Amendments to the Excise Tax Act, the Excise Act, 2001 and Related Acts and the Air Travellers Security Charge Act

Explanatory Notes

Published by
The Honourable James M. Flaherty, P.C., M.P.
Minister of Finance

November 2006

Canada

Amendments to the Excise Tax Act, the Excise Act, 2001 and Related Acts and the Air Travellers Security Charge Act

Explanatory Notes

Published by
The Honourable James M. Flaherty, P.C., M.P.
Minister of Finance

November 2006

Department of Finance Canada
Ministère des Finances Canada

Available from the

Distribution Centre
Department of Finance Canada
Room P-135, West Tower
300 Laurier Avenue West
Ottawa, Ontario K1A 0G5
Tel: 613 943-8665
Fax: 613 996-0901

Price : $15.00 including GST

This document is available free on the Internet
at www.fin.gc.ca

Cette publication est également disponible en français

Cat No.: F2-179/2006E
ISBN 0-660-19683-2

Preface

The legislation to which the explanatory notes relate mainly implements proposed measures relating to the Goods and Services Tax and Harmonized Sales Tax (GST/HST). The legislation also contains measures relating to the *Excise Act, 2001*, a new legislative framework for the taxation of spirits, wine and tobacco products. Finally, the legislation contains measures relating to the Air Travellers Security Charge.

The GST/HST measures are principally aimed at improving the operation and fairness of the GST/HST in the affected areas and ensuring that the legislation accords with the policy intent. In some cases, adjustments have been made to the legislation as originally proposed in response to representations from the tax and business communities.

The excise measures implement minor refinements that will improve the operation of the *Excise Act, 2001* and more accurately reflect current industry and administrative practices. They also implement related and consequential amendments to the *Access to Information Act*, the *Customs Act*, the *Customs Tariff* and the *Excise Tax Act*.

The measures pertaining to the Air Travellers Security Charge include previously announced relief provisions as well as technical changes to the *Air Travellers Security Charge Act*.

The explanatory notes describe the proposed amendments, clause by clause, for the assistance of Members of Parliament and Senators as well as for taxpayers and their professional advisors.

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

Table of Contents

Clause 1

Short Title

This clause provides that the enactment to which these notes relate may be cited as the "*Sales Tax Amendments Act, 2006*".

Part 1
Amendments to the Excise Tax Act

Amendments in Respect of the Goods and Services Tax/Harmonized Sales Tax

Clause 2

Definitions

ETA
123(1)

Subsection 123(1) of the *Excise Tax Act* (the "Act") defines a number of terms that apply for the purposes of Part IX of the Act and related Schedules.

Subclause 2(1)

Definition "closely related group"

ETA
123(1)

Existing definition "closely related group" refers to a group of corporations each member of which is closely related within the meaning of section 128 of the Act (i.e., generally, there is at least 90 per cent common ownership among the corporations). Members of a closely related group may be eligible to make the elections under section 150 or 156 of the Act in respect of certain intra-group supplies or may file joint applications to offset, under subsection 228(7) of the Act, one corporation's refunds against another's tax owing.

Under the current legislation, there may be situations in which two corporations, that are part of a 90 per cent or more common ownership group and that are each a registrant resident in Canada, will not be part of a closely related group because one or more of the corporations that connect them in the ownership structure are either non-residents or non-registrants. An example of this would be two resident and registrant corporations (CanCo1 and CanCo2) each of which is 100 per cent owned respectively by corporations (NR1 and NR2) that are both non-residents and non-registrants, with NR1 and NR2 in turn being 100 per cent owned by another non-resident non-registrant corporation (NR3). In this case, CanCo1 and CanCo2 are not closely related under section 128 and consequently not part of a closely related group, because NR1 and NR2 are not "qualifying subsidiaries" (as defined in subsection 123(1)) of NR3 as they are not resident in Canada. Also, subsection 128(2) does not assist CanCo1 and CanCo2 to be closely related as it does not allow the fact that NR1 and NR2 are not registrants to be ignored. As a result, while CanCo1 and CanCo2 are both registrants and residents in Canada and are part of a 90 per cent or more common ownership group, they are not part of a closely related group (as currently defined) and cannot make the elections provided for under sections 150, 156 and 228.

The definitions “closely related group” and “qualifying subsidiary” and section 128 are amended to move the registration and residency requirements, currently in section 128 and the definition “qualifying subsidiary”, to the definition “closely related group” in subsection 123(1). The effect of this change is that the determination of whether a corporation is a qualifying subsidiary and whether two corporations are closely related to each other will be based on the degree of share ownership of the corporations, and of other corporations in the ownership structure, without reference to the registration or residency status of any of those corporations. However, while corporations that are non-resident and/or non-registrant can be closely related to one another, only those closely related corporations that are both registrants and resident in Canada can be members of a closely related group (as defined in subsection 123(1)) and be party to elections provided under sections 150, 156 and 228 open to members of a closely related group. The impact of these amendments in the example above is that CanCo1, CanCo2, NR1, NR2 and NR3 are now all closely related to one another under amended section 128, but only CanCo1 and CanCo2 are members of a closely related group under the amended definition of that expression.

The definition “closely related group” is also amended to include two deeming rules that apply for the purposes of the definition “closely related group”. These rules are currently in section 128. Specifically, in subsection 128(1), a non-resident insurer with a permanent establishment in Canada is deemed to be a resident in Canada and, in paragraph 128(3)(*a*), a credit union and a member of a mutual insurance group are deemed to be registrants. These deeming rules are deleted from section 128 and included in the definition “closely related group”. This change has no effect on the ability of a non-resident insurer, credit union or member of a mutual insurance group to be a member of a closely related group.

The amendments are deemed to have come into force on November 17, 2005.

Subclause 2(2)

French Definition “logement en copropriété”

ETA
123(1)

A “residential condominium unit” is a “residential complex” (as defined in subsection 123(1)) that is, or is intended to be, a separate unit within a building registered or described on a condominium or strata lot plan or description, or a similar plan or description registered under provincial law.

As a result, an area of a building that is intended to be a condominium unit would be considered a “residential condominium unit” even though the area is not yet registered or described on a plan.

The current French version of the definition “residential condominium unit” uses the term “censé être” to accomplish the same objective as “intended to be” accomplishes in the English version. However, depending on the context, “censé être” generally means “supposed to be” or “deemed to be”. In a particular case litigated in French and involving owner-built condominium units, the Tax Court of Canada concluded that the current wording of the Act did not allow for a GST New Housing Rebate since the units could not be considered “residential condominium unit” before their limits are actually described on a plan even though it was what the appellants intended to do.

The French version of the definition is amended by replacing the term “censé être” by “destiné à être”. This new term is consistent with the term used in the French version of the definition “residential complex” that also contains the notion of units that are owned or intended to be owned separately from other units.

The amendment is deemed to have come into force on January 1, 2000.

Subclauses 2(3) and (4)

Definition "basic tax content"

ETA
123(1)

The definition "basic tax content" provides that the basic tax content of a person's property is generally the amount of tax under Part IX that the person was required to pay on the property and improvements to it, after deducting any amounts (other than input tax credits) that the person was entitled to recover by way of rebate, refund, remission or otherwise and after taking any depreciation in the value of the property into account. The basic tax content includes not only tax that was actually paid but also the tax that otherwise would have been payable when the property (or improvements to the property) was last acquired if not for subsection 153(4) of the Act or section 167 of the Act or the fact it was acquired or brought in for consumption, use or supply exclusively in the course of commercial activities.

Subparagraph (iii) of the description of A in paragraph (*a*) and subparagraph (iv) of the description of J in paragraph (*b*) of the definition "basic tax content" are amended to provide that the basic tax content of a property also includes tax that otherwise would have been payable, in the absence of new section 167.11 of the Act, when the property (or improvements to the property) was last acquired.

The amendments are deemed to have come into force on June 28, 1999.

Subclause 2(5)

Definition "qualifying subsidiary"

ETA
123(1)

The definition "qualifying subsidiary" in subsection 123(1) is relevant for the purposes of the definition "closely related corporations" in section 128. The definition "qualifying subsidiary" is amended to delete the requirement that a qualifying subsidiary be resident in Canada, as this residency requirement is now contained in the amended definition "closely related group" in subsection 123(1). These changes are further explained in the commentary on definition "closely related group".

The amendment is deemed to have come into force on November 17, 2005.

Subclause 2(6)

Definition "listed international agreement"

ETA
123(1)

The definition "listed international agreement" is added to subsection 123(1) as a consequence of the amendments to subsections 289(1) and 295(5) and paragraph 328(2)(*a*). The agreemetn included in the definition is the *Convention on Mutual Administratie Assistance in Tax Matters*, concluded at Strasbourg on January 25, 1988, as amended from time to time. That Convention provides a framework for governments to combat tax avoidance and tax evasion on a global scale by facilitating the exchange of information between national tax administrations.

The amendment comes into force on Royal Assent.

Definition "Superintendent"

ETA
123(1)

Subsection 123(1) is amended to add the definition "Superintendent". The definition provides that "Superintendent" means the Superintendent of Financial Institutions appointed pursuant to the *Office of the Superintendent of Financial Institutions Act*. The Superintendent may make orders authorizing a foreign bank to become an authorized foreign bank permitted to establish a branch in Canada to carry on banking business in Canada. Only transfers of property or services made pursuant to an authorized foreign bank reorganization that has been approved by the Superintendent qualify for the tax-free rollover election provided by new section 167.11.

The amendment is deemed to have come into force on June 28, 1999.

Clause 3

Closely Related Corporations

ETA
128

Section 128 of the Act contains rules for determining whether two corporations are considered to be "closely related" for the purposes of Part IX of the Act. This determination is relevant for determining whether a corporation can be a member of a closely related group (as defined in subsection 123(1) of the Act) and thus eligible to make an election under section 150 or 156 of the Act, which effectively exempt or treat as zero-rated respectively transactions between members of the closely related group. It is also relevant for determining whether a corporation is eligible to file joint applications to offset one corporation's refunds against another's tax owing.

Subsection 128(1) provides that two corporations are considered to be closely related if they are registrants and resident in Canada and if there is a degree of common ownership of at least 90 per cent. Subsection 128(1) is amended to remove the requirement that the two corporations both be registrants resident in Canada to be considered closely related. However, in respect of the concept of closely related group, this requirement still exists and is now contained in the amended definition "closely related group" in subsection 123(1). This change is further explained in the commentary on that definition.

Subsection 128(2) provides that if two corporations are closely related to the same corporation under subsection 128(1), or would be if all the corporations were Canadian residents, these two corporations are considered to be closely related to each other. Subsection 128(2) is amended to delete the words "or would be so related if all the corporations were resident in Canada" given that those words are no longer needed as amended subsection 128(1) no longer requires that two corporations both be resident in Canada in order to be closely related to each other. Amended subsection 128(2) now simply provides that two corporations are closely related to each other if they are each closely related under subsection 128(1) to a third corporation.

Existing subsection 128(3) contains deeming rules, which apply for the purposes of determining if two corporations are closely related to one another under section 128. Subsection 128(3) is amended to delete paragraph (*a*) which deems credit unions and members of a mutual insurance group to be registrants for the purposes of section 128. Since a corporation no longer needs to be a registrant in order to be closely related to another corporation under amended section 128, this deeming rule is no longer needed. Subsection 128(3) now only deems an investment fund that is a member of a mutual insurance group to be a corporation.

The amendments are deemed to have come into force on November 17, 2005.

Clause 4

Supply by Small Supplier Division

ETA
129.1(1)

Subsection 129.1(1) of the Act parallels section 166 of the Act and clarifies that, similar to a small supplier, a "small supplier division" of a public sector body designated under section 129 of the Act is not required to collect and remit tax on most of its supplies. Consistent with section 166, subsection 129.1(1) currently does not provide relief for sales of real property by small supplier divisions of a public sector body.

Effective March 10, 2004, section 166 was amended, as a result of the increased rebate for municipalities, to also exclude from its application sales of personal property by a municipality that is capital property of the municipality and sales of "designated municipal property" (as defined in subsection 123(1) of the Act) of a person designated to be a municipality for the purposes of section 259 of the Act that is capital property of the person.

Subsection 129.1(1) is amended to provide parallel treatment between municipalities that are small suppliers and small supplier divisions of a municipality with respect to supplies made by way of sale of capital personal property. Parallel treatment is also extended to small supplier divisions of designated municipalities with respect to supplies made by way of sale of "designated municipal property".

The amendment applies to any supply for which consideration becomes due after Announcement Date or is paid after that day without having become due, but does not apply to any supply made under an agreement in writing entered into before the day following that day.

Clause 5

Election for Exempt Supplies

ETA
150(2) and (2.1)

Section 150 of the Act entitles two corporations that are members of the same closely related group that includes a listed financial institution to make an election to treat certain transactions between them as exempt supplies of financial services. Subsection 150(2) describes transactions that are excluded from the application of this rule.

New paragraph 150(2)(*c*) excludes certain supplies of services in relation to the clearing or settlement of cheques and other payment items. Specifically, group relief would not apply to a supply of such services if they were acquired, in whole or in part, by the first purchasing group member, or by any subsequent closely related purchaser, for the purpose of making a supply of exempt services (as defined in new subsection 150(2.1)) to an unrelated party (as defined in new subsection 150(2.1)).

This provision applies in circumstances in which the re-supply to the unrelated party were made by a member of the group that is a deposit-taking institution belonging to the Canadian Payments Association (the "CPA"). Further, the unrelated party must be acquiring the services for the purpose of providing services in relation to clearing or settlement.

The result of the amendment is that a corporation that is not itself a CPA member must charge tax on clearing services provided in respect of payment items that are deposited at financial institutions outside the corporation's closely related group. Group relief continues to apply to services supplied between members of the group for their own use, that is, for clearing payment items deposited at financial institutions that are part of the closely related group.

New paragraph 150(2)(*c*) comes into force on September 14, 2001. The amendment does not apply to a supply of clearing services that is acquired to make an exempt supply to an outside purchaser where the agreement for the supply to the outside purchaser was entered into before September 14, 2001. If the agreement for the supply to the outside purchaser was entered into after September 13, 2001, then the amendment applies only to those clearing services that are provided after that date. In determining if a supply of clearing services is provided after that date, it should be noted that subsection 136.1(2) of the Act already deems a separate supply of a service to be made for each billing period under the agreement for the supply. A transitional rule for this amendment further divides a supply of services for any billing period that includes September 14, 2001, by deeming the provision of the services before that day and the provision of the services on or after that day to be two separate supplies.

New subsection 150(2.1) adds new definitions that are used throughout new paragraph 150(2)(*c*).

New definition "exempt services" means services prescribed by section 3 of the *Financial Services (GST/HST) Regulations*. These services, which are prescribed for the purposes of paragraph (*m*) of the definition "financial service" in subsection 123(1) of the Act, comprise any service in relation to the clearing and settlement of cheques and other payment items under the national payments system of the Canadian Payments Association that is supplied by the Association or any of its members.

New definition "unrelated party" means, in respect of a supply of services in relation to the clearing and settlement of cheques and other payment items under the national payments system of the Canadian Payments Association, a person that receives a supply of such services, that is not a member of a closely related group (as defined in subsection 123(1)) of which the supplier of that supply is a member of and that acquires those services for the purpose of making a supply of services in relation to the clearing or settlement of cheques and other payment items under the national payments system of the Canadian Payments Association. An example of an unrelated party would be a smaller bank which obtains cheque clearing services from an unrelated larger bank so that the smaller bank can allow its customers to deposit payment items issued by other financial institutions.

The amendment to new subsection 150(2.1) comes into force on September 14, 2001.

Clause 6

Election for Closely Related Persons

ETA
156

Section 156 of the Act allows supplies between certain members (defined as "specified members") of a closely related group of corporations and partnerships resident in Canada to be effectively treated as zero-rated supplies if those member corporations and partnerships are all engaged exclusively in commercial activities (and, therefore, are entitled to fully recover any tax paid on purchases from other members in any event). This is achieved by specified members electing to treat certain supplies between them as having been made for no consideration. The effect is that the members need not account for otherwise fully recoverable tax on the supplies.

Subclauses 6(1) and (2)

Definitions

ETA
156(1)

Subsection 156(1) provides definitions that apply for the purposes of section 156. The amendments to section 156 modify the existing definitions "qualifying group" and "specified member" and add new definitions "distribution", "qualifying member" and "temporary member".

The amendments to subsection 156(1) are deemed to have come into force on November 17, 2005.

Definition "qualifying group"

Existing definition "qualifying group" refers to a group whose members are entitled to make an election under subsection 156(2) if they qualify as "specified members". A qualifying group means a "closely related group", as defined in subsection 123(1) of the Act as being a group of corporations each member of which is a registrant, resident in Canada and closely related (generally, 90 per cent or more common ownership) to each other within the meaning of section 128 of the Act. A qualifying group also means a group consisting of Canadian partnerships, or of Canadian partnerships and corporations resident in Canada, that are all registrants and are closely related to one another, according to the rules set out in subsections 156(1.1) and (1.2).

The definition "qualifying group" is amended so that a corporation no longer has to be resident in Canada or a registrant in order to be a member of a qualifying group. As well, in the case of a Canadian partnership, it no longer has to be a registrant, though members of the partnership still have to be resident in Canada, in order to be a member of a qualifying group. These registration and residency requirements are instead moved to new definition "qualifying member" in subsection 156(1), which determines who is eligible to make the election under subsection 156(2). These changes are further explained in the commentary on that definition.

Definition "specified member"

Existing definition "specified member" refers to persons that are eligible to make an election under subsection 156(2). Currently, the meaning of specified member is limited to corporations and partnerships that are members of a qualifying group of closely related corporations and partnerships and are not party to an election under subsection 150(1) of the Act. Also, the members must meet the condition that all or substantially all of their property was last manufactured, produced, acquired or imported for consumption, use or supply exclusively in the course of their commercial activities or, if they have no property (other than financial instruments), all or substantially all of their supplies were taxable supplies.

The definition "specified member" is amended to provide that a specified member of the qualifying group (as defined in subsection 156(1)) includes a temporary member (as defined in subsection 156(1)) of the group as well as a qualifying member (as defined in subsection 156(1)). The effect of the change is that a corporation which exists to receive a supply made in contemplation of a distribution made in the course of a reorganization described in subparagraph 55(3)(*b*)(i) of the *Income Tax Act*, and which prior to that supply never carried on business or owned property, can qualify as a specified member and make an election under subsection 156(2). However, a temporary member only qualifies as a specified member during the course of a reorganization. Once the reorganization is completed, the temporary member must meet the requirements of being a qualifying member or else it will cease to be a specified member and any election previously made by it under subsection 156(2) will cease to be valid.

The conditions that were in existing definition "specified member" are now contained in new definition "qualifying member".

Definition "distribution"

New definition "distribution" has the same meaning as under subsection 55(1) of the *Income Tax Act*. A distribution is the direct or indirect transfer of property of a corporation to one or more of its corporate shareholders such that each corporation that receives property on the distribution receives its pro rata share of each type of property owned by the distributing corporation immediately before the distribution.

Definition “qualifying member”

New definition “qualifying member” has a similar meaning to the existing definition “specified member”. Therefore, a “qualifying member” is a corporation or partnership that is a member of a qualifying group of closely related corporations and Canadian partnerships and that is not a party to an election under subsection 150(1). The member must also meet the condition that all or substantially all of its property was last manufactured, produced, acquired or imported for consumption, use or supply exclusively in the course of its commercial activities or, if it has no property (other than financial instruments), all or substantially all of its supplies were taxable supplies. However, the definition adds additional requirements, not contained in the existing definition “specified member”, that the corporation or partnership be a registrant and that it be either a corporation resident in Canada or a Canadian partnership. The addition of residency and registration requirements is necessary as the same requirements are concurrently being removed from the definition “qualifying group” in subsection 156(1) and from subsections 156(1.1) and 156(1.2).

The effect of the amendments to this definition is that a corporation or Canadian partnership can be a member of qualifying group if it meets the ownership requirements (i.e., to have at least 90 per cent ownership of the corporation’s full voting shares or to hold all or substantially all of the interest in the partnership) despite its residency (in the case of a corporation) or its registration status. However, only those corporations or partnerships in the qualifying group that are both registrants and that are either corporations resident in Canada or Canadian partnerships qualify as qualifying members, which allows them to meet the amended definition “specified member” in subsection 156(1) and to make the election under subsection 156(2). As a result, corporations and Canadian partnerships that meet these residency and registration requirements and that form part of a 90 per cent or more common ownership group, but do not currently qualify as “specified members” because one or more of the corporations or partnerships in the ownership structure do not meet these residency and registration requirements, are now qualifying members and therefore specified members. These amendments parallel similar amendments to the definitions “closely related group” and “qualifying subsidiary” and to section 128.

Definition “temporary member”

New definition “temporary member” refers to a corporation that exists to receive a transfer of property from an existing corporation as part of a transaction undertaken to comply with the requirements of paragraph 55(3)(*b*) of the *Income Tax Act* (a “butterfly” transaction). This type of corporation cannot currently qualify as a “specified member” (as defined in existing subsection 156(1)) and cannot make the election in subsection 156(2) in respect of this transfer since, prior to receiving the property, it would not have had any property (other than possibly financial instruments) or made taxable supplies.

Amendments to section 156 allow this corporation, if it falls within the definition “temporary member”, to qualify as a “specified member” (as defined in subsection 156(1)) and to make the election in respect of a supply it receives that is made in contemplation of a distribution made in the course of a reorganization described in subparagraph 55(3)(*b*)(i) of the *Income Tax Act*. To qualify as a temporary member, a corporation must be resident in Canada and a registrant for the GST/HST. Further, it must receive the supply from a distributing corporation in contemplation of a distribution and its shares must be transferred in the course of the distribution. It must also be a member of the same qualifying group as the distributing corporation making the supply. In addition, the corporation cannot be a party to an election made under subsection 150(1) and, prior to receiving the supply, must not have had any business activities or owned any property other than financial instruments. Finally, if a corporation meets the requirement of being a qualifying member (as defined in subsection 156(1)), it cannot also be a temporary member at the same time.

Subclauses 6(3) to (9)

Closely Related Persons

ETA
156(1.1)

Subsection 156(1.1) contains rules for determining whether two Canadian partnerships, or a Canadian partnership and a corporation resident in Canada, are closely related for the purposes of section 156. Paragraph 156(1.1)(*a*) provides the rules for determining whether two Canadian partnerships are closely related. Paragraph 156(1.1)(*b*) provides the rules for determining whether a Canadian partnership is closely related to a corporation resident in Canada. In all cases, however, both persons must be registrants.

Subsection 156(1.1) is amended to remove the requirement that a person be a registrant, and the requirement that a corporation be a resident in Canada, in order to be closely related for the purposes of section 156. These residency and registration requirements are moved to the definition "qualifying member" in subsection 156(1) and are explained in the commentary on that definition.

The amendments are deemed to have come into force on November 17, 2005.

Subclause 6(10)

Persons Closely Related to the Same Person

ETA
156(1.2)

Subsection 156(1.2) provides that, where two persons are closely related to the same corporation or partnership under subsection 156(1.1), or would be so related if the corporation or each member of the partnership were resident in Canada, the two persons are considered closely related to each other for the purposes of section 156.

Subsection 156(1.2) is amended to remove the reference allowing the corporation to be considered resident in Canada for the purposes of determining if the two persons are closely related to the corporation. This reference is no longer needed, as amended subsection 156(1.1) no longer requires that a corporation be resident in Canada in order to be closely related to another corporation or to a Canadian partnership. Subsection 156(1.2) now simply provides that two persons are closely related to each other for the purposes of section 156 if they are each closely related under subsection 156(1.1) to the same corporation or partnership, or if they would be so related to that partnership if each member of that partnership were resident in Canada.

The amendment is deemed to have come into force on November 17, 2005.

Subclause 6(11)

Election for Nil Consideration

ETA
156(2) and (2.1)

Existing subsection 156(2) allows certain members (defined as "specified members" in subsection 156(1)) of a closely related group of corporations and/or Canadian partnerships to elect to treat certain taxable supplies between them as having been made for no consideration. The effect is that the members need not account for otherwise fully recoverable tax on the supplies. Subsection 156(2) excludes from the application of the election supplies by way of sale of real property and supplies of property or services that are not acquired for consumption, use or supply exclusively in the course of the recipient's commercial activities. Subsection 156(2) is amended to delete these exclusions from section 156. These exclusions are now contained in new subsection 156(2.1).

The amendments also add new subsection 156(2.1), which provides exclusions from the application of the election under section 156. Paragraphs 156(2.1) (*a*) and (*b*) contain the exclusions removed from existing subsection 156(2). Paragraph (*c*) contains a new exclusion that only applies to supplies where the recipient is a temporary member (as defined in subsection 156(1)). This paragraph provides that, in the case of these supplies, the election applies only to supplies received by the temporary member that are made in contemplation of a distribution made in the course of a reorganization described in subparagraph 55(3)(*b*)(i) of the *Income Tax Act*.

The amendments apply to supplies made after November 16, 2005.

Clause 7

Supply of Right to Use Coin-Operated Device

ETA
165(3.2)

Former subsection 165(3.1) of the Act sets out the rules for calculating the amount of tax payable on goods or services supplied through mechanical coin-operated devices that are built in such a way that they can accept only a single coin of twenty-five cents or less as the total consideration for the supply. Under these rules, the tax payable for such supply is equal to zero.

Former subsection 165(3.1) covers situations where the device dispenses goods, such as candy, or where a service is rendered through the operation of the device. The latter wording of former subsection 165(3.1) was intended to cover situations where a form of amusement or entertainment, such as the playing of a game, is provided through the operation of the device. However, in some such circumstances, the more accurate description of the supply is of a right to use the device, rather than a supply of a service.

New subsection 165(3.2) is added to the Act for greater certainty only to cover those circumstances and applies for supplies made after April 23, 1996 and before April 1, 1997, the period during which former subsection 165(3.1) was applicable.

Clause 8

Supply of Right to Use Coin-Operated Device

ETA
165.1(3)

Subsection 165.1(2) (formerly subsection 165(3.1)) of the Act sets out the rules for calculating the amount of tax payable on goods or services supplied through mechanical coin-operated devices that are built in such a way that they can accept only a single coin of twenty-five cents or less as the total consideration for the supply. Under these rules, the tax payable for such supply is equal to zero.

The existing subsection covers situations where the device dispenses goods, such as candy, or where a service is rendered through the operation of the device. The latter wording was intended to cover situations where a form of amusement or entertainment, such as the playing of a game, is provided through the operation of the device. However, in some such circumstances, the more accurate description of the supply is of a right to use the device, rather than a supply of a service.

New subsection 165.1(3) is added to the Act for greater certainty only to cover those circumstances. Since the application of the rule under subsection 165.1(2) in these circumstances is consistent with the manner in which the provision has been administered since its introduction, this clarifying amendment is made retroactive to April 1, 1997, the day on which subsection 165.1(2) came into effect.

Clause 9

Supply to Authorized Foreign Bank

ETA
167.11

New section 167.11 of the Act sets out rules that apply to certain supplies of property or services, made to a foreign bank by a related Canadian corporation, where the supply is made in order for the foreign bank to establish a branch and commence business in Canada as an authorized foreign bank (as defined in subsection 167.11(1)). This section permits, in certain circumstances, an otherwise taxable sale of property or a service to be made without tax applying if both parties to the transaction so elect under the rules and conditions set out in this section.

New section 167.11 is deemed to have come into force on June 28, 1999.

Subsection 167.11(1) - Definitions

Subsection 167.11(1) adds new definitions that are used throughout section 167.11.

Definition "authorized foreign bank"

New definition "authorized foreign bank" has the same meaning as under section 2 of the *Bank Act*. An authorized foreign bank is a foreign bank that has been permitted by the Superintendent of Financial Institutions to establish and carry on banking business through a branch in Canada.

Definition "foreign bank branch"

New definition "foreign bank branch" means a branch as defined in paragraph (*b*) of the definition "branch" in section 2 of the *Bank Act* in respect of an authorized foreign bank. That paragraph provides that a branch of an authorized foreign bank means an agency, the principal office or any other office of an authorized foreign bank where that bank carries on its Canadian banking business.

Definition "qualifying supply"

New definition "qualifying supply" means a supply made as part of a foreign bank reorganization where a foreign bank, which previously conducted business in Canada through a Canadian subsidiary but which has since been authorized by the Superintendent of Financial Institutions to establish a branch of the foreign bank in Canada, transfers property or services from a subsidiary to the branch. The definition "qualifying supply" is relevant in determining which supplies qualify for the election, provided for in subsection 167.11(2), which allows a tax-free rollover of certain property and services transferred to the foreign bank branch (as defined in this subsection).

In order for a supply to be a qualifying supply, it must be a supply of property, or of a service, made in Canada under an agreement for the supply. As well, the recipient must be a foreign bank that is, or has filed an application for an order under subsection 524(1) of the *Bank Act* with the Superintendent of Financial Institutions to become, an authorized foreign bank and the supplier must be a corporation resident in Canada that is related to that foreign bank. Also, the supply must be made after June 27, 1999 (the day on which the foreign bank branching legislation contained in the *Bank Act* came into force) and must be made before the day that is one year after the day on which the Act enacting this definition receives royal assent. However, if, during the one-year period after the date of royal assent, the Superintendent of Financial Institutions makes an order under subsection 534(1) of the *Bank Act* approving the foreign bank's application to commence and carry on business in Canada, then the supply can be made up to the day that is one year after the date of that order.

In addition, to be a qualifying supply, the foreign bank must acquire the property or service for consumption, use or supply for the purpose of the establishment and commencement of business in Canada as an "authorized foreign bank" at one of its branches. Moreover, if the related corporation is a registrant at the time the related corporation and the foreign bank enter into the agreement for the supply, the foreign bank must also be a registrant at that time. New paragraph 240(3)(*e*) of the Act permits a foreign bank that will enter into an agreement to receive a supply, which would meet the requirements of the definition "qualifying supply" but for the foreign bank not being a registrant, to register for the GST/HST. This ensures that a foreign bank that receives a qualifying supply from a registered related Canadian corporation has the opportunity to make the election under s. 167.11(2) in respect of the qualifying supply even if it is not otherwise permitted by section 240 to register.

