New paragraph 232(3)(*d*) has the effect of requiring a person who has received a credit note, or issued a debit note, for an adjustment of tax in accordance with that section to repay a portion of any rebate under Division VI previously paid or applied to a liability of the person to the extent that the rebate included the amount so refunded, credited or adjusted. The portion of the rebate that must be repaid is equal to the amount by which that rebate was increased due to the fact that the amount refunded, credited or adjusted was included in the calculation of the rebate.

This rule will apply if the rebate is paid or applied before the day that a credit note is received, or a debit note is issued, for the refund, credit or adjustment under section 232. Related amendments are made to sections 259 and 263 (see commentary on clauses 19 and 20) to address the situation where the person receives the credit note, or issues the debit note, before the rebate is paid or applied.

If a person is required to repay part of a rebate, the repayment is due on the due date of the person's return, in the case of a registrant or, in the case of a non-registrant, at the end of the calendar month following the month in which the credit note is received or debit note is issued, as the case may be.

New paragraph 232(3)(*d*) applies to any amount adjusted, refunded or credited for which a credit note is received, or a debit note is issued, after Announcement Date.

Clause 16

Threshold Amounts for Fiscal Quarters

ETA
249(2)

Section 249 provides the rules for determining a person's "threshold amounts" for the purpose of establishing that person's reporting period.

Existing subsection 249(2) provides for the calculation of a person's threshold amount for a fiscal quarter, which is relevant to determining whether the person qualifies to file GST/HST returns on a quarterly basis. The amendment to this subsection excludes consideration attributable to the sale of goodwill of a business from the calculation of this threshold amount.

This amendment applies in determining the threshold amount of a person for any fiscal quarter of the person beginning after Announcement Date.

Clause 17

New Housing Rebate for Building Only

ETA
254.1(2)

Section 254.1 provides for a rebate to an individual in respect of the purchase of a residential complex on land leased from the builder of the complex, on a long-term basis or with an option to purchase. The rebate is available in circumstances in which the builder was deemed to have made a supply of the complex under section 191 and was therefore required to self-assess tax.

This section applies to a “single unit residential complex”, which is defined for this purpose to include a multiple unit residential complex that does not contain more than two residential units (e.g., a duplex). However, the circumstances necessary to obtain the rebate, described in existing paragraph 254.1(2)(*d*), cover only the case of a single-unit residential complex or condominium unit. This is because that paragraph cross-references only the builder's self-supply provision under subsection 191(1) and not subsection 191(3). The latter subsection is proposed to be amended (by Notice of Ways and Means Motion of November 26, 1997) to add a self-supply rule with respect to duplexes and other multiple-unit complexes built on leased land.

The amendment to paragraph 254.1(2)(*d*) adds a reference to subsection 191(3). The effect is that the purchaser of a residential complex containing two units and situated on leased land will be entitled to the rebate under section 254.1 provided that all other conditions are met.

This amendment comes into force on November 26, 1997, the day on which the earlier announced amendment to subsection 191(3) is to come into force.

Clause 18

Rebate to Owner or Lessee of Land Leased for Residential Purposes

ETA
256.1(1)

Section 256.1 provides a rebate of tax to an owner or lessee of certain residential land where tax was paid by the owner or lessee in purchasing or improving the land. Generally, the rebate is available where the land has been leased or sub-leased to a person who will be required to self-assess tax on the use of the land for residential purposes. In these circumstances, the existing rebate under section 256.1 is available to the owner or any other lessee who paid tax when either purchasing or improving the land.

The amendment under subclause 18(1) ensures that the rebate under section 256.1 is also available where a lessor of the land who is required to self-assess tax assigns the lessor's leasehold interest as opposed to entering into a sub-lease. This amendment is effective on January 1, 1991.

The amendment under subclause 18(2) clarifies that the rebate is available for tax on improvements only if the improvements were used in the course of improving the property before the time at which the deemed supply of the complex is made and the requirement to self-assess tax arises. A concurrent wording change is made to replace the phrase “total tax charged in respect of the land” to avoid any confusion as to whether tax on improvements is included in the calculation of the rebate. The amendments under subclause 18(2) apply for the purpose of determining any rebate under section 256.1, the application for which is received by the Minister of National Revenue on or after Announcement Date.

Clause 19

Rebates to Public Service Bodies

ETA
259

Section 259 of the Act provides for rebates to charities, substantially government-funded non-profit organizations and other public service bodies.

