

NOTICE OF WAYS AND MEANS MOTION TO AMEND THE *EXCISE TAX ACT*

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

1. (1) Subsections 156(1) to (3) of the *Excise Tax Act* are replaced by the following:

Definitions

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

"Canadian
partnership"
« *société de
personnes
canadienne* »

| "Canadian partnership" means a partnership each member of which is a corporation or
| partnership and is resident in Canada.

"qualifying group"
« *groupe
admissible* »

| "qualifying group" means
|
| (a) a closely related group; or
|
| (b) a group of Canadian partnerships, or of Canadian partnerships and corporations
| resident in Canada, each member of which is closely related, within the meaning of this
| section, to each other member of the group.

"secured creditor"
« *créancier garanti* »

| "secured creditor" has the same meaning as in subsection 317(4).

"security interest"
« *garantie* »

| "security interest" has the same meaning as in subsection 317(4).

"specified member"

« *membre*
déterminé »

"specified member" of a qualifying group means a person that is a corporation or a partnership and

(a) that is a member of the group;

(b) that is not a party to an election under subsection 150(1); and

(c) all or substantially all of the property of which (other than financial instruments) was last manufactured, produced, acquired or imported by the person for consumption, use or supply exclusively in the course of commercial activities of the person or, where the person has no property (other than financial instruments), all or substantially all of the supplies made by which are taxable supplies.

Closely related
persons

(1.1) For the purposes of this section, a particular Canadian partnership and another person that is a Canadian partnership or a corporation resident in Canada are closely related to each other at any time if, at that time, the particular partnership and the other person are registrants and

(a) where the other person is a Canadian partnership,

(i) all or substantially all of the interest in the other person is held by

(A) the particular partnership,

(B) a corporation resident in Canada, or a Canadian partnership, that is a member of a qualifying group of which the particular partnership is a member, or

(C) any combination of corporations or partnerships referred to in clauses (A) and (B), or

(ii) the particular partnership

(A) owns at least 90% of the value and number of the issued and outstanding shares of the capital stock, having full voting rights under all circumstances, of a

corporation resident in Canada that is a member of a qualifying group of which the other person is a member, or

(B) holds all or substantially all of the interest in a Canadian partnership that is a member of a qualifying group of which the other person is a member; and

(b) where the other person is a corporation,

(i) not less than 90% of the value and number of the issued and outstanding shares of the capital stock of the other person, having full voting rights under all circumstances, are owned by

(A) the particular partnership,

(B) a corporation resident in Canada, or a Canadian partnership, that is a member of a qualifying group of which the particular partnership is a member, or

(C) any combination of corporations or partnerships referred to in clauses (A) and (B),

(ii) not less than 90% of the value and number of the issued and outstanding shares of the capital stock, having full voting rights under all circumstances, of a corporation resident in Canada are owned by,

(A) where the corporation is a member of a qualifying group of which the particular partnership is a member, the other person, and

(B) where the corporation is a member of a qualifying group of which the other person is a member, the particular partnership,

(iii) all or substantially all of the interest in the particular partnership is held by

(A) the other person,

(B) a corporation resident in Canada, or a Canadian partnership, that is a member of a qualifying group of which the other person is a member, or

(C) any combination of corporations or partnerships referred to in clauses (A) and (B), or

(iv) all or substantially all of the interest in a Canadian partnership is held by

(A) where the Canadian partnership is a member of qualifying group of which the particular partnership is a member, the other person, and

(B) where the Canadian partnership is a member of a qualifying group of which the other person is a member, the particular partnership.

Persons closely
related to the same
person

(1.2) Where, under subsection (1.1), two persons are closely related to the same corporation or partnership, or would be so related if that corporation, or each member of that partnership, as the case may be, were resident in Canada, the two persons are closely related to each other for the purposes of this section.