Subsection 167.11(2) - Supply of Assets

Subsection 167.11(2) provides that where a corporation resident in Canada makes a qualifying supply (as defined in subsection (1)) to a foreign bank that is related to the corporation, the corporation and the foreign bank may make a joint election that allows a tax-free rollover of certain property and services supplied in the authorized foreign bank reorganization. As a consequence of the election, the related corporation and the foreign bank are deemed to have respectively made and received a separate supply of each property and service that is made under the agreement for the qualifying supply, notwithstanding that these properties and services may be supplied together in a single supply. When attributing the consideration for the qualifying supply to each property or service, no amount should be attributed to goodwill unless section 167.1 of the Act applies to the qualifying supply. If section 167.1 does not apply, any amount that has been allocated to goodwill should instead be attributed to a taxable supply of intangible personal property, in which case subparagraph 167.11(3)(*a*)(vi) applies to that supply. Moreover, subsections (3) to (6) apply to each deemed supply of property or service to determine the tax, if any, that is payable, any adjustments to net tax that may be made by the foreign bank and the impact of the election on the basic tax content of the transferred property. Under subsection (7), the election is valid only if the foreign bank files the election within the time period and under the conditions provided for in that subsection.

Subsection 167.11(3) - Effect of Election

Subsection 167.11(3) sets out further rules that apply when a foreign bank and a related corporation resident in Canada make the joint election referred to in subsection (2) in respect of a qualifying supply (as defined in subsection (1)) of property or a service.

Paragraph 167.11(3)(*a*) provides that tax is not payable on the deemed separate supply of property or a service that is made under the agreement for the qualifying supply. However, there are some exclusions from this rule similar to the existing exclusions contained in subsection 167(1.1) of the Act respecting the election for a tax-free supply of assets in the case of the sale of a business. Specifically, subparagraphs 167.11(3)(*a*)(i), (iii) and (iv) are similar to the existing subparagraphs 167(1.1)(*a*)(i), (ii) and (iii) in providing that tax continues to be payable on taxable supplies of either services to be rendered by the supplier (i.e., the related corporation), property by way of lease, license or similar arrangement by the related corporation or in the case of a taxable sale of real property where the foreign bank recipient is not a registrant.

In addition, subparagraph 167.11(3)(*a*)(ii) provides that tax is payable on taxable supplies of services if paragraph 167(1)(*a*) does not apply to the qualifying supply. Paragraph 167(1)(*a*) does not apply if the related corporation making the taxable supply of services is not making a supply of a business, or a part of a business, and if the foreign bank recipient is not acquiring ownership, possession or use of all or substantially all of the property that it would need to carry on the transferred business or part as a business.

Subparagraph 167.11(3)(*a*)(v) excludes from the relieving rule a taxable supply of property or a service that was previously made under an agreement for a qualifying supply if no tax was payable in respect of that previous supply by reason of subsection 167.11(3). As a result, property or a service may only be transferred once on a tax-free basis under these asset rollover provisions.

Also, subparagraph 167.11(3)(*a*)(vi) excludes from the relieving rule a taxable supply of intangible personal property (other than capital property) if there is a greater than 10% difference between the extent (expressed as a percentage of the total use of the property by the related corporation supplier) to which the related corporation used the property in commercial activities immediately before the qualifying supply is made and the extent (expressed as a percentage of the total use of the property by the foreign bank recipient) to which the foreign bank used the property in commercial activities immediately after the qualifying supply is made. In other words, no relief is provided for a taxable supply of intangible personal property if there is a significant (greater than 10%) decrease in the use of the property in commercial activities as a result of the transfer.

Paragraphs 167.11(3)(*b*) and (*c*) deem property that is supplied under the agreement for the qualifying supply, that was capital property of the related corporation supplier and that is acquired for use as capital property by the foreign bank recipient, to have been acquired by that foreign bank for use exclusively in commercial activities (where the supply would otherwise be taxable) or for use exclusively in non-commercial activities (where the supply would otherwise be exempt). These rules are similar to the deeming rules that apply to capital property under subsection 167(1.1) in the case of a supply of a business.

The purpose of these rules is to ensure that, if the foreign bank uses the property in commercial activities to a lesser extent than the related corporation last used the property (i.e., the foreign bank would have been entitled to a lesser input tax credit than the related corporation), the change-in-use rules in Subdivision d of Division II of Part IX of the Act will require the foreign bank to self-assess tax. The foreign bank may conversely be entitled to an input tax credit if the foreign bank uses the property in commercial activities to a greater extent than the related corporation last used the property. Further information can be found in the commentary on new subsections 205(4.1) and (5.1) of the Act.

Finally, paragraph 167.11(3)(*d*) provides that, if property that was used otherwise than as a capital property by the related corporation supplier before being supplied under the agreement for the qualifying supply, the foreign bank recipient is deemed to have acquired the property for consumption, use or supply in the course of commercial activities and otherwise than as capital property. This rule only applies if, in the absence of the election referred to in subsection (2), tax would have been payable by the foreign bank in respect of the supply of the property. The purpose of this rule is to trigger change-in-use rules under section 196.1 of the Act, if for example, there is an appropriation of property by the foreign bank for use as capital property that was previously inventory of the related corporation.

Subsection 167.11(4) - Basic Tax Content

Subsection 167.11(4) sets out rules that apply to determine the basic tax content of property acquired by a foreign bank recipient under an agreement for a qualifying supply if the property is, immediately before the time the qualifying supply is made, capital property of a related corporation supplier. These rules apply where the property is acquired from the related corporation on a tax-free basis because the joint election referred to in subsection 167.11(2) is made in respect of the qualifying supply. These basic tax content rules may be triggered if the foreign bank is required to pay tax, or may be entitled to claim an input tax credit, if the property is capital property and its extent of use in commercial activities changes following the supply.

The basic tax content, defined in subsection 123(1) of the Act, is generally the amount of tax under Part IX that the person was required to pay on the property and improvements to that property after deducting any amounts (other than input tax credits) that the person was entitled to recover by way of rebate, refund, remission or otherwise and after taking any depreciation in the value of the property into account. In the case of a supply of property, in the absence of special rules, the foreign bank recipient might in certain circumstances (e.g., supply of property acquired by the supplier before 1991 or property that has appreciated in value) be required to self-assess and account for tax based on the fair market value of the property, which tax could be higher than the tax that the related corporation supplier originally paid. Therefore, special rules are proposed to ensure that the supply from the related corporation to the foreign bank is ignored and that the basic tax content of the transferred property remains at the time the recipient acquires the property what it was immediately before the qualifying supply was made. However, in determining the basic tax content of that property after the time the

qualifying supply is made, the foreign bank must also take into account any amounts of tax payable and any other tax amounts required to be added (e.g., in the case of improvements to the property acquired by the foreign bank) or deducted under the basic tax content rules subsequent to the supply.

In order to accomplish this, subsection 167.11(4) provides a series of rules that effectively transfer the basic tax content of the property supplied under the agreement for a qualifying supply from the related corporation to the foreign bank by deeming the foreign bank to be in the shoes of the related corporation for the period between the last acquisition of the property by the related corporation and the time the qualifying supply is made.

Subsection 167.11(5) - Adjustment to Net Tax

Subsection 167.11(5) provides for an adjustment to net tax of the foreign bank in the case where a related corporation made a qualifying supply (as defined in subsection 167.11(1)) to the foreign bank but the two parties did not make the joint election under subsection 167.11(2) in respect of that supply until after the foreign bank had already paid tax on that supply. Subsection 167.11(5) provides a mechanism whereby that foreign bank can make an adjustment to its net tax to recover the tax it could have avoided paying if it had made the subsection 167.11(2) election at the time of the supply.

Subsection 167.11(5) provides an adjustment to net tax in respect of a supply of a property or a service, made under an agreement for the qualifying supply, where that supply would not be taxable by virtue of paragraph 167.11(3)(*a*) if the election referred to in subsection 167.11(2) is made. Subsection 167.11(5) applies to supplies of property or a service made under an agreement for a qualifying supply, but only if that agreement is made before November 17, 2005. This subsection applies to each supply of property or of a service, deemed to have been made separately under subsection 167.11(2), rather than to the qualifying supply as a whole. The amount of the adjustment to net tax that the foreign bank can make in respect of such a supply is the amount of tax the foreign bank actually paid on the non-taxable supply of the property or service minus all amounts of that tax paid, in respect of the property or service, that the foreign bank either recovered through an input tax credit claim, rebate, refund, remission or other means or could have recovered through a deduction from net tax (other than an amount determined under subsection 167.11(5)).

Subsection 167.11(6) - Limitation Period Where Election

Subsection 167.11(6) modifies the normal limitation period that applies for the purpose of making an assessment, reassessment or additional assessment to take into account an amount payable by a foreign bank, or an amount remittable by a related corporation, in the case where the foreign bank and the related corporation make the joint election referred to in subsection 167.11(2) in respect of a qualifying supply (as defined in subsection 167.11(1)). Subsection 167.11(6) provides that the four-year limitation period that applies solely for this purpose begins on the day that is the later of the day on which the foreign bank and related corporation make the joint election referred to in subsection 167.11(2) and the day on which the qualifying supply is made. As a result, the limitation period for an assessment, reassessment or additional assessment may be extended as a result of making the joint election where the election is made some time after the supply of property or service is made.

Subsection 167.11(7) - Validity of Election

Subsection 167.11(7) sets out conditions and time requirements for validity of the joint election referred to in subsection 167.11(2) by a foreign bank recipient and a related corporation supplier in respect of a qualifying supply (as defined in subsection 167.11(1)). If the foreign bank is a registrant at the time the qualifying supply is made, paragraph 167.11(7)(*a*) provides that the joint election must be filed with the Minister of National Revenue in prescribed form containing prescribed information, no later than the day that is the latest of (i) the day on which the foreign bank was first required to file a return to report tax that would, in the absence of the provisions of section 167.11, be payable in respect of the supply of property or a service made under the agreement for the qualifying supply received by that foreign bank; (ii) the day that is one year after the day on which the Act enacting section 167.11 receives royal assent; and (iii) any later day that the Minister may permit to file the election if the foreign bank so applies. If, instead, the foreign bank is not a registrant at the time the

qualifying supply is made, paragraph 167.11(7)(*a*) provides that the joint election must be filed no later than the latest of the three days described above except that the day provided for in subparagraph (i) is the day that is one month after the end of the reporting period for which tax would, in the absence of section 167.11, have become payable in respect of the supply of property or service supply made under the agreement for the qualifying supply received by the foreign bank.

Paragraph 167.11(7)(*b*) provides that a joint election can only be made in respect of qualifying supplies made within a one-year period. In other words, a joint election is only valid in respect of a qualifying supply if that supply is made on or before the day that is one year after the day on which the recipient has received for the first time a qualifying supply in respect of which a joint election referred to in subsection (2) has been made.

Finally, paragraph 167.11(7)(*c*) provides that the joint election referred to in subsection 167.11(2) in respect of a qualifying supply is not valid if, on or before the day on which the election is filed, the foreign bank has made a valid election under subsection 167(1) in respect of that qualifying supply. As a result, if the foreign bank and the related corporation have already chosen to make the election, under subsection 167(1), in respect of the qualifying supply, they cannot then also avail themselves of the election referred to in subsection 167.11(2) that is particular to authorized foreign bank reorganizations.

Clause 10

Acquisition of Used Returnable Containers

ETA
176(1)(*a*) and (*d*)

Existing section 176 of the Act deems tax to have been paid by a registrant in certain circumstances where the registrant has acquired used returnable containers from a person not required to charge tax (e.g., where a consumer returns used containers to a redemption centre in exchange for a refund). The effect is that the registrant may be able to claim an input tax credit for the tax component of the amount refunded.

The amendments to subsection 176(1) exclude returnable containers, as defined in amended subsection 226(1) of the Act, from the ambit of section 176 since the effect of the amendments to section 226 is to exclude refundable deposits on beverage containers for taxable products from the GST/HST tax base. Accordingly, section 176 no longer needs to apply to those containers, as there would no longer be any tax component in the refund for them.

The amendments apply to used containers for which consideration becomes due or is paid (i.e., refunds are given) after July 15, 2002, which is 75 days after the implementation date of May 1, 2002 for the changes to section 226. There is therefore a 75-day transition period during which registrants may continue to be able to claim input tax credits in respect of the acquisition of used containers regardless of whether any tax was originally charged on the container deposits. This reflects the fact that the deposits on returnable beverage containers already in circulation at the time of implementation of the amendments to section 226 include an amount of tax. It should be noted that, for the purposes of applying section 176 during that 75-day transition period, existing section 226 applies. For example, the meaning of "returnable container" in existing subsection 226(1) continues to apply for the purposes of section 176 throughout the transition period.

Clause 11

Agents

ETA
177

Section 177 of the Act deals with supplies made by agents, including auctioneers, on behalf of principals. The rules stipulate which party is required to account for and remit tax respecting these supplies.

Subclause 11(1)

Election for Agent to Account for Tax

ETA
177(1.1)

Subsection 177(1.1) provides for an election in cases where an agent who is a registrant makes a supply (otherwise than by auction) on behalf of a principal who is required to collect tax in respect of the supply. Subsection 177(1.1) allows the principal and the agent to elect jointly to have the agent report and remit the tax as if it were collectible by the agent.

Paragraph 177(1.1)(*a*) provides that, if the election under subsection 177(1.1) between a principal and an agent is made in respect of a supply, the tax collectible in respect of the supply is to be included in the net tax calculation of the agent and not of the principal.

This paragraph is amended to also provide that sections 222 and 232 of the Act apply as if the tax, or any amount charged or collected as or on account of tax, were collectible, charged or collected, as the case may be, by the agent and not by the principal. As a result of the addition of the reference to section 222, amounts collected by the agent as or on account of tax are deemed to be held in trust by the agent for the Crown separate and apart from other funds of the agent. The reference to section 232 ensures that, if the agent has charged to, or collected from, a customer an excess amount of tax, or reduces the consideration and tax collectible in respect of a supply, and provides a refund, credit, or adjustment in accordance with section 232, the agent can claim the deduction under that section.

Existing paragraph 177(1.1)(*b*) provides that the principal and the agent are jointly and severally liable for all obligations arising upon or as a consequence of the tax on the supply becoming collectible or any failure to account for or remit the tax. Wording changes are made, for clarification purposes only, to reflect the fact that there is no obligation for a supplier to remit tax collectible in respect of a supply *per se* but rather the remittance obligations under the GST/HST are with respect to a positive amount of net tax, or to any repayment required under section 230.1 of the Act of an over-payment of a net tax refund, that is reasonably attributable to the supply.

In addition, paragraph 177(1.1)(*b*) is amended to provide that the principal and agent are also jointly and severally liable with respect to any claims the agent may make under section 231 or 232 of the Act (i.e., in respect of bad debts or price or tax adjustments relating to the supply).

The amendments to paragraph 177(1.1)(*b*) ensure that the principal and the agent are jointly and severally liable for all obligations (including any interest or penalty) arising as a consequence of an underpayment of net tax, or an overpayment of a net tax refund, that results from the agent erroneously claiming or over-claiming a deduction under section 231 or 232.

New subparagraphs 177(1.1)(*b*)(v) and (vi) ensure that, if the agent claims bad debt relief under subsection 231(1) relating to the supply, the principal and agent are jointly and severally liable for a determined amount in respect of the GST/HST on the supply if all or part of the bad debt is subsequently recovered. In the event of a recovery, subsection 231(3) requires the agent to add back to net tax an amount determined by that subsection.

New paragraph 177(1.1)(*c*) provides that the agent must include the consideration for the supply in the calculation of the agent's threshold amounts under subsections 249(1) and (2) of the Act, which are relevant to the determination of the agent's reporting periods. Accordingly, the consideration is not included in determining the principal's threshold amounts under those subsections.

Subsection 177(1.1) is also amended to harmonize it with the civil law applicable in the province of Quebec by adding a reference to a principal and agent being "solidarily" liable, which is comparable to the common law concept of joint and several liability.

The amendments to paragraph 177(1.1)(*a*) apply to supplies made after December 20, 2002. The amendments to paragraph 177(1.1)(*b*) apply to any supply made after April 23, 1996 in respect of which the election under subsection 177(1.1) applies. In the case of supply made before December 21, 2002, in respect of which an election was made before that day, the only amendments to paragraph 177(1.1)(*b*) that apply retroactively are those relating to the agent's claims for bad debt relief. This coincides with the retroactive coming into force of the amendments to the bad debt provisions in section 231, which apply to supplies made after April 23, 1996 and allow an agent to claim any deduction under section 231 relating to those supplies (see commentary on amendments to section 231).

New paragraph 177(1.1)(*c*) applies to supplies made after December 20, 2002.

It should be noted that the rules under new subsection 177(1.11) permitting billing agents to also use the election under subsection 177(1.1) apply only to supplies made after December 20, 2002.

Subclause 11(2)

Election for Billing Agent and Revocations

ETA
177(1.11) and (1.12)

Subsection 177(1.11) - Election for Billing Agent to Account for Tax

New subsection 177(1.11) applies where a supplier engages a registrant to act as a billing agent respecting supplies made by the supplier. The registrant in this case acts as the supplier's agent in charging and collecting consideration and tax respecting the supply, but does not act as the supplier's agent with respect to the making of the supply.

New paragraph 177(1.11)(*a*) deems the billing agent to also act as agent in making the supply just for the purposes of enabling the supplier and the agent to apply subsection 177(1.1). If all other conditions of subsection 177(1.1) are met, the supplier and agent may make an election under that subsection. This amendment gives billing agents the same option for accounting for tax as in the case of agents who make supplies on behalf of suppliers.

The deeming rule under paragraph 177(1.11)(*a*) does not apply for all purposes of Part IX of the Act. However, new paragraph 177(1.11)(*b*) provides that, in the event that the supplier and the billing agent do make the election under subsection 177(1.1), the agent is deemed to have acted as agent in making the supply on behalf of the supplier for purposes of all provisions that refer to a supply in respect of which such an election has been made. For example, subparagraph (*b*)(iii) of the description of A of the net tax formula for charities under subsection 225.1(2) of the Act refers to supplies made on behalf of another person for whom the charity acts as agent and in respect of which the charity has made an election under subsection 177(1.1). That description in the formula would therefore also apply where the charity acted only as a billing agent and made the election.

As a result of a principal and their billing agent making the election under subsection 177(1.1) in respect of a supply, the billing agent must report and remit the tax in respect of that supply and is the only person entitled to claim bad debt relief respecting the supply under section 231 in cases where the supplier writes off the bad debt in the supplier's books of account (see commentary on amendments to section 231). Similarly, if a price or tax adjustment is made under section 232 of the Act in respect of the supply, only the billing agent is entitled to the corresponding deduction under section 232.

In addition, the supplier and the billing agent are jointly and severally, or solidarily, liable under paragraph 177(1.1)(*b*) for obligations arising from the requirement to account for or remit net tax attributable to the supply, from the claiming of deductions by the billing agent under section 231 or 232 and from the requirement to account for or remit amounts attributable to the additions to net tax required by subsection 231(3) resulting from a recovery of bad debts in respect of the supply.

Principals and their billing agents may make elections under subsection 177(1.1) only with respect to supplies made after December 20, 2002.

Subsection 177(1.12) - Joint Revocation

New subsection 177(1.12) provides for the joint revocation of an election made under subsection 177(1.1) by a principal and their agent with respect to any supply.

The revocation must be with respect to a particular supply or supplies that are made on or after the effective date specified in the revocation. The principal and agent can backdate a revocation so as to accommodate, for example, a situation where the parties had originally made the election to have the agent report the tax on the supplies in question but the supplier in fact reported the tax.

If an election is revoked with respect to a supply, the election is deemed never to have been made in respect of that supply. Therefore, the agent also thereby revokes the agent's entitlement to claim bad debt deductions under section 231 and deductions under section 232 with respect to that supply. The principal would instead be so entitled if all the conditions were met by the principal.

New subsection 177(1.12) comes into force on December 20, 2002.

Clause 12

Meaning of "Specified Service" by a Charity

ETA
178.7(1)

Subsection 178.7(1) of the Act defines the term "specified service" for purposes of subsection 178.7(2) and paragraph (*d.1*) of section 1 of Part V.1 of Schedule V to the Act. Specified services supplied to registrants by a charity that is designated under subsection 178.7(3) are excluded from the general exemption under section 1 of Part V.1 of Schedule V.

Paragraph 178.7(1)(*b*) of the French version of the Act is amended by replacing the term "bénéficiaire" by the term "acquéreur" (as defined in subsection 123(1) of the Act) to ensure consistency between both official versions of the Act.

The amendment is deemed to have come into force on February 24, 1998, the day section 178.7 came into force, and applies to reporting periods of a charity beginning after that day.

Clause 13

Import Arrangements

ETA
178.8

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

New section 178.8 applies to goods imported on or after October 3, 2003 and to goods imported before that day that were not accounted for under section 32 of the *Customs Act* before that day.

Subsection 178.8(1) – Definition "specified supply"

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

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

Subsection 178.8(2) – Deemed Importer of Goods

Section 178.8 deals with circumstances in which imported goods are for the consumption, use or supply in Canada by the person who is referred to as the "constructive importer". Since it is the constructive importer's activities for which the goods are immediately destined after they are imported into Canada, it is those activities that should determine eligibility for any recovery of tax on the importation of the goods. However, in some cases, in the absence of new subsection 178.8(2), the constructive importer would not meet all of the conditions for achieving such recovery.

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

The constructive importer is the person to whom a supply of the goods outside Canada is made and who does not, at any time before the goods are released under the *Customs Act*, supply the goods outside Canada. New subsection 178.8(2) will only apply if the goods supplied outside Canada to the constructive importer are imported for the constructive importer's consumption, use or re-supply. The supply to the constructive importer may be considered to be made outside Canada either by virtue of where the legal delivery of the goods to the constructive importer takes place or by virtue of section 143 of the Act, which deems a supply of goods to be made outside Canada, despite their delivery in Canada, if the supplier is a non-resident person who is not registered for GST/HST purposes and does not make the supply in the course of a business carried on in Canada. For example, if such a non-resident supplier enters into an agreement to sell goods that are then located outside Canada, but are to be imported for delivery in Canada to the recipient of the supply, and that is the last agreement for a supply of the goods made outside Canada that is entered into before the goods are released, that supply qualifies as a "specified supply" and the recipient of that supply is the constructive importer of the goods.

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

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

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

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

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

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

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

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

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

Subsections 178.8(5) to (7) - Agreement Regarding Rebates, Abatements and Refunds

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

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

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

By virtue of subsection 178.8(7), if the specified importer and constructive importer so agree under subsection 178.8(5), the specified importer may claim any rebate, abatement or refund that may be available as a result of the application of subsection 215.1(2) or (3) or 216(6) or (7), but only if the specified importer issues to the constructive importer a "tax adjustment note" indicating the amount of the rebate, abatement or refund. The consequences for the constructive importer who receives a tax adjustment note are similar to those that result from a person receiving a credit note issued under section 232 of the Act by a supplier for a tax adjustment in respect of a domestic supply. If the constructive importer had already claimed an input tax credit or rebate for the amount, the constructive importer would have to add back the amount to their net tax or repay the amount as if it were an overpayment of a rebate received by the constructive importer.

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

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

Subsections 178.8(8) and (9) - Application

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

Similarly, the deeming rules in section 178.8 do not apply for purposes of sections 220.07, 236.3 or 273.1 of the Act, Schedule VII to the Act, the *Non-Taxable Imported Goods (GST/HST) Regulations* or the *Value of Imported Goods (GST/HST) Regulations*, all of which relate to the calculation of tax under Division III. For example, in some cases, whether an imported good is exempt from tax under Division III pursuant to a provision of Schedule VII or the Regulations, or whether the good is subject to tax calculated on a reduced value, depends, among other things, on the status of the importer and the purposes for which the importer brings the goods into Canada. The conditions of those relieving provisions must be met without regard to the deeming rules under section 178.8. In most cases, those conditions are only met by the person for whose consumption, use or supply in Canada the goods are imported and therefore that person must also be the importer in order for the relieving provision to apply.

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

Subsection 178.8(10) – Limitation Period where Retroactive Agreement

Where a registrant has made a taxable supply of goods outside Canada to the constructive importer of the goods and accounts for the goods at the time of their entry into Canada, the registrant and constructive importer may enter into an agreement under subsection 178.8(3). Under subsection 178.8(4), this agreement has the effect of permitting the supplier to claim an input tax credit for the GST/HST payable on the importation. In that case, the supplier would have to charge the constructive importer GST/HST under Division II on the supply of the goods to the constructive importer as if it had been made in Canada.

Subsection 178.8(10) extends in certain circumstances the limitation period for making an assessment, reassessment or additional assessment to take into account an amount payable or remittable by the registrant or the constructive importer as a result of the registrant and constructive importer entering into an agreement under subsection 178.8(3). Subsection 178.8(10) only applies if the agreement is entered into after the goods have been imported. The limitation period to make any assessment, reassessment and additional assessment is extended until four years after the day on which the agreement is entered into for the purpose of taking into account an amount payable or remittable by the registrant or constructive importer as a result of the application of subsection 178.8(4).

Clause 14

Sale of Real Property

ETA
193(1)(*b*)

Subsection 193(1) of the Act allows, in certain circumstances, a registrant who makes a taxable supply of real property to claim an input tax credit for previously non-recoverable tax paid by the registrant in respect of the property. The credit is equal to the amount determined by the formula A x B, where the description of A is the lesser of the basic tax content of the property at the time of the supply and the tax that is or would, in the absence of section 167 of the Act, be payable in respect of the taxable supply. The description of B is the percentage of the total use of the property otherwise than in commercial activities of the registrant immediately before the sale.

The amendment adds a reference to new section 167.11 of the Act in paragraph (*b*) of the description of A of the formula to take into account the tax that would have been payable in the absence of that section.

The amendment is deemed to have come into force on June 28, 1999.

Clause 15

Value of Passenger Vehicle

ETA
201(*b*)

Section 201 of the Act limits the amount that a registrant is allowed to claim as an input tax credit in respect of the acquisition, importation or bringing into a province of a passenger vehicle to the amount of the maximum capital cost of the vehicle for the purposes of the *Income Tax Act*. The method of calculating the maximum capital cost of a passenger vehicle is set out in paragraphs 13(7)(*g*) and (*h*) of the *Income Tax Act*, which refer to paragraph 7307(1)(*b*) of the *Income Tax Regulations*. Since January 1, 2001, the maximum capital cost of a passenger vehicle is $30,000, exclusive of GST/HST and provincial sales taxes.

Section 201 is amended to clarify that the amount of the maximum capital cost of the vehicle is to be calculated exclusive of any federal or provincial sales taxes that may be included in that amount for income tax purposes.

This amendment applies to passenger vehicles that are acquired, imported or brought into a participating province after Announcement Date and to any passenger vehicle that is acquired, imported or brought into a participating province on or before that day unless an input tax credit in respect of the vehicle was claimed in a return filed under Division V of Part IX of the Act on or before that day and was determined on the basis that the capital cost of the passenger vehicle for the purposes of the *Income Tax Act* included federal or provincial sales taxes.

Clause 16

Improvement to Passenger Vehicle

ETA
202(1)

Section 202 of the Act sets out rules governing input tax credits in respect of passenger vehicles and aircraft. Subsection 202(1) provides that if an improvement to a passenger vehicle of a registrant increases the cost to the registrant of the vehicle to an amount that exceeds the maximum capital cost of the vehicle for the purposes of the *Income Tax Act*, an input tax credit may not be claimed in respect of the tax on that excess. The method of calculating the maximum capital cost of a passenger vehicle is set out in paragraphs 13(7)(*g*) and (*h*) of the *Income Tax Act*, which refer to paragraph 7307(1)(*b*) of the *Income Tax Regulations*. Since January 1, 2001, the maximum capital cost of a passenger vehicle is $30,000, exclusive of GST/HST and provincial sales taxes.

Subsection 202(1) is amended to clarify that the amount of the maximum capital cost of the vehicle is to be determined exclusive of any federal or provincial sales taxes that may be included in that amount for income tax purposes.

This amendment applies to improvements to passenger vehicles that are acquired, imported or brought into a participating province after Announcement Date and to any such improvements that are acquired, imported or brought into a participating province on or before that day unless an input tax credit in respect of the improvement was claimed in a return filed under Division V of Part IX of the Act on or before that day and was determined on the basis that the capital cost of the passenger vehicle for the purposes of the *Income Tax Act* included federal and provincial sales taxes.

Clause 17

Acquisition of Assets

ETA
205

Section 205 of the Act provides that change-in-use rules for capital real property also apply to capital personal property of a financial institution in certain circumstances. For example, these change-in-use rules may apply where, in acquiring all or part of a business of a registrant, a financial institution is deemed by section 167 of the Act to have either acquired property exclusively in commercial activities or, conversely, exclusively otherwise than in the course of commercial activities. Amendments are made to section 205 consequential to the addition of new section 167.11 of the Act.

The amendments to section 205 are deemed to have come into force on June 28, 1999.

Subclause 17(1)

Acquisition of Asset by Foreign Bank

ETA
205(4.1)

New subsection 205(4.1) is similar to existing subsection 205(4) but it applies where an election has been made under section 167.11 rather than under section 167. Subsection 205(4.1) applies if a foreign bank and a corporation related to that foreign bank make the joint election referred to in subsection 167.11(2) in respect of a qualifying supply at the time the foreign bank and the related corporation are both registrants. Subsection 205(4.1) also requires that the related corporation make a supply of capital personal property to the foreign bank under the agreement for the qualifying supply, that subsection 167.11(3) deems that foreign bank to have acquired the property for use exclusively in commercial activities and that, immediately after the transfer, the foreign bank actually uses that property as capital property but not exclusively in commercial activities.

If all these conditions are met, subsection 205(4.1) provides that subsection 193(1) of the Act, which normally only applies to sales of real property, applies to capital property supplied by a related corporation to a foreign bank, which may allow that corporation to claim an input tax credit for previously non-recoverable tax paid by that corporation. As well, the change-in-use rules in subsections 206(4) and (5) of the Act apply to the capital personal property so acquired by the foreign bank requiring the foreign bank to self-assess and pay tax. It should be noted that while subsections 206(4) and (5) normally only apply to capital real property or, in the case of a financial institution, to personal property having a cost in excess of $50,000, there is no cost threshold to the application of subsections 206(4) or (5) where they apply to personal property by virtue of the application of subsection 205(4.1).