Subclause 19(1)

Definition of “non-creditable tax charged”

ETA
259(1)

The term “non-creditable tax charged” refers to amounts that a public service body is or was required to pay as GST/HST (net of input tax credits and certain other amounts) and that are therefore potentially subject to a rebate under section 259. The amendment excludes from the “non-creditable tax charged” for a claim period any amount of tax that has been adjusted, refunded or credited for which a credit note has been received or a debit note has been issued in accordance with section 232. A related amendment is made to section 232 to deal with the situation where the rebate is paid or applied before the tax adjustment is made (see commentary on clause 15).

This amendment comes into force on Announcement Date and applies to amounts adjusted, refunded or credited for which a credit note is received, or a debit note is issued, after that day.

Subclause 19(2)

Restriction on Inclusion of Amount in “non-creditable tax charged”

ETA
259(4.01)

The November 26, 1997 Notice of Ways and Means Motion to amend the *Excise Tax Act* proposed the addition of new subsection 259(4.01). That subsection parallels, for the purposes of the rebate under subsection 259(4), the restrictions that already apply in determining the rebate under subsection (3) because of the definition “non-creditable tax charged”. Proposed subsection (4.01) is further modified by the addition of paragraph (*c*), which parallels the amendment to that definition under subclause 19(1) (see commentary above).

As proposed in the November 26, 1997 Ways and Means Motion, new subsection 259(4.01) applies for the purposes of determining rebates for which applications are received at a Revenue Canada office on or after November 26, 1997. However, new paragraph (*c*) of that subsection applies only to amounts adjusted, refunded or credited for which a credit note is received or a debit note is issued after Announcement Date.

Subclause 19(3)

Exception to Limitation Period

ETA
259(5.1)

Under subsection 259(5), persons that have not claimed a rebate for tax that became payable in a particular claim period on an application filed for that period have up to four years to claim the amount in another application. Section 259 is amended to extend the limitation period in cases where a person's supplier is assessed for not having charged the correct tax on a supply to the person and subsequently does charge the tax after the four-year period for claiming the rebate has expired.

In these circumstances, after paying the tax, the rebate applicant will be permitted to claim the rebate in the return for the period in which the tax was paid, provided that the supplier discloses in writing to that person that the Minister has assessed the supplier for that tax. This amendment parallels an existing extension on the general limitation period for claiming input tax credits under paragraph 225(4)(*c*).

New subsection 259(5.1) applies as of January 1, 1991.

Clause 20

General Restrictions on Rebates

ETA
263

Section 263 is amended by adding new paragraph (*d*). That paragraph has the effect of disallowing a person a rebate of tax to the extent that the person has received an adjustment, refund or credit of the same tax for which the person received a credit note or issued a debit note in accordance with section 232. A related amendment is made to section 232 to deal with the circumstance where the rebate is paid or applied before the credit note is received or the debit note is issued, as the case may be (see commentary on clause 15).

New paragraph 263(*d*) comes into force on Announcement Date. Therefore, it provides that the Minister of National Revenue shall not pay a rebate of an amount at any time on or after that day to the extent that a credit note has been received, or a debit note has been issued, under section 232 before that day for an adjustment, refund or credit that includes the amount.

Clause 21

Charge on Property

ETA
316(4) to (10.1)

Section 316 provides authority for a certification by the Minister of National Revenue evidencing various amounts payable by a taxpayer to be registered with the Federal Court. The section also provides that once issued, the certificate may be registered in a province for the purpose of creating a charge that binds land in that province.

The amendments ensure that, upon registration of a certificate, writ or any notification thereof (each of which is referred to as a "memorial"), using the same judicial and administrative procedures as may be set out by the relevant provincial law for creating a lien, charge, priority or binding interest in the province, the memorial will be equally effective for the purpose of binding land and personal property in that province.

New subsection 316(10.1) also provides that a lien, charge, priority or binding interest created under amended subsection 316(6) is deemed to give rise to a secured claim in bankruptcy upon registration in accordance with section 87 of the *Bankruptcy and Insolvency Act* under both paragraphs 86(2)(*a*) and (*b*) of that Act. As provided in that Act, the order of registration will determine priority among secured claims.

Finally, these amendments introduce the concept of a priority on property (or on an interest in property) in addition to the existing references to a charge or lien, in order to reflect the *Quebec Civil Code*'s nomenclature for these concepts.