Interest in a
partnership

(1.3) For the purposes of this section, a person, or a group of persons, holds, at any time, all or substantially all of the interest in a partnership only if, at that time,

(a) the person, or every person in the group of persons, is a member of the partnership;
and

(b) the person, or the members of the group collectively, as the case may be, is or are

(i) entitled to receive at least 90% of

(A) where the partnership had income for the last fiscal period (within the meaning of the *Income Tax Act*) of the partnership that ended before that time (or, if the partnership's first fiscal period includes that time, for that period), the total of all amounts each of which is the share of that income from all sources that each member of the partnership is entitled to receive, and

(B) where the partnership had no income for the last fiscal period or the first fiscal period referred to in clause (A), as the case may be, the total of all amounts each of which is the share of the income of the partnership that each member of the partnership would be entitled to receive if the income of the partnership from each source were one dollar,

(ii) entitled to receive at least 90% of the total amount that would be paid to all members of the partnership (otherwise than as a share of any income of the partnership) if it were wound up at that time, and

(iii) able to direct the business and affairs of the partnership or would be so able if no secured creditor had any security interest in an interest in, or the property of, the partnership.

Election for nil consideration

(2) For the purposes of this Part, where a specified member of a qualifying group elects jointly with another specified member of the group, every taxable supply (other than a supply of real property by way of sale or of property, or of a service, that is not acquired by the recipient of the supply for consumption, use or supply exclusively in the course of commercial activities of the recipient) made between them at a time when the election is in effect is deemed to have been made for no consideration.

Cessation

(3) An election under subsection (2) made jointly by a particular member of a qualifying group and another member of the group ceases to have effect on the earliest of

- (a) the day on which the particular member ceases to be a specified member of the group;
- (b) the day on which the other member ceases to be a specified member of the group; and
- (c) the day on which the election is revoked jointly by those members.

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

2. (1) The Act is amended by adding the following after section 184:

Carrying on construction

184.1 (1) In this section, a reference to a particular person carrying on construction includes a reference to the particular person engaging another person, by way of acquiring services from the other person, to carry on construction for the particular person.

Performance bonds

(2) Where a person (in this subsection referred to as the "surety") acting as a surety under a performance bond in respect of a contract for a particular taxable supply of construction services relating to real property situated in Canada carries on the particular construction that is undertaken in full or partial satisfaction of the surety's obligations under the bond,

(a) for the purposes of this Part, other than those described in paragraph (b), if the surety is entitled to receive at any time from the obligee, by reason of carrying on the particular construction, an amount (in this subsection referred to as a "contract payment") that is not an amount the tax in respect of which was or will be required to be included in determining the net tax of the principal under the bond and is not an amount paid or payable as or on account of either tax under this Part or a tax, duty or fee payable by the obligee that is prescribed for the purposes of section 154,

(i) in carrying on the particular construction, the surety is deemed to be making, at the place where the particular supply was made, a taxable supply,

(ii) sections 150, 156 and 166 do not apply to that supply, and

(iii) the contract payment is deemed to be consideration for that supply;

(b) for the purposes of determining the extent to which property or services are acquired, imported or brought into a participating province by the surety for consumption, use or supply in the course of commercial activities and the extent to which property or services acquired, imported or brought into a participating province by the surety are consumed, used or supplied by the surety in the course of commercial activities, the carrying on of the particular construction is deemed not to be for the purpose of making a taxable supply and not to be a commercial activity of the surety;

(c) notwithstanding paragraph (b), if paragraph (a) deems a surety to be making a taxable supply, any property or service (each of which is, in this section, referred to as a "direct input") that the surety acquires, imports or brings into a participating province for consumption, use or supply exclusively and directly in the course of carrying on the particular construction and not for use as capital property of the surety or in improving capital property of the surety is deemed, for the purposes of this Part other than sections 155 and 156 and Divisions IV and IV.1, to have been acquired, imported or brought in by the surety for consumption, use or supply exclusively in the course of commercial activities of the surety; and

(d) the total amount of all input tax credits in respect of direct inputs that the surety is entitled to claim is equal to the lesser of that total determined without reference to this paragraph and

(i) where

(A) the amount determined by the formula

$$A \times B$$

where

A is

(I) where the supply deemed under subparagraph (a)(i) to be made by the surety is made in a participating province, the total of 7% and the tax rate for the participating province, and

(II) in any other case, 7%, and

B is the total of all contract payments (other than contract payments that are not in respect of the particular construction)

exceeds

(B) the total of all amounts, each of which would be an input tax credit of the surety in respect of a direct input but for the fact that tax is not payable by the surety in respect of the acquisition, importation or bringing into a participating province of the direct input because of section 150 or 167 or because of the fact that the surety is deemed to have acquired or imported it, or brought it in, for consumption, use or supply exclusively in the course of commercial activities,

that excess, and

(ii) in any other case, zero.

