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

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

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Legislative Proposals Relating to the Excise Tax Act

1. (1) The portion of subsection 141.01(5) of the *Excise Tax Act* before paragraph (*a*) is replaced by the following:

Method of determining extent of use, etc.

(5) Subject to section 141.02, the methods used by a person in a fiscal year to determine

(2) Subsection (1) is deemed to have come into force on April 1, 2007.

2. (1) The Act is amended by adding the following after section 141.01:

Definitions

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

"direct attribution method" « *méthode d'attribution directe* »

"direct attribution method" means a method, conforming to criteria, rules, terms and conditions specified by the Minister, of determining in the most direct manner the operative extent and procurative extent of property or a service.

"direct input" « *intrant direct* »

"direct input" means property or a service, other than

(*a*) an excluded input;

(*b*) an exclusive input; or

(*c*) a non-attributable input.

"excluded input" « *intrant exclu* »

"excluded input" of a person means

(*a*) property for use by the person as capital property;

(*b*) property or a service that is acquired, imported or brought into a participating province by the person for use as an improvement to the property described by paragraph (*a*); or

(*c*) a prescribed property or service.

"exclusive input" « *intrant exclusif* »

"exclusive input" of a person means property or a service (other than an excluded input) that is acquired, imported or brought into a participating province by the person for consumption or use directly and exclusively for the purpose of making taxable supplies for consideration or directly and exclusively for purposes other than making taxable supplies for consideration.

"non-attributable input" « *intrant non attribuable* »

"non-attributable input" of a person means property or a service that is

(*a*) not an excluded input or an exclusive input of the person;

(*b*) acquired, imported or brought into a participating province by the person; and

(*c*) not attributable to the making of any particular supply by the person.

"operative extent" « *mesure d'utilisation* »

"operative extent" of property or a service means the extent to which the consumption or use of the property or service is for the purpose of making taxable supplies for consideration or the extent to which the consumption or use of the property or service is for purposes other than making taxable supplies for consideration.

"procurative extent" « *mesure d'acquisition* »

"procurative extent" of property or a service means the extent to which the property or service is acquired, imported or brought into a participating province for the purpose of making taxable supplies for consideration or the extent to which the property or service is acquired, imported or brought into a participating province for purposes other than making taxable supplies for consideration.

"qualifying institution" « *institution admissible* »

"qualifying institution" for a particular fiscal year means a person that

(*a*) is a financial institution of a prescribed class throughout the particular fiscal year of the person;

(*b*) has a tax credit amount for each of the two fiscal years immediately preceding the particular fiscal year of the person equal to or exceeding the prescribed amount for the prescribed class of financial institutions of the person for the particular fiscal year; and

(*c*) has a tax credit rate for each of the two fiscal years immediately preceding the particular fiscal year of the person equal to or exceeding the prescribed percentage for the prescribed class of financial institutions of the person for the particular fiscal year.

"residual input" « *intrant résiduel* »

"residual input" means a direct input or a non-attributable input.

"specified method" « *méthode déterminée* »

"specified method" means a method, conforming to criteria, rules, terms and conditions specified by the Minister, of determining the operative extent and the procurative extent of property or a service.

"tax credit amount" « *montant de crédit de taxe* »

"tax credit amount" of a person for a fiscal year of the person means

(*a*) where the person has made an election under subsection (9) in respect of the fiscal year, the total of all amounts each of which is an input tax credit for the fiscal year that the person would, in the absence of subsection (9), be entitled to claim under this Part in respect of a residual input for which tax in respect of the supply, importation or bringing into a participating province of the residual input became payable by the person during the fiscal year without having been paid before the fiscal year or was paid by the person during the fiscal year without having become payable;

(*b*) where the person is a qualifying institution for the fiscal year, has not made an election under subsection (7) in respect of the fiscal year and has not received an authorization from the Minister for an application made under subsection (18) in respect of the fiscal year, the total of all amounts each of which is an input tax credit for the fiscal year that

the person would, if the person were not a qualifying institution for the fiscal year and did not make an election under subsection (9) in respect of the fiscal year, be entitled to claim under this Part in respect of a residual input for which tax in respect of its supply, importation or bringing into a participating province became payable by the person during the fiscal year without having been paid before the fiscal year or was paid by the person during the fiscal year without having become payable; and

(*c*) in any other case, the total of all amounts each of which is an input tax credit for the fiscal year that the person is entitled to claim under this Part in respect of a residual input for which tax in respect of its supply, importation or bringing into a participating province became payable by the person during the fiscal year without having been paid before the fiscal year or was paid by the person during the fiscal year without having become payable.