Subclause 17(2)

Acquisition of Asset by Foreign Bank

ETA
205(5.1)

New subsection 205(5.1) is similar to existing subsection 205(5) but applies where an election has been made under section 167.11 rather than under section 167. Subsection 205(5.1) applies if a foreign bank and a corporation related to that foreign bank make the joint election referred to in subsection 167.11(2) in respect of a qualifying supply at the time the supplier and the registrant are both registrants. Subsection 205(5.1) also requires that a supply of capital personal property by the related corporation to the foreign bank be made under the agreement for the qualifying supply, that subsection 167.11(3) deems that foreign bank to have acquired the property for use otherwise than in commercial activities and that, immediately after the transfer, the foreign bank actually uses that property as capital property in commercial activities.

If all these conditions are met, subsection 205(5.1) provides that the change-in-use rules in subsection 206(2) apply to the foreign bank which may entitle that foreign bank to claim an input tax credit. It should be noted that while subsection 206(2) normally only applies to capital real property or, in the case of a financial institution, to personal property having a cost in excess of $50,000, there is no cost threshold to the application of subsection 206(2) where it applies to personal property by virtue of the application of subsection 205(5.1).

Clause 18

Abatement or Refund of Tax as if it were Duty

ETA
215.1(3)

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

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

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

Clause 19

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

ETA
216(4) to (6)

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

The amendments come into force on January 1, 1998, when the related changes to the *Customs Act* came into force. However before December 12, 2005, the reference to “President of Canada Border Services Agency” in subsection 216(5) shall be read as “Commissioner”.

Clause 20

Definition "imported taxable supply"

ETA
217(*b.11*)

Division IV of Part IX of the Act imposes tax in respect of certain supplies made outside Canada and in respect of other supplies on which the recipient, as opposed to the supplier, is required to account for tax. Section 217 defines the expression "imported taxable supply" for purposes of Division IV.

The amendment to paragraph 217(*b.11*) adds another type of supply to the definition "imported taxable supply" for the purposes of the tax imposed under Division IV of Part IX of the Act and is related to the addition of new subsections 178.8(3) and (4) of the Act (see commentary on those subsections). Those subsections provide for a mechanism whereby a registrant that has supplied goods outside Canada and then imported the goods for the recipient (referred to as the "constructive importer") can claim a full input tax credit for the tax imposed in respect of the importation but must, at the same time, charge tax under Division II of Part IX of the Act to the recipient as if the supply had been made in Canada. This mechanism ensures that tax is ultimately borne on thegoods if, after being imported, they are not intended for consumption, use or supply in the course of commercial activities.

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

New paragraph 217(*b.11*) applies to any supply of goods by way of lease, licence or similar arrangement by a non-resident unregistered person in the circumstances in which subsection 143(1) deems the supply to be made outside Canada where the original supply by way of lease, licence or similar arrangement to the recipient had been deemed under new subsection 178.8(4) to be made in Canada. New subsection 178.8(4) applies to goods imported on or after October 3, 2003 and to goods imported before that day that were not accounted for under section 32 of the *Customs Act* before that day.

Clause 21

Definitions

ETA
220.01

Section 220.01 of the Act defines terms used throughout Division IV.1 of Part IX of the Act, which provides for tax on property and services brought into a participating province. The amendments to section 220.01 add the definitions of the terms "provincial authority", "specified provincial tax" and "specified value".

The term "provincial authority" means any department or agency of a province that is empowered under the laws of that province to collect, at the time when a specified motor vehicle is registered in the province, any "specified provincial tax" (as defined in section 220.01) imposed in respect of the vehicle. This term is used in the definition "specified value".

The term "specified provincial tax" means, in the case of a specified motor vehicle registered in a participating province, the provincial tax imposed in that province on the sale of a vehicle in certain circumstances where the HST is not applicable. This term is used in the definitions "provincial authority" and "specified value".

The term "specified value" means the value, in the case of a specified motor vehicle that a person is required to register under the laws of a participating province relating to the registration of motor vehicles, that would be attributed to the vehicle by the "provincial authority" (as defined in section 220.01) for that province for the purpose of calculating the "specified provincial tax" (as defined in section 220.01) payable if, at the time of registration, that tax were payable in respect of the vehicle.

The amendments are deemed to have come into force on April 1, 1997.

Clause 22

Tax in Participating Province

ETA
220.05(1)(*a*)

Section 220.05 of the Act provides for self-assessment of the provincial component of the HST in respect of certain tangible personal property brought into a participating province from a non-participating province.

In the case of "specified motor vehicle" (as defined in subsection 123(1) of the Act), subsection 220.05(1) provides that the tax is to be calculated on a prescribed value set out by regulations. The amendment replaces the term "prescribed value" by the term "specified value" following the introduction of the definition of this term in section 220.01 of the Act.

The amendment is deemed to have come into force on April 1, 1997.

Clause 23

Value of Goods

ETA
220.07(3)(*a*)

Section 220.07 of the Act imposes a requirement to self-assess the provincial component of the HST in respect of most taxable importations of goods into the participating province where the goods are not subject to tax under Division III of Part IX of the Act. Where the property is a "specified motor vehicle" (as defined in subsection 123(1) of the Act), subsection 220.07(3) provides that the tax under subsection 220.07(1) of the Act is to be calculated on a prescribed value set out by regulations.

The amendment replaces the term "prescribed value" by the term "specified value" following the introduction of the definition of this term in section 220.01 of the Act.

The amendment is deemed to have come into force on April 1, 1997.

Clause 24

Exception for Specified Motor Vehicle

ETA
220.09(2)

Subsection 220.09(2) of the Act provides an exception to the general rules regarding the manner in which tax imposed under Division IV.1 of Part IX of the Act must be reported and paid in respect of a "specified motor vehicle" (as defined in subsection 123(1) of the Act). The provincial component of the HST imposed on specified motor vehicles imported or brought into a participating province is not required to be reported in any return, and it must be paid in the prescribed manner at the time the person registers the vehicle or the day on or before which the vehicle is required to be registered, whichever is earlier.

The amendments provide the manner in which that tax is required to be paid. Although the tax is payable to Her Majesty in Right of Canada, the amendment to subsection 220.09(2) provides that the tax shall be paid to provincial authorities (as defined in section 220.01 of the Act) in their capacity as agent of Her Majesty in Right of Canada.

The amendments are deemed to have come into force on April 1, 1997.

Clause 25

Export Trading House Certificate

ETA
221.1(2)(*a*)

Existing section 221.1 of the Act sets out the conditions under which the Minister of National Revenue may authorize the use of export certificates. Such certificates may be provided to a supplier in lieu of evidence of export for the purpose of zero-rating a sale of goods.

Subsection 221.1(2) empowers the Minister to authorize a person registered for GST/HST purposes to use an export certificate for the purpose of acquiring goods on a zero-rated basis. One of the conditions for determining eligibility to use such a certificate is that at least 90% of the value of the registrant's inventory purchases in the twelve-month period following the effective date of the certificate is expected to be attributable to purchases that would be included in section 1 of Part V of Schedule VI to the Act if there were no export documentation requirement. However, existing paragraph 221.1(2)(*a*) contains an incorrect cross-reference to section 1.1 of Part V of Schedule VI, instead of to section 1 of that Part.

The amendment corrects this cross-reference, effective January 1, 2001, the day on which other related amendments to subsection 221.1(2) came into force.

Clause 26

Net Tax Calculation for Charities

ETA
225.1(2)

Section 225.1 of the Act sets out a streamlined accounting method by which registrants that are charities calculate their net tax.

Paragraph (*c*) of the description of A in subsection 225.1(2) identifies amounts that a charity must add in determining its net tax remittance for a reporting period under the simplified accounting method. These amounts are in respect of the recovery of a bad debt under subsection 231(3) of the Act involving a taxable sale of real property or capital property or in respect of a tax adjustment under subsection 232(3) of the Act on the acquisition of real property or capital property.

A minor change is made to paragraph (*c*) of the description of A in subsection 225.1(2) to clarify that in the case of the recovery of a bad debt, the charity is the supplier of the property rather than the recipient.

The amendment to paragraph (*c*) applies for the purpose of determining the net tax of a charity for reporting periods beginning after 1996, which correspond to the application of subsection 225.1(2).

Under description of B of the net tax formula in subsection 225.1(2), a charity may claim certain input tax credits or deductions from net tax.

Existing paragraph (*b.1*) of the description of B provides for a charity operating a bottle return depot to claim a net tax deduction in respect of returnable containers for which it pays refunds of deposits where the total amount refunded by the charity includes the provincially-mandated deposit, where applicable, and GST/HST calculated on that deposit. The purpose of this provision is to entitle the charity to a net tax deduction for the tax component of the amount it refunds in respect of the deposit equal to 7% (or 15% where the charity is in a participating province). The circumstances in which the net tax deduction may be claimed and the calculation of the amount of the deduction are set out in existing section 226.1 of the Act.

Paragraph (*b.1*) is repealed since the effect of amendments to section 226 of the Act is to exclude refundable deposits on beverage containers for taxable products from the GST/HST tax base. Accordingly, paragraph (*b.1*) is no longer needed, as refunds would no longer include any tax.

The application rule for the repeal of paragraph (*b.1*) reflects the fact that charities have, in effect, four years to claim a deduction under that paragraph to which they have become entitled. The entitlement, based on the application of section 176 of the Act, extended up to and including July 15, 2002. Since the related amendments to section 226 apply as of May 1, 2002, a 75-day transition period has been provided during which a charity continued to be entitled to claim the deduction in respect of refunds paid on returned beverage containers, regardless of whether any tax was originally charged on the container deposits, provided of course that all other conditions for claiming the deduction were met. This reflects the fact that the deposits on returnable beverage containers already in circulation on May 1, 2002 would have included an amount of tax.

It should be noted that, for the purpose of applying paragraph (*b.1*) of the description of B of the formula in subsection 225.1(2) during the 75-day transition period, existing section 226 applies. For example, the meaning of "returnable container" in existing subsection 226(1) continues to apply in relation to the transition period for the purpose of determining the amount that may be deducted by a charity under subsection 226.1(1).

Clause 27

Selected Listed Financial Institution Election

ETA
225.2(5)

Subsection 225.2(4) of the Act allows a "selected listed financial institution" (as defined in subsection 225.2(1)) to elect with a closely related supplier to use a cost-based method of determining the value of certain supplies made between them for purposes of the financial institution's net tax calculation under the HST. Existing subsection 225.2(5) requires the election to be filed with the Minister of National Revenue by a specified time, with no provision for late-filed elections. The amendment gives the Minister discretion to accept an election filed on any later day that the Minister may allow.

The amendment comes into force on October 3, 2003.

Clause 28

Returnable Containers

ETA
226

Section 226 of the Act sets out the GST/HST rules relating to returnable beverage container deposits.

Subclause 28(1)

Separate Supply of Beverage and Container

ETA
226(2)

Existing subsection 226(2) deems the supply of a beverage in a returnable container to be separate from the supply of the container. The purpose of this deeming provision is to segregate the container from the beverage so that the general rule, in subsection 226(3), excluding amounts from the registrant's net tax applies only to the tax attributed to the container. The purpose of this deeming provision is also to ensure that the general rule, in subsection 226(4), that a registrant may not claim an input tax credit with respect to tax paid or payable on purchases of beverages in returnable containers applies only to the tax attributed to the container.

Subsection 226(2) is amended to specify that the supply of a beverage in a returnable container is separate from the provision of the container only in circumstances in which the supplier typically does not unseal the container when serving the beverage to the customer. This is in accordance with the policy intent that no part of the charge to the consumer for the beverage should be attributed to the container in the circumstance where the supplier unseals the container when serving the beverage since it is one in which the supplier normally retains the container for a refund of the deposit. This is typically the case with eat-in restaurants and bars.

This amendment generally applies to supplies made after 1995 and before May 1, 2002, when section 226 is repealed and replaced. However, this amendment does not apply if the supplier applied, in an application received at an office of the Canada Revenue Agency before February 8, 2002, for a refund of tax the supplier attributed to the container. The amendment also does not apply if the supplier had already accounted for the tax on the supply of the beverage, in a return received by the Agency before February 8, 2002, by excluding an amount that the supplier attributed to the container.

Subclause 28(2)

Returnable Beverage Containers

ETA
226(1)

Section 226 sets out the GST/HST rules relating to returnable beverage container deposits. Under amended section 226, the non-refundable portion of a deposit continues to be subject to tax if the supply of the beverage is taxable. However, the refundable portion of a deposit is excluded from the GST/HST tax base.

Amended section 226 comes into force on May 1, 2002 and applies to supplies for which consideration becomes due on or after that day or is paid on or after that day without having become due. There are, however, two exceptions to this rule. First, existing section 226 continues to apply for the purposes of applying sections 176 and 226.1 of the Act to supplies of used returnable containers for which consideration is paid or becomes due on or before July 15, 2002. Second, new subsections 226(4), (6) and (7) do not apply to supplies for which consideration is paid or becomes due on or before July 15, 2002.

Consequently, a 75-day transition period has been provided during which registrants continued to be entitled to claim input tax credits in respect of the acquisition of used containers regardless of whether any tax was originally charged on the container deposits. This reflects the fact that the deposits on returnable beverage containers already in circulation at the time of implementation of the amendments to section 226 included an amount of tax. As noted, for the purpose of applying section 176 of the Act during that 75-day transition period, existing section 226 applies. For example, the definition "returnable container" in existing subsection 226(1) continues to apply for purposes of section 176 throughout the transition period.

Subsection 226(1) – Definitions

Subsection 226(1) defines the following terms used in amended section 226.

Definition "applicable legislated amount"

In most cases, the "applicable legislated amount" in a province for a returnable container is the "legislated consumers' refund" (as defined in subsection 226(1)) that is provided for under an Act of the legislature of the province in respect of the recycling of returnable containers. The "legislated consumers' refund" is essentially the amount that, under that Act, must be paid to a consumer as a refund for a used and empty returnable container.

Paragraph (*b*) of the definition "applicable legislated amount" alternatively applies if, under an Act of the legislature of the province in respect of recycling, a legislated consumers' refund for a returnable container of that class is specified as well as an amount referred to as the "recycler's reimbursement".

The "recycler's reimbursement" is an amount that must be paid for a used and empty returnable container of that class to a person who paid an amount as the legislated consumers' refund for the container when acquiring it used and empty. Also, the recycler's reimbursement must be an amount that is paid otherwise than specifically as a handling charge. Finally, in order for paragraph (*b*) to apply, there must be no amount specified, under an Act of the legislature of the province, as the amount, or the minimum amount, that must be charged by a distributor in respect of the supply of a filled and sealed container of that class.

Therefore, paragraph (*b*) applies where the provincial legislation provides for an amount of the refund that must be paid to a consumer returning a returnable container of a particular class but does not provide for the deposit in respect of the sale of a beverage in a container of that class. If the legislation also provides for an amount that must be paid to the person who accepted the container from a consumer, otherwise than as any kind of handling charge, that amount would be the "applicable legislated amount".

As an example, assume a provincial Act stipulates that the refund for a returnable beverage container of a particular class must be at least $0.17 but does not specify any amount of deposit that must be charged in relation to the supply of a beverage in a returnable container of that class. Also assume that the Act stipulates that beverage distributors in the province must pay (aside from any handling charge) $0.20 per container to bottle depots in the province for each returnable container of that class they collect. The "applicable legislated amount" would be $0.20. The term "applicable legislated amount" is used in the definition "refund" in subsection 226(1).

Definition "consumers' recycler"

The term "consumers' recycler", in respect of returnable containers of a particular class, refers to a person who, in the ordinary course of their business, acquires used and empty returnable containers of that class from consumers for consideration (i.e., who pays refunds to consumers for empty containers). It includes, for example, bottle depots and retailers who accept returns of beverage containers. The term "consumers' recycler" is used in the definition "refund" in subsection 226(1).

Definition "distributor"

A "distributor" of a returnable container of a particular class refers to a person who supplies beverages in filled and sealed returnable containers (as defined in subsection 226(1)) of that class and who charges a "returnable container charge" (also defined in subsection 226(1)) in respect of the returnable containers. A distributor can be, for example, a bottler, a wholesaler or a retailer of beverages in filled and sealed returnable containers. The term "distributor" is used in the definitions "applicable legislated amount" and "returnable container charge" in subsections 226(1) and is also used in subsection 226(6).

Definition "legislated consumers' refund"

The term "legislated consumers' refund", in a province for a returnable container of a particular class, refers to the amount, or the minimum amount, that, under an Act of the legislature of the province in respect of recycling, must be paid in certain circumstances to a consumer for a used and empty returnable container of that class. The term "legislated consumers' refund" is used in the definition "applicable legislated amount" in subsection 226(1).

Definition "recycler"

A "recycler" of returnable containers of a particular class is defined as a person who, in the ordinary course of their business, acquires used and empty returnable containers (as defined in subsection 226(1)) of that class, or the material resulting from their compaction, for consideration (i.e., for refunds). A "recycler" also includes a person who pays consideration to another person in compensation for that other person acquiring used and empty returnable containers of that class and paying consideration for those containers. The term "recycler" is used in the definition "returnable container charge" in subsection 226(1) and in subsections 226(6) and (7).

For example, a recycler can be a retailer or a redemption centre operator who accepts empty containers from consumers and pays refunds. A recycler would also include a bottler who buys back used and empty refillable beverage containers. An example of a recycler included in paragraph (*b*) of this definition is a corporation or provincial board that pays amounts to redemption centres or retailers in compensation for those centres or retailers accepting used and empty returnable containers and paying refunds.

Definition "recycling"

The term "recycling" refers to the return, redemption, reuse, destruction or disposal of returnable containers (as defined in subsection 226(1)) or of returnable containers and other goods. The term also more generally refers to the control or prevention of waste or the protection of the environment. The term "recycling" is used in the definitions "applicable legislated amount", "legislated consumers' refund" and "returnable container charge" in subsection 226(1), as well as in subsections 226(6) and (7).

Definition "refund"

The term "refund" is used throughout new section 226. Under the new rules of section 226, the refundable portion of a deposit on a returnable beverage container is excluded from the GST/HST base. In the case of a taxable supply of a beverage, the GST/HST continues to apply to the non-refundable portion (if any) of the returnable container charge (as defined in subsection 226(1)). The taxable portion of the returnable container charge is the portion that is greater than the refund.

The "refund" for a returnable container is defined with reference to a province and a particular time, since this amount may vary from province to province and over time. The term is also defined in relation to a container of a particular class. For example, the refund for a 355ml aluminium can may not be the same as the refund for a plastic beverage container.

The term "refund" is defined for purposes of its application in three different contexts. Under paragraph (*a*) of the definition, the term "refund" is defined in relation to a returnable container of a particular class that is being supplied used and empty, and in relation to a returnable container of a particular class that contains a beverage that is being supplied. Under paragraph (*b*) of the definition, the term is defined in relation to a returnable container of a particular class in respect of which a supply is being made of a service to which subsection 226(7) applies.

Under subparagraph (*a*)(i), the "refund" for a returnable container that is being supplied used and empty, or that contains a beverage that is being supplied, is the greatest of the amounts described in clauses (*a*)(i)(A) to (D). The refund is defined as the greatest of these amounts because consumers may receive varying amounts depending on where they return the containers.

In the majority of cases, the "refund" for a returnable container that is being supplied used and empty, or that contains a beverage that is being supplied, is the provincially-mandated amount that is paid in the province to a consumer that returns the used container to a retailer or other redemption centre. That amount is referred to in clause (*a*)(i)(A) of the definition "refund" as the "applicable legislated amount" and, in most cases, it will be the amount defined in subsection 226(1) as the "legislated consumers' refund".

Clause (*a*)(i)(B) deals with a case of a supply of the beverage in a container of a particular class where the supplier acquires used containers of that class from consumers and pays refunds. The amount under this clause is the usual refund paid to consumers by that supplier for containers of that class, provided it does not exceed the usual returnable container charge that the supplier charges for containers of that class.

Clause (*a*)(i)(C) deals with a case of a supply of a used and empty container by a supplier who accepts used containers of that class from consumers for refunds but who does not sell the beverage in those containers (e.g., a bottle depot). The amount under this clause is the usual refund that the supplier pays consumers for the used containers.

Clause (*a*)(i)(D) could apply in the context of a supply of the beverage in the container or in the context of a supply of the used container. Clause (D) deals with the situation where there is an established industry practice of suppliers charging a common amount as a returnable container charge. However, in the case described by clause (D), consumers can typically obtain varying amounts of refunds for the used containers depending on where they return them (e.g., to a retailer or a bottle depot). The amount under clause (D) is the greatest of those amounts paid to consumers, not exceeding the usual returnable container charge.

To illustrate the application of clause (D), assume a regulation under a provincial Act stipulates that the refund for a returnable container must be at least $0.05 and retailers commonly charge $0.10 as a returnable container charge. If bottle depots in the province pay a refund of $0.05 per container but retailers pay $0.10 per container, the "refund" for all such containers in that province would be considered to be $0.10 for the purposes of section 226.

The "refund" for a returnable container that is being supplied used and empty, or that contains a beverage that is being supplied, is the amount described in subparagraph (*a*)(ii) if none of clauses (*a*)(i)(A) to (D) applies, i.e.,

- there is no applicable legislated amount in the province for the returnable container,
- the supplier does not accept used containers of that class from consumers, and
- there is no established industry practice as described in clause (*a*)(i)(D) with respect to containers of that class.

In that case, the refund for purposes of section 226 is the portion of the refund paid in the greatest number of cases by consumers' recyclers in the province that does not exceed the returnable container charge that, in the greatest number of cases, beverage suppliers in the province charge for containers of that class.

To illustrate the application of subparagraph (*a*)(ii), assume a retailer who does not accept used containers sells beverages in filled and sealed containers of a particular class in a province in which there is no applicable legislated amount for a returnable container of that class. Also assume that, in that province, most consumers' recyclers pay $0.05 as a refund for used containers of that class and most suppliers charge a deposit of $0.05 when selling the beverage in the containers. The refund, in relation to that retailer's supply of the beverage in the container is $0.05, since it is the amount paid to consumers in most cases and it does not exceed the returnable container charge that is charged in most cases by suppliers in the province.

The term "refund" is also defined, under paragraph (*b*) of the definition, specifically for purposes of applying subsection 226(7). That subsection deals with circumstances such as where a recycling corporation pays a depot consideration for accepting used and empty returnable containers and paying refunds to consumers, but the corporation does not acquire those containers from the depot. In this example, in determining the consideration on which tax applies to the depot's services, the corporation can deduct the amount of the refund for the containers and, for that purpose, the "refund" is defined as the usual refund paid by the depot to consumers.

Subsection 226(7) also deals with a potential case of a recycler who does not accept used and empty containers but who provides services in respect of recycling to another recycler. In that case, the refund amount that is deducted in determining the consideration for the service is taken to be the usual refund paid in the greatest number of cases by persons in the province who accept used and empty containers from consumers.

Definition "returnable container"

The term "returnable container" is used throughout new section 226 and is defined, in relation to a province, as a beverage container of a class of containers that, in that province, are ordinarily acquired by consumers filled and sealed and are ordinarily returned empty by consumers for an amount of money (i.e., a refund). Accordingly, a container of a particular class (e.g., a 355ml aluminium can) may constitute a returnable container in one province and not in another since it may be sold with a refundable deposit in some provinces and without a refundable deposit in others.

Where a taxable beverage in a container is sold without a refundable deposit in a province, that container is not a returnable container for the purposes of section 226. Given that section 137 of the Act deems the container to form part of the beverage, any tax-excluded amount charged in respect of the container will form part of the consideration for the beverage and therefore also be subject to GST/HST.

It should be noted that the containers falling within the definition "returnable container" under new section 226 are not restricted to containers for taxable beverages. However, the rule under new subsection 226(2) that treats the container deposit differently from the amount charged for the beverage does not apply when the beverage is supplied on a zero-rated basis. In that case, section 137 continues to apply such that the container deposit for the beverage supplied on a zero-rated basis forms part of the consideration for the beverage and therefore has the same tax-free status.

Definition "returnable container charge"

The term "returnable container charge" is defined in relation to a returnable container (as defined in subsection 226(1)) containing a beverage that is being supplied or held as inventory by a person. The term is also defined in relation to a returnable container in respect of which a recycler is making a supply of a recycling service to a distributor or to another recycler.

In the case of a returnable container of a particular class that contains a beverage that is being supplied in a province, the "returnable container charge" is the total of all amounts charged by the supplier in respect of the recycling (as defined in subsection 226(1)) of returnable containers of that class, or charged by the supplier to recover an equivalent amount that was charged to the supplier for the same purpose. Accordingly, the returnable container charge would include, for example, any provincially-mandated amount such as a refundable deposit, a non-refundable portion of a deposit, an environmental levy or a handling charge. If there is no provincially-mandated amount, the returnable container charge includes any amount in respect of the recycling of the containers that is charged in a particular industry or by a particular supplier.

Also, the returnable container charge would include any amounts charged by a supplier to recover amounts previously charged to that supplier in respect of the containers. For example, a provincially-mandated amount in respect of recycling could be required to be charged only on supplies of a beverage by bottlers who are the first vendors of the beverage in the province. Subsequently, a wholesaler will charge the equivalent amount to a retailer to recover the amount paid by the wholesaler to a bottler. This latter amount is referred to in subparagraph (*a*)(ii) of the definition of "returnable container charge". In turn, the retailer will charge the equivalent amount to a consumer to recover the amount paid by the retailer to the wholesaler. This latter amount is referred to in subparagraph (*a*)(iii) of the definition.

In relation to a filled and sealed returnable container containing a beverage that is held by a person in inventory at any time in a province for the purpose of making a supply of the beverage in that province, the term "returnable container charge" refers to the amount that the person can reasonably expect will be determined to be the returnable container charge in respect of the container when the beverage is so supplied (i.e., the total amount in respect of recycling that will be charged by the supplier).

In relation to a filled and sealed returnable container containing a beverage that is held by a person at any time in a province for a purpose other than the sale of the beverage in the container, the term "returnable container charge" means the amount in respect of the container that could reasonably be expected to be paid by the person if they were acquiring the beverage in the container at that time in the province.

Finally, paragraph (*c*) of the definition "returnable container charge" defines this term in relation to a returnable container of a particular class in respect of which a recycler of returnable containers of that class is supplying a service in respect of recycling in a province to a distributor or to another recycler of returnable containers of that class. These are the situations dealt with in subsections 226(6) and (7).

In this case, the "returnable container charge" is the amount, or minimum amount, that is required, under an Act of the legislature of the province in respect of recycling, to be paid in respect of the supply of a beverage in a returnable container of that class. In some provinces, there is no such legislated amount for particular classes of containers but there is instead an industry-established container charge for those containers. In that case, the "returnable container charge" is that amount in respect of the container that would reasonably be expected to be charged by a supplier in the province when selling a beverage in a container of that class.

Definition "specified beverage retailer"

The term "specified beverage retailer" is relevant to subsections 226(3), (9) and (18). The term is defined in relation to a returnable container of a particular class. A "specified beverage retailer" refers to a registrant who, in the ordinary course of their business, sells to consumers beverages in containers of that class in circumstances in which the registrant typically does not unseal the containers when serving the beverages. Further, in order for a registrant to be considered a "specified beverage retailer" it must not be the case that all or substantially all of the used containers that are gathered at establishments at which the registrant makes such supplies of beverages and that are then returned by the registrant to a depot or other recycler are containers that have been returned to the registrant for refunds.

For example, an operator of a restaurant that is a combination eat-in, take-out establishment might sell beverages in filled and sealed returnable containers of a particular class but the only containers of that class that the registrant gathers at such establishments and returns are those that are left behind by customers who have chosen to consume the beverages on the premises. In that case, the registrant would be a specified beverage retailer in relation to returnable containers of that class.

In contrast, the operator of, for example, a regular grocery store at which the operator sells beverages in filled and sealed returnable containers of a particular class and also accepts returns of used containers of that class from consumers would likely not be a specified beverage retailer in respect of those containers. In that case, it would be expected that all or substantially all of the used containers that the store operator gathers at the store and returns to a recycler would have been acquired from consumers for refunds.

Subsection 226(2) - Taxable Supply of Beverage in Returnable Container

Subsection 226(2) applies where a supplier makes a taxable supply (other than a zero-rated supply) of a beverage in a filled and sealed returnable container (as defined in subsection 226(1)) in circumstances in which the supplier typically does not unseal the container, and the supplier charges a returnable container charge (also as defined in subsection 226(1)) in respect of the container.

Paragraph 226(2)(*a*) deems the consideration for the supply of the beverage to be equal to the amount obtained by subtracting the returnable container charge from the consideration for the supply as otherwise determined for the purposes of Part IX of the Act. Section 137 of the Act deems the container to form part of the beverage. Therefore, the consideration for the supply determined under Part IX without regard to paragraph 226(2)(*a*) is the total of the consideration for the beverage and the returnable container charge.

For example, if $1.00 is charged for the beverage and $0.10 is charged as a returnable container charge, the consideration for the supply of the beverage would otherwise be determined to be $1.10. Paragraph 226(2)(*a*) then deems the consideration for the supply of the beverage in the container to be $1.00 (i.e., $1.10 - $0.10).

Under paragraph 226(2)(*b*), where the returnable container charge exceeds the refund for a returnable container, the supplier is deemed to have made to the recipient, at the time at which the consideration for the beverage becomes due (or would, in the absence of section 156 of the Act, have become due), a taxable supply of a service in respect of the container. The consideration for this deemed supply is considered to be separate from the consideration for the beverage. The value of the consideration for the deemed supply is determined under subparagraph 226(2)(*b*)(i) or (ii).

Paragraph 226(2)(*b*) results in tax on part of the returnable container charge only when it exceeds the refund (as defined in subsection 226(1)) for the returnable container. Consequently, for every class of container where the refund is equal to the returnable container charge in a province, the returnable container charge will not be taxable in that province. In other words, a fully refundable deposit for a returnable container is not subject to GST/HST.