The amendments to section 316 come into force on Royal Assent.

Clause 22

Definition “secured creditor” and “security interest”

ETA
317

Existing subsection 317(4) defines the terms “secured creditor” and “security interest” for the purposes of subsection 317(3). Since those terms are to be used in other provisions (e.g., amended section 222), these definitions are added to subsection 123(1) (see commentary on subclause 2(2)) so as to apply to Part IX generally. Accordingly, subsection 317(4) is repealed.

This amendment comes into force on Royal Assent.

Clause 23

Lease of Real Property Where Exempt Re-supply

ETA
Schedule V, Part I, section 6.1

Existing section 6.1 of Part I of Schedule V exempts certain leases of real property to a person who holds the property for the purpose of re-supplying it in circumstances in which the re-supply is exempt under section 6, 6.1, or 7 of that Part. In particular, section 6.1 refers to the person making, or holding the property for the purpose of making, an exempt supply of the “property”. However, paragraph 7(*c*) of that Part exempts, not a supply of the real property itself, but the supply, by way of assignment, of a lease, license, or similar arrangement in respect of the property.

The amendment to section 6.1 is therefore made simply to clarify that, in addition to a re-supply of the property itself, a supply of a lease, license or similar arrangement in respect of the property triggers the exemption provided under that section. The section is repealed and replaced in two steps because, prior to amendments to the section that came into effect in 1993, the section was structured differently.

The amendment is consistent with administrative practice and is therefore effective January 1, 1991.

Clause 24

Sale of a Parking Space

ETA
Schedule V, Part I, section 8

Section 8 of Part I of Schedule V exempts the sale of a parking space in a condominium complex where the purchaser is also buying a residential condominium unit in the same complex. Since a "condominium complex" is defined in subsection 123(1) as a residential complex that contains more than one residential condominium unit, existing section 8 does not exempt the sale of a parking space to the purchaser of a detached single unit condominium.

The amendment to section 8 ensures that the sale of a parking space to the purchaser of a detached single unit condominium is also exempt. The amended section provides that the exemption applies to the sale of a parking space situated within the boundaries of a condominium or strata lot plan where the purchaser is also acquiring from the supplier a residential condominium unit described by the same plan.

This amendment applies to supplies made after Announcement Date.

Clause 25

Lease, etc., of Parking Space

ETA
Schedule V, Part I, section 8.1

Section 8.1 of Part I of Schedule V exempts the supply of a parking space by way of lease, licence or similar arrangement when made to an occupant, owner or lessee of a residential condominium unit and when the parking space is part of the condominium complex in which

the condominium unit is located. Since "condominium complex" is defined in subsection 123(1) as a residential complex that contains more than one residential condominium unit, existing section 8.1 does not exempt the supply of a parking space to the occupant, owner, or lessee of a detached single unit condominium.

Amended section 8.1 exempts a supply by way of lease, licence or similar arrangement of a parking space when made to the occupant, owner, or lessee of a residential condominium unit provided the unit and the parking space are described by the same condominium or strata lot plan. It therefore covers the situation of a single unit condominium.

This amendment applies to supplies made after Announcement Date. It should be noted that paragraph 136.1(1)(*b*) determines when a supply for a lease interval is made. It provides that the supply is made on the earliest of the first day of the lease interval, the day on which the payment attributable to the interval becomes due and the day that the payment is made.

Clause 26

Condominium Fees

ETA
Schedule V, Part I, section 13

Section 13 of Part I of Schedule V is intended to exempt condominium fees charged to residential condominium owners or lessees. This is accomplished by exempting the supply by a condominium corporation of property or a service relating to the occupancy or use of a condominium unit in the complex managed by the corporation when the supply is made to the owner or lessee of the unit. Since "condominium complex" is defined in subsection 123(1) as a residential complex that contains more than one residential condominium unit, existing section 13 does not exempt condominium fees charged to the owner or lessee of a detached single unit condominium.

Amended section 13 covers the situation of a single unit condominium. It exempts a supply of property or a service by a corporation established by the registration of a condominium or strata lot plan when the supply is made to the owner or lessee of a residential condominium unit described by that plan. As in the existing section, the property or service supplied by the corporation must be related to the occupancy or use of the unit.

This amendment applies to supplies for which consideration becomes due after Announcement Date or is paid after that day without having become due.