"tax credit rate"
« *taux de crédit de taxe* »

"tax credit rate" of a person for a fiscal year of the person means the quotient, expressed as a percentage, that is determined by dividing the tax credit amount of the person for the fiscal year by the total of all amounts each of which is an amount of tax in respect of a supply, importation or bringing into a participating province of a residual input that became payable by the person during the fiscal year without having been paid before the fiscal year or was paid by the person during the fiscal year without having become payable.

Meaning of "consideration"

(2) In this section, "consideration" does not include nominal consideration.

Financial institution throughout a year

(3) For the purposes of this section, a person is a financial institution of a prescribed class throughout a particular fiscal year of the person if the person is a financial institution of that class at any time in the particular fiscal year.

Mergers and amalgamations

(4) If two or more corporations (each of which is referred to in this subsection as a "predecessor") are merged or amalgamated to form one corporation (in this subsection referred to as the "new corporation"), otherwise than as the result of the acquisition of property of one corporation by another corporation pursuant to the purchase of the property by the other corporation or as the result of the distribution of the property to the other corporation on the winding-up of the corporation, despite section 271 and for the purposes of determining the tax credit amount and the tax credit rate of the new corporation for a fiscal year of the new corporation, the following rules apply:

(*a*) the new corporation is deemed to have had two fiscal years immediately preceding the first fiscal year of the new corporation;

(*b*) the tax credit amount of the new corporation for the fiscal year of the new corporation (in this subsection referred to as the "prior year of the new corporation") immediately preceding the first fiscal year of the new corporation is deemed to be equal to the total of all amounts each of which is the tax credit amount of a predecessor for the last fiscal year of the predecessor (in this subsection referred to as the "prior year of the predecessor") ending before the time of the merger or amalgamation otherwise than as a result of the merger or amalgamation;

(*c*) the tax credit amount of the new corporation for the fiscal year of the new corporation (in this subsection referred to as the "second prior year of the new corporation") immediately preceding the prior year of the new corporation is deemed to be equal to the total of all amounts each of which is the tax credit amount of a predecessor for the fiscal year of the predecessor (in this subsection referred to as the "second prior year of the predecessor") immediately preceding the prior year of the predecessor;

(*d*) the tax credit rate for the prior year of the new corporation is deemed to be the quotient, expressed as a percentage, that is determined by dividing the tax credit amount of the new corporation for the prior year of the new corporation by the total of all amounts each of which is an amount of tax in respect of a supply, importation or bringing into a participating province of a residual input that, in respect of each predecessor, became payable by the predecessor during the prior year of the predecessor without having been paid before the prior year of the predecessor or was paid by the predecessor during the prior year of the predecessor without having become payable; and

(*e*) the tax credit rate for the second prior year of the new corporation is deemed to be the quotient, expressed as a percentage, that is determined by dividing the tax credit amount of the new corporation for the second prior year of the new corporation by the total of all amounts each of which is an amount of tax in respect of a supply, importation or bringing into a participating province of a residual input that, in respect of each predecessor, became payable by the predecessor during the second prior year of the predecessor without having been paid before the second prior year of the predecessor or was paid by the predecessor during the second prior year of the predecessor without having become payable.