Subparagraph 226(2)(*b*)(i) applies where the returnable container charge in respect of the container is not provided for under a provincial Act prescribed for purposes of subparagraph 226(2)(*b*)(ii). The provincial Acts that are intended to be prescribed are those that provide for only partially refundable tax-included amounts, or tax-included minimum amounts, that must be charged in respect of the recycling of containers in the province. As of the introduction of new section 226, the only such provincial Acts are those of the HST participating provinces and therefore subparagraph 226(2)(*b*)(i) applies everywhere except in those provinces.

Subparagraph 226(2)(*b*)(i) provides that the consideration for the supply of the service deemed to have been made by the supplier under paragraph 226(2)(*b*) is equal to the amount by which the returnable container charge exceeds the refund for the container.

Example 1 illustrates the calculation of the total tax payable in a hypothetical case of a non-HST participating province (i.e., where there is no prescribed provincial Act) where only half of the deposit is refundable.

Example 1 – Non-Participating Province and Half-Back Deposit	
• Taxable beverage sold in a returnable container	$1.00
• Returnable container charge	$0.10
• Refund	$0.05
Deemed consideration for the beverage [$1.10 – $0.10]:	$1.00
Deemed consideration for the deemed supply of a service [$0.10 – $0.05]:	$0.05
Total taxable consideration	$1.05
Total GST payable [1.05 x 6%]:	$0.063

Subparagraph 226(2)(*b*)(ii) provides the rule for determining the value of the consideration for the supply of a service deemed to have been made by the supplier under paragraph 226(2)(*b*) in the situation where an Act of the legislature of the province is prescribed under that paragraph. This is the case where, under the provincial Act (including any regulations thereunder), an amount in respect of a returnable container of a particular class must be charged in the province when a beverage in that class of container is sold in the province. In addition, the amount specified must be a tax-included amount.

The intention is to prescribe the following Acts of the Provinces of Nova Scotia, New Brunswick and Newfoundland and Labrador:

- *The Environment Act*, S.N.S. 1994-95 c. 1, under which the Solid Waste-Resource Management Regulations are made,
- *The Beverage Containers Act* S.N.B. 1991 c. B-2.2, under which the General Regulation – Beverage Containers Act is made, and
- *The Waste Management Act* S.N.L. 1998 c. W-3.1, or any subsequent legislation, under which the Waste Management Regulations are made.

Under clause 226(2)(*b*)(ii)(A), the value of the consideration for the service is equal to the non-tax portion of the amount provided for under the prescribed Act that exceeds the refund for the container.

Example 2 illustrates the calculation of the total tax payable in this instance.

Example 2 – Participating Province and Half-Back Deposit	
• Taxable beverage sold in a returnable container	$1.00
• Tax-included legislated amount required to be charged	$0.10
• Refund	$0.05
Deemed consideration for the beverage [$1.10 – $0.10]:	$1.00
Deemed consideration for the deemed supply of a service [Legislated Amount ($0.10) – Refund ($0.05)] x 100/114]:	$0.0439
Total taxable consideration	$1.0439
Total HST payable [1.0439 x 14%]:	$0.1461

Clause 226(2)(*b*)(ii)(B) provides authority to make regulations to determine the consideration for the deemed supply in respect of the container in the case of a non-participating province should similar need for a formula arise in the case of a non-participating province in the future.

Under paragraph 226(2)(*c*), the recipient is considered to have acquired the deemed service for the same purpose as that for which the recipient acquired the beverage. This completes the deeming rule for purposes of determining the extent to which the recipient may be entitled under section 169 of the Act to claim an input tax credit for the tax calculated on the non-refundable portion of the returnable container charge.

Subsection 226(3) - Exception for Specified Beverage Retailer

Subsection 226(3) provides an exception to the rule under subsection 226(2) with respect to beverage containers of a particular class for a registrant who is a "specified beverage retailer" in respect of those containers, as defined in subsection 226(1). Specifically, subsection 226(2) does not apply to a supply by such a retailer of a beverage in a container of that class if the registrant elects not to deduct the amount of the returnable container charge in respect of the container in determining the consideration for the supply of the beverage for GST/HST purposes. The registrant may choose to do so to avoid having to later add, under subsection 226(18), an amount to the registrant's net tax in respect of any returns by the registrant of the used containers that are left with the registrant by the consumers of the beverages.

A "specified beverage retailer", in respect of a particular class of returnable containers, refers to a registrant who, in the ordinary course of their business, sells to consumers beverages in containers of that class in circumstances in which the registrant typically does not unseal the containers when serving the beverages. Further, for a registrant to be considered a "specified beverage retailer" it must not be the case that all or substantially all of the used containers that are gathered at establishments at which the registrant makes such supplies of beverages and that are then returned by the registrant to a depot or other recycler, are containers that have been returned to the registrant for refunds.

For example, an operator of a restaurant that is a combination eat-in, take-out establishment might sell beverages in filled and sealed returnable containers of a particular class but the only containers of that class that the registrant gathers at such establishments and returns are those that are left behind by customers who have chosen to consume the beverages on the premises. In that case, the registrant would be a specified beverage retailer in relation to returnable containers of that class.

The deduction, under subsection 226(2), of the refundable container deposit from the consideration applicable to the sale of the beverage gives the appropriate result where the purchaser of the beverage retains the container in order to obtain the refund of the deposit. This is not the case where the beverage retailer instead retains the container for the refund. Therefore, under subsection 226(18), a specified beverage retailer must add to their net tax an amount of tax calculated on the refund they receive for the container unless the retailer had elected, under subsection 226(3), to charge tax on the entire amount paid for the beverage and the container when the beverage was sold.

Subsection 226(4) - Supply of Used Container

Subsection 226(4) provides that a supplier (e.g., a retailer who accepts used and empty returnable containers) who supplies a used and empty returnable container (or the material resulting from its compaction) to a person (e.g., a recycling corporation) can deduct the amount of the refund for the container in determining the consideration for the supply for GST/HST purposes. However, if the consideration as otherwise determined exceeds the refund for the container, the supplier is deemed to have made to the recipient a separate taxable supply of a service in respect of the container for consideration equal to that excess amount.

It should also be noted that, if two separate supplies are made of the used container (or the material resulting from its compaction) and of a service of handling the container, the rule in subsection 226(4) applies only to the supply of the container or the material.

Subsection 226(4) is subject to the exceptions set out in subsection 226(5).

Subsection 226(5) - Exceptions

Subsection 226(5) describes the situations where subsection 226(4) do not apply, that is, where the refund for a returnable container is not subtracted from the value of the consideration for a supply of the used and empty container or of the material resulting from its compaction.

First, subsection 226(4) does not apply for the purposes of section 5 of Part V.1, or section 10 of Part VI, of Schedule V to the Act. In other words, the rule in subsection 226(4) deeming the consideration for a supply of a used and empty returnable container (or the material resulting from its compaction) to be nil does not apply for the purposes of determining if a supply falls into the exemption provision for supplies of property or services ordinarily supplied free of charge by a charity or a public sector body.

Second, subsection 226(4) does not apply where the usual business practice of the recipient is to pay consideration for supplies in the province of used and empty returnable containers of the particular class (or of the material resulting from their compaction) that is determined based on the value of the material from which the containers are made, or on any basis other than the amount of the refund or returnable container charge for the containers.

For example, if a supply of used and empty aluminium returnable containers were made by a recycler to an aluminium producer for consideration equal to $1.00 per pound, subsection 226(4) would not apply.

Subsection 226(6) - Supply of Recycling Service to Distributor

Subsection 226(6) applies where a recycler (as defined in subsection 226(1)) of returnable containers of a particular class makes a taxable supply in a province of a service in respect of the recycling of returnable containers of that class to a distributor (as defined in subsection 226(1)), but does not sell the containers to the distributor. Where this subsection applies, the distributor is not a recycler who also supplies such services to other distributors. Also, the consideration for the supply must be based in whole or in part on the amount in that province of the returnable container charge in respect of returnable containers of that class or on an amount that a consumer could reasonably expect to receive for a used and empty returnable container of that class.

For example, assume a distributor of a beverage is required, under a provincial act in respect of the protection of the environment, to have a plan for the recycling of the container in which the beverage is sold. In order to fulfil this obligation and be entitled to sell the beverage in the province, the distributor contracts with a corporation having a recycling system in place. Assume further that the corporation does not supply the used and empty containers to the distributor but provides a service in respect of the recycling of the containers and charges a fee equal to the deposit that the distributor is required to charge to its clients when selling the beverage in the province. If the distributor does not also provide such recycling services to other distributors, subsection 226(6) will apply to the transaction between the corporation and the distributor.

Under the formula in subsection 226(6), the consideration for the service is the amount as otherwise determined for purposes of Part IX minus the total of the returnable container charges for all the returnable containers in respect of which the consideration for the service is attributable.

Examples 3 and 4 illustrate the calculation of the total tax payable where a distributor contracts with a recycler for a service in respect of the recycling of the returnable containers that the distributor supplies filled and sealed in a province.

Example 3 – Recycling Services Supplied to Distributor – per Container	
• Returnable container charge in respect of a filled and sealed container:	$0.10
• Actual consideration for the service in respect of the container:	$0.10
Deemed consideration for the service [Actual consideration – Returnable container charge]:	$0.00
Total GST payable [$0 x 6%]:	$0.00

Example 4 – Recycling Services Supplied to Distributor – 1000 Containers	
• Returnable container charge per filled and sealed containers:	$0.10
• Actual consideration for the service (assumed equal to the returnable container charge plus $0.02 handling charges per container):	$0.12
Deemed consideration for the service [Actual consideration – Returnable container charge] x 1000:	$20.00
Total GST payable [$0.02 x 6%] x 1000:	$1.20

It is important to note that subsection 226(6) does not apply for the purposes of section 5 of Part V.1, or section 10 of Part VI, of Schedule V to the Act. In other words, the rule in subsection 226(6) does not apply for the purpose of determining if a supply falls into the exemption provision for supplies of property or services ordinarily supplied free of charge by a charity or a public sector body.

It should also be noted that subsection 226(6) does not apply if the distributor is also receiving from the recycler a supply of the empty containers themselves. In that case, subsection 226(4) applies instead.

Subsection 226(7) - Supply Between Recyclers

Subsection 226(7) applies where a recycler (as defined in subsection 226(1)) of returnable containers of a particular class makes a taxable supply of a service in respect of the recycling of returnable containers of that class without supplying the containers to the other recycler. Also, the consideration for the supply must be based in whole or in part on the amount of the refund (as defined in subsection 226(1)), or the returnable container charge (also as defined in subsection 226(1)), in respect of returnable containers of that class.

Under the formula in subsection 226(7), the consideration for the service is deemed to be the amount as otherwise determined for the purposes of Part IX minus the total of all refunds for all returnable containers in respect of which that consideration is paid or payable.

Example 5 illustrates the calculation of the total tax payable where a recycling corporation pays consideration to a redemption centre for accepting used and empty returnable containers and paying refunds.

Example 5 – Supply Between Recyclers – 1000 Containers	
Refund per container:	$0.05
Actual consideration for the service per container (assumed equal to the refund for the container plus $0.02 handling charge):	$0.07
Deemed consideration for the service [Actual consideration – Refund] x 1000:	$20.00
Total GST payable [$0.02 x 6%] x 1000:	$1.20

It should be noted that subsection 226(7) does not apply if the recycler who is the recipient of the service is also acquiring the used and empty containers themselves. In that case, subsection 226(4) applies instead.

Subsection 226(8) - Special Rules in the Case of Prescribed Provincial Act

Subsection 226(8) sets out special rules applicable in a province in which an Act prescribed for the purposes of paragraph 226(2)(*b*) applies (see commentary on subsection 226(2)). These special simplifying rules apply in provinces where only a partial refund of the deposit is provided for under the applicable provincial legislation and where the legislated amount of the deposit is a tax-inclusive amount (i.e., Nova Scotia, New Brunswick and Newfoundland and Labrador).

Subject to subsection 226(9), subsection 226(8) applies where a registrant purchases a beverage in a returnable container for the purpose of selling the beverage in the province in circumstances in which the registrant will charge a returnable container charge in respect of the container and be required to collect tax in respect of the sale. If the registrant had paid a tax-included non-refundable amount as a returnable container charge when acquiring the beverage, that amount would have been deemed under paragraph 226(2)(*b*) to have been consideration paid by the registrant for a separate service. In these circumstances, paragraph 226(8)(*a*) provides that the registrant is not entitled to claim an input tax credit in respect of that amount. The input tax credit is denied because the registrant is concurrently relieved of having to include, in determining the registrant's net tax, any amount of tax in respect of the returnable container charge when the registrant in turn sells the beverage in the returnable container.

For example, if a retailer in a province in which an Act prescribed for the purpose of paragraph 226(2)(*b*) charged the same tax-inclusive amount of deposit as the retailer paid (e.g., $0.10), the special rules would apply to the retailer. Assume $0.05 were the amount of the non-refundable tax-included deposit. The retailer would not have to include the HST component of the $0.05 charged to the consumer in the retailer's HST remittances but would include the HST on the beverage. The retailer would accordingly not be entitled to include the HST component of the $0.05 deposit paid to the retailer's supplier in determining the retailer's input tax credit. The retailer would be entitled to claim an input tax credit in respect of the HST paid on the beverage.

For registrants using a streamlined accounting method to determine their net tax, the amount determined under paragraph 226(2)(*b*) as the consideration for the deemed service, as opposed to the HST component of the tax-included non-refundable deposit, is the amount in respect of the deposit that is excluded in determining their net tax.

Subsection 226(9) – Non-application of Special Rules

Subsection 226(9) describes circumstances in which paragraphs 226(8)(*a*) and (*b*) do not apply. The first circumstance is where it is the usual business practice of the registrant to charge, when selling in the province a particular beverage in a returnable container of a particular class, a returnable container charge that is not equal to the returnable container charge that the registrant pays in respect of returnable containers of that class containing the particular beverage.

The special rules under subsection 226(8) are meant to apply only where the amount of input tax credits to which a registrant would be entitled in respect of the non-refundable deposits on returnable containers for beverages acquired by the registrant is equal to the amount of the tax component of non-refundable deposits the registrant charges in respect of sales of the beverages in the returnable containers.

It is important to note that the ineligibility to use the special rules under subsection 226(8) is determined in respect of a particular beverage sold in returnable containers of a particular class. A registrant may therefore be entitled to use the special rules for some beverages and not for others if the registrant's usual business practice varies with respect to the different products.

For example, if the registrant is the first vendor to charge a returnable container charge in respect of a beverage container in a province (e.g., where the registrant imports a particular type of beverage and does not pay any returnable container charge to the registrant's out-of-province suppliers), the registrant would not follow the special rules with respect to that product. However, that would not affect the eligibility of the registrant to use the special rules for another beverage for which the registrant pays to the registrant's supplier the same amount of returnable container charge as the registrant charges to customers.

The second circumstance in which paragraph 226(8)(*a*) does not apply to deny an input tax credit to a registrant for the purchase of a beverage in a returnable container of a particular class is where the registrant is a specified beverage retailer (as defined in subsection 226(1)) in respect of containers of that class. Subsection 226(8)(*a*) does not apply as long as the registrant elects under subsection (3) not to deduct the amount of the returnable container charge in respect of the container in determining the consideration for the supply by the registrant of the beverage in the container. In that case, the registrant is required to charge the recipient tax on the entire amount paid for the beverage and the container, and the registrant must include the full amount of that tax in the registrant's net tax.

Subsection 226(10) – Change in Practise

Subsection 226(10) applies in a province in which an Act prescribed for the purposes of paragraph 226(2)(*b*) applies (i.e., where the special rules under subsection 226(8) apply). Subsection 226(10) deals with the case where a registrant changes their usual business practise with respect to a particular beverage such that the registrant becomes eligible to use the special rules under subsection 226(8) with respect to that beverage.

In other words, subsection 226(10) applies where the registrant starts to charge, when selling the beverage in the province, a returnable container charge that is equal to the returnable container charge the registrant pays when acquiring the beverage. The registrant would have previously claimed input tax credits for tax paid on the tax-included non-refundable portion of the deposit paid on the acquisition of any beverage held in the registrant's inventory at the time of the change in practise. However, under the special rules that will apply to the sale of that inventory subsequent to the change in practise, the registrant neither includes the non-refundable portion of the deposit charged to customers, nor any tax included in that amount, in determining the net tax of the registrant.

Therefore, subsection 226(10) requires the registrant, in those circumstances, to account for tax on each item of that inventory equal to the input tax credit that was previously claimed, or that the registrant would, but for section 156 or 167 of the Act, have been entitled to claim in respect of each item of that inventory.

Subsection 226(11) - Change in Practice – Ceasing to Apply Special Rules

Subsection 226(11) applies in a province in which an Act prescribed for the purposes of paragraph 226(2)(*b*) applies (i.e., where the special rules under subsection 226(8) apply). Subsection 226(11) deals with the case where a registrant changes their usual business practice with respect to a particular beverage such that the registrant ceases to be eligible to use the special rules under subsection 226(8) with respect to that beverage.

In other words, subsection 226(11) applies where the registrant starts to charge, when selling the beverage in the province, a returnable container charge that is not equal to the returnable container charge the registrant pays when acquiring the beverage. The registrant would not have claimed input tax credits for tax paid on the tax-included non-refundable portion of the deposit paid on the acquisition of any beverage held in the registrant's inventory at the time of the change in practice. However, since the special rules will not apply to the sale of that inventory subsequent to the change in practice, the registrant will have to include the non-refundable portion of the deposit charged to customers, or any tax included in that amount, in determining the net tax of the registrant.

Therefore, as a result of the deemed acquisition and payment of tax under subsection 226(11), the registrant, in those circumstances, is allowed to claim input tax credits in respect of each item of that inventory equal to the input tax credits that were previously denied or that would have been denied if tax had been payable but for section 156 or 167.

Subsection 226(12) - Ceasing to be a Registrant While Special Rules Apply

Subsection 226(12) applies in a province in which an Act prescribed for the purposes of paragraph 226(2)(*b*) applies (i.e., where the special rules under subsection 226(8) apply). Where a person ceases to be a registrant, subsection 171(3) of the Act results in the person having to account for tax on all items of inventory then held by the person for sale in the course of a commercial activity. That rule presumes that the person would have been entitled to claim input tax credits for those items. However, in the case of the person's inventory of beverages in returnable containers, the person would not have been entitled to claim input tax credits for the tax included in the non-refundable portion of the container deposits if the person had been subject to the special rules under subsection 226(8) immediately before ceasing to be a registrant.

In this situation, the person is deemed under subsection 226(12) to have received, immediately before ceasing to be a registrant, a supply of a service in respect of each item of that inventory and is deemed to have paid tax in respect thereof. That tax is equal to the tax that was, or would, but for section 156 or 167, have been included in the non-refundable portion of the container deposits. Consequently, the registrant is able to claim input tax credits for that tax, assuming all other conditions for claiming the credits are met.

Subsection 226(13) – Supplies Under Section 167

Subsection 226(13) addresses a case where filled and sealed returnable containers are held in the inventory of a business at the time it is sold. Subsection 167(1.1) of the Act sets out the rules that apply when, under an agreement to supply a business or part of a business, the supplier and recipient jointly elect under subsection 167(1) to treat certain supplies made under the agreement as non-taxable. This tax treatment generally does not apply to taxable services that are to be rendered by the supplier.

Subsection 226(13) ensures that the supply of a service that is deemed under subsection 226(2) to be made when the supplier sells the beverage is essentially ignored for purposes of applying the roll-over rules in section 167. Therefore, the inventory of filled and sealed returnable containers will be treated the same under the agreement for the sale of the business as is other inventory.

Subsection 226(14) – Deemed Tax Collected where Section 156 or 167 Applies

Subsection 226(14) applies only in respect of a taxable supply (other than a zero-rated supply) of a beverage contained in a filled and sealed returnable container of a particular class in a province in which an Act prescribed for the purposes of paragraph 226(2)(*b*) applies (see commentary on subsection 226(2)). It deals with certain supplies of beverages in filled and sealed returnable containers that are not subject to tax because of section 156 or 167.

In the cases in question, the supplier would have been entitled to claim an input tax credit in respect of the tax component of the deposit amount included in the total amount paid when acquiring the beverages but the recipient will not have to account for tax in respect of the deposits when re-supplying the beverage because the recipient is subject to the special rules under subsection 226(8). Subsection 226(14) requires the recipient to include tax calculated on the non-refundable portion of the container deposits in determining net tax for the reporting period in which the beverages are acquired.

Subsection 226(15) – Deemed Tax Paid where Section 156 or 167 Applies

Subsection 226(15) applies only in respect of a taxable supply (other than a zero-rated supply) of a beverage contained in a filled and sealed returnable container of a particular class in a province in which an Act prescribed for the purposes of paragraph 226(2)(*b*) applies (see commentary on subsection 226(2)). It deals with supplies of beverages in filled and sealed returnable containers that are not subject to tax because of section 156 or 167.

In the cases in question, the supplier would not have been entitled to claim an input tax credit in respect of the tax component of the deposit amount included in the total amount paid when acquiring the beverages but the recipient will have to account for tax in respect of the deposits when re-supplying the beverage because the recipient is not allowed to use the special rules under subsection 226(8). Under subsection 226(15), the recipient is entitled to claim an input tax credit, in determining net tax for the reporting period in which the beverages are acquired, equal to tax calculated on the non-refundable portion of the container deposits.

Subsection 226(16) – Fair Market Value of Beverage in Filled and Sealed Container

Subsection 226(16) specifies how to determine, for the purposes of Part IX of the Act, the fair market value of a beverage in a filled and sealed returnable container in respect of which there is a returnable container charge where that beverage is held at any time by a person for consumption, use or supply in a province in the course of commercial activities of the person. That fair market value is deemed not to include the amount that would be determined as the refund for the container if the beverage were supplied in the province by the person at that time in the filled and sealed container.

This rule is relevant to the application of section 171 of the Act where a person ceases to be a registrant and must account for tax based on the fair market value of inventory held at that time.

Subsection 226(17) – Basic Tax Content of Beverage in Filled and Sealed Container

Subsection 226(17) provides a rule for determining the basic tax content (as defined in section 123(1) of the Act) at any time of a beverage in a filled and sealed returnable container that is held at that time by a person. The rule ensures that the basic tax content of the beverage includes the tax that was payable on the non-refundable portion of the container deposits paid when initially acquiring the containers or when the person was deemed to have made a supply under subsection 226(14) or to have received a supply under subsection 226(15).

This rule is pertinent to section 171 where a person becomes at any time a registrant and is entitled to claim input tax credits determined based on the basic tax content of property held at that time.

Subsection 226(18) – Addition to Net Tax

Subsection 226(18) requires a registrant who is a specified beverage retailer (as defined in subsection 226(1)) to add an amount in determining the net tax of the registrant in certain circumstances.

A "specified beverage retailer", in respect of a particular class of returnable containers, refers to a registrant who, in the ordinary course of their business, sells to consumers beverages in containers of that class in circumstances in which the registrant typically does not unseal the containers when selling the beverages. Further, for a registrant to be considered a "specified beverage retailer", it must not be the case that all or substantially all of the used containers that are gathered at establishments at which the registrant makes such supplies of beverages and that are then returned by the registrant to a depot or other recycler are containers that have been returned to the registrant for refunds.

For example, an operator of a restaurant that is a combination eat-in, take-out establishment might sell beverages in filled and sealed returnable containers of a particular class but the only containers of that class that the registrant gathers at such establishments and returns are those that are left behind by customers who have chosen to consume the beverages on the premises. In that case, the registrant would be a specified beverage retailer in relation to returnable containers of that class.

Under subsection 226(2), a registrant can deduct the refundable beverage container deposit from the consideration applicable to the sale of the beverage. That gives the appropriate result where the purchaser of the beverage retains the container in order to obtain the refund of the deposit. This is not the case where the beverage retailer instead retains the container for the refund.

Therefore, under subsection 226(18), a specified beverage retailer must add to their net tax an amount of tax calculated on the refund they receive for the container unless the retailer had elected, under subsection 226(3), to charge tax on the entire amount paid for the beverage and the container when the beverage was sold. Where the registrant so elects, subsection 226(2) does not apply and therefore neither does subsection 226(18) since paragraph 226(18)(*b*) restricts the application of this rule to circumstances in which paragraph 226(2)(*a*) applies.

Clause 29

Non-application of Exemption

ETA
226.01

Section 5.1 of Part V.1 of Schedule V to the Act and section 6 of Part VI of that Schedule describe a supply made by a charity and public service body respectively, that is exempt based on the amount charged for the supply in relation to the "direct cost" of the supply. The direct cost of a supply is essentially the direct material cost, in the case of goods produced by the charity or body, or the purchase price paid by the charity or body, in the case of property or services purchased for resale. The consequence of the exemption is that the supply is not considered to be part of a commercial activity and the supplier, while not having to collect tax on the supply, is not able to claim related input tax credits.

New section 226.01 of the Act provides that these direct cost exemptions do not apply to a supply of a used and empty returnable container (as defined in section 226 of the Act) or to a supply of the material resulting from its compaction. In the returnable container recycling industry it is typical for a recycler to acquire used and empty containers for a consideration equal to the refund for that class of container. The recycler will then sell the containers or the material resulting from their compaction for a lesser consideration to another person who will recycle the material. The activity is economic for the recycler because the recycler is typically also in receipt of amounts of deposits in respect of the containers from a distributor or another recycler.

New section 226.01 ensures that, when the recycler is a charity or other public service body, its supplies of used and empty containers (or the material resulting from their compaction) are not treated as exempt supplies solely due to the direct cost exemption provisions. Consequently, such a recycler may be able to claim input tax credits for related inputs in the same manner as other recyclers that are engaged in the same activity and that are not charities or other public service bodies, provided their activity is not otherwise an exempt activity and all other conditions for claiming the input tax credits are met. It is important to note that, in the case of charities, the exemption under section 1 of Part V.1 of Schedule V to the Act for the sale of tangible personal property that was used by another person before its acquisition by the charity may still apply.

New section 226.01 applies to supplies of used and empty returnable containers (or the material resulting from their compaction) for which consideration becomes due after 1996 or is paid after 1996 without having become due. This application corresponds to the enactment of section 5.1 of Part V.1 of Schedule V.

New section 226.01 is not required following the coming into force of new subsection 226(4), which deems the value of the consideration for the supply of a used and empty returnable container (or the material resulting from its compaction) to be nil. Accordingly, the amount charged by the recycler for the supply can reasonably be expected to be greater than zero and thus greater than the direct cost. Consequently, the direct cost exemptions will not apply to a supply of a used and empty returnable container or to a supply of the material resulting from its compaction. Therefore, new section 226.01 will cease to apply to supplies of used and empty returnable containers (or the material resulting from their compaction) for which consideration becomes due, or is paid without having become due after July 15, 2002.

Clause 30

Deduction for Charity

ETA
226.1

Subsection 226.1 of the Act applies where a charity operates an authorized bottle return depot in a province in the course of exempt activities and refunds a provincially-mandated refundable deposit. In this case, the charity is allowed to claim a net tax deduction (which could result in a net tax refund) equal to 7% (or 15% where the province is an HST-participating province) of the refundable deposit. To be entitled to this deduction, the charity must pay the refundable deposit, plus an amount equal to the deduction, to the person from whom it collects the container.

Subsection 226.1(1) is amended to ensure that a charity has the same amount of time to claim the deduction as the charity would have if the amount were instead claimed as an input tax credit. The amendment adds the reference to “or for a subsequent reporting period” in subsection 226.1(1) in the English version of the Act and the reference to “ou pour une période de déclaration postérieure” to the French version of that subsection of the Act. This amendment is for greater certainty as subsection 226.1(2) already explicitly provides for a four-year period to claim the deduction.

The amendment applies to any supply of a container made to a charity after March 1998, the date of the coming into force of section 226.1.

A second amendment repeals section 226.1 since new section 226 of the Act excludes refundable deposits on beverage containers from the GST/HST tax base. There will therefore be no tax component in the refund paid for the used and empty containers.

The amendment applies to supplies for which consideration becomes due after July 15, 2002 or is paid after that day without having become due. The delay of 75 days between the coming into force of the amendments to section 226 (May 1, 2002) and the repeal of section 226.1 reflects the fact that the deposit on returnable beverage containers in circulation at the time of implementation of new section 226 included an amount of tax. This 75-day transition period allowed for those containers to reach a redemption centre and for the operator to claim the related deduction in respect of them. For the purpose of applying section 226.1 during that 75-day transition period, existing section 226 is to be read as if it had not been replaced by new section 226. For example, the meaning of "returnable container" under existing subsection 226(1) continues to apply during the transition period for the purposes of section 226.1.

Clause 31

Bad Debts - Deduction from Net Tax

ETA
231

Section 231of the Act provides for bad-debt relief when a debt relating to a taxable supply (other than a zero-rated supply) is written off in the supplier's books of accounts.

Subclause 31(1)

Bad Debt Deduction

ETA
231(1) and (1.1)

Existing subsection 231(1) provides that only the supplier can claim bad debt relief respecting a taxable supply and only if the supplier reports the tax payable in respect of that supply and establishes that the consideration and tax payable have become in whole or in part a bad debt. Therefore, under the existing legislation, where the supplier and their agent have jointly elected under subsection 177(1.1) of the Act to have the agent report the tax payable in respect of a supply made by the supplier, neither the agent nor the supplier can claim bad debt relief in respect of the GST/HST on that supply.

Subsection 231(1) is amended to deal with the case where the joint election under subsection 177(1.1) has been made by the supplier and the agent (see commentary on amendments to subsection 177(1.1)). In this case, the amendments to subsection 231(1) permit an agent who has reported the tax respecting a supply to claim a deduction for any bad debt relating to that supply that is written off by the supplier.

Amended subsection 231(1) repeats the existing condition that it must be established not only that all or part of the debt in respect of the supply has become a bad debt, but also that the supplier has written the bad debt off in its books of account. Amended subsection 231(1) makes it clear that bad debt relief can be claimed if all or any part of the total of the consideration and tax payable respecting a taxable supply becomes a bad debt. If it is only a part of that total that is written off as a bad debt, regardless of whether that part is attributable entirely to tax, entirely to consideration or to a mixture of tax and consideration, a deduction under subsection 231(1) can be claimed equal to a fraction of the amount written off.