Clause 27

Health Care Services

ETA
Schedule V, Part II

Part II of Schedule V sets out exempt supplies of health-related services.

Subclause 27(1)

Definition of “practitioner” - speech therapy and osteopathic services

ETA
Schedule V, Part II, section 1

Amendments contained in chapter 10 of the Statutes of Canada, 1997, had the effect of removing, as of January 1, 1998, osteopathic and speech therapy services from the list of services that are exempt in all provinces from the GST/HST under section 7 of Part II of Schedule V to the *Excise Tax Act*. However, in the November 26, 1997 Notice of Ways and Means Motion to amend the Act, the government proposed a continuation of the exemption for osteopathic services, and a one-year deferral, to January 1, 1999, of the removal of speech therapy services from the exemption.

The amendment under clause 27 supersedes that earlier motion. It extends the speech therapy exemption for another two years, to January 1, 2001. If, at that time, speech therapy is regulated as a health profession by the governments of at least five provinces, a further amendment will be introduced to allow these services to remain exempt after that date.

The related Ways and Means Motion of November 26, 1997 to amend section 7 of Part II of Schedule V, which lists the services that are exempt, is also replaced under clause 29.

Subclause 27(2)

Psychological Services

ETA
Schedule V, Part II, paragraph (*d*) of the definition of "practitioner"

The definition "practitioner" in section 1 of Part II of Schedule V is amended to remove the requirement for persons practising the profession of psychology to be registered in the Canadian Register of Health Service Providers in Psychology in order for their services to be exempt under that Part.

This amendment applies to supplies made after April 1999.

Clause 28

Institutional Health Care Services

ETA
Schedule V, Part II, section 2

Existing section 2 of Part II of Schedule V exempts the supply of institutional health care services when "made" to a patient or resident of a health care facility. Given the definition of "recipient" in subsection 123(1) of the Act, the reference to the person to whom the supply is made is a reference to the person who is liable to pay the consideration for the supply. This section is amended to clarify that these services are exempt as long as they are "rendered" to a patient

or resident, (i.e., regardless of who is liable to pay the consideration for the supply).

This amendment applies to supplies made after Announcement Date.

Clause 29

Speech Therapy Services

ETA
Schedule V, Part II, section 7

The November 26, 1997 Notice of Ways and Means Motion to amend the *Excise Tax Act* proposed to provide for the exemption of speech therapy services until the end of 1998. The amendment under clause 29 supersedes that motion and extends the exemption to the end of 2000. This amendment is related to the amendment to the definition "practitioner" (see commentary on clause 27).

Clause 30

Second-language Courses

ETA
Schedule V, Part III, section 11

Existing section 11 of Part III of Schedule V exempts second-language training in English or French when provided by a school, college or university, or organization established and operated primarily to provide language instruction. This section is amended to extend the exemption to include English and French second-language courses offered by vocational schools.

In addition, the reference to "organization" is removed to clarify that the exemption is available whenever the supplier is a person whose business is primarily to provide instruction in languages. For example, the section applies to a supply by a sole proprietor who operates a business established primarily to provide language training.

These amendments apply to supplies made after April 1999.

Clause 31

Prescription Drugs

ETA
Schedule VI, Part I, paragraphs 2(*c*) and (*d*)

Existing section 2 of Part I of Schedule VI lists zero-rated supplies of a broad range of drugs that are regulated under federal legislation. This section is amended to update cross-references as a result of changes to the *Food and Drugs Act* and the *Narcotic Control Act* and regulations made under those Acts.

Specifically, drugs formerly listed in schedule G to the *Food and Drugs Act* are now found in the schedule to Part G of the *Food and Drug Regulations*. In addition, substances previously listed in the schedule to the *Narcotic Control Act* are now set out in the schedule to the *Narcotic Control Regulations.*

These amendments come into force on May 14, 1997, when the corresponding changes to the cross-referenced legislation came into effect.

Clause 32

Services in respect of Medical Devices

ETA
Schedule VI, Part II, section 34

Section 34 of Part II of Schedule VI describes zero-rated supplies of certain services related to medical devices listed in that Part. As a result of amendments to that Part (contained in S.C., 1997, c. 10) a number of medical devices set out in the *Medical Devices (GST) Regulations*, including incontinence products, were added in the Schedule itself with the intention that the corresponding items of the Regulations made under section 31 would be repealed. While section 34 covers devices prescribed by the Regulations under

section 31, the amendments in 1997 added incontinence products under section 37, which is not cross-referenced in existing section 34.