Winding-up

(5) If at any time a particular corporation is wound up and not less than 90% of the issued shares of each class of the capital stock of the particular corporation were, immediately before that time, owned by another corporation, despite section 272 and for the purposes of determining the tax credit amount and the tax credit rate of the other corporation for a fiscal year of the other corporation, the following rules apply:

(*a*) the tax credit amount of the other corporation for the fiscal year of the other corporation (in this subsection referred to as the "specified year of the other corporation") that includes the day on which the particular corporation is wound up is deemed to be equal to the total of

(i) the amount that would, in the absence of this subsection, be the tax credit amount of the other corporation for the specified year of the other corporation, and

(ii) the amount that is the tax credit amount of the particular corporation for the last fiscal year of the particular corporation (in this subsection referred to as the "prior year of the particular corporation") ending before the day on which the particular corporation is wound up;

(*b*) the tax credit amount of the other corporation for the fiscal year of the other corporation (in this subsection referred to as the "prior year of the other corporation") immediately preceding the specified year of the other corporation is deemed to be equal to the total of

(i) the amount that would, in the absence of this subsection, be the tax credit amount of the other corporation for the prior year of the other corporation, and

(ii) the amount that is the tax credit amount of the particular corporation for the fiscal year of the particular corporation (in this subsection referred to as the "second prior year of the particular corporation") immediately preceding the prior year of the particular corporation;

(*c*) the tax credit rate of the other corporation for the specified year of the other corporation is deemed to be the quotient, expressed as a percentage, that is determined by dividing the tax credit amount of the other corporation, as determined under paragraph (*a*), for the specified year of the other corporation by the total of all amounts each of which is an amount of tax in respect of a supply, importation or bringing into a participating province of a residual input that

(i) became payable by the other corporation during the specified year of the other corporation without having been paid before the specified year of the other corporation or was paid by the other corporation during the specified year of the other corporation without having become payable; or

(ii) became payable by the particular corporation during the prior year of the particular corporation without having been paid before the prior year of the particular corporation or was paid by the particular corporation during the prior year of the particular corporation without having become payable; and

(*d*) the tax credit rate of the other corporation for the prior year of the other corporation is deemed to be the quotient, expressed as a percentage, that is determined by dividing the tax credit amount of the other corporation, as determined under paragraph (*b*), for the prior year of the other corporation by the total of all amounts each of which is an amount of tax in respect of a supply, importation or bringing into a participating province of a residual input that

(i) became payable by the other corporation during the prior year of the other corporation without having been paid before the prior year of the other corporation or was paid by the other corporation during the prior year of the other corporation without having become payable; or

(ii) became payable by the particular corporation during the second prior year of the particular corporation without having been paid before the second prior year of the particular corporation or was paid by the particular corporation during the second prior year of the particular corporation without having become payable.

Allocation of exclusive inputs

(6) For the purposes of this Part, the following rules apply in respect of any exclusive input of a financial institution

(*a*) if the exclusive input is acquired, imported or brought into a participating province for consumption or use directly and exclusively for the purpose of making taxable supplies for consideration, the financial institution is deemed to have acquired, imported or brought

into the participating province the whole of the exclusive input for consumption or use exclusively in the course of commercial activities of the financial institution; and

(*b*) if the exclusive input is acquired, imported or brought into a participating province for consumption or use directly and exclusively for purposes other than making taxable supplies for consideration, the financial institution is deemed to have acquired, imported or brought into the participating province the whole of the exclusive input for consumption or use exclusively otherwise than in the course of commercial activities of the financial institution.

Residual inputs — Election for transitional year

(7) If a person is a qualifying institution for the first fiscal year of the person that begins after March 2007, the Minister has assessed the net tax of the person for any reporting period included in any of the four fiscal years immediately preceding that first fiscal year, the notice of assessment, subsequent assessment or reassessment in respect of the reporting period does not reflect any inappropriateness in respect of the method or methods used by the person for the purpose of determining input tax credits in respect of all residual inputs of the person and the method or methods would be fair and reasonable if used in the same manner by the person in that first fiscal year for the purposes of determining the operative extent and procurative extent of all the residual inputs of the person, the person may elect to use the method or methods in that same manner for that first fiscal year to determine, for the purposes of this Part, the operative extent and procurative extent of all the residual inputs of the person.