The reporting requirements under existing subsection 231(1) are set out in new subsection 231(1.1). The rules are amended to provide that the "reporting entity", as defined in new subsection 231(5), must report the tax. If the election under subsection 177(1.1) has been made, the reporting entity is the agent. If the election under subsection 177(1.1) has not been made, the reporting entity is the supplier.

New subsection 231(1.1) repeats the conditions found in the existing post-amble to subsection 231(1) with the necessary modifications to reflect the fact that either the supplier or an agent of the supplier may be the "reporting entity" that is required to report the tax in respect of a supply in their return. It is the same reporting entity that must also satisfy the requirement to remit any positive amount of net tax reported in that return.

The amendments apply to supplies made after April 23, 1996, the date on which the election under subsection 177(1.1) generally came into force. It should be noted as well that a transitional rule is provided to extend in some circumstances the period allowed for an agent, who has made a supply on behalf of a supplier and who has elected under subsection 177(1.1) with the supplier, to claim a deduction for a bad debt that was written off before December 21, 2002. This extension of the limitation period recognizes that the existing denial of a bad debt deduction to both the supplier and their agent was an unintended consequence of unrelated amendments that were made to the agency rules in section 177 that generally applied to supplies made after April 23, 1996. The agent may claim the deduction for a debt that was written before December 21, 2002 within the usual limitation period set out in subsection 231(4) of the Act except that, if that usual period ends before December 21, 2003, the transitional rule extends the limitation period so that the agent has a full year from December 20, 2002 to file a return in which the agent claims the deduction.

Subclause 31(2)

Recoveries and Limitations on Claiming Deductions

ETA
231(3) to (5)

Subsection 231(3) – Recovery of Bad Debt

Subsection 231(3) deals with the situation where a person has claimed bad debt relief under subsection 231(1) in respect of a debt relating to a taxable supply and all or part of that debt is subsequently recovered. The subsection requires that an amount be added to net tax equal to a fraction of the amount recovered.

The amendments to subsection 231(3) reflect the fact that the supplier who recovers the debt previously written off is not necessarily the same person who claimed the bad debt deduction. The deduction may have been claimed by the supplier's agent if the supplier and the agent had made an election under subsection 177(1.1) in respect of the supply to which the bad debt relates.

The amendments also clarify that, when there is a recovery of a particular amount at any time, the amount that is included in the description of A in the formula for determining the addition to net tax for the period is that amount recovered at that point in time. This clarification reflects the fact that partial recoveries may occur at different times, each of which would result in a separate addition under subsection 231(3).

The amendments apply to bad debts relating to supplies made after April 23, 1996.

Subsection 231(4) – Limitation Period

Subsection 231(4) sets out the limitation period for claiming bad debt deductions under section 231. Amendments are made to this provision to reflect changes to subsection 231(1) that provide that the "reporting entity" for a supply (as defined in new subsection 231(5)) is the person entitled to claim bad debt relief respecting a bad debt that has been written off in the supplier's books of accounts. The reporting entity is the agent of the supplier where an election under subsection 177(1.1) has been made.

The amendment applies to bad debts relating to supplies made after April 23, 1996. However, the reference to "the supplier" in the context of who writes off the bad debt in their books of account is read as a reference to the person claiming the bad debt deduction in the case of a deduction under former subsection 231(2). That subsection dealt with a case where the purchaser of a debt wrote off the debt in its books of account and was entitled to claim the bad debt deduction. Despite subsection 231(4), a transitional rule extends in certain circumstances the limitation period for an agent to claim a bad debt deduction under section 231 in relation to a supply that the agent accounted for pursuant to an election made under subsection 177(1.1) jointly with the supplier/principal.

The extension of the limitation period may apply to supplies made before December 20, 2002 in respect of which a bad debt was written off on or before that day. Specifically, the deadline for claiming the deduction is extended to the day that is one year after December 20, 2002 if the usual four-year limitation period under subsection 231(4) either had already expired by December 20, 2002 or would expire earlier than one year after that date.

Subsection 231(5) – Definitions "Applicable Provincial Tax" and "Reporting Entity"

New subsection 231(5) sets out the definition "applicable provincial tax" for the purposes of the formulae in amended subsections 231(1) and (3). The meaning of this expression is unchanged from its meaning within existing subsections 231(1) and (3). An "applicable provincial tax" is a tax, duty or fee that is imposed under a provincial act and that is prescribed by the *Taxes, Duties and Fees (GST/HST) Regulations*. The most common of these provincial taxes are the general sales taxes of the provinces.

New subsection 231(5) also adds the definition "reporting entity", which defines who (i.e., the supplier or their agent) is required to meet the reporting conditions for claiming a bad debt deduction.

The amendment comes into force on April 24, 1996.

Clause 32

Net Tax Where Passenger Vehicle Leased

ETA
235(1)(*b*)

The purpose of section 235 of the Act is to recapture input tax credits in respect of leased passenger vehicles if the lease costs exceed the maximum lease costs that are deductible under the *Income Tax Act*. The method of calculating the maximum lease costs is set out in section 67.3 of the *Income Tax Act*, which refers to paragraphs 7307(1)(*b*) and (3)(*b*) of the *Income Tax Regulations*.

Subsection 235(1) is amended to clarify that the maximum lease costs are to be calculated exclusive of any federal or provincial sales taxes that may be included in that amount for income tax purposes.

The amendment applies in respect of reporting periods that end after Announcement Date and in respect of any reporting period that ends on or before that day unless an amount was added pursuant to section 235 in determining the net tax for the reporting period, the amount was determined on the basis that the capital cost of the passenger vehicle for the purposes of the *Income Tax Act* included federal and provincial sales taxes, and the return for that reporting period was filed under Division V of Part IX of the Act on or before that day.

Clause 33

Registration Permitted

ETA
240(3)(*e*) and (*f*)

Subsection 240(3) of the Act permits persons engaged in a commercial activity in Canada and certain other specified persons to apply to become registered for purposes of the GST/HST.

Subsection 240(3) is amended to add new paragraph (*e*), which extends voluntary registration to a foreign bank that receives a qualifying supply (as defined in subsection 167.11(1) of the Act), or that receives a supply which would meet the definition "qualifying supply" contained in subsection 167.11(1) if the foreign bank were a registrant at the time of the agreement for that supply. The registration is permitted provided that the foreign bank recipient files a joint election under subsection 167.11(2) with the Minister of National Revenue in respect of the qualifying supply within the time limit set out in paragraph 167.11(7)(*a*).

Subsection 240(3) is also amended to add new paragraph (*f*), which permits a corporation in certain circumstances to register for the purposes of GST/HST. The corporation must be a corporation that would qualify as a temporary member (as defined in subsection 156(1) of the Act) if the corporation met all the requirements of that definition other than the requirement that the corporation be a registrant. This amendment allows this corporation to meet the registration requirement for being a temporary member, which in turn may, if the other conditions contained in section 156 are met, permit the corporation to make an election under that section to receive a supply on a GST/HST-free basis. The supply must be made in contemplation of a distribution made in the course of a reorganization described in subparagraph 55(3)(*b*)(i) of the *Income Tax Act*. This corporation may apply to be registered before it receives that supply so long as it does in fact subsequently receive that supply.

The amendment adding new paragraph 240(3)(*e*) is deemed to have come into force on June 28, 1999, and the amendment adding new paragraph 240(3)(*f*) is deemed to have come into force on November 17, 2005.

Clause 34

Accommodation Rebate

ETA
252.1(2), (3) and (8)

Section 252.1 of the Act provides a rebate of tax paid on short-term accommodation and camping accommodation that are made available to a non-resident. Subsections 252.1(2), (3) and (8) of the French version of the Act are amended to ensure consistency with the English version in respect of camping accommodation.

The amendments apply to campsites not included in a tour package where the campsite is made available after June 1998. These amendments in respect of campsites included in a tour package apply where any accommodation in Canada (whether short-term accommodation or a campsite) that is part of the tour package is first made available after June 1998.

Clause 35

Restriction

ETA
252.2(*g*)(ii)

Section 252.2 of the Act sets out restrictions on the claiming of rebates under section 252 or subsections 252.1(2) or (3) of the Act. Subparagraph 252.2(*g*)(ii) of the French version of the Act is amended to ensure consistency with the English version in respect of the rebate of tax paid on camping accommodation that is made available to a non-resident.

The amendment applies to rebate applications received by the Minister of National Revenue after June 1998.

Clause 36

Rebate Paid by Supplier

ETA
252.4(4)

Subsection 252.4(4) of the Act allows a supplier in certain circumstances to credit an unregistered organizer or a sponsor of a foreign convention (as defined in subsection 123(1) of the Act) the amount of a rebate under section 252.4 to which the organizer or sponsor would be entitled in respect of supplies made by that supplier. Among the items that qualify for the rebate is short-term accommodation (as defined in subsection 123(1)) and camping accommodation that are acquired by the organizer or sponsor, as the case may be, for supply in connection with the convention. Subsection 252.4(4) of the French version of the Act is amended to ensure consistency with the English version in respect of camping accommodation.

The amendment applies in respect of supplies of camping accommodation that are acquired for re-supply in connection with a convention that begins after June 1998 and for which no admissions are sold before February 25, 1998

Clause 37

Nova Scotia First-Time Homebuyers' HST Rebate

ETA
254(2.01) to (2.1)

Subsection 254(2.1) of the Act provides for a partial rebate of the provincial component of the HST in respect of the purchase of new homes in Nova Scotia where the purchaser is entitled to a rebate under subsection 254(2) or would be so entitled if the total consideration for the residential complex were less than $450,000. Under existing subsection 254(2.1), the Nova Scotia HST New Housing Rebate is equal to 18.75 per cent of the provincial component of the HST paid (or 1.5 per cent of the pre-tax purchase price), to a maximum of $2,250. The maximum is reached at a pre-tax home price of $150,000.

As announced in Nova Scotia's 2001 budget, the Nova Scotia HST New Housing Rebate is amended to target the rebate to first-time homebuyers, effective January 1, 2002. Further, the maximum rebate is reduced to $1,500.

To qualify as a first-time homebuyer, it must generally be the case that neither that individual, nor their spouse or common-law partner, was an owner-occupant of a home in Canada within the preceding five years. Further, if the new home in respect of which a new housing rebate is claimed is acquired for use as the primary place of residence of a relation of the rebate applicant, but not of the applicant or the applicant's spouse or common-law partner, then the relation must also satisfy the same condition regarding previous owner-occupant status. It should be noted, however, that an individual would still meet this condition, even if they were an owner-occupant during that preceding five-year period, if the last home in Canada in relation to which they were an owner-occupant during the period was accidentally destroyed during that period.

New subsection 254(2.01) provides that an individual is an "owner-occupant" of a home if it is their primary place of residence and they or their spouse or common-law partner own either the home or, in the case of a residential unit in a residential complex of a cooperative housing corporation, a share in the corporation.

For purchased homes, new subsection 254(2.02) establishes the end of the five-year period (referred to as the "relevant transfer date"), which is the earlier of the date on which ownership of the new home is transferred to the purchaser and the date possession of the new home is transferred to the purchaser.

For purchased homes, the new rebate rules apply where:

- the agreement of purchase and sale is entered into after 2001;
- the new home is first occupied as the primary place of residence of the purchaser, or a relation of the purchaser, after 2002, in the case of condominium units, or after June 2002, in any other case; or
- ownership and possession of the new home are transferred to the purchaser after 2002, in the case of condominium units, or after June 2002, in any other case.

Clause 38

Nova Scotia First-Time Homebuyers' HST Rebate for Building Only

ETA
254.1(2.01) to (2.1)

Subsection 254.1(2.1) of the Act effectively provides for a partial rebate of the provincial component of the HST embedded in the price of a new building forming part of a residential complex or a residential condominium unit located in Nova Scotia in the circumstances where the land on which the building is situated is being leased to the purchaser of the building. To qualify for a rebate under subsection 254.1(2.1), a purchaser must also qualify for a partial rebate under subsection 254.1(2), or would have so qualified if the value of the complex were less than $477,000. Under existing subsection 254.1(2.1), the Nova Scotia New Housing Rebate is equal to 1.39 per cent of the purchase price attributable to the building, to a maximum of $2,250.

As announced in Nova Scotia's 2001 budget, this rebate is amended to target the rebate to first-time homebuyers, effective January 1, 2002. Further, the maximum rebate is reduced to $1,500.

The eligibility condition relating to previous owner-occupant status under subsection 254.1(2.01) is the same for this rebate as for the Nova Scotia First-time Homebuyers' Rebate under subsection 254(2.1), as described in the commentary on the amendments to that subsection and on new subsections 254(2.01) and (2.02). However, in the case of the rebate under subsection 254.1(2.1), new subsection 254.1(2.02) provides that the "relevant transfer date" is the date on which possession of the residential complex is transferred to the purchaser of the building.

The new rebate rules apply where:

- the agreement of purchase and sale of the building is entered into after 2001;
- the new home is first occupied as the primary place of residence of the purchaser, or a relation of the purchaser, after 2002, in the case of condominium units, or after June 2002, in any other case; or
- under the agreement for the sale of the building, possession of the residential complex is transferred to the purchaser after 2002, in the case of a condominium unit, or after June 2002, in any other case.

Existing paragraph 254.1(2.1)(*a*) refers to the value of the complex at which a purchaser ceases to qualify for the rebate under subsection (2). Due to a previous amendment to section 165 in 2006, which reduced the GST/HST rate, subsection 254.1(2) and paragraph 254.1(2.1)(*a*) were previously amended to reduce the amount referred to in that paragraph from $481,500 to $477,000 to reflect the reduced embedded tax. Since the amendment applies also to cases where the federal component of the HST applied at the higher rate, the amendment first refers to $481,500. Paragraph 254.1(2.1)(*a*) is subsequently amended to refer to $477,000 where the federal component of the HST applies at the lower rate. The amendment applies in respect of a residential complex in which a residential unit is situated if the possession of the unit is transferred on or after July 1, 2006, unless the tax under subsection 165(1) in respect of the deemed supply of the complex referred to in paragraph 254.1(2)(*d*) applied at the higher rate.

Clause 39

Nova Scotia Cooperative Housing Rebate

ETA
255(2.01) to (2.1)

Subsection 255(2.1) effectively provides for a partial rebate of the provincial component of the HST embedded in the cost of a share in a cooperative housing corporation acquired for the purpose of using a new residential unit in a residential complex of the corporation situated in Nova Scotia as the primary place of residence of the purchaser or a relation of the purchaser.

Under existing subsection 255(2.1), the rebate is equal to 1.39 per cent of the purchase price of the share, to a maximum of $2,250.

As announced in Nova Scotia's 2001 budget, this rebate is amended to target the rebate to first-time homebuyers, effective January 1, 2002. Further, the maximum rebate is reduced to $1,500.

The eligibility condition relating to previous owner-occupant status under subsection 255(2.01) is the same for this rebate as for the Nova Scotia First-time Homebuyers' Rebate under subsection 254(2.1, as described in the commentary on the amendments to that subsection and on new subsections 254(2.01) and (2.02). However, in the case of the rebate under subsection 255(2.1), new subsection 255(2.02) provides that the "relevant transfer date" is the date on which ownership of the share in the cooperative housing corporation is transferred.

The new rebate rules apply where:

- the agreement of purchase and sale of the share is entered into after 2001;
- the residential unit in respect of which the share is acquired is first occupied as the primary place of residence of the purchaser, or a relation of the purchaser, after June 2002; or
- ownership of the share is transferred to the purchaser after June 2002.

Existing paragraph 255(2.1)(*c*) refers to the amount of total consideration payable for the supply of the share at which a purchaser ceases to qualify for the rebate under subsection (2). Due to a previous amendment to section 165 in 2006, which reduced the GST/HST rate, subsection 255(2) and paragraph 255(2.1)(*c*) were previously amended to reduce the amount referred to in that paragraph from $481,500 to $477,000 to reflect the reduced embedded tax. Since the amendment applies also to cases where the federal component of the HST applied at the higher rate, the amendment first refers to $481,500. Paragraph 255(2.1)(*c*) is subsequently amended to refer to $477,000 where the federal component of the HST applies at the lower rate. The amendment applies in respect of a rebate application filed on or after July 1, 2006, unless the cooperative housing corporation paid tax calculated at the higher rate under section 165 in respect of the supply to the corporation of the complex in which the residential unit is situated.

Clause 40

New Housing Rebate for Owner-built Homes

ETA
256

Section 256 of the Act provides for a partial rebate of the GST, or of the federal component of the HST, in respect of new homes constructed by the owner, as well as a partial rebate of the provincial component of the HST in the case of such homes situated in Nova Scotia.

Subclause 40(1)

Nova Scotia New Housing Rebate for Owner-built Homes

ETA
256(2.02) to (2.1)

Under existing subsection 256(2.1), the rebate in respect of a new owner-built home situated in Nova Scotia is equal to 18.75 per cent of the provincial component of the HST paid by the owner that is eligible for the rebate, to a maximum of $2,250.

As announced in Nova Scotia's 2001 budget, this rebate is amended to target the rebate to first-time homeowners, effective January 1, 2002. Further, the maximum rebate is reduced to $1,500.

The eligibility condition relating to previous owner-occupant status during the preceding five-year period is the same for this rebate as for the Nova Scotia First-time Homebuyers' Rebate under subsection 254(2.1) of the Act, as described in the commentary on the amendments to that subsection and on the new subsections 254(2.01) and (2.02). However, in the case of the rebate under subsection 256(2.1), new subsection 256(2.03) provides that the end of the five-year period (referred to as the "relevant completion date") is the day on which the construction of the home is substantially completed.

The new rebate rules apply where:

- the building permit for the construction of the new home is issued after 2001; or
- the new home is first occupied as the primary place of residence of the owner, or a relation of the owner, after June 2002.

Subclause 40(2)

Application for New Housing Rebate

ETA
256(3)

Section 256 of the Act provides for a GST New Housing Rebate to an individual who constructs or substantially renovates their home. This rebate parallels the GST New Housing Rebate that is available to an individual who purchases a new home from a builder.

While the rebate for purchased homes is usually credited by the builder at the time of sale, the rebate for owner-built homes must, in all cases, be claimed by the owner-builder by filing an application with the Canada Revenue Agency within a specified period from the day the construction or renovation of the home is substantially completed or the date of occupation, depending on the circumstances. The process of claiming the rebate for an owner-built home thus requires construction information and other details to be provided along with the rebate application.

The amendment to subsection 256(3) permits the Minister of National Revenue to accept an application for the rebate for an owner-built home after the period otherwise allowed for making an application. The amendment recognizes that exceptional circumstances may prevent an owner-builder from filing the rebate application by the due date.

The amendment also applies in respect of the Nova Scotia Housing Rebate provided under subsections 256(2.1) and (2.2).

The amendment to subsection 256(3) comes into force on December 20, 2002.

Clause 41

Non-registrant Sale of Real Property

ETA
257(1)(*b*)

Subsection 257(1) of the Act allows a non-registrant who makes or is deemed to make a taxable sale of real property to claim a rebate to recover previously non-recoverable tax paid by the non-registrant in respect of the property. The rebate is equal to the lesser of the basic tax content of the property at the time of the sale and the tax that is or would, in the absence of section 167 of the Act, be payable in respect of the sale.

An amendment is made to paragraph 257(1)(*b*), consequential to the addition of new section 167.11 of the Act, to add a reference to section 167.11. As a result, the rebate under subsection 257(1) is equal to the lesser of the basic tax content of the property at the time of the sale and the tax that is or would, in the absence of section 167 or 167.11, be payable in respect of the sale.

The amendment is deemed to have come into force on June 28, 1999.

Clause 42

Rebate for Qualifying Motor Vehicle

ETA
258.1(1) and (6)

Subsection 258.1(1) of the Act defines the term "qualifying motor vehicle" for the purposes of a rebate of the tax on that portion of the vehicle's purchase price attributable to its special features for use by individuals with disabilities. The rebate applies to new and used vehicles that are specially equipped but that were not previously used while so equipped.

The amendment modifies the definition "qualifying motor vehicle" under subsection 258.1(1) by removing the restriction that for as long as the vehicle has been specially equipped, it has never been used. Consequently, subsection 258.1(6) is also amended to allow for a rebate of the tax paid on specially equipped vehicles used before being imported into Canada or being brought into a participating province.

The amendments are deemed to have come into force on April 4, 1998. To the extent that the rebate was previously unavailable to a person, a transitional rule provides a four-year period from Announcement Date for the person to claim this rebate as a result of the extended definition "qualifying motor vehicle" and consequential removal of a usage restriction. A special rule is also provided in cases where a person previously filed a rebate claim that was assessed based on the pre-amended provision, since the Act generally does not permit a person to file more than one rebate application with respect to the same matter. The special rule provides a person four years from Announcement Date to file a second application for a rebate in respect of a vehicle that was previously used while specially equipped.

Clause 43

Rebate for Modification Service

ETA
258.2(*b*)

Section 258.2 of the Act allows persons in certain circumstances to claim a rebate of the tax attributable to modification services paid on the importation or bringing in a participating province of a vehicle that is specially equipped or adapted in a manner that transports a wheelchair or allows a disabled individual to operate the vehicle.

The amendment removes the restriction that the vehicle could only be used to the extent reasonably necessary to bring the vehicle to the supplier of the modification service and bring the vehicle back to Canada or back to the participating province after modification.

The amendment is deemed to have come into force on April 4, 1998. To the extent that the rebate was previously unavailable to a person, a transitional rule provides the person four years from the Announcement Date to claim this rebate as a result of the importation or bringing into a participating province of a vehicle that had the modification service performed on it. A special rule is also provided in cases where a person previously filed a rebate claim that was assessed based on the pre-amended provision, since the Act generally does not permit a person to file more than one rebate application with respect to the same matter. The special rule provides a person four years from the Announcement Date to file a second application for a rebate in respect of the tax paid on importing or bringing a modified vehicle into Canada or into the participating province, as the case may be.

Clause 44

Public Service Body Rebate

ETA
259

Section 259 of the Act provides for rebates to charities, substantially government-funded non-profit organizations and other public service bodies (i.e., universities, public colleges, school authorities, hospital authorities and municipalities).

Subclause 44(1)

Definition "non-creditable tax charged"

ETA
259(1)(*a*)(i)

The term "non-creditable tax charged" refers to amounts that an entity eligible for a rebate is or was required to pay as GST/HST (net of input tax credits or other rebates) and is not otherwise recoverable by the entity.

Under the definition "non-creditable tax charged", an amount of tax in respect of a returnable container that the entity would otherwise not be entitled to recover under the special rules for returnable container deposits in section 226 of the Act is not eligible to be rebated under section 259. The definition thus contains a cross-reference to existing subsection 226(4).

The amendment to the definition "non-creditable tax charged" is consequential on the amendments to section 226. Under new section 226, the restrictions on the claiming of input tax credits are found under a new subsection. Therefore, the amendment to the definition "non-creditable tax charged" replaces the reference therein to subsection 226(4) with a reference to section 226.

The amendment is deemed to have come into force on May 1, 2002.

Subclause 44(2)

Exclusions

ETA
259(4.2)

Subsection 259(4.2) provides that, subject to certain exceptions provided in subsection 259(4.21), no provincial component of the HST is to be included in determining rebates to public service bodies under section 259. The French version of subsection 259(4.2) is amended to replace the term "taux" with the term "pourcentage" to ensure that the defined term "pourcentage provincial établi" is properly referred to, thereby ensuring consistency between both official versions of the Act.

The amendment applies for the purposes of determining the rebate of a person under section 259 for claim periods ending on or after January 1, 2005. However, the rebate is determined as if the amendment had not come into force for the purposes of determining the rebate of a person for the claim period of the person that includes January 1, 2005, in respect of

- an amount of tax that became payable by the person before January 1, 2005;
- an amount that is deemed to have been paid or collected by the person before January 1, 2005; or
- an amount that is required to be added in determining the person's net tax as a result of a branch or division of the person becoming a small supplier division before January 1, 2005, or as a result of the person ceasing before January 1, 2005, to be a registrant.

Clause 45

Rebates in Respect of Beverages in Returnable Containers

ETA
263.2

Under sections 252, 260 and 261.1 of the Act, rebates are provided for exported goods and goods removed from HST participating provinces in certain circumstances. New section 263.2 of the Act addresses a case where a person purchases a beverage in a returnable container and is charged a non-refundable container deposit. In that case, the tax in respect of the non-refundable container deposit is deemed under new section 226 of the Act to be in respect of a deemed supply of a service received by the person (see commentary on amendments to section 226).

New section 263.2 also addresses a case where a person has purchased used and empty returnable containers (or the material resulting from their compaction) for consideration in excess of the refundable deposits for the containers. In that case, the tax on the excess amount is deemed under new section 226 to be in respect of a service received by the person.

In both cases, without new section 263.2, the person would not be entitled to a rebate under any of sections 252, 260 and 261.1 for the tax amount since it is considered to be in respect of a service instead of a good. New section 263.2 ensures that the tax is considered to be part of the tax on the beverage for purposes of those rebate provisions.

The amendment is deemed to have come into force on May 1, 2002.

Clause 46

Waiver or Cancellation of Interest or Penalties

ETA
281.1(1) and (2)

Effective April 1, 2007, section 281.1 of the Act will introduce a ten-year limitation period in respect of waivers or cancellations of interest or penalties, such that the Minister of National Revenue may, on or before the day that is ten calendar years after the end of a reporting period of a person, waive or cancel interest or penalties payable by the person in respect of that reporting period.

Section 281.1 is amended to enable the Minister to waive or cancel interest or penalties in respect of a reporting period beyond the ten-year limitation period, provided the person makes an application for relief before the end of that period.

The amendment comes into force on April 1, 2007.

Clause 47

Requirement to Provide Documents or Information

ETA
289(1)

Subsection 289(1) of the Act provides that, despite any other provision of Part IX of the Act, the Minister of National Revenue may by notice require that any person provide information or any document for any purpose relating to the administration or enforcement of Part IX. An exception is made where the information or document relates to an unnamed person or persons, in which case the procedure set out in subsections 289(2) to (6) of the Act must be followed.

Subsection 289(1) is amended to provide that the Minister may by notice require any person to provide information or any document relating to the administration or enforcement of a listed international agreement or Part IX. A "listed international agreement" is newly defined in subsection 123(1) of the Act to mean the *Convention on Mutual Administrative Assistance in Tax Matters*, as amended from time to time, concluded at Strasbourg on January 25, 1988.

The amendment comes into force on Royal Assent.

Clause 48

Disclosure of Personal Information

ETA
295(5)

Existing section 295 of the Act prohibits the use or communication of information obtained by the Canada Revenue Agency under Part IX of the Act unless specifically authorized by one of the exceptions found in that section.

Subclause 48(1)

Disclosure of Confidential Information

ETA
295(5)(*d*)(v)

Subparagraph 295(5)(*d*)(v) currently permits disclosure of the name, address, occupation and size or type of business of a person to a government department or agency for the purpose of enabling that department or agency to obtain statistical data for research and analysis.

Subparagraph 295(5)(*d*)(v) is amended to add "telephone number" to the list of data that may be disclosed in those circumstances.

The amendment comes into force on Royal Assent.

Subclause 48(2) and (3)

Disclosure of Confidential Information

ETA
295(5)(*m*) and (*n*)

Subsection 295(5) is amended to add new paragraph (*m*), which allows the communication of confidential information with respect to business activities carried on in a province to a statistical agency in that province. The information may be provided solely for the agency's research and analysis and only if the agency is authorized under its provincial law to collect the same or similar information on its own behalf. New paragraph (*m*) parallels existing paragraph 241(4)(*o*) of the *Income Tax Act*.

Subsection 295(5) is also amended to add new paragraph (*n*), which authorizes an official to provide or to allow the inspection of or access to confidential information solely for the purposes of a provision contained in a listed international agreement. The term "listed international agreement" is newly defined in subsection 123(1) of the Act to mean the *Convention on Mutual Administrative Assistance in Tax Matters*, as amended from time to time, concluded at Strasbourg on January 25, 1988.

The amendment adding new paragraph 295(5)(*m*) comes into force on Royal Assent and applies to information relating to fiscal years ending after 2003. The amendment adding new paragraph 295(5)(*n*) comes into force on Royal Assent.

Clause 49

Exception for Extension of Time by Minister

ETA
303(4)

Subsection 303(4) of the Act allows the Minister of National Revenue to accept an application to extend the time for filing a notice of objection under subsection 303(1) that is not made or sent in the manner specified in subsection 303(3). Subsection 303(4) of the French version of the Act is amended to replace the term "faire droit à" by the term "recevoir" to ensure consistency between both official versions of the Act.

The amendment comes into force on Royal Assent.

Clause 50

Provision of Document to the Court

ETA
308(2)

Subsection 308(2) of the Act requires the Commissioner to forward copies of all returns, applications, notices of assessment, notices of objection and notifications that are relevant to an appeal to the Court and the appellant. Once forwarded, the copies become part of the Court record and are evidence of the existence of the documents and the making of the statements contained therein. Subsection 308(2) is parallel to subsection 176(1) of the *Income Tax Act*.

The amendment repeals subsection 308(2) since the Federal Court of Appeal found subsection 176(1) of the *Income Tax Act* to be unconstitutional.

The amendment comes into force on Royal Assent.

Clause 51

Offence re Confidential Information

ETA
328(2)(*a*)

Existing paragraph 328(2)(*a*) of the Act makes it an offence for any person who receives confidential information for a particular purpose specified in certain paragraphs of subsection 295(5) of the Act to use that information, or provide the information to another person, for any other purpose. A person who is found guilty of an offence under this provision is liable on summary conviction to a fine of up to $5,000, to a term of imprisonment of up to one year, or to both.

Paragraph 328(2)(*a*) is amended to refer to new paragraph 295(5)(*m*), which allows the communication of confidential information with respect to business activities carried on in a province to a statistical agency in that province. Paragraph 328(2)(*a*) is also amended to refer to new paragraph 295(5)(*n*), which allows the disclosure of confidential information for the purposes of a provision contained in a "listed international agreement" (a term newly defined in subsection 123(1) of the Act).