Section 34 of the Part is therefore amended to ensure that it continues to encompass services in respect of incontinence products.

This amendment applies to supplies made after April 23, 1996, which corresponds to the application of the amendment adding incontinence products to the Part under section 37.

Clause 33

Exports by Common Carrier

ETA
Schedule VI, Part V, section 12

Section 12 of Part V of Schedule VI describes a zero-rated supply of tangible personal property that is delivered by the supplier to a common carrier, or mailed by the supplier, for export. Section 12 is amended to ensure that a supply can be zero-rated under this section only if the supplier ships the property, or sends it by mail or courier, to a destination outside Canada on the supplier's own behalf or if the supplier retains a common carrier or consignee on behalf of the recipient to ship the property to a destination outside Canada. This criterion parallels that under which a supplier is considered to "deliver" goods directly, or for shipment by a carrier, outside a province for purposes of relieving the goods from the 8 per-cent provincial component of the Harmonized Sales Tax.

As proposed in the Department of Finance Press Release of August 7, 1998, the section is also amended by providing that it does not apply to a continuous transmission commodity.

The exclusion of continuous transmission commodities from section 12 applies to supplies made after August 7, 1998. The other changes described above apply to supplies made after April 1999.

Clause 34

Imported Goods Supplied under Warranty

ETA
Schedule VII, section 5

Section 5 of Schedule VII describes goods that may be imported free of GST/HST. The existing section covers warranty replacement parts for other goods where the parts are imported by a person who has obtained them from a non-resident person for no consideration other than shipping and handling charges.

The amendment expands the scope of section 5 in two ways. First, it has the effect of covering not only repair parts but also replacement property supplied under warranty and imported in the same circumstances. This would include both the situation where the non-resident substitutes replacement goods on a permanent basis and the situation where the replacement property is provided on a temporary basis (e.g., where the non-resident lends substitute property for use while the goods covered by the warranty are under repair or a permanent replacement is sought).

Secondly, the amendment to section 5 removes the restriction that the warranty must be in respect of tangible personal property. Therefore, the warranty could relate to property that has already been incorporated into real property.

Similar changes are made to the parallel section 14 of Part I of Schedule X dealing with goods brought into an HST participating province (see clause 37).

This amendment applies to goods imported after Announcement Date.

Clause 35

Deemed Delivery in a Province

ETA
Schedule IX, Part II, paragraph 3(*a*) of the French Version

The amendment to the French version of paragraph 3(*a*) of Part II of Schedule IX replaces an obsolete term for "carrier" with the more common term. This amendment is effective on Announcement Date.

Clause 36

Place of Supply for Lease Interval under Short-term Lease, etc.

ETA
Schedule IX, Part II, section 4

Schedule IX sets out rules for determining whether a supply is made in a particular province for purposes of the Harmonized Sales Tax (HST). Under those rules, in the case of short-term leases, licences, etc. of property (i.e., three months or less), the province in which the supply of the property is made is intended to be determined once and for all based on the province in which the property is first delivered or made available to the recipient, similar to the rule for sales of goods. This rule differs from that for longer-term arrangements. In the latter case, the province in which the supply is considered to be made could be different for each lease interval (as defined in subsection 136.1(1) of the Act) based on where the property is located during that interval. Therefore, in that case, the periodic payment could be subject to the 15 per-cent HST in some periods and subject to the 7 per-cent GST in other periods, if the property is re-located from one period to the next.

New section 4 is added to clarify that the province in which the supply of tangible personal property is made in the case of a lease, licence or similar arrangement of three months or less is determined once based on the initial delivery of the property and will not change throughout the different lease intervals, if any, under the arrangement. Therefore, for example, if a piece of equipment is delivered in a non-participating province to a recipient under a lease for three months requiring monthly payments (i.e., having three lease intervals) and the recipient brings the property into a participating province at

the beginning of the third month, the payment for that month will not be subject to the 15 per-cent HST but will remain subject to the 7 per-cent GST.

However, it should be noted that, just as leased goods may be subject to tax when imported from outside Canada, upon bringing goods from a non-participating province into a participating province, the goods are subject to the 8 per-cent provincial component of the HST generally on their fair market value, subject to any special provision for goods temporarily brought in. New section 4 clarifies that, in this circumstance, the periodic payments would not also be subject to the 8 per-cent component under Division II of Part IX of the Act.