Residual inputs — Prescribed extent of use

(8) For the purposes of this Part, if a financial institution is a qualifying institution for a fiscal year of the financial institution and has not made an election under subsection (7) for the fiscal year, the following rules apply for the fiscal year in respect of each residual input of the financial institution:

(*a*) the extent to which the consumption or use of each residual input of the financial institution is for the purpose of making taxable supplies for consideration is deemed to be equal to the prescribed percentage for the prescribed class of the financial institution;

(*b*) the extent to which the consumption or use of each residual input of the financial institution is for purposes other than making taxable supplies for consideration is deemed to be equal to the difference between 100% and the prescribed percentage for the prescribed class of the financial institution;

(*c*) the extent to which each residual input of the financial institution is acquired, imported or brought into a participating province by the qualifying institution for the purpose of making taxable supplies for consideration is deemed to be equal to the prescribed percentage for the prescribed class of the financial institution;

(*d*) the extent to which each residual input of the financial institution is acquired, imported or brought into a participating province by the qualifying institution for purposes other than making taxable supplies for consideration is deemed to be equal to the difference between 100% and the prescribed percentage for the prescribed class of the financial institution; and

(*e*) for the purpose of determining an input tax credit in respect of each residual input of the financial institution, the description of B in the formula in subsection 169(1) is deemed to be equal to the prescribed percentage for the prescribed class of the financial institution.

Residual inputs — Elected extent of use

(9) For the purposes of this Part, if a person is a financial institution (other than a qualifying institution) of a prescribed class throughout a particular fiscal year of the person and the tax credit rate of the person for each of the two fiscal years immediately preceding the particular fiscal year equals or exceeds the prescribed percentage for the prescribed class of financial institutions of the person for the particular fiscal year, the person may elect to have the following rules apply for the particular fiscal year in respect of each residual input of the person:

(*a*) the extent to which the consumption or use of each residual input of the person is for the purpose of making taxable supplies for consideration is deemed to be equal to the prescribed percentage for the prescribed class;

(*b*) the extent to which the consumption or use of each residual input of the person is for purposes other than making taxable supplies for consideration is deemed to be equal to the difference between 100% and the prescribed percentage for the prescribed class;

(*c*) the extent to which each residual input of the person is acquired, imported or brought into a participating province by the institution for the purpose of making taxable supplies for consideration is deemed to be equal to the prescribed percentage for the prescribed class;

(*d*) the extent to which each residual input of the person is acquired, imported or brought into a participating province by the institution for purposes other than making taxable supplies for consideration is deemed to be equal to the difference between 100% and the prescribed percentage for the prescribed class; and

(*e*) for the purpose of determining an input tax credit in respect of each residual input of the person, the description of B in the formula in subsection 169(1) is deemed to be equal to the prescribed percentage for the prescribed class.

Non-attributable inputs — Specified method

(10) For purposes of this Part, if a financial institution (other than a qualifying institution) has not made an election under subsection (9) in respect of a fiscal year of the financial institution, the financial institution shall use a specified method to determine for the fiscal year the operative extent and the procurative extent of each non-attributable input of the financial institution.

Non-attributable inputs — Exception

(11) For purposes of this Part, despite subsection (10), if a financial institution (other than a qualifying institution) has not made an election under subsection (9) in respect of a fiscal year of the financial institution and no specified method applies to a particular non-attributable input of the financial institution, the financial institution shall use another attribution method to determine for the fiscal year the operative extent and the procurative extent of the particular non-attributable input.

Direct inputs — Direct attribution method

(12) For purposes of this Part, if a financial institution (other than a qualifying institution) has not made an election under subsection (9) in respect of a fiscal year of the financial institution, the financial institution shall use a direct attribution method to determine for the fiscal year the operative extent and the procurative extent of each direct input of the financial institution.

Direct inputs — Exception

(13) For purposes of this Part, despite subsection (12), if a financial institution (other than a qualifying institution) has not made an election under subsection (9) in respect of a fiscal year of the financial institution and no direct attribution method applies to a particular direct input of the financial institution, the financial institution shall use another attribution method to determine in the most direct manner for the fiscal year the operative extent and the procurative extent of the particular direct input.

Excluded inputs — Specified method

(14) For purposes of this Part, a financial institution shall use a specified method to determine the operative extent and the procurative extent of each excluded input of the financial institution.