The amendments come into force on Royal Assent.

Clause 52

Definitions

ETA
Schedule V, Part II, section 1

Section 1 of Part II of Schedule V to the Act contains definitions of key terms referred to in this Part, which sets out the health care services that are exempt.

Subclause 52(1)

Definition "practitioner"

ETA
Schedule V, Part II, section 1

The definition "practitioner" in section 1 of Part II of Schedule V identifies the types of health care professionals who are not required to charge tax on their health care services itemized in sections 7 and 7.1 of Part II of Schedule V.

The definition "practitioner" is amended to add those persons practicing the profession of speech-language pathology to the list. An amendment contained in the *Sales Tax and Excise Tax Amendments Act, 2001* had the effect of including speech therapists (as speech-language pathologists were formerly referred to) in the definition "practitioner" until the end of 2001, to allow time for the completion of a regulatory process then underway. A subsequent announcement proposed a similar amendment for the year 2002, during which the regulatory process was completed. The definition "practitioner" in the English version also replaces the term "speech therapy" with the modern term "speech-language pathology". No change is needed in the terminology used in the French version of this provision.

The amendment applies to any supply made after 2000.

Subclause 52(2) and (3)

Definition "health care facility"

ETA
Schedule V, Part II, section 1

Subparagraph (*c*)(i) of the French version of the definition "health care facility" is amended to correct minor inconsistencies with the English version of the definition. The French version of the definition is further amended by the re-introduction of subparagraph (*c*)(iii), which covers meals and accommodation, to correct the fact that the subparagraph was inadvertently deleted during the printing process in Parliament when the provision was last amended.

The amendments are deemed to have come into force on December 17, 1990.

Clause 53

Speech-language Pathology Services

ETA
Schedule V, Part II, section 7

Section 7 of Part II of Schedule V to the Act lists health care practitioners' services that are exempt in all provinces from the GST/HST even when supplied in a province that does not cover the particular service under its own provincial health care plan.

The amendment has the effect of confirming the exemption for speech-language pathology services under section 7 of Part II of Schedule V to the Act. Amendments contained in the *Sales Tax and Excise Tax Amendments Act, 2001* added the services of speech therapists (as speech-language pathologists were formerly referred to) to the list of exempt services under paragraph 7(*h*), until the end of 2001, in order to allow time for the completion of a regulatory process then underway. A subsequent announcement extended the exemption for the year 2002 during which the regulatory process was completed. The exemption is therefore being added to the list. The amendment to paragraph 7(*h*), in the English version also replaces the term "speech therapy" with the modern term "speech-language pathology". This change in terminology does not alter the scope of coverage of the provision. No change is needed in the terminology used in the French version of this provision.

The amendment applies to supplies made after 2000.

Clause 54

Social Workers' Services

ETA
Schedule V, Part II, section 7.2

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

The exemption of this service under section 7.2 does not depend on whom the service is supplied to (i.e., it is not dependant on who the recipient of the supply is within the meaning of subsection 123(1) of the Act). For instance, a social worker may counsel an individual for an alcohol dependency, but that service may be paid for by an aid organization. In this case, even though the supply is made to the organization, and not the individual, it is an exempt supply because the service is rendered to an individual. In addition, in order for the service to be exempt, it must be rendered within a professional-client relationship between the social worker and the individual to whom the service is rendered. Thus, if an organization hired a social worker to give a talk on alcohol dependency at a seminar open to the general public, the social worker's service would not be provided in the context of a professional-client relationship between the social worker and each of the individuals attending the seminar. Therefore, the social worker's charge to the organization would not be exempt.

The exemption applies not only to services rendered to the individual who is afflicted with a physical or mental disorder, but also to any other individual who is a relative or caregiver of the individual suffering from the disorder. The exemption does not, however, cover services provided by a social worker to another professional, such as another social worker, in relation to a client of the other professional, unless the services are rendered to the client in the course of a professional-client relationship with the service provider. For example, a supply by a social worker of the service of giving non-client-specific advice to another social worker about the general arrangement of client care would not be exempt.

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

The amendment applies to supplies made after October 3, 2003. If the time to file an application for a rebate under subsection 261(1) of the Act would otherwise expire earlier, a transitional rule gives a person until the day that is one year after the day the enactment of new section 7.2 is given Royal Assent to file an application for a refund under that subsection of an amount that was paid by the person before the day of Royal Assent in respect of tax in respect of a supply that is exempt as a result of new section 7.2. Another transitional rule provides that, if the time for a supplier to adjust, credit or refund an amount under subsection 232(1) of the Act

would otherwise expire earlier, the supplier has until the day that is one year after the day the enactment of new section 7.2 is given Royal Assent to adjust, credit or refund an amount in respect of tax that was charged or collected before the day of Royal Assent in respect of a supply that is exempt as a result of new section 7.2. These rules do not apply to an amount charged, collected or paid on account of tax in respect of a supply that was already exempt under another provision.

Clause 55

Goods Supplied by a Charity in Conjunction with Real Property

ETA
Schedule V, Part V.1, section 1

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

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

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

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

Clause 56

Supply by Government, Municipality, etc.

ETA
Schedule V, Part VI, Section 20

Existing section 20 of Part VI of Schedule V to the Act sets out a number of supplies relating to regulatory and administrative functions that are exempt when made by a government, municipality, or a board, commission or other body established by a government or municipality.

The exemptions provided under section 20 include exemptions under existing paragraphs 20(*a*), (*b*), (*b.1*), (*d*) and (*e*) for services of filing and retrieval of certain documents or information in official registration systems, such as those for vital statistics (e.g. birth, deaths and marriages), property (e.g. land registration) and courts.

Paragraphs 20(*a*), (*b*), (*b.1*), (*d*) and (*e*) are amended to extend the application of exemption under these paragraphs to include supplies made in circumstances when a supply of filing or retrieval of documents or information is characterized as the supply of a right rather than the supply of a service (e.g. when such a supply is made with little or no human intervention through providing a right to access or use an electronic database).

Paragraphs 20(*a*) and (*b*) are also amended to provide that supplies of the processing of applications for filing or retrieval of documents and information are exempt even when the processing leads to the rejection of an application.

Existing paragraph 20(*b.1*) provides that the service of filing a document in accordance with legislative requirements is exempt. Paragraph 20(*b.1*) is combined with existing paragraph 20(*b*) which provides exempt status for filing or procuring of a document in a court. Paragraph 20(*b*) is also amended to confirm that exemption applies regardless of whether a fee is considered to be for filing or for issuing**,** providing or obtaining a document from a court and that exemption extends to issuing**,** providing or obtaining a document from a tribunal similar to a court.

The amendments to paragraphs 20(*a*), (*b*), (*b.1*), (*d*) and (*e*) are deemed to have come into force on December 17, 1990, except that they do not apply to supplies in respect of which the supplier charges or collects an amount of tax on or before Announcement Date.

Existing paragraph 20(*c*) provides that supplies of, and services in respect of processing an application for, a licence, permit, quota or similar right are exempt. This paragraph is amended to ensure consistency with the wording of the exemptions for services of processing of applications provided under paragraphs (*a*) and (*b*) and to confirm that exemption does not extend to services other than the processing of an application, such as inspection services. The amendments also extend the exemption to include the supply of a right to have access to, or to use, a filing or registration system to make application for a licence, permit, quota or similar right.

The amendments to paragraph 20(*c*) are deemed to have come into force on December 17, 1990, except that they do not apply to supplies of services made on or before Announcement Date in respect of which either tax is not charged or collected, or a refund of tax is claimed, on or before that day. The amendments also do not apply to supplies of rights to have access to, or to use, a filing or registration system in respect of which the supplier charges or collects an amount of tax on or before that day.

Existing paragraph 20(*l*) excludes supplies of rights to have access to, or to use, property of a government, municipality, or a board, commission or other body established by a government or municipality from exemption under section 20. Paragraph 20(*l*) is amended consequential to amendments to paragraphs 20(*a*) to (*e*) so that the exclusion does not apply to supplies of rights to have access to or to use a filing or registration system that are made exempt by those amendments.

The amendments to paragraphs 20(*l*) are deemed to have come into force on December 17, 1990, except that they do not apply to supplies made in respect of which the supplier charges or collects an amount of tax on or before Announcement Date.

Clause 57

Prescription Drugs and Biologicals

ETA
Schedule VI, Part I, section 2

Section 2 of Part I of Schedule VI to the Act contains a listing of drugs and substances that are unconditionally zero-rated at all levels of production and distribution. Section 2 is amended to add to the list of zero-rated prescription drugs and biologicals a blood substitute product known as plasma expander. This product is purchased by the blood agencies and distributed to hospitals and other health care providers for use in maintaining patients' circulatory blood volume during surgical procedures or trauma care.

Section 2 is also amended by adding paragraph (*d.1*) to provide zero-rated status for drugs listed in Schedule 1 to the *Benzodiazepines and Other Targeted Substances Regulations* that were previously zero-rated under paragraph (*b*) because they were listed in Schedule F to the *Food and Drug Regulations*.

The change reflects the transfer of federal regulatory control of Benzodiazepines from the *Food and Drug Regulations* to regulations made under the *Controlled Drugs and Substances Act*, the *Benzodiazepines and Other Targeted Substances Regulations,* on September 1, 2000.

The amendments in respect of plasma expander apply to supplies made after April 12, 2001 and to supplies for which consideration becomes due after that day or is paid after that day without having become due.

The amendment in respect of *Benzodiazepines* is deemed to have come into force on September 1, 2000, except that it does not apply to any supply, importation or bringing into a province occurring after August 2000, but on or before Announcement Date, and for which tax was charged or paid on or before that day.

Clause 58

Sales of Industrial Hemp Seeds and Straw

ETA
Schedule VI, Part IV, section 3

The amendment to section 3 of Part IV of Schedule VI to the Act adds to the list of zero-rated supplies of agriculture products, supplies of grain or seeds, or the mature bare stalks (i.e., straw), of industrial hemp plants. This treatment applies where the supply is made in accordance with the *Controlled Drugs and Substances Act* or is excluded from the application of that Act. In the case of grain or seeds, they must not be further processed than sterilized or treated for seeding purposes and must not be for sale or use as feed for wild birds or pets.

The amendment applies to supplies for which consideration becomes due after April 12, 2001 or is paid after that day without having become due.

Clause 59

Importations of Industrial Hemp Seed or Straw

ETA
Schedule VII, section 6

The amendment to section 6 of Schedule VII to the Act coincides with other amendments made to Part IV of Schedule VI to the Act, which has the effect of zero-rating domestic sales of industrial hemp grain or seed or the mature bare stalks (i.e., straw), and Schedule VII, which ensures that importations of these products are likewise not taxable.

Existing section 6 of Schedule VII is amended so as not to apply to the importation of industrial hemp grain or seed and straw since such importations are specifically addressed in new section 12 of Schedule VII in order to apply the condition relating to compliance with the *Controlled Drugs and Substances Act*.

The amendment applies to goods imported after April 12, 2001.

Clause 60

Imported Goods Relieved Under Exporters of Processing Services Program

ETA
Schedule VII, section 8.3

Section 8.1 of Schedule VII to the Act sets out the conditions for a registrant to obtain GST/HST relief on certain importations of goods that are imported solely for the purposes of having services performed that are supplied by the registrant to a non-resident person. One of those conditions, set out in subparagraph 8.1(*e*)(iii), is that the registrant not be closely related to that non-resident person or to any non-resident owner of the imported goods or of the processed products. Section 8.3 of the Schedule provides that a non-resident referred to in section 8.1 is considered to be closely related to the registrant where they would be closely related to each other under section 128 of the Act if the non-resident were a registrant resident in Canada.

Schedule VII is amended to repeal section 8.3. This amendment is consequential to amendments to section 128 of the Act, which removes the requirement that two corporations be registrants and resident in Canada in order to be closely related to each other.

The amendment to Schedule VII is deemed to have come into force on November 17, 2005.

Clause 61

Importations of Industrial Hemp Seed or Straw

ETA
Schedule VII, section 12

The amendment to section 12 of Schedule VII to the Act coincides with the amendment under Part IV of Schedule VI to the Act that has the effect of zero-rating domestic sales of industrial hemp grain or seed, or the mature bare stalks (i.e., straw), by ensuring that importations of these products are likewise not taxable.

New section 12 sets out the particular circumstances in which an importation of industrial hemp grain or seed or straw can be imported on a non-taxable basis. Specifically, since the *Controlled Drugs and Substances Act* regulates the importation of these products in certain cases, one of the conditions for relief from tax at the border is that the importation must be in accordance with that Act where applicable.

The amendment applies to grains or seeds and stalks imported after April 12, 2001.

Clause 62

Goods Brought into a Participating Province

ETA
Schedule X, Part I, section 22

Section 22 of Part I of Schedule X to the Act describes goods that are relieved from the tax imposed under Division IV.1 of Part IX of the Act (i.e., the provincial component of the HST) on bringing the goods into a participating province. Generally, relief is provided for goods brought in by a registrant for consumption, use or supply exclusively in the course of commercial activities of the registrant. In that case, if the tax were not relieved, the registrant would otherwise be entitled to claim a full input tax credit for the tax.

Existing section 22 excludes returnable beverage containers from relief from the tax payable under Division IV.1. This is because, under existing rules, a registrant would not, in all cases, be entitled to claim an input tax credit for the tax component of the container deposits even if the beverages in the filled and sealed containers were brought into a participating province exclusively for supply in the course of commercial activities of the registrant. Under existing section 226 of the Act, registrants are disallowed from claiming these input tax credits if the registrants are, in turn, not required to include in their net tax the tax component of the container deposits when selling the beverages in the filled and sealed containers.

The existing exclusion in section 22 for returnable containers is not necessary under the amended rules for returnable containers in section 226 (see commentary on that section). Under those rules, a registrant is entitled to claim input tax credits for tax (including the tax on the container deposit) in respect of beverages in filled and sealed returnable containers that are brought into a participating province. It is only in circumstances where a beverage in a filled and sealed container is both purchased and sold in a participating province that the registrant may be denied the input tax credit (see commentary on subsection 226(8)).

The amendment applies to containers brought into a participating province after April 2002.

Clause 63

Replacing "(GST)" with "(GST/HST)" and "(TPS)" with "(TPS/TVH)"

ETA
195.2(1)(*b*), 195.2(2), 220.07(2)(*a*), 225.1(10), 227(4.2), 227(6), 352(9)(*a*), 352(9)(*c*), 352(10)(*a*)(i), 352(10)(*c*)(i), 354(2)(*a*)(i), 354(2)(*c*)(i), and section 1 of Part II of Schedule X

The amendments replace the reference to "(GST)" with "(GST/HST)" in regulation titles throughout the Act. The amendments also replace the references to "(TPS)" with "(TPS/TVH)" in regulation titles throughout the French version of the Act.

The amendments are deemed to have come into force on April 1, 1997.

Amendments in Respect of Excise Taxes

Clause 64

Interpretation

ETA
2

Section 2 of the Act defines terms that apply in section 2, Parts I to VIII (other than section 121) and Schedules I to IV to the Act.

Definition "listed international agreement"

ETA
2(1)

The definition "listed international agreement" is added to subsection 2(1) of the Act as a consequence of the amendments to subsection 99(1) of the Act. The agreement included in the definition is the *Convention on Mutual Administrative Assistance in Tax Matters*, as amended from time to time, concluded at Strasbourg on January 25, 1988. That Convention provides a framework for governments to combat tax avoidance and tax evasion on a global scale by facilitating the exchange of information between national tax administrations.

The amendment comes into force on Royal Assent.

Clause 65

Waiver or Cancellation of Interest or Penalty

ETA
88(1)

Effective April 1, 2007, subsection 88(1) of the Act will introduce a ten-year limitation period in respect of waivers or cancellations of interest or penalties, such that the Minister of National Revenue may, on or before the day that is ten calendar years after the end of a reporting period of a person, waive or cancel interest or penalties payable by the person in respect of that reporting period.

Subsection 88(1) is amended to enable the Minister to waive or cancel interest or penalties in respect of a reporting period beyond the ten-year limitation period, provided the person makes an application for relief before the end of that limitation period.

The amendment comes into force on April 1, 2007.

Clause 66

Provision of Documents May be Required

ETA
99(1)

Subsection 99(1) of the Act provides that the Minister of National Revenue may by notice require that any person provide any book, record, writing or other document or any information or further information for any purpose relating to the administration or enforcement of the Act.

Subsection 99(1) is amended to provide that the Minister may by notice require any person to provide any book, record, writing or other document or any information or further information relating to the administration or enforcement of the Act, or of a listed international agreement.

A "listed international agreement" is newly defined in subsection 2(1) of the Act to mean the *Convention on Mutual Administrative Assistance in Tax Matters*, as amended from time to time, concluded at Strasbourg on January 25, 1988.

The amendment applies on Royal Assent.

Part 2
Amendments in Respect of Excise Duty on Alcohol and Tobacco Products

Excise Act, 2001

Clause 67

Interpretation

EA, 2001
2

Section 2 of the *Excise Act, 2001* defines terms that apply for the purposes of the Act.

Subclauses 67(1) to (4)

Definitions

EA, 2001
2

Definition "tobacco dealer"

"Tobacco dealer" is currently defined under the Act to mean a person, other than a tobacco licensee, who purchases and sells raw leaf tobacco on which duty is not imposed, without taking physical possession of the tobacco.

The definition "tobacco dealer" is amended to remove the reference to licensed tobacco dealers not taking physical possession of raw leaf tobacco. This change is consistent with other amendments to the Act to permit licensed tobacco dealers to possess and import raw leaf tobacco on which duty is not imposed (see clauses 77 and 80(2)).

The proposed amendment is deemed to have come into force on April 1, 2003, the same date as other provisions of the *Excise Act, 2001* relating to licensing came into force.

Definition "spirits"

For the purposes of the Act, "spirits" means any material or substance containing more than 0.5% absolute ethyl alcohol by volume other than wine, beer, vinegar, denatured alcohol, specially denatured alcohol, an approved formulation or any product made from any of the aforementioned products except wine.

The definition "spirits" is amended to exclude fusel oil or other refuse from the definition. Fusel oil and other refuse are by-products of the distillation process. They are non-potable and are either disposed of or used in the manufacture of products other than beverage alcohol. This change ensures that fusel oil and other refuse are not considered "spirits" and therefore are neither subject to duty nor the controls over spirits.

The proposed amendment is deemed to have come into force on April 1, 2003, the same date as other provisions of the *Excise Act, 2001* relating to licensing came into force.

Definition "mark"

The French version of the definition of "mark" (« marquer ») is amended to bring it in line with the English version. The amended definition specifies that the form and manner in which a special container of alcohol is marked is prescribed by regulation.

The proposed amendment is deemed to have come into force on April 1, 2003, the same date as other provisions of the *Excise Act, 2001* relating to licensing came into force.

Definition “listed international agreement”

The definition “listed international agreement” is added to section 2 as a consequence of the amendments to subsections 208(1) and 211(6) and paragraph 221(2)(a). The agreement included in the definition is the *Convention on Mutual Administrative Assistance in Tax Matters*, as amended from time to time, concluded at Strasbourg on January 25, 1988. That Convention provides a framework for governments to combat tax avoidance and tax evasion on a global scale by facilitating the exchange of information between national tax administrations.

The amendment comes into force on Royal Assent.

Definition “restricted formulation”

The Act is amended to add a new definition, “restricted formulation”. “Restricted formulation” means an approved formulation on which the Minister of National Revenue imposes the condition or restriction under section 143 of the Act that the formulation may only be used by a licensed user or be exported. The definition is relevant for the purposes of describing a sub-category of approved formulations in respect of which controls on their possession, use and disposal are imposed under the Act.

The proposed amendment is deemed to have come into force on April 1, 2003, the same date as other provisions of the *Excise Act, 2001* relating to licensing came into force.

Clause 68

Licences

EA, 2001
14

Section 14 provides that the Minister of National Revenue may issue a licence to a person, who meets the requirements set out in the regulations, authorizing the person to carry out certain activities under the Act. This section also specifies that a person is not entitled to an alcohol licence solely because the person is deemed to have produced or packaged alcohol under the Act.

Subclause 68(1)

Issuance

EA, 2001
14(1)(*c*)

Existing paragraph 14(1)(*c*) provides that the Minister of National Revenue may issue a user’s licence to a person authorizing the person to use bulk alcohol and non-duty-paid packaged alcohol.

Paragraph 14(1)(*c*) is amended to indicate that a user’s licence entitles the licence holder to use restricted formulations. This amendment is required as a result of controls being imposed on restricted formulations under the Act. These controls are consistent with the treatment of certain approved formulae under the former excise framework.

The proposed amendment is deemed to have come into force on April 1, 2003, the same date as other provisions of the *Excise Act, 2001* relating to licensing came into force.

Subclause 68(2)

Production Excluded and Issuance of Wine Licence

EA, 2001
14(3) and (4)

Existing subsection 14(3) specifies that a person will not be entitled to hold a spirits licence solely because the person is deemed to have produced spirits under subsection 131(2) of the Act. Subsection 131(2) deems spirits to be produced at the time bulk wine is blended with spirits and the resulting product is spirits.

Subsection 14(3) is amended to replace the reference to subsection 131(2) with a reference to new section 131.2. Section 131.2 deems spirits to be produced at the time wine is blended with bulk spirits and the resulting product is spirits and also deems spirits to be produced at the time a material or substance containing absolute ethyl alcohol, other than spirits or wine, is blended with bulk spirits or wine and the resulting product is spirits.

Subsection 14(3) is also amended to ensure that a person will not be entitled to hold a spirits licence solely because the person produced spirits as a result of, or for the purpose of, analyzing the composition of a substance containing ethyl alcohol.

New subsection 14(4) provides that the Minister of National Revenue may issue a wine licence to a person, who is a holder of a spirits licence and a user's licence, authorizing the person to fortify wine. The amendment ensures the continuation of the practice under the former excise framework where spirits licensees who were licensed as a bonded manufacturer could fortify wine that would be used to flavour other spirits. The amendment is consistent with other controls under the Act on the possession and disposition of bulk wine, as well as to the amendment of new section 62.1 that prohibits the fortification of wine other than in accordance with section 130 of the Act, specifically other than in accordance with a user's licence and wine licence (see clause 91).

The proposed amendments are deemed to have come into force on April 1, 2003, the same date as other provisions of the *Excise Act, 2001* relating to licensing came into force.

Clause 69

Alcohol Registration

EA, 2001
17

Section 17 provides that the Minister of National Revenue may issue an alcohol registration to a person who meets the requirements set out in the regulations. An alcohol registration authorizes the person to store or transport bulk alcohol and specially denatured alcohol.

Section 17 is amended to authorize a person who holds an alcohol registration to also store or transport a restricted formulation. The amendment is necessary as a result of new controls being introduced on the possession, use and disposal of restricted formulations.

The proposed amendment is deemed to have come into force on April 1, 2003, the same date as other provisions of the *Excise Act, 2001* relating to licensing came into force.

Clause 70

Issuance of Excise Warehouse Licence

EA, 2001
19(1)

Existing subsection 19(1) provides that the Minister of National Revenue may, subject to the regulations, issue an excise warehouse licence to a person who is not a retailer of alcohol, authorizing the person to possess non-duty-paid packaged alcohol or unstamped tobacco products in the person's excise warehouse.

Subsection 19(1) is amended to replace the reference to "tobacco product" with "manufactured tobacco or cigars". "Tobacco product" is defined under the Act to mean manufactured tobacco, packaged raw leaf tobacco or cigars. Packaged raw leaf tobacco means raw leaf tobacco that is packaged in a prescribed package. Because packaged raw leaf tobacco is not supplied to the export market or the domestic duty-free market (*i.e.*, cigars and manufactured tobacco for sale to accredited representatives and cigars and imported manufactured tobacco for sale in a duty free shop or as ships' stores), a number of provisions, including subsection 19(1), are amended to specify that only manufactured tobacco or cigars may be placed in an excise warehouse.

The proposed amendment is deemed to have come into force on April 1, 2003, the same date as other provisions of the *Excise Act, 2001* relating to licensing came into force.

Clause 71

Issuance of Special Excise Warehouse Licence

EA, 2001
20(1)

Existing subsection 20(1) provides that the Minister of National Revenue may, subject to the regulations, issue a special excise warehouse licence to a person who is authorized by a tobacco licensee to be the sole distributor of the licensee's tobacco products to accredited representatives.

Subsection 20(1) is amended to replace the reference to "tobacco product" with "manufactured tobacco or cigars". Because packaged raw leaf tobacco is not supplied to accredited representatives, the amended subsection specifies that only manufactured tobacco or cigars may be distributed by a special excise warehouse licensee.

The proposed amendment is deemed to have come into force on April 1, 2003, the same date as other provisions of the *Excise Act, 2001* relating to licensing came into force.

Clause 72

Return of Tobacco

EA, 2001
21

Section 21 sets out requirements for the return of the tobacco products of a tobacco licensee from a special excise warehouse where the licensee of the special excise warehouse ceases to be authorized by the tobacco licensee to distribute the licensee's tobacco products to accredited representatives.

Section 21 is amended to replace the references to "tobacco product" with "manufactured tobacco or cigars". This amendment is consistent with other changes being made to the Act, including the amendment to section 20 in respect of special excise warehouses, that restrict the types of tobacco that may be supplied to the duty-free and export markets to manufactured tobacco and cigars.

The proposed amendment is deemed to have come into force on April 1, 2003, the same date as other provisions of the *Excise Act, 2001* relating to licensing came into force.

Clause 73

Licences and Registrations not Statutory Instruments

EA, 2001
24.1

New section 24.1 clarifies that any licence or registration issued under this Act is not a statutory instrument for the purposes of the *Statutory Instruments Act*. This provision ensures that licences and registrations may be issued without meeting the requirements of the *Statutory Instruments Act*, such as pre-publication.

The proposed amendment is deemed to have come into force on April 1, 2003, the same date as other provisions of the *Excise Act, 2001* relating to licensing came into force.

Clause 74

Exception – Manufacturing for Personal Use

EA, 2001
25(3)

Subsection 25(3) currently provides that an individual may, without holding a tobacco licence, manufacture tobacco products from duty-paid packaged raw leaf tobacco for the individual's personal use. In addition, an individual may manufacture tobacco products from raw leaf tobacco grown on land on which the individual resides, provided the quantity of products manufactured for the personal use of the individual and each adult family member who lives with the individual does not exceed 15 kg per person each year.

Subsection 25(3) is amended to replace the reference to "tobacco product" with "manufactured tobacco or cigars". "Tobacco product" is defined under the Act to mean manufactured tobacco, packaged raw leaf tobacco or cigars. Raw leaf tobacco that is intended for personal use in the circumstances described in this subsection would not be "packaged" for purposes of the Act. As a result, subsection 25(3) is amended to give a more accurate description of the types of tobacco that an individual would manufacture for personal use.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 75

Unlawful Removal from Premises of Tobacco Licensee

EA, 2001
28(2)(*a*)

Existing paragraph 28(2)(*a*) authorizes a tobacco licensee to remove raw leaf tobacco from the licensee's premises for return to a tobacco grower, delivery to another tobacco licensee or export.

Paragraph 28(2)(*a*) is amended to permit removals of raw leaf tobacco by a tobacco licensee from the premises of the licensee for return to a licensed tobacco dealer. This change is one of the amendments made to the Act to authorize licensed tobacco dealers, who are in the business of buying and selling raw leaf tobacco, to possess raw leaf tobacco on which duty is not imposed.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 76

Unlawful Removal from Premises of Tobacco Dealer

EA, 2001
28.1

New section 28.1 places controls on removals of raw leaf tobacco from the premises of a licensed tobacco dealer. Subsection 28.1(1) prohibits the removal of raw leaf tobacco from a licensed tobacco dealer's premises. However, subsection 28.1(2) provides three exceptions to this prohibition. A licensed tobacco dealer may remove raw leaf tobacco from the licensee's premises for return to a tobacco grower, delivery to a tobacco licensee or another licensed tobacco dealer, or export.

The new controls on removals of raw leaf tobacco from the premises of a licensed tobacco dealer are required as a result of licensed tobacco dealers being authorized under section 30 to possess raw leaf tobacco on which duty is not imposed (see clause 77).

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 77

Selling, etc., Unstamped Raw Leaf Tobacco

EA, 2001
30(2)(*a*) and (*b*)

Subsection 30(2) provides exceptions to the prohibition against the possession, sale, offering for sale, purchase or disposal of raw leaf tobacco that is not packaged and stamped. The prohibition currently does not apply to:

- tobacco licensees;
- customs bonded warehouse or sufferance warehouse licensees or tobacco marketing bodies established under provincial law, in respect of the possession of raw leaf tobacco; or
- licensed tobacco dealers, in respect of the sale, offer for sale or purchase of raw leaf tobacco.

Subsection 30(2) is amended to permit licensed tobacco dealers to possess raw leaf tobacco that is not packaged and stamped, in addition to being able to purchase, sell or offer it for sale. This change is consistent with other amendments to the Act to permit licensed tobacco dealers to possess raw leaf tobacco on which duty is not imposed.

The subsection is also amended to authorize a prescribed person to transport raw leaf tobacco under prescribed circumstances and conditions. This amendment provides greater flexibility to tobacco growers, licensed tobacco dealers and tobacco licensees by enabling them to use a common carrier to transport raw leaf tobacco that is not packaged and stamped.

The proposed amendments are deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 78

Exceptions to Sections 26 and 30

EA, 2001
31(*a*)(ii)

Section 31 exempts tobacco growers from some of the restrictions imposed under sections 26 and 30 on raw leaf tobacco. Under paragraph 31(*a*), a tobacco grower may possess or deal in raw leaf tobacco that the grower has grown for sale to a licensed tobacco dealer or for sale or other disposition to a tobacco licensee, if the tobacco is:

- on the grower's property,
- being transported for curing, or
- being transported for delivery to or return from a tobacco licensee or a provincial tobacco marketing body.