This amendment parallels a similar amendment made to subsection 136.1(1) dealing with the determination of whether a supply of property for a lease interval is deemed to be made in or outside Canada (see commentary on clause 3).

New section 4 applies in determining the place of supply for supplies made after Announcement Date. It should be noted that paragraph 136.1(1)(*b*) determines when a supply for a lease interval is made. It provides that the supply is made on the earliest of the first day of the lease interval, the day on which the payment attributable to the interval becomes due and the day that the payment is made.

Clause 37

Goods Supplied Under Warranty and
Brought into a Participating Province

ETA
Schedule X, Part I, section 14

Section 14 of Part I of Schedule X describes goods that may be brought into an HST participating province free of the 8 per-cent provincial component of the HST. The existing section covers warranty replacement parts for other goods where the parts are brought into the province by a person who has obtained them for no consideration other than shipping and handling charges.

The amendment expands the scope of section 14 in two ways. First, it has the effect of covering not only repair parts but also replacement property supplied under warranty and brought into a participating province in the same circumstances. Secondly, it removes the restriction that the warranty must be in respect of tangible personal property. Therefore, the warranty could relate to property that has already been incorporated into real property. Similar changes are made to the parallel section 5 of Schedule VII dealing with imported goods (see clause 34).

This amendment applies to property brought into a participating province after Announcement Date.

Draft Amendment to the Federal Book Rebate (GST/HST) Regulations

Section 259.1 of the Act provides for a 100-per-cent rebate of the GST, or of the federal component of the HST, paid by specified institutions on purchases or importations of certain reading materials and audio recordings of printed books. Entities qualifying to receive the rebate include schools, universities, public colleges and municipalities as well as charities and substantially government-funded non-profit organizations that operate a public lending library.

In addition, the section provides that the rebate is available to organizations prescribed under the *Federal Book Rebate (GST/HST) Regulations* whose primary purpose is the promotion of literacy. The Regulations are amended to add the following organizations to the list of prescribed rebate recipients:

- L'ABC Communautaire / Péninsule du Niagara;
- Metro Toronto Movement for Literacy; and
- Yukon Learn Society.

These organizations will qualify for a rebate in respect of tax that becomes payable after October 23, 1996.

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

Prescribed Registrants

Games of Chance Regulations
3(*m*)

Section 3 of the Regulations prescribes registrants that are provincial gaming authorities and whose net tax is determined in accordance with these Regulations. It is also intended to prescribe, under paragraph (*m*), wholly-owned subsidiaries of provincial gaming authorities for which a special rule for determining net tax is set out under sections 15 and 16 of the Regulations.

Existing paragraph 3(*m*) refers to all wholly-owned subsidiaries of provincial gaming authorities, even though the type referred to in section 15 are the only ones dealt with in the Regulations. This could result in confusion over what method of determining net tax applies to wholly-owned subsidiaries that are not referred to in section 15. To clarify, paragraph 3(*m*) is amended to refer only to wholly-owned subsidiaries referred to in section 15.

This amendment is effective on January 1, 1991.

Section 2

Definition of “reimbursement”

Games of Chance Regulations
5(1)

The term “reimbursement” is defined in subsection 5(1) of the Regulations to distinguish certain amounts of consideration paid as separately-invoiced reimbursements of expenses incurred by a distributor from other forms of consideration paid or payable by a provincial gaming authority to a distributor. The amendment to the

definition is made to correct a circularity problem in the existing subsection that results from the fact that the term “consideration” is defined in that subsection to not include a reimbursement. The amendment clarifies that the term “consideration” as used in the definition “reimbursement” takes on the meaning assigned by Part IX of the Act as opposed to its meaning in subsection 5(1) of the Regulations.

This amendment is effective on January 1, 1991.

Section 3

Imputed Tax on Gaming Expenses

Games of Chance Regulations
7(7)

Generally, provincial gaming authorities are relieved under section 188.1 of the Act 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 equal to tax calculated on the consideration paid or payable to the distributors is deducted from a special credit to which the authorities are entitled in determining their net tax under the Regulations. This amount by which their special credit is reduced, referred to as “imputed tax on gaming expenses”, is effectively what the authorities are required to remit.