Determining credit
for construction
inputs

(3) Where a person acquires, imports or brings into a participating province property or a service for consumption, use or supply exclusively and directly in the course of carrying on

construction that includes the particular construction that is undertaken in full or partial satisfaction of the person's obligations as a surety under a performance bond and other construction, for the purposes of this section and of determining an input tax credit of the person and the total amount of all input tax credits of the person in respect of direct inputs that the person is entitled to claim,

(a) notwithstanding section 138, that part (in this subsection referred to as the "particular construction input") of the property or service that is for consumption, use or supply in the course of carrying on the particular construction and the remaining part (in this subsection referred to as the "additional construction input") of the property or service are each deemed to be a separate property or service that does not form part of the other;

(b) the particular construction input is deemed to have been acquired, imported or brought in, as the case may be, exclusively and directly for use in the course of carrying on the particular construction;

(c) the additional construction input is deemed not to have been acquired, imported or brought in, as the case may be, for consumption, use or supply in the course of carrying on the particular construction;

(d) the tax payable in respect of the supply, importation or bringing in, as the case may be, of the particular construction input is deemed to be equal to the amount determined by the formula

$$A \times B$$

where

A is the tax payable (in this subsection referred to as the "total tax payable") by the person in respect of the supply, importation or bringing in, as the case may be, of the property or service, determined without reference to this subsection, and

B is the extent (expressed as a percentage) to which the property or service was acquired, imported or brought in, as the case may be, for consumption, use or supply in the course of carrying on the particular construction; and

(e) the tax payable in respect of the additional construction input is deemed to be equal to the difference between the total tax payable and the amount determined under paragraph (d).

(2) Section 184.1 of the Act, as enacted by subsection (1), applies, in relation to a surety under a performance bond in respect of a contract for a particular supply of

construction services who carries on or engages another person to carry on for the surety the particular construction that is undertaken in full or partial satisfaction of the surety's obligations under the bond, as follows:

(a) the section applies where, after ANNOUNCEMENT DATE, the surety begins to carry on the particular construction or first engages another person to carry on the particular construction, unless, on or before that day, any amount that would be a contract payment within the meaning of that section in respect of the particular construction became due from or was paid by the obligee to the surety and the surety did not charge or collect any amount as or on account of tax under Part IX of the Act in respect of the amount; and

(b) the section (other than paragraphs (2)(b) to (d) and subsection (3) thereof) also applies where,

(i) on or before ANNOUNCEMENT DATE, the surety begins to carry on or first engages another person to carry on the particular construction,

(ii) on or before that day, the surety charged or collected an amount as or on account of tax under Part IX of the Act in respect of each amount, if any, that would be a contract payment within the meaning of that section in respect of the particular construction and that, on or before that day, became due from or was paid by the obligee to the surety, and

(iii) the surety did not, on or before that day, adjust, refund or credit, in accordance with section 232 of the Act, any amount referred to in subparagraph (ii) that was charged or collected as or on account of tax,

except that, in applying paragraph 184.1(2)(a) of the Act, as enacted by subsection (1), in the circumstances described in subparagraphs (b)(i) to (iii), it shall be read without reference to the words "other than those described in paragraph (b)".