Subparagraph 31(*a*)(ii) is amended to permit raw leaf tobacco to be delivered to, or returned from, a licensed tobacco dealer. This change is consistent with other amendments to the Act to permit licensed tobacco dealers to possess raw leaf tobacco on which duty has not been imposed.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 79

Unlawful Possession or Sale of Tobacco Products

EA, 2001
32

Section 32 prohibits a person from selling, offering for sale or possessing any tobacco product that is not stamped, unless one of the exceptions described in either subsection 32(2) or 32(3) applies.

Subclauses 79(1) to (4)

Exceptions – Possession

EA, 2001
32(2)

Subsection 32(2) currently lists the exceptions to the prohibition against the possession of unstamped tobacco products.

Specific paragraphs under subsection 32(2) are amended to replace the references to "tobacco product" with "manufactured tobacco or cigars". These changes reflect the fact that packaged raw leaf tobacco is not supplied to the export market or the domestic duty-free market (*i.e.*, cigars and manufactured tobacco for sale to accredited representatives and cigars and imported manufactured tobacco for sale in a duty free shop or as ships' stores) and are consistent with other amendments made to the Act that restrict the tobacco that may be supplied to the duty-free or export market to manufactured tobacco and cigars.

The proposed amendments are deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Subclauses 79(5) to (10)

Exceptions – Sale or Offer for Sale

EA, 2001
32(3)

Existing subsection 32(3) sets out the exceptions to the prohibition against the sale or offer for sale of unstamped tobacco products.

Subsection 32(3) is amended by replacing the references to "tobacco product" in certain paragraphs with "manufactured tobacco or cigars". These changes are part of a series of amendments that restrict the types of tobacco products that may be supplied to the duty-free or export market to manufactured tobacco and cigars.

The proposed amendments are deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 80

Packaging and Stamping of Imported Tobacco

EA, 2001
35

Subsection 35(1) requires all imported tobacco products and raw leaf tobacco to be packaged and stamped before they are released under the *Customs Act* for entry into the duty-paid market. Subsection 35(2) sets out the exceptions to this requirement.

Subclause 80(1)

Exception for Certain Importations

EA, 2001
35(2)(*b*)

Paragraph 35(2)(*b*) currently provides that a tobacco licensee may import unstamped tobacco products that it manufactured if they are imported for re-working or destruction by the licensee in accordance with subsection 41(2) of the Act.

Paragraph 35(2)(*b*) is amended by replacing the reference to "tobacco product" with "manufactured tobacco or cigars". The amendment recognizes that there is no export market for packaged raw leaf tobacco, and is consistent with other amendments that restrict the types of tobacco products that may be supplied to the duty-free and export markets.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Subclause 80(2)

Exception for Certain Importations

EA, 2001
35(2)(*d*)

Paragraph 35(2)(*d*) authorizes a tobacco licensee to import raw leaf tobacco that is not packaged and stamped.

Paragraph 35(2)(*d*) is amended to permit importations by a licensed tobacco dealer of raw leaf tobacco that is not packaged and stamped. This change allows persons who were licensed as tobacco packers under the *Excise Act*, but who would not qualify for a tobacco licence under the *Excise Act, 2001*, to be able to continue to import raw leaf tobacco on which duty is not imposed, provided they hold a tobacco dealer's licence.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 81

Unstamped Products to be Warehoused

EA, 2001
37

Section 37 requires any Canadian-manufactured tobacco product not stamped by a tobacco licensee to be placed immediately into an excise warehouse. "Tobacco product" is defined under the Act to mean manufactured tobacco, packaged raw leaf tobacco or cigars.

Section 37 is amended to replace the reference to "tobacco product" with "manufactured tobacco or cigars" in order to restrict the types of tobacco products that may be supplied to the duty-free and export markets. Since the only market for packaged Canadian raw leaf tobacco is the domestic duty-paid market, all packaged raw leaf tobacco should be stamped to show that duty has been paid and no packaged raw leaf tobacco should be entered into an excise warehouse.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 82

No Warehousing or Delivery of Tobacco Without Markings

EA, 2001
38(1) to (4)

Section 38 requires all tobacco products being placed in an excise warehouse and imported tobacco products being delivered to a duty free shop, accredited representative or customs bonded warehouse to have tobacco markings and other prescribed information printed on, or affixed to, the products' containers. Exceptions to the marking and information requirements are set out for prescribed tobacco products not commonly sold in Canada in subsection 38(3) and for prescribed cigarettes of a particular type or formulation in subsection 38(4).

Consistent with the new restrictions on the types of tobacco products that may be supplied to the duty-free and export markets, the references to "tobacco products" in subsections 38(1) to (3) are replaced with "manufactured tobacco or cigars".

Section 38 is also amended to specify that only tobacco markings are not required to be placed or affixed on containers of prescribed manufactured tobacco not commonly sold in Canada and prescribed cigarettes of a particular type or formulation. Other prescribed information, such as the origin of the tobacco product, must be on all tobacco containers. This amendment puts in place a statutory requirement for information that is consistent with the practices of Canadian tobacco manufacturers and it brings the Act into compliance with specifications of the Framework Convention on Tobacco Control, an international treaty on tobacco controls sponsored by the World Health Organization.

The proposed amendments are deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 83

Importation for Re-working or Destruction

EA, 2001
41(2)

Under subsection 41(2), the Minister of National Revenue may authorize a tobacco licensee to import any tobacco product manufactured by the licensee in Canada for re-working or destruction by the licensee in the manner approved by the Minister.

Subsection 41(2) is amended to replace the reference to "tobacco product" with "manufactured tobacco or cigars", in order to reflect the restrictions under the Act on the types of tobacco products that may be supplied to the export market.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 84

Duty Relieved – Raw Leaf Tobacco

EA, 2001
46

Under section 46, the duty imposed on imported raw leaf tobacco under section 42 is relieved if the raw leaf tobacco is imported by a tobacco licensee for manufacture by the licensee.

In recognition that some imported raw leaf tobacco could be imported by one tobacco manufacturer and processed by another under the former excise framework, section 46 of the Act is amended to remove the requirement that the tobacco licensee who imports the raw leaf tobacco must also use it for further manufacture.

Section 46 is also amended to relieve raw leaf tobacco that is imported by licensed tobacco dealers from the duty imposed under section 42. This change is consistent with other amendments made to the Act to permit licensed tobacco dealers to possess and import raw leaf tobacco.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 85

Prohibition on Removal from an Excise Warehouse

EA, 2001
50(3) and (10)

Section 50 restricts the removal of Canadian-manufactured tobacco products from an excise warehouse or special excise warehouse. Subsection 50(3) imposes a general prohibition against the removal of Canadian tobacco products. Under subsection 50(10), a tobacco licensee may remove Canadian tobacco products that were manufactured by the licensee, if they are removed for re-working or destruction under section 41.

Subsections 50(3) and (10) are amended to replace the references to "tobacco product" with "manufactured tobacco or cigars". "Tobacco product" is defined to mean manufactured tobacco, packaged raw leaf tobacco or cigars. However, because packaged raw leaf tobacco is not supplied to the export market or the domestic duty-free market (*i.e.*, cigars and manufactured tobacco for sale to accredited representatives and cigars and imported manufactured tobacco for sale in a duty free shop or as ships' stores), only manufactured tobacco or cigars should be placed in an excise warehouse. The amendments to section 50 are consistent with other changes made to the Act that restrict the types of tobacco products that may be placed in an excise warehouse and a special excise warehouse.

The proposed amendments are deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 86

Removal of Imported Tobacco

EA, 2001
51(1) and (2)

Section 51 restricts the removal of imported tobacco products from an excise warehouse. The section is amended by replacing the references to "tobacco product" with "manufactured tobacco or cigars". This change is consistent with other amendments made to the Act to reflect the fact that there is no duty-free or export market for packaged raw leaf tobacco.

The proposed amendments are deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 87

Restriction – Special Excise Warehouse

EA, 2001
52

Section 52 restricts a special excise warehouse licensee's possession of tobacco products in the licensee's warehouse for the purpose of selling and distributing them to an accredited representative for the representative's personal or official use.

Section 52 is amended to replace the reference to "tobacco product" with "manufactured tobacco or cigars". The amendment is consistent with other changes to the Act, including those to sections 20 and 21, that recognize that packaged raw leaf tobacco is not supplied to accredited representatives (see clauses 71 and 72).

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 88

Importations Involving a Provincial Authority

EA, 2001
59.1

New section 59.1 recognizes that subsection 3(1) of the *Importation of Intoxicating Liquors Act* (IILA) provides for Her Majesty in right of a province or a liquor authority to be the importer of alcohol into the province. However, for purposes of the *Excise Act, 2001* and subsection 21.2(3) of the *Customs Tariff*, the person who would have been the importer in the absence of subsection 3(1) of the IILA (*i.e.*, the physical importer) is deemed to be the importer of the alcohol.

Section 59.1 applies to both bulk and packaged alcohol and replaces the current section 75 of the Act, which only deals with bulk alcohol. Section 59.1 continues to ensure that the physical importer of bulk alcohol is the person to whom the restrictions under the Act on the importation and possession of bulk alcohol would apply. In addition, the new provision ensures that if a physical importer of packaged alcohol is an excise warehouse licensee or a licensed user, duty on the packaged alcohol is not payable at the time of importation if, after the release from customs, the alcohol is directly delivered to the importer in accordance with subsection 21.2(3) of the *Customs Tariff*.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 89

Prohibition – Production and Packaging of Spirits

EA, 2001
60(2)

Subsection 60(1) prohibits any person, other than a spirits licensee, from producing or packaging spirits. Subsection 60(2) provides an exception to the prohibition, by permitting a purchaser at a bottle-your-own premises to package duty-paid spirits that are obtained from a marked special container.

Subsection 60(2) is amended to add a further exception with respect to spirits produced in the course of, or for the purpose of, analyzing the composition of a substance containing absolute ethyl alcohol. This change reflects the fact that under former provisions of the *Excise Act* certain persons other than licensed distillers were permitted to possess stills or other equipment for the purpose of analysis of a substance, which may have resulted in small amounts of spirits being produced. The amendment to the *Excise Act, 2001* ensures that persons who undertake the analysis of a substance, and as a result produce spirits, will be exempt from the requirement to have a spirits licence.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 90

Prohibition – Possession of Still

EA, 2001
61

Section 61 of the Act currently authorizes a spirits licensee or a person who has a pending application for a spirits licence to possess, with the intention of producing spirits, a still or other equipment suitable for the production of spirits.

Section 61 is amended to also permit a person to possess a still or other equipment suitable for producing spirits if the possession is limited to the production of spirits for the purpose of, or as a result of, the analysis of the composition of a substance containing absolute ethyl alcohol.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 91

Prohibition – Fortification of Wine

EA, 2001
62.1

New section 62.1 prohibits a person from fortifying bulk wine with bulk spirits other than in accordance with section 130. Under section 130, a person who is both a licensed user and a wine licensee may fortify wine to an alcoholic strength not in excess of 22.9% absolute ethyl alcohol by volume. Section 62.1 is consistent with other controls under the *Excise Act, 2001* on the possession and disposition of bulk wine and reflects the fortification of wine under the former excise framework, where only a bonded manufacturer licensed under the *Excise Act* could fortify wine with non-duty-paid spirits.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 92

Application – In-Transit and Transhipped Alcohol

EA, 2001
66

Section 66 concerns imported alcohol and specially denatured alcohol which, in accordance with customs legislation, is shipped by customs bonded carrier through Canada or stored in Canada in a sufferance or customs bonded warehouse en route to a foreign destination. Such alcohol is exempted by section 66 from the application of certain controls under the *Excise Act, 2001*, including restrictions on the importation of bulk spirits and wine under section 74.

Section 66 is amended to reflect the fact that section 74 is renumbered as section 75 (see clause 95).

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 93

Prohibition – Possession of Bulk Alcohol

EA, 2001
70(2)(*c.1*)

Subsection 70(2) sets out exceptions to the prohibition, under subsection 70(1), on the possession of bulk alcohol. New paragraph 70(2)(*c.1*) provides an additional exception for a person who produced bulk spirits in the course of the person's analysis of the composition of a substance containing absolute ethyl alcohol and who possesses the spirits during the period of analysis. This new exception is consistent with other amendments that permit, for purposes of analysis, the production of spirits from substances containing ethyl alcohol by persons who are not licensed as spirits licensees.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 94

Restriction – Licensed User

EA, 2001
73(*d*)

Section 73 sets out how a licensed user may use or dispose of bulk alcohol. Under paragraph 73(*d*), a licensed user may use bulk spirits to fortify wine in accordance with section 130 or blend bulk wine with spirits in accordance with section 131.

Paragraph 73(*d*) is amended to permit a licensed user to use bulk wine to produce spirits in accordance with new section 131.1.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 95

Disposal and Importation of Bulk Alcohol

EA, 2001
74 and 75

Section 74 – Disposal of Bulk Spirits

New section 74 requires a person, who produced spirits in the course of, or for the purpose of, analyzing the composition of a substance containing absolute ethyl alcohol, to destroy or dispose of those spirits in a manner approved by the Minister of National Revenue once the analysis is complete. The provision is one of a number of amendments made to the Act to permit persons who are not spirits licensees to produce spirits in the course of their analysis of substances containing ethyl alcohol.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Section 75 – Importation of Bulk Alcohol

Currently, section 74 of the *Excise Act, 2001* restricts the importation of bulk alcohol to specified licensees. Section 74 is renumbered as section 75 and the existing section 75 is replaced by new section 59.1 (see clause 88).

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 96

Prohibition – Possession of Non-Duty-Paid Packaged Alcohol

EA, 2001
88(2)(*i*) and (*j*)

Subsection 88(2) provides exceptions to the prohibition under subsection 88(1) against the possession of non-duty-paid packaged alcohol. Subsection 88(2) is amended to introduce two more exceptions to the prohibition.

First, new paragraph 88(2)(*i*) permits a wine licensee or an individual to possess at the licensee's premises non-duty-paid packaged wine that was produced or packaged by the wine licensee and removed from the licensee's excise warehouse, if the wine is for supply to individuals for consumption as a free sample at the premises where the licensee produces or packages wine. This amendment is consistent with other amendments to the Act that will exempt from the payment of duty wine given as free samples to individuals at the premises of wine licensees. The provisions related to duty-free wine samples are consistent with the excise tax treatment of wine given away as samples at a vintner's premises under the former excise framework.

Second, new paragraph 88(2)(*j*) provides that any person may possess wine that is described under paragraph 135(2)(*b*). Under that paragraph, duty is not imposed on wine that is produced by a wine licensee and packaged by or on behalf of the licensee during a fiscal month, if the wine licensee's total sales of wine in both the previous fiscal year and the current fiscal year before that month did not exceed $50,000.

The proposed amendments are deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 97

Restricted Formulations

EA, 2001
93.1 and 93.2

Section 93.1 – Restriction to Licensed Users

New section 93.1 prohibits a licensed user from using or disposing of a restricted formulation except in accordance with conditions or restrictions imposed on the formulation by the Minister of National Revenue under section 143. Restricted formulations are a sub-category of approved formulations in respect of which the Act imposes further controls on their possession, use and disposal because, for instance, they contain significant levels of absolute ethyl alcohol. Section 93.1 provides the foundation for stronger offence and penalty provisions in respect of restricted formulations.

Section 93.2 – Prohibition on the Possession of Restricted Formulations

New section 93.2 prohibits any person from possessing a restricted formulation unless the person is a licensed user or an alcohol registrant. The measure is consistent with the tighter controls that are required in respect of restricted formulations, which reflects the treatment of certain approved formulae under the former excise framework, and it provides a basis for stronger offence and penalty provisions with respect to this particular sub-category of approved formulations.

The proposed amendments are deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 98

Responsibility for Wine Ceases

EA, 2001
117.1

The responsibility rules under the Act establish who is responsible for bulk alcohol. The person who is responsible for bulk alcohol is liable for duty on the alcohol at the time it is packaged or taken for use. Under the Act, only a spirits licensee or licensed user will be responsible for bulk spirits, while a wine licensee or licensed user will be responsible for bulk wine.

New section 117.1, along with other related amendments to the Act, clarifies the treatment under the Act of wine that is distilled to produce spirits. The section provides that at the time spirits are produced from bulk wine, the wine licensee or licensed user who was responsible for the wine ceases to be responsible for it. The general responsibility rule under section 104 for bulk spirits then applies in respect of the spirits that are produced from the wine. As a result, a spirits licensee or licensed user is responsible for the resulting spirits and liable for the duty on them.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 99

Production of Spirits Using Wine

EA, 2001
131 to 131.2

Section 131 – Blending Wine with Spirits

Subsection 131(1) currently provides that a licensed user may blend bulk wine and spirits to produce spirits if the user is also a spirits licensee. Subsection 131(2) relieves the duty that was imposed on the spirits that were blended with the wine and deems the resulting spirits to have been produced at the time of blending. By deeming the spirits to be produced at the time of blending, duty will then be imposed under section 122 on the resulting spirits.

Section 131 is amended by moving subsection 131(2) to new subsection 131.2(1) and renumbering subsection 131(1) as section 131.

Section 131.1 – Producing Spirits from Wine

New section 131.1 provides that a licensed user who is also a spirits licensee may produce spirits from bulk wine. This change is linked with an amendment to section 73 that sets out the permitted uses of bulk alcohol by a licensed user (see clause 94). Both amendments to the Act ensure greater flexibility in regard to the production of spirits from wine and are consistent with the Act's controls over the possession of bulk alcohol.

Section 131.2 – Deemed Production of Spirits – Blending Wine

New section 131.2 sets out the duty treatment of spirits that are produced from the blending of either bulk spirits with wine or bulk alcohol with a substance containing absolute ethyl alcohol, other than spirits or wine. The duty previously imposed on any spirits used in the blend (under section 122 of the Act or section 21.1 of the *Customs Tariff*) is relieved and the resulting spirits are deemed to have been produced at the time of blending.

Subsection 131.2(1), which replaces existing subsection 131(2), has been broadened to apply in all circumstances where wine and bulk spirits are blended and the resulting product is spirits. Subsection 131.2(2) is intended to apply to situations where spirits are produced through the blending of spirits or wine with another product containing ethyl alcohol, other than spirits or wine, such as a restricted formulation.

The proposed amendments are deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 100

Wine Produced for Personal Use and by Small Producers

EA, 2001
135(2)(*b*)

Currently, paragraph 135(2)(*b*) provides that duty is not imposed on wine that is produced by a wine licensee and packaged by the licensee during a particular fiscal month if the licensee's sales of wine in the twelve fiscal months preceding the particular fiscal month do not exceed $50,000.

Paragraph 135(2)(*b*) is amended to provide that wine that is produced by a wine licensee and packaged by or on behalf of the licensee during a fiscal month of a particular fiscal year of the licensee will not be subject to duty if:

- the licensee's sales of wine in the fiscal year ending immediately before the particular fiscal year did not exceed $50,000, and
- the licensee's total sales of wine in the particular fiscal year before the fiscal month do not exceed $50,000.

The amendment to paragraph 135(2)(*b*) reflects more accurately the administrative treatment of the former excise tax exemption for wine produced by small vintners under the *Excise Tax Act*. The amendment also permits wine to be packaged on behalf of a small vintner in recognition that many of the smallest vintners do not have their own packaging facilities and equipment.

The proposed amendments are deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 101

Removals of Wine for Consignment Sales

EA, 2001
136

Section 136 currently sets out the general rule that when packaged wine, which was entered into an excise warehouse, is removed from a warehouse for entry into the duty-paid market, the duty on the wine is payable by the excise warehouse licensee.

New subsection 136(2) introduces an exception to the general rule. It deems wine to be removed from the excise warehouse of the small wine licensee who produced or packaged the wine at the time the wine is sold, if the wine was removed for delivery and sale on a consignment basis in a retail store that is operated by or on behalf of two or more small wine licensees and that is not located at a wine licensee's premises. Under new subsection 136(3), a wine licensee is defined as a small wine licensee during a fiscal year if the licensee sold no more than 60,000 litres of wine in the licensee's previous fiscal year.

This amendment puts in place rules that ensure the excise tax treatment of wine sold on consignment under the former excise framework continues to apply to wine sold on consignment by small vintners under the *Excise Act, 2001*.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 102

Duty Payable on Unaccounted Packaged Wine

EA, 2001
138(1)(*a.1*)

Subsection 138(1) currently provides that duty is payable on non-duty-paid packaged wine that has been received by an excise warehouse licensee or licensed user who cannot account for it as being present in the licensee's excise warehouse or the licensed user's specified premises, as having been removed, used or destroyed in accordance with the Act, or as having been lost in prescribed circumstances.

New paragraph 138(1)(*a.1*) provides that duty is not payable on non-duty-paid packaged wine described in subsection 136(2), if the wine can be accounted for as being at a retail store described in that subsection. The wine described by subsection 136(2) is wine produced or packaged by a small wine licensee and delivered for sale on a consignment basis in a retail store, which is operated by or on behalf of two or more small wine licensees and is not located at a wine licensee's premises.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 103

Duty not Payable – Packaged Alcohol

EA, 2001
145(2)(*d*)

Section 145 specifies the circumstances under which duty will not be payable in respect of bulk and non-duty-paid packaged alcohol that is analyzed, destroyed or used in a manner approved by the Minister of National Revenue.

New paragraph 145(2)(*d*) provides that duty is not payable on packaged wine that an excise warehouse licensee takes for use as free samples given to individuals, if the excise warehouse licensee is also the wine licensee who produced or packaged the wine and the wine is provided for consumption at the wine licensee's premises. This amendment is consistent with other amendments made to the Act that ensure the excise tax treatment of wine given away as free samples at vintners' premises under the former excise framework continues to apply to wine supplied for this purpose under the *Excise Act, 2001*.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 104

Duty not Payable – Wine Samples

EA, 2001
147(4)

Section 147 specifies the circumstances under which duty will not be payable when non-duty-paid packaged alcohol is removed from an excise warehouse.

New subsection 147(4) provides that duty on non-duty-paid packaged wine, other than marked special containers of wine, is not payable if the wine is removed from the excise warehouse of the wine licensee who produced or packaged the wine for free supply to individuals as a sample for consumption at the premises where the licensee produces or packages wine. The amendment is part of a series of changes to the Act that are intended to continue the excise tax treatment of wine given away as samples at vintners' premises under the former excise framework.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 105

Restriction on Removal from Excise Warehouse

EA, 2001
151(2)(*a*)(viii) and (*a.1*)

Subsection 151(1) prohibits any person from removing non-duty-paid packaged alcohol from an excise warehouse. Subsection 151(2) specifies the exceptions to the prohibition.

Paragraph 151(2)(*a*) sets out the circumstances under which non-duty-paid packaged alcohol, other than a marked special container of alcohol, may be removed from an excise warehouse. Paragraph 151(2)(*a*) is amended to renumber subparagraph 151(2)(*a*)(viii) as subparagraph 151(2)(*a*)(ix) and to permit, under subparagraph 151(2)(*a*)(viii), removals of wine for delivery to a retail store as described by new subsection 136(2). Under that subsection, wine may be removed from the excise warehouse of the small wine licensee who produced or packaged the wine for delivery and sale on a consignment basis at a retail store that is operated by or on behalf of two or more small wine licensees and that is not located on a wine licensee's premises. This amendment is consistent with other changes being made in respect of consignment sales of wine by small vintners.

Subsection 151(2) is also amended to add new paragraph 151(2)(*a.1*), which authorizes non-duty-paid packaged wine, other than marked special containers of wine, to be removed from the excise warehouse of the wine licensee who produced or packaged the wine, if the wine is removed for supply to individuals for consumption as a free sample at the premises where the licensee produces or packages wine. This amendment is one of a series of amendments to the Act to permit wine samples to be provided without the payment of duty, consistent with the excise tax treatment of wine given away as free samples at vintners' premises under the former excise framework.

The proposed amendments are deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 106

Return of Non-Duty-Paid Wine

EA, 2001
153.1

New section 153.1 permits non-duty-paid wine that was removed from an excise warehouse in the circumstances described by subparagraph 151(2)(*a*)(viii) to be returned, under prescribed conditions, to the warehouse as non-duty-paid packaged wine, provided the wine had not entered the duty-paid market. Under that subparagraph, non-duty-paid wine may be removed from the excise warehouse of the small wine licensee who produced or packaged the wine for delivery and sale on a consignment basis at a retail store that is operated by or on behalf of two or more small wine licensees and that is not located on a wine licensee's premises. This change is consistent with other amendments made to the Act in respect of consignment sales of wine by small vintners.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 107

Filing by Licensee

EA, 2001
160

Subsection 160(1) requires every licensee under the Act to file, by the last day of the first month following each fiscal month of the licensee, a return for the fiscal month and to calculate and remit duty, if any, in respect of that fiscal month. Under subsection 160(2), licensed tobacco dealers are currently not required to file monthly returns.

The provision is amended by repealing subsection 160(2) and renumbering subsection 160(1) as section 160. As a result, licensed tobacco dealers are required to file returns in respect of their fiscal months. This amendment is consistent with other changes made to the Act to permit licensed tobacco dealers to possess raw leaf tobacco.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 108
Ten-Year Limitation Period on Waiving or Reducing Interest

EA, 2001
173

Effective April 1, 2007, section 173 will introduce a ten-year limitation period in respect of waivers or reductions of interest, such that the Minister of National Revenue may, on or before the day that is ten calendar years after the day an amount was required to be paid by a person, waive or reduce interest on the amount payable by the person.

Section 173 is amended to enable the Minister to waive or reduce interest beyond the ten-year limitation period, provided the person makes an application for relief before the end of that limitation period.

This amendment was not previously announced. It comes into force on April 1, 2007.

Clause 109

Restriction on Refunds

EA, 2001
177(*a*)

Paragraph 177(*a*) provides that a person is not entitled to a refund or payment of an amount under the Act to the extent that the amount was previously refunded, remitted, applied or paid to that person under this or any other Act of Parliament.

The paragraph is amended to clarify that “applied” is in respect of an amount previously applied against an amount owed by the person to Her Majesty under this or any other Act of Parliament. The English version of the provision is thus brought in line with the French version.

The proposed amendment comes into force upon Royal Assent.

Clause 110

Destroyed Imported Manufactured Tobacco

EA, 2001
181.1

New section 181.1 permits a duty free shop licensee to apply for a refund in respect of the special duty imposed on imported manufactured tobacco under section 53 and paid by the licensee, provided the licensee destroys the tobacco in accordance with the *Customs Act* and an application for the refund is made within two years of the tobacco being destroyed. This provision ensures that duty free shop operators will be able to obtain refunds of the special duty on imported manufactured tobacco that becomes stale-dated.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 111

Limitation on Refunding Overpayments; Limitation

EA, 2001
188(6) and 188(7)(b)(ii)

Effective April 1, 2007, subsection 188(6) and subparagraph 188(7)(b)(ii) will provide that no overpayment, refund or part of refund shall be applied or refunded to a person until the person has filed all returns and other records of which the Minister of National Revenue has knowledge and that are required to be filed under various federal taxation statutes including the *Customs Act*.

Each of the provisions is amended by adding a reference to the Minister of Public Safety and Emergency Preparedness, who is responsible for the *Customs Act*.

This measure was not previously announced. It comes into force on April 1, 2007.

Clause 112

Restriction on Refunds

EA, 2001
189(4)

Effective April 1, 2007, subsection 189(4) will provide that a refund shall not be paid to a person until the person has filed all returns and other records of which the Minister of National Revenue has knowledge and that are required to be filed under various federal taxation statutes including the *Customs Act*.

The subsection is amended by adding a reference to the Minister of Public Safety and Emergency Preparedness, who is responsible for the *Customs Act*.

This measure was not previously announced. It comes into force on April 1, 2007.

Clause 113

Extension of Time by Minister

EA, 2001
196

Section 196 of the Act allows a person to make an application to the Minister of National Revenue to extend the time for filing a notice of objection to an assessment, subject to certain conditions.

Subclause 113(1)

Exception for Extension of Time by Minister

EA, 2001
196(4)

Subsection 196(4) of the French version of the Act is amended to replace the term “faire droit à” by the term “recevoir” to ensure consistency between both official versions of the Act.

The amendment comes into force upon Royal Assent.

Subclause 113(2)

Conditions – Grant of Application

EA, 2001
196(7)(b)(i)

Subsection 196(7) sets conditions that must be met in order for an application to extend the time for filing a notice of objection to an assessment to be granted. Currently, the conditions include a requirement that the person demonstrate that, within the time limited under the Act, the person

(A) was unable to act or to give a mandate to act in their name, and

(B) had a *bona fide* intention to object to the assessment.

The provision is amended by replacing the conjunction “and” with “or”, bringing the extension of time provision in line with those in other taxation statutes.

This amendment comes into force upon Royal Assent.

Clause 114

Extension of Time to Appeal Assessment

EA, 2001
197(6)(b)(i)

Subsection 197(6) sets conditions that must be met in order for an application to the Tax Court of Canada to extend the time for filing a notice of objection to an assessment to be granted. Currently, the conditions include a requirement that the person demonstrate that, within the time limited under the Act, the person

(A) was unable to act or to give a mandate to act in their name, and

(B) had a *bona fide* intention to object to the assessment.

The provision is amended by replacing the conjunction “and” with “or”, bringing the extension of time provision in line with those in other taxation statutes.

This amendment comes into force upon Royal Assent.

Clause 115

Extension of Time to Appeal to Tax Court of Canada

EA, 2001
199(5)(b)(i)

Subsection 199(5) sets conditions that must be met in order for an application to the Tax Court of Canada to extend the time for appealing an assessment to be granted. Currently, the conditions include a requirement that the person demonstrate that, within the time limited under the Act, the person

(A) was unable to act or to give a mandate to act in their name, and

(B) had a *bona fide* intention to appeal.

The provision is amended by replacing the conjunction "and" with "or", bringing the extension of time provision in line with those in other taxation statutes.

This amendment comes into force upon Royal Assent.

Clause 116

Requirement to Provide Records or Information

EA, 2001
208(1)

Subsection 208(1) of the Act provides that, despite any other provision of the Act, the Minister of National Revenue may by notice require that any person provide information or any record for any purpose relating to the administration or enforcement of the Act. An exception is made where the information or record relates to an unnamed person or persons, in which case the procedure set out in subsections 208(2) to (6) of the Act must be followed.