Subsection 3(1)

Reimbursements to Casino Operators of
Cost of Employee Remuneration

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

The imputed tax on gaming expenses determined under subsection 7(7) of the Regulations includes consideration paid or payable to persons who supply a casino operating service to the provincial gaming authority both when the consideration takes the form of a separately-invoiced reimbursement of expenses the operator has incurred in supplying the service and when it takes the form of a

general commission. In either case, the intention is to exclude from imputed tax on gaming expenses the amount paid or payable to the casino operator that is attributable to salaries, wages or other remuneration for the operator's employees to the extent that such amounts represent a cost of providing the casino operating service. This recognizes the fact that some authorities are able to operate casinos using their own employees rather than those of a contract operator and, in that case, would not be incurring GST/HST on the cost of employee remuneration.

However, while remuneration to the contract operator's employees is excluded under elements A and B of the formula in subsection 7(7) for determining the imputed tax on gaming expenses, it was inadvertently not excluded from element C of that formula. The amendment to the definition of element C corrects that oversight.

This amendment is effective on January 1, 1991.

Subsection 3(2)

Employee Benefits

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

The imputed tax on gaming expenses determined by the formula under subsection 7(7) of the Regulations also includes taxable benefits provided by a provincial gaming authority to its employees, but only to the extent that the benefits represent a cost of making gaming supplies. In other words, to the extent that the benefits are a cost of making non-gaming supplies (e.g., where provided to employees working exclusively in non-gaming activities such as a restaurant of the authority), they are carved out of the calculation of imputed tax on gaming expenses. The amendment is made, effective January 1, 1991, for greater certainty only to clarify that the reference to “non-gaming supplies” is a reference to such supplies other than the provision of the benefit itself where it takes the form of a property or service.

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Section 4

Presumption Concerning Tax on Supply by Interprovincial Lottery Corporation

Games of Chance Regulations
11

The amendment to the portion of section 11 of the English version of the Regulations before the formula in that section is a housekeeping amendment to replace the existing reference to “the authority” with a reference to “a provincial gaming authority” since it is the first reference in that section to a provincial gaming authority. This amendment is effective on January 1, 1991.

Draft Place of Supply (GST/HST) Regulations

The draft *Place of Supply (GST/HST) Regulations* set out rules for determining in which province certain supplies are considered to be made for purposes of the Harmonized Sales Tax (HST). The draft Regulations were released on March 21, 1997 and are to be effective as of April 1, 1997, when the HST went into effect.

Section 5 - Railway Rolling Stock

Subsection 5(1) of the draft Regulations provides that the place of supply of a railway passenger, baggage or freight car made otherwise than by way of sale is based on where the supplier delivers or makes available the car to the recipient of the supply. Subsection 5(2) further provides that, where continuous possession of a railway car is given under two or more successive agreements, the place of supply of the car is determined based on where the rail car was delivered or made available under the first of those agreements. This resolves the practical difficulty of keeping track of where the railway car is situated when a lease is renewed as they frequently are.

The revised draft of section 5 (which supersedes the March 21, 1997 version) clarifies that the section applies equally to any railway rolling stock, which includes railway locomotives. The amended version also clarifies that, where the rolling stock is supplied by way of lease, licence or similar arrangement covering more than one lease interval (within the meaning of subsection 136.1(1) of the Act), the place of supply for the first lease interval is the place of supply for all subsequent lease intervals under the arrangement.

A further amendment to the draft is made to add subsection 5(4), which provides a special transitional rule for railway rolling stock delivered or made available to a recipient before April 1, 1997. To avoid the complexity of determining, pursuant to the rule described above, where the rolling stock was originally delivered or made available, the rolling stock is deemed to have been delivered under the agreement outside the participating provinces.

The effect of subsection 5(4) is that leases, etc. of railway rolling stock in effect on April 1, 1997 would not be subject to the 8 per-cent component of the HST. However, the supplier must keep track of whether the rolling stock is delivered or made available to

the recipient in a participating province under the next renewal agreement, if any, with the same recipient. If that delivery occurs in a participating province, the supply under that renewal agreement will become subject to the HST. For the purposes of additional future renewals, the rule in subsection 5(3) will apply as if the first renewal agreement were the first arrangement between the supplier and recipient. Therefore, the place of delivery under that first renewal agreement entered into after April 1, 1997 will determine the place of supply under that and all succeeding agreements.

These amendments come into force on April 1, 1997.