3. (1) Subsection 236(1) of the Act is replaced by the following:

Food, beverages and
entertainment

| 236. (1) Where
|

| (a) an amount (in this subsection referred to as the "composite amount")

(i) becomes due from a person, or is a payment made by a person without having become due, in respect of a supply of property or a service made to the person, or

(ii) is paid by a person as an allowance or reimbursement in respect of which the person is deemed under section 174 or 175 to have received a supply of property or a service,

(b) subsection 67.1(1) of the *Income Tax Act* applies, or would apply if the person were a taxpayer under that Act, to all of the composite amount or that part of it that is, for the purposes of that Act, an amount paid or payable in respect of the human consumption of food or beverages or the enjoyment of entertainment and deems the composite amount or that part to be 50% of a particular amount, and

(c) tax included in the composite amount or deemed under section 174 or 175 to have been paid by the person is included in determining an input tax credit in respect of the property or service that is claimed by the person in a return for a reporting period in a fiscal year of the person,

the person shall, in determining the net tax for the appropriate reporting period of the person, add the amount determined by the formula

$$50\% \times A/B \times C$$

where

A is the particular amount,

B is the composite amount, and

C is the input tax credit.

Appropriate reporting
period

(1.1) Where a person is required under subsection (1) to add, in determining the person's net tax, an amount determined by reference to an input tax credit claimed by the person in a return for a reporting period in a fiscal year of the person, for the purposes of that subsection, the appropriate reporting period of the person is,

(a) if the person ceases to be registered under Subdivision d in a reporting period ending in that fiscal year, that reporting period;

(b) if that fiscal year is the person's reporting period, that reporting period; and

(c) in any other case, the person's reporting period that begins immediately after that fiscal year.

Unreasonable
amounts

(1.2) Where tax calculated on an amount (in this subsection referred to as the "unreasonable consideration") that is all or part of the total amount that becomes due from a person, or is paid by a person without having become due, in respect of a supply of property or a service made to the person is, because of subsection 170(2), not to be included in determining an input tax credit, for the purposes of subsection (1), that total amount is deemed to be the amount, if any, by which it exceeds the total of the unreasonable consideration and all gratuities, and taxes, duties or fees under this Part or under an Act of the legislature of a province, that are paid or payable in respect of the unreasonable consideration.

(2) Subsection (1) applies,

(a) in the case of an amount that becomes due or is paid without having become due in respect of a supply of food, beverages or entertainment and in the case of an amount paid as a reimbursement or allowance in respect of a supply of food, beverages or entertainment, for the purpose of determining net tax for reporting periods ending after ANNOUNCEMENT DATE and for the purpose of determining any rebate under subsection 261(1) of the Act the application for which is received by the Minister of National Revenue on or after that day, and

(b) in any other case, to amounts that become due after that day or are paid after that day without having become due

except that, in its application to any person who ceases, before that day, to be registered under Subdivision d of the Act, paragraph 236(1.1)(a) of the Act, as enacted by subsection (1), shall be read as follows:

(a) if the person ceases in or at the end of that fiscal year to be registered under Subdivision d, for the person's last reporting period in that fiscal year;

DRAFT REGULATIONS AMENDING
THE FINANCIAL SERVICES (GST) REGULATIONS

AMENDMENTS

1. Section 1 of the *Financial Services (GST) Regulations* is replaced by the following:

1. These Regulations may be cited as the *Financial Services (GST/HST) Regulations*.

2. (1) The definition "person at risk" in subsection 4(1) of the Regulations is replaced by the following:

"person at risk", in respect of an instrument in relation to which a service referred to in subsection (2) is provided, means a person who is financially at risk by virtue of the acquisition, ownership or issuance by that person of the instrument or by virtue of a guarantee, an acceptance or an indemnity in respect of the instrument, but does not include a person who becomes so at risk in the course of, and only by virtue of, authorizing a transaction, or supplying a clearing or settlement service, in respect of the instrument.

(2) Paragraph 4(3)(c) of the Regulations is replaced by the following:

(c) an agent, salesperson or broker who arranges for the issuance, renewal or variation, or the transfer of ownership, of the instrument for a person at risk or a person closely related to the person at risk.

COMING INTO FORCE

3. (1) Section 1 is deemed to have come into force on April 1, 1997.

(2) Section 2 is deemed to have come into force on December 31, 1990.