Subsection 208(1) is amended to provide that the Minister may by notice require any person to provide information or any record for any purpose relating to the administration or enforcement of the Act, or of a listed international agreement.

A "listed international agreement" is newly defined in section 2 to mean the *Convention on Mutual Administrative Assistance in Tax Matters*, concluded at Strasbourg on January 25, 1988.

This amendment applies on Royal Assent.

Clause 117

Disclosure of Personal Information

EA, 2001
211

Section 211 provides for the confidentiality of information obtained by the Minister of National Revenue in the administration or enforcement of the Act that reveals, directly or indirectly, the identity of a person. This information cannot be used or communicated unless specifically authorized by one or more of the exceptions contained in the section.

Subclause 117(1)

Disclosure of Confidential Information

EA, 2001
211(6)(*e*)(v)

Subparagraph 211(6)(*e*)(v) currently permits disclosure of the name, address, occupation and size or type of business of a person to a government department or agency for the purpose of enabling that department or agency to obtain statistical data for research and analysis.

Subparagraph 211(6)(*e*)(v) is amended to add "telephone number" to the list of data that may be disclosed in those circumstances.

The amendment comes into force on Royal Assent.

Subclause 117(2)

Disclosure of Confidential Information

EA, 2001
211(6)(*l*) and (*m*)

Subsection 211(6) is amended to add new paragraph (*l*) which authorizes an official to provide or to allow the inspection of or access to confidential information solely for the purposes of a provision contained in a listed international agreement. The term "listed international agreement" is newly defined in section 2 of the Act to mean the *Convention on Mutual Administrative Assistance in Tax Matters*, as amended from time to time, concluded at Strasbourg on January 25, 1988.

Subsection 211(6) is also amended to add new paragraph (*m*), which allows the communication of confidential information with respect to business activities carried on in a province to a statistical agency in that province. The information may be provided solely for the agency's research and analysis and only if the agency is authorized under its provincial law to collect the same or similar information on its own behalf. New paragraph (*m*) parallels existing paragraph 241(4)(*o*) of the *Income Tax Act*.

The proposed amendments come into force upon Royal Assent.

Clause 118

Punishment for Certain Alcohol Offences

EA, 2001
217

Section 217 currently makes certain unauthorized activities involving alcohol or specially denatured alcohol an offence under the Act. A person convicted of an offence under this section is liable to a fine determined in accordance with subsections 217(2) and (3) or to imprisonment, on indictment, for a term not exceeding five years or, on summary conviction, for a term not exceeding 18 months or to both the fine and imprisonment.

Section 217 is amended to remove the references to "denatured alcohol" since the provision does not cover offences involving denatured alcohol. The section is also amended to add references to new sections 93.1, which restricts the use and disposal of a restricted formulation, and 93.2, which restricts the possession of a restricted formulation. Furthermore, section 217 is amended by including references to a "restricted formulation" when determining the minimum and maximum fines under subsections 217(2) and (3). The fines that are applied in respect of contraventions involving restricted formulations are equivalent to the fines determined in respect of specially denatured alcohol.

The proposed amendment comes into force upon Royal Assent.

Clause 119

Punishment for More Serious Alcohol Offences

EA, 2001
218(1)

Section 218 deals with more serious alcohol-related offences. Among the contraventions to the Act that constitute an offence under section 218 are contraventions of section 74, which restricts who may import bulk alcohol. The amendment to section 218 is consequential to section 74 being renumbered as section 75.

The proposed amendment comes into force upon Royal Assent.

Clause 120

Offence – Confidential Information

EA, 2001
221(2)(*a*)

Section 221 makes it an offence to contravene the confidentiality provisions in section 211 regarding information gathered by the Canada Revenue Agency in the administration or enforcement of the Act. Conviction carries a fine of up to $5,000, imprisonment for up to 12 months, or both.

Paragraph 221(2)(*a*) is amended to refer to new paragraph 211(6)(*l*), which allows the disclosure of confidential information for the purposes of a provision contained in a "listed international agreement" (a term newly defined in section 2 of the Act). Paragraph 221(2)(*a*) is also amended to refer to new paragraph 211(6)(*m*), which allows the communication of confidential information with respect to business activities carried on in a province to a statistical agency in that province.

The proposed amendments come into force upon Royal Assent.

Clause 121

Contravention of Section 38, 40, 41, 49, 61, 62.1, 99, 149 or 151

EA, 2001
234

Section 234 currently provides a maximum penalty of $25,000 for certain contraventions of the *Excise Act, 2001*.

Section 234 is amended to include a reference to new section 62.1, in order to specify a penalty in respect of the fortification of wine by an unauthorized person. Section 62.1 prohibits a person from using bulk spirits to fortify wine unless the person is both a licensed user and a wine licensee.

The proposed amendment comes into force upon Royal Assent.

Clause 122

Diversion of Black Stock Tobacco

EA, 2001
236(1)

Section 236 currently provides a penalty on tobacco licensees who pay duty on tobacco products at the lower rates set out in Schedule 1 to the Act, which apply to deliveries, in Canada and abroad, to duty free shops and as ships' stores, but deliver the products to other destinations. Permitted deliveries of tobacco products subject to lower rates, known as black stock tobacco, by tobacco licensees also include to a customs bonded warehouse.

Subsection 236(1) is amended to ensure that this diversion penalty also applies to customs bonded warehouse licensees who deliver black stock tobacco to destinations other than to a person for use as ships' stores in accordance with the *Ships' Stores Regulations*. This amendment is consistent with the current administrative treatment of black stock tobacco in customs bonded warehouses and former provisions of the *Customs Bonded Warehouses Regulations* that limited the removals of this tobacco for use as ships' stores.

The proposed amendment comes into force upon Royal Assent.

Clause 123

Diversion of Non-Duty-Paid Alcohol

EA, 2001
237(1)

Subsection 237(1) currently provides that if non-duty-paid packaged alcohol is removed from an excise warehouse for a purpose described by section 147, and the alcohol is not exported or delivered for that purpose, the excise warehouse licensee is liable to a penalty equal to 200% of the duty imposed on the alcohol.

Subsection 237(1) is amended to provide that if an excise warehouse licensee removes wine from the licensee's warehouse in accordance with subsection 147(4) for the purpose of providing the wine as a free sample to individuals for consumption at the licensee's premises and the wine is not provided for that purpose, the licensee is liable to a penalty equal to 200% of the duty imposed on the wine.

The proposed amendment comes into force upon Royal Assent.

Clause 124

Certain Contraventions Involving Alcohol

EA, 2001
243 and 243.1

Section 243 – Contravention of Section 73, 74 or 90

Section 243 currently provides that a person who contravenes any of sections 73, 76 or 89 to 91 of the Act is liable to a penalty. If the contravention involves spirits, the penalty is equal to the duty imposed on the spirits. If wine is involved, the penalty is equivalent to $0.62 per litre of the wine. Contraventions of these provisions relate to unauthorized activities involving persons who are either licensed or registered under the Act.

Section 243 is amended to ensure that the amount of penalty a person is liable to pay takes into account the amount of duty, if any, that is payable by the person in respect of the alcohol involved in the contravention. The section is also amended to provide a penalty for contraventions of new section 74, which requires that spirits produced during, or as a result of, the analysis of the composition of a substance containing absolute ethyl alcohol be destroyed or disposed of in a manner approved by the Minister of National Revenue after the analysis is complete. A further amendment to the section involves moving contraventions of sections 76, 89 and 91 to new section 243.1.

Section 243.1 – Contravention of Section 76, 89 or 91

Under new section 243.1, a person is liable to a penalty if the person contravenes any of sections 76, 89 or 91. If the contravention involves spirits, the person is liable to a penalty equal to the duty imposed on the spirits, and if the contravention involves wine, the person is liable to a penalty equal to $0.62 per litre of the wine. These penalty amounts are the same as provided for under section 243 before it was amended and contraventions of sections 76, 89 and 91 moved to new section 243.1.

The proposed amendments come into force upon Royal Assent.

Clause 125

Unauthorized Possession, etc. of Restricted Formulation

EA, 2001
247.1

New section 247.1 introduces a penalty for contraventions of the Act involving restricted formulations, by providing that a person who uses, disposes or possesses a restricted formulation in contravention of either section 93.1 or 93.2 is liable to a penalty equal to $10 per litre of restricted formulation involved in the contravention. The amount of the penalty is equivalent to the penalty that applies for similar contraventions of the Act involving specially denatured alcohol.

The proposed amendment comes into force upon Royal Assent.

Clause 126

Waiving or Reducing Failure to File Penalty

EA, 2001
255.1

Effective April 1, 2007, section 255.1 will introduce a ten-year limitation period in respect of waivers or reductions of penalty under section 251.1, such that the Minister of National Revenue may, on or before the day that is ten calendar years after the end of a fiscal month of a person, waive or reduce any penalty payable under section 251.1 by the person in respect of that fiscal month.

Section 255.1 is amended to enable the Minister to waive or reduce any penalty under section 251.1 in respect of a fiscal month beyond the ten-year limitation period, provided the person makes an application for relief before the end of that fiscal month.

This amendment was not previously announced. It comes into force on April 1, 2007.

Clause 127

Certain Things not to be Returned

EA, 2001
264

Section 264 currently provides that alcohol, specially denatured alcohol, raw leaf tobacco or tobacco products seized in the course of an inspection under section 260 may not be returned to any person, unless they were seized in error. Section 264 is amended to also prevent a seized restricted formulation from being returned to any person, except if the seizure was made in error. This amendment is consistent with other controls being introduced on the possession, use and disposal of restricted formulations.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 128

Dealing with Things Seized

EA, 2001
266(2)(*d*)

Subsection 266(1) specifies that the Minister of National Revenue may sell, destroy or otherwise deal with any item seized in the course of an inspection under section 260. However, under subsection 266(2), the Minister may only sell seized spirits or specially denatured alcohol to a spirits licensee, seized wine to a wine licensee and seized raw leaf tobacco or tobacco products to a tobacco licensee.

New paragraph 266(2)(*d*) is introduced to restrict the sale by the Minister of a seized restricted formulation to a licensed user. This amendment is consistent with the new controls on the possession, use and disposal of restricted formulations under the Act.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 129

Definition "common-law partner"

EA, 2001
297(6)

Section 297 provides an anti-avoidance rule for non-arm's length transfers of property by a person liable to make a payment under the Act. Under this section, the transferor and the transferee, who for example may be a spouse or common-law partner, are jointly and severally or solidarily liable to pay the amount determined under subsection 297(1). For the purposes of this section, "common-law partner" is currently defined in subsection 297(6) in relation to an individual to mean a person who is cohabitating with the individual in a conjugal relationship for a period of at least one year.

Subsection 297(6) is amended to define the "common-law partner" of an individual to mean a person who, at that particular time, is a common-law partner of the individual for purposes of the *Income Tax Act*. This amendment to the *Excise Act, 2001* brings the definition of "common-law partner" into alignment with the *Excise Tax Act* and the *Income Tax Act* and therefore ensures consistent administration of the anti-avoidance rule for non-arm's length transfers.

The proposed amendment comes into force upon Royal Assent.

Clause 130

Regulations – Governor in Council

EA, 2001
304(1) and (3)

Section 304 provides the authority to the Governor in Council to make regulations to carry out the purposes and provisions of the Act, including, under paragraph 304(1)(*n*), respecting the sale under section 266 of alcohol, tobacco products, raw leaf tobacco or specially denatured alcohol seized under section 260.

Subclause 130(1)

Regulations – Sale of Restricted Formulations

EA, 2001
304(1)(*n*)

Paragraph 304(1)(*n*) is amended to also provide regulation making authority in respect of the sale of restricted formulations. This amendment is consistent with the new controls on the possession, use and disposal of restricted formulations under the Act and, in particular, with amended subsection 266(2) that restricts the sale by the Minister of National Revenue of a restricted formulation seized under the Act to a licensed user (see clause 128).

The proposed amendment comes into force upon Royal Assent.

Subclause 130(2)

Regulations – Incorporation by Reference

EA, 2001
304(3)

New subsection 304(3) clarifies that a regulation made under the Act may include a reference to any material, regardless of the material's source, as it exists at a particular time or as periodically amended.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 131

Application of Regulations made under the *Excise Act*

EA, 2001
315.1

Section 1.1 of the *Excise Act* currently provides that upon Parts 3 and 4 of the *Excise Act, 2001* coming into force, the *Excise Act*, including the regulations made under it, cease to apply in respect of any good or substance other that beer, malt liquor and malt products manufactured in accordance with subsection 169(2) of that Act. Consequently, the *Excise Act* ceases to apply in respect of spirits on the coming into force of those Parts of the *Excise Act, 2001*, which by an order of the Governor in Council occurred on July 1, 2003.

Under new section 315.1 of the *Excise Act, 2001*, the provisions of regulations made under the *Excise Act* relating to the blending and certification of age and origin of spirits continue to apply until July 1, 2009. This transitional measure is intended to maintain the regulatory provisions of the former excise framework that play an important role in the specification of standards for Canadian spirits, pending their permanent transfer to more appropriate legislation.

This transitional measure is being extended to July 1, 2009, two years longer than was originally announced, in order to provide additional time to permanently transfer the blending and certification regulatory provisions to more appropriate legislation.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 132

Refund for Re-worked or Destroyed Tobacco Product

EA, 2001
316.1

Under the former excise framework, tobacco products manufactured in Canada were subject to two separate excise levies: an excise duty imposed under the *Excise Act*, payable at the time of packaging, and an excise tax imposed under the *Excise Tax Act*, payable at the time of delivery to a purchaser. With the implementation of the *Excise Act, 2001*, tobacco products, other than cigars, are only subject to duty at a rate equal to the combined former excise duty and excise tax rates.

New section 316.1 applies to tobacco products manufactured in Canada in respect of which both the excise duty and excise tax were payable before the implementation date (*i.e.*, the day on which Parts 3 and 4 of the Act came into force or specifically, July 1, 2003) and that are destroyed or re-worked on or after that day by the tobacco licensee who manufactured the products. It provides that section 181 of the *Excise Act, 2001* applies to those tobacco products as if the excise duty and excise tax were a duty paid under the *Excise Act, 2001*. This amendment ensures that a tobacco licensee can recover an amount equal to the duty and tax paid in respect of tobacco products that were delivered to a purchaser before the implementation date and subsequently returned to the licensee for re-working or destruction on or after that day.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 133

Imported Tobacco Delivered to Duty Free Shop before Implementation Date

EA, 2001
317.1

New section 317.1 provides that if a duty free shop licensee possesses imported manufactured tobacco on the implementation date of the *Excise Act, 2001*, the excise tax paid under section 23.12 of the *Excise Tax Act* in respect of the tobacco is treated as though it were special duty under section 53 of the *Excise Act, 2001* (which replaces the excise tax under section 23.12 of the *Excise Tax Act*), provided that no application for a refund of the tax has been made under the *Excise Tax Act*. By treating the excise tax as special duty under the new Act, the duty free shop licensee may apply for a refund under section 181.1, if the imported manufactured tobacco is destroyed by the licensee on or after the implementation date, or for a refund under section 183, if the tobacco is sold on or after that day to a non-resident who is about to depart Canada.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Access to Information Act

Clause 134

Statutory Prohibitions against Disclosure

AIA
Schedule II

The *Access to Information Act* sets out statutory obligations for public access to information under the control of the federal government. Under section 24, the head of a government institution shall refuse to disclose a record if the record contains information the disclosure of which is restricted under any legislative provision set out in Schedule II to the Act. An amendment is made to Schedule II to include a reference to section 211 of the *Excise Act, 2001*, which provides for the confidentiality of information obtained in the administration or enforcement of the Act that reveals, directly or indirectly, the identity of a person.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Customs Act

Clause 135

Interpretation

CA
2(1)

Subsection 2(1) of the *Customs Act* is amended by adding definitions of "licensed user" and "restricted formulation", both of which reference the corresponding definition of the term in section 2 of the *Excise Act, 2001*. The definitions are necessary because of other amendments to the *Customs Act* that utilize these terms, such as the new controls being introduced on the sale or disposal of restricted formulations under clauses 136 to 140.

The proposed amendments are deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 136

Sale of Detained Goods

CA
97.25(3)

Subsection 97.25(3) provides that the Minister may direct, after giving 30 days written notice to the debtor, the sale, by public auction or tender or by the Minister of Public Works and Government Services, of any good imported or reported for export by or on behalf of the debtor that has been detained because the debtor has failed to pay an amount as required by the *Customs Act*.

Subsection 97.25(3) is amended to restrict the sale of detained spirits or specially denatured alcohol to a spirits licensee, detained wine to a wine licensee, detained raw leaf tobacco or tobacco products to a tobacco licensee, and detained restricted formulations to a licensed user. The amendment ensures consistency with other provisions of the *Customs Act* and the *Excise Act, 2001* that restrict the sale of seized alcohol, specially denatured alcohol, restricted formulations and tobacco.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 137

No Return of Certain Goods

CA
117(2)

Subsection 117(2) of the *Customs Act* provides that spirits, wine, specially denatured alcohol, raw leaf tobacco or tobacco products that were seized under the Act may not be returned, unless they were seized in error.

Subsection 117(2) is amended to also prevent the return of a restricted formulation, unless it was seized in error. This amendment is consistent with other restrictions on the sale or disposal of seized restricted formulations under the *Excise Act, 2001* and *Customs Act*, including the restriction on returns of seized restricted formulations under section 264 of the *Excise Act, 2001* (see clause 127).

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 138

Dealing with Goods Seized

CA
119.1(1.1)(*d*)

Subsection 119.1(1.1) of the *Customs Act* currently provides that the Minister may, subject to the regulations, only sell seized spirits or specially denatured alcohol to a spirits licensee, seized wine to a wine licensee, and seized raw leaf tobacco and tobacco products to a tobacco licensee.

The subsection is amended to also restrict the sale of seized restricted formulations to a licensed user. This amendment is consistent with other controls being placed on the sale or disposal of detained and abandoned or forfeited restricted formulations under the *Customs Act*, as well as the sale restrictions on seized restricted formulations under section 266 of the *Excise Act, 2001* (see clause 128).

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 139

Disposal of Things Abandoned or Forfeit

CA
142(1)

Subsection 142(1) of the *Customs Act* currently excludes spirits, specially denatured alcohol, wine, raw leaf tobacco and tobacco products from the rules under that subsection covering the disposal of goods abandoned or forfeited under the Act.

Subsection 142(1) is amended to also exclude abandoned or forfeited restricted formulations from the general rules under that subsection. This amendment is consistent with other changes being made to the *Customs Act* in respect of restricted formulations, in particular the amendment to section 142.1 in respect of the sale or disposal of abandoned or forfeited restricted formulations (see clause 140).

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 140

Dealing with Abandoned or Forfeited Alcohol, etc.

CA
142.1

Section 142.1 of the *Customs Act* currently restricts the sale of abandoned or forfeited spirits, specially denatured alcohol, wine, raw leaf tobacco and tobacco products. The section is amended to also restrict the sale of an abandoned or forfeited restricted formulation to a licensed user, which is consistent with the new controls being placed on the possession, use and disposal of restricted formulations under the *Excise Act, 2001*.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Clause 141

Regulations

CA
164(1)

Subsection 164(1) of the *Customs Act* provides the authority to the Governor in Council to make regulations to carry out the purposes and provisions of the Act. This subsection is amended to add, under new paragraph 164(1)(*h.2*), regulation making authority respecting the sale of alcohol, tobacco products, raw leaf tobacco, specially denatured alcohol or a restricted formulation detained, seized, abandoned or forfeited under the Act. This amendment is consistent with the restrictions imposed on the sale of similar seized products under the *Excise Act, 2001*.

The proposed amendment comes into force upon Royal Assent.

Customs Tariff

Clause 142

Definitions – Beer, Wine, *Utilisateur Agréé*

CT
21

Section 21 of the *Customs Tariff* defines terms that apply for the purposes of sections 21.1 to 21.3.

Subclause 142(1)

CT
21

Section 21 of the *Customs Tariff* defines "beer" and "wine" in relation to their meaning under the *Excise Act* or the *Excise Act, 2001* and by specified tariff items or headings for alcoholic product under these terms. Section 21 is amended to remove the tariff items related to ginger beer and mead from the definition of "beer" and to add them to the definition of "wine" to ensure that these imported products are provided comparable duty treatment to like domestic product, which are treated as "wine" under the *Excise Act, 2001*.

The proposed amendment comes into force upon Royal Assent.

Subclause 142(2)

CT
21

In addition, section 21 of the French version of the *Customs Tariff* is amended by adding a definition for «utilisateur agréé» ("licensed user"), which references the definition of the term as provided under section 2 of the *Excise Act, 2001*. This definition is consistent with the definition of "licensed user" that already exists under the English version of the *Customs Tariff*.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Excise Tax Act

Clause 143

Value of Goods

ETA
215(1)(*b*)

Subsection 215(1) provides that GST on imported goods is to be calculated on the excise- and duty-paid value of the goods. Paragraph 215(1)(*b*) is amended to include duty payable on imported goods under the *Excise Act, 2001*.

The proposed amendment is deemed to have come into force on July 1, 2003, corresponding with the date that the *Excise Act, 2001* fully came into force.

Part 3
Amendments to the Air Travellers Security Charge Act

Clause 144

Definitions

ATSCA
2

Section 2 contains definitions of terms and expressions that apply in the *Air Travellers Security Charge Act* ("the Act").

Subclause 144(1)

Definition "listed airport"

ATSCA
2

The definition of "listed airport" is being amended to remove the phrase "and a prescribed airport" in that definition. This portion of the definition will no longer be needed, as other proposed amendments will allow the Governor in Council to use regulations to add, remove or vary the reference to an airport in the schedule to the Act that lists the airports where the Air Travellers Security Charge is levied.

This amendment comes into force upon Royal Assent.

Subclause 144(2)

Definition "registered charity"

ATSCA
2

A definition of "registered charity" is being added to clarify the scope of the tax relief for air travel donated by air carriers to charities for no consideration.

This amendment is deemed to have come into force on April 1, 2002.

Clause 145

Exceptions

ATSCA
11(1.1)

New subsection 11(1.1) contains two relieving measures in respect of the Air Travellers Security Charge (ATSC) that were previously announced in a Department of Finance press release dated April 19, 2002.

New paragraph 11(1.1)(*a*) provides that the charge is not payable in respect of an air transportation service sold by a reseller of air travel, such as a tour operator, prior to the introduction of the charge on April 1, 2002, if final payment was made to the air carrier after that date but before May 1, 2002. This measure provides transitional relief in circumstances where resellers of air travel would find it difficult to recover the cost of the charge from air travellers to whom they had sold an air transportation service prior to the introduction of the ATSC.

New paragraph 11(1.1)(*b*) provides that the charge is not payable in circumstances where an air carrier donates, for no consideration, an air transportation service to a registered charity that donates the service to an individual for no consideration and in pursuit of its charitable purposes.

New subsection 11(1.1) is deemed to have come into force on April 1, 2002.

Clause 146

Waiving or Reducing Interest

ATSCA
30(1)

Effective April 1, 2007, subsection 30(1) will introduce a ten-year limitation period in respect of waivers or reductions of interest, such that the Minister of National Revenue may, on or before the day that is ten calendar years after the end of a fiscal month of a person, waive or reduce interest payable by the person in respect of that fiscal month.

Subsection 30(1) is amended to enable the Minister to waive or reduce interest in respect of a fiscal month beyond the ten-year limitation period, provided the person makes an application for relief before the end of that period.

This amendment comes into force on April 1, 2007.

Clause 147

Extension of Time by Minister

ATSCA
44

Section 44 allows the Minister of National Revenue to accept an application to extend the time for filing a notice of objection and outlines the content of the application as well as the conditions that must be met in order for the Minister to grant the application.

Subclause 147(1)

How Application Made

ATSCA
44(3)

Subsection 44(3) currently provides that applications to extend the time for filing a notice of objection must be made by delivering or mailing, to the Chief of Appeals in a Tax Services Office or Taxation Centre of the Canada Revenue Agency, the application accompanied by a copy of the notice of objection.

The amendment to subsection 44(3) removes the reference “or Taxation Centre”.

This amendment comes into force upon Royal Assent.

Subclause 147(2)

Demande non conforme

ATSCA
44(4)

Subsection 44(4) allows the Minister of National Revenue to accept an application under subsection 44(1) that is not made or sent in the manner specified in subsection 44(3). Subsection 44(4) of the French version of the Act is amended to replace the term “faire droit à” by the term “recevoir” to ensure consistency between both official versions of the Act.

This amendment comes into force upon Royal Assent.

Clause 147(3)

Conditions - Grant of Application

ATSCA
44(7)(*b*)(i)

Subsection 44(7) sets conditions that must be met in order for an application to extend the time for filing a notice of objection to an assessment to be granted. Currently, the conditions include a requirement that the person demonstrate that, within the time limited under the Act, the person

(A) was unable to act or to give a mandate to act in their name, and

(B) had a *bona fide* intention to object to the assessment.

The provision is amended by replacing the conjunction "and" with "or", bringing the extension of time provision in line with those in other taxation statutes.

This amendment comes into force upon Royal Assent.

Clause 148

When Application to be Granted

ATSCA
45(6)(*b*)(i)

Subsection 45(6) sets conditions that must be met in order for an application to the Tax Court of Canada to extend the time for filing a notice of objection to an assessment to be granted. Currently, the conditions include a requirement that the person demonstrate that, within the time limited under the Act, the person

(A) was unable to act or to give a mandate to act in their name, and

(B) had a *bona fide* intention to object to the assessment.

The provision is amended by replacing the conjunction "and" with "or", bringing the extension of time provision in line with those in other taxation statutes.

This amendment comes into force upon Royal Assent.

Clause 149

When Order to be Made

ATSCA
47(5)(*b*)(i)

Subsection 47(5) sets conditions that must be met in order for an application to the Tax Court of Canada to extend the time for appealing an assessment to be granted. Currently, the conditions include a requirement that the person demonstrate that, within the time limited under section 46 for appealing, the person

(A) was unable to act or to give a mandate to act in their name, and

(B) had a *bona fide* intention to appeal.

The provision is amended by replacing the conjunction "and" with "or", bringing the extension of time provision in line with those in other taxation statutes.

This amendment comes into force upon Royal Assent.

Clause 150

Appeal

ATSCA
52(6)

Subsection 52(6) currently provides that if a question set out in an application is determined by the Tax Court of Canada, the Minister of National Revenue or any of the persons who have been served with a copy of the application and who are named in an order of the Court under subsection 52(4) may, in accordance with the provisions of the Act, the *Tax Court of Canada Act* or the *Federal Court Act*, as they relate to appeals from or applications for judicial review of decisions of the Tax Court, appeal from the determination.

In March 2002, the *Courts Administration Service Act* replaced the name of the *Federal Court Act* with the *Federal Courts Act*, effective July 2, 2003.

In order to reflect that change, the amendment to subsection 52(6) replaces the reference to the "*Federal Court Act*" with the "*Federal Courts Act*".

This amendment is deemed to have come into force on July 2, 2003.

Clause 151

Waiving or Cancelling Penalties

ATSCA
55(1)

Effective April 1, 2007, subsection 55(1) will introduce a ten-year limitation period in respect of waivers or cancellations of any penalty payable under section 53, such that the Minister of National Revenue may, on or before the day that is ten calendar years after the end of a fiscal month of a person, waive or cancel any penalty payable by the person under section 53 in respect of that fiscal month.

Subsection 55(1) is amended to enable the Minister to waive or cancel any penalty payable under section 53 in respect of a fiscal month beyond the ten-year limitation period, provided the person makes an application for relief before the end of that period.

This amendment comes into force on April 1, 2007.

Clause 152

Regulations

ATSCA
84(1.1)

Subsection 84(1) provides the Governor in Council with authority to make regulations. The new subsection 84(1.1) provides the Governor in Council with authority to make regulations amending the schedule to the Act that lists airports where the Air Travellers Security Charge is levied by adding, removing or varying the reference to any airport in the schedule. This new authority replaces the current authority provided in the Act to the Governor in Council to make regulations prescribing new airports where the charge is levied.

New subsection 84(1.1) comes into force upon Royal Assent.

Clause 153

Reference to Subsection 84(1.1)

ATSCA
Schedule

The schedule to the Act lists airports where the Air Travellers Security Charge is applicable. The schedule is amended by adding a reference to subsection 84(1.1), which provides the Governor in Council with the authority to make regulations amending the schedule to the Act by adding, removing or varying the reference to any airport in the schedule.

This amendment comes into force upon Royal Assent.

Clause 154

Deletions From the List of Designated Airports

ATSCA
Schedule

The schedule to the Act lists airports where the Air Travellers Security Charge is applicable. This amendment removes La Grande-3 and La Grande-4 airports in Quebec from the schedule, as previously announced in a Transport Canada news release dated December 20, 2004.

This amendment is deemed to have come into force on December 23, 2004.

Clauses 155 and 156

Additions to the List of Designated Airports

ATSCA
Schedule

The schedule to the Act lists airports where the Air Travellers Security Charge (ATSC) is applicable. These amendments add Red Deer Regional and Rivière-Rouge (Mont Tremblant International) airports to the schedule. These additions are necessary because the *Listed Airport Regulations*, which currently prescribe those two airports as "listed airports" where the ATSC is levied, will no longer be valid regulations upon Royal Assent (i.e. since the phrase "and a prescribed airport" is being removed from the definition of "listed airport" in section 2 of the Act). In other words, these amendments simply maintain the *status quo* for these two airports.

These amendments come into force upon Royal Assent.

Part 4
Coordinating Amendment

Clause 157

Bill C-28 (*Budget Implementation Act, 2006, No. 2*)

Section 57 of Bill C-28 (*Budget Implementation Act, 2006, No. 2*) proposes to amend section 135(2)(a) of the *Excise Act, 2001* to provide that duty will not apply to wine that is produced and packaged in Canada and composed wholly of agricultural or plant product grown in Canada. This coordinating amendment ensures that the amendment proposed in clause 96 of this Act, which deals with new exceptions to the prohibition against the possession of non-duty packaged alcohol, takes into account the proposed amendment to section 135(2)(*a*) of the *Excise Act, 2001*in Bill C-28.