Excluded inputs — Exception

(15) For purposes of this Part, despite subsection (14), if no specified method applies to a particular excluded input of a financial institution, the financial institution shall use another attribution method to determine the operative extent and the procurative extent of the particular excluded input.

Attribution method — Conditions

(16) Any method that a financial institution is required in accordance with subsection (10), (11), (12), (13), (14) or (15) to use in respect of a fiscal year of the financial institution shall

(*a*) be fair and reasonable;

(*b*) be used consistently by the financial institution throughout the fiscal year; and

(*c*) be determined by the financial institution no later than the day on or before which the financial institution is required to file a return with the Minister for the first reporting period in the fiscal year.

Alteration or substitution of method

(17) Any method used by a financial institution under any of subsections (10), (11), (12), (13), (14) or (15) in respect of a fiscal year of the financial institution shall not, after the day on or before which the financial institution is required to file a return with the Minister for the first reporting period in the fiscal year, be altered or be substituted with another method by the financial institution for the fiscal year without the written consent of the Minister.

Application for pre-approved method

(18) A person that is a qualifying institution for a fiscal year may apply to the Minister to use particular methods to determine for the fiscal year the operative extent and the procurative extent of each property or service of the person.

Form and manner of application

(19) An application made by a person under subsection (18) shall

(*a*) be made in prescribed form containing prescribed information;

(*b*) specify which method is to be used in respect of each property or service of the person; and

(*c*) be filed by the person with the Minister in prescribed manner on or before the day that is

(i) the day that is 180 days before the first day of the fiscal year to which the application applies, or

(ii) any later day that the Minister may allow on application by the person.

Authorization

(20) On receipt of an application made under subsection (18), the Minister shall, within 180 days of that receipt, consider the application and authorize or refuse it, and shall, within that time limit, notify the person in writing of the decision by registered or certified mail.

Effect of authorization

(21) For the purposes of this Part, if under subsection (20) the Minister authorizes the use of methods specified in an application by a person under subsection (18) in respect of a fiscal year of the person and the person is a qualifying institution for the fiscal year,

(*a*) the methods specified in the application to determine the operative extent and the procurative extent of property and services of the person shall be used consistently, and in the manner specified in the application, by the person throughout the fiscal year; and

(*b*) subsections (6), (8), (14) and (15) do not apply, in respect of the fiscal year, for any property or service of the person.

Revocation

(22) An authorization granted to a person under subsection (20) in respect of a fiscal year of a person ceases to have effect on the first day of the fiscal year if

(*a*) the Minister revokes the authorization and sends a notice of revocation to the person on or before the day that is 60 days before the day that is the first day of the fiscal year; or

(*b*) the person files in prescribed manner with the Minister a notice of revocation in prescribed form containing prescribed information and the notice is received by the Minister on or before the day that is 60 days before the first day of the fiscal year.

Making of election

(23) An election under subsection (7) or (9) in respect of a fiscal year of a person shall

(*a*) be made in prescribed form containing prescribed information; and

(*b*) be filed by the person with the Minister in prescribed manner on or before the day that is

(i) the day on or before which a return under Division V for the first reporting period of the fiscal year is required to be filed, or

(ii) any later day that the Minister may allow on application by the person.

Revocation of election

(24) An election under subsection (7) or (9) in respect of a fiscal year of a person may be revoked by the person, effective on the first day of the fiscal year, if a notice of revocation of the election in prescribed form containing prescribed information is filed in prescribed manner with the Minister on or before the day on or before which the return under Division V is required to be filed for the first reporting period of the fiscal year.

Financial institution's own method — Burden of proof

(25) If a financial institution appeals an assessment under this Part for a reporting period in a fiscal year of the financial institution in respect of an issue relating to the determination of any extent of an input under subsection (10), (11), (12), (13), (14) or (15), the financial institution must establish on a balance of probabilities in any court proceeding relating to the assessment that

(*a*) in the case of the determination of an extent of the input under subsection (10) or (14), the financial institution used a specified method consistently throughout the fiscal year to determine that extent;

(*b*) in the case of the determination of an extent of the input under subsection (11) or (15), no specified method applied to the input and the other attribution method used by the financial institution to determine that extent was fair and reasonable and used consistently by the financial institution throughout the fiscal year;

(*c*) in the case of the determination of an extent of the input under subsection (12), the financial institution used a direct attribution method consistently throughout the fiscal year to determine that extent; and

(*d*) in the case of the determination of an extent of the input under subsection (13), no direct attribution method applied to the input and the other attribution method used by the financial institution to determine that extent was fair and reasonable and used consistently by the financial institution throughout the fiscal year.

Ministerial direction

(26) If a financial institution uses a method (in this subsection referred to as the "previous method") in accordance with subsection (10), (11), (12), (13), (14) or (15) in respect of a fiscal year of the financial institution, the Minister may at any time direct the financial institution to use for the purposes of that subsection and for the fiscal year or any subsequent fiscal year another method that is fair and reasonable in the circumstances and, if the Minister so directs, the other method, and not the previous method, shall apply for the purposes of that subsection and for the fiscal year or any subsequent fiscal year.

Method directed by the Minister — Burden of proof

(27) If under subsection (26) the Minister directs a financial institution to use a method in respect of an input, subsection (25) does not apply in respect of that input.

(2) Subsections 141.02(1) to (17), (23), (24) and (26) of the Act, as enacted by subsection (1), apply for the purpose of determining the net tax of a person for any reporting period of the person included in a fiscal year of the person beginning after March 2007, except that, for the purposes of the definition "qualifying institution" in subsection 141.02(1) of the Act and of subsection 141.02(9) of the Act, as enacted by subsection (1), paragraphs (*b*) and (*c*) of that definition and subsection 141.02(9) of the Act shall be read as if subsection 1(1) and subsection (1) had come into force on April 1, 2005.

(3) Subsections 141.02(18) to (22) of the Act, as enacted by subsection (1), apply for the purpose of determining the net tax of a person for any reporting period of the person included in a fiscal year of the person beginning after March 2008.

3. (1) Subsection 185(1) of the Act is replaced by the following:

Financial services — Input tax credits

185. (1) Where tax in respect of property or a service acquired, imported or brought into a participating province by a registrant becomes payable by the registrant at a time when the registrant is neither a listed financial institution nor a person who is a financial institution because of paragraph 149(1)(*b*), for the purpose of determining an input tax credit of the registrant in respect of the property or service and for the purposes of Subdivision d, to the extent (determined in accordance with subsections 141.01(2) and 141.02(6)) that the property or service was acquired, imported or brought into the province, as the case may be, for consumption, use or supply in the course of making supplies of financial services that relate to commercial activities of the registrant,

(*a*) where the registrant is a financial institution because of paragraph 149(1)(*c*), the property or service is deemed, notwithstanding subsections 141.01(2) and 141.02(6), to have been so acquired, imported or brought into the province for consumption, use or supply in the course of those commercial activities except to the extent that the property or service was so acquired, imported or brought into the province for consumption, use or supply in the course of activities of the registrant that relate to

(i) credit cards or charge cards issued by the registrant, or

(ii) the making of any advance, the lending of money or the granting of any credit; and

(*b*) in any other case, the property or service is deemed, notwithstanding subsections 141.01(2) and 141.02(6), to have been so acquired, imported or brought into the province for consumption, use or supply in the course of those commercial activities.

(2) Subsection (1) is deemed to have come into force on April 1, 2007.

4. (1) The Act is amended by adding the following after section 217:

Definitions

217.1 (1) The following definitions apply in this Division.

"Canadian activity" « *activité au Canada* »

"Canadian activity" of a qualifying taxpayer means

(*a*) in the case of a qualifying taxpayer described by paragraph (*a*) of the definition "qualifying taxpayer", an activity of the qualifying taxpayer carried on, engaged in or conducted in Canada, and

(*b*) in the case of a qualifying taxpayer described by paragraph (*b*) of the definition "qualifying taxpayer", an activity of the qualifying taxpayer carried on, engaged in or conducted in Canada through a qualifying establishment of the qualifying taxpayer.

"duty performed" « *tâche accomplie* »

"duty performed" by an employee includes anything done by the employee in the course of, or in relation to, the office or employment of the employee.

"employee" « *salarié* »

"employee" includes an individual who agrees to become an employee.

"loading" « *chargement* »

"loading" includes any part of the consideration for a specified non-arm's length supply that is attributable to administrative expenses, an error or profit margin, business handling costs, commissions (other than commissions for a specified financial service), communications expenses, claims handling costs, employee compensation or benefits, execution or clearing costs, management fees, marketing or advertising costs, occupancy or equipment expenses, operating expenses, acquisition costs, premium collection costs, processing costs and any other costs or expenses of a person that makes the specified non-arm's length supply, other than the part of the consideration that is

(*a*) in the case of a specified non-arm's length supply in respect of which the financial service includes the issuance, renewal, variation or transfer of ownership of an insurance policy but not of any other financial instrument, the estimate of the quantum that an insured is expected to claim under the insurance policy,

(*b*) in the case of a specified non-arm's length supply in respect of which the financial service includes the issuance, renewal, variation or transfer of ownership of a financial instrument (other than an insurance policy), the estimate of the default risk premium that is directly associated with the financial instrument, and

(*c*) in the case of a specified non-arm's length supply in respect of which the financial service includes the issuance, renewal, variation or transfer of ownership of an insurance policy and a financial instrument (other than an insurance policy), the amount determined by the formula

A + B

where

A is, in respect of the insurance policy, the estimate of the quantum that an insured is expected to claim under the insurance policy, and

B is, in respect of the financial instrument, the estimate of the default risk premium that is directly associated with the financial instrument.

"qualifying compensation" « *rétribution admissible* »

"qualifying compensation" of an employee means any salary, wages and other remuneration of the employee and any other amount that is, or is to be, included as income from an office or employment in computing the income of the employee for the purposes of the *Income Tax Act*.

"qualifying consideration" « *contrepartie admissible* »

"qualifying consideration" for a taxation year of a qualifying taxpayer in respect of an outlay made, or expense incurred, outside Canada means the amount in respect of the outlay or expense determined by the formula

A - B

where

A is the amount of the outlay or expense that

(*a*) is allowed as a deduction, an allowance or an allocation for a reserve under the *Income Tax Act* in computing the qualifying taxpayer's income for the taxation year, or would be so allowed if

(i) the qualifying taxpayer's income were computed in accordance with that Act,

(ii) the qualifying taxpayer carried on a business in Canada, and

(iii) that Act applied to the qualifying taxpayer, and

(*b*) may reasonably be regarded as being applicable to a Canadian activity of the qualifying taxpayer;

B is the total of all amounts each of which is included in the amount determined under the description of A and each of which, for the taxation year or a preceding taxation year of the qualifying taxpayer, is

(*a*) consideration for a supply of property or a service, or the value of imported goods, upon which tax under this Part (other than section 218.01 or subsection 218.1(1.2)) became payable by the qualifying taxpayer,

(*b*) tax referred to in paragraph (*a*) in respect of the supply or importation referred to in that paragraph,

(*c*) a prescribed provincial levy (as referred to in section 154) that is payable by the recipient of the supply referred to in paragraph (*a*),

(*d*) an amount that is deemed to be assistance (within the meaning of subsection 248(18) of the *Income Tax Act*) repaid by the qualifying taxpayer in respect of the property or service referred to in paragraph (*a*),

(*e*) consideration for a supply of property or a service (other than a financial service) made to the qualifying taxpayer as part of a transaction or series of transactions in which all participants deal at arm's length with the qualifying taxpayer, unless

(i) that consideration is included in paragraph (*a*), or

(ii) an activity carried on, engaged in or conducted outside Canada, through a permanent establishment (as defined in subsections 123(1) or 132.1(2)) of the qualifying taxpayer or of a person related to the qualifying taxpayer, relates in any manner to the supply,

(*f*) qualifying compensation of an employee of the qualifying taxpayer that is paid in the taxation year by the qualifying taxpayer if the duties performed by the employee during the taxation year are performed primarily in Canada,

(*g*) interest that is paid or payable by the qualifying taxpayer as the consideration for a supply of a financial service made to the qualifying taxpayer (other than an amount paid or credited by the qualifying taxpayer, or deemed by Part I of the *Income Tax Act* to have been paid or credited by the qualifying taxpayer, to a person as, on account or in lieu of payment of, or in satisfaction of, a management or administration fee or charge (within the meaning of subsection 212(4) of that Act)),

(*h*) dividends,

(*i*) consideration (other than interest referred to in paragraph (*g*) or dividends referred to in paragraph (*h*)) for a specified arm's length supply made to the qualifying taxpayer,

(*j*) consideration (other than interest referred to in paragraph (*g*) or dividends referred to in paragraph (*h*)) for a supply of a specified financial service made to the qualifying taxpayer, or

(*k*) consideration (other than interest referred to in paragraph (*g*), dividends referred to in paragraph (*h*) or loading) for a specified non-arm's length supply made to the qualifying taxpayer.

"qualifying service" « *service admissible* »

"qualifying service" means any duty performed by an employee or any service.

"qualifying taxpayer" « *contribuable admissible* »

"qualifying taxpayer" means a person that is, at any time in a taxation year of the person, a financial institution and is

(*a*) at any time in the taxation year, resident in Canada (other than a person deemed under subsection 132(2) to be resident in Canada in respect of activities of the person carried on through a permanent establishment in Canada), or

(*b*) non-resident (other than a person deemed under subsection 132(3) to be a non-resident in respect of activities of the person carried on through a permanent establishment in a country other than Canada) and has, at any time in the taxation year, a qualifying establishment in Canada.

"specified arm's length supply" « *fourniture déterminée entre personnes sans lien de dépendance* »

"specified arm's length supply" means a supply of a financial service (other than a specified financial service) made to a qualifying taxpayer as part of a transaction or series of transactions in which all participants deal at arm's length with the qualifying taxpayer.

"specified financial service" « *service financier déterminé* »

"specified financial service" means a financial service supplied to a qualifying taxpayer by an agent, salesperson or broker of arranging for the issuance, renewal, variation or transfer of ownership of a financial instrument that is property of a person other than the agent, salesperson or broker.

"specified non-arm's length supply" « *fourniture déterminée entre personnes liées* »

"specified non-arm's length supply" means a supply of a financial service (other than a specified financial service) that includes the issuance, renewal, variation or transfer of ownership of a financial instrument, made to a qualifying taxpayer as part of a transaction or series of transactions in which any participant does not deal at arm's length with the qualifying taxpayer.

"transaction" « *opération* »

"transaction" includes an arrangement or event.

Qualifying establishment

(2) For the purposes of this Division,

(*a*) a particular person has a qualifying establishment in Canada during a taxation year of the particular person if, at any time in the taxation year, the particular person

(i) has a permanent establishment (as defined in subsections 123(1) or 132.1(2)) in Canada, or

(ii) is carrying on activities in Canada and a majority of the persons having beneficial ownership of the property of the particular person are resident in Canada; and

(*b*) a person has a qualifying establishment in a province during a taxation year of the person if, at any time in the taxation year, the person has a permanent establishment (as defined in subsections 123(1) or 132.1(2)) in the province.

Outlay made, or expense incurred, outside Canada

(3) For the purposes of this Division, an outlay made, or expense incurred, outside Canada includes an amount representing

(*a*) any outlay made, or expense incurred, by a qualifying taxpayer in respect of

(i) property that is, in whole or in part, transferred or of which possession or use is, in whole or in part, given or made available, outside Canada, to the qualifying taxpayer, or

(ii) a qualifying service (other than any duty performed by an employee) that is, in whole or in part, performed outside Canada for the benefit of, or rendered outside Canada to, the qualifying taxpayer;

(*b*) any adjustment (within the meaning of subsection 247(2) of the *Income Tax Act*) to the outlay or expense referred to in paragraph (*a*),

(*c*) any expenditure or purchase in respect of a reportable transaction (as defined in section 233.1 of the *Income Tax Act*) in respect of which a qualifying taxpayer is required under that section to file with the Minister a return in prescribed form containing prescribed information, or would be so required to file if the qualifying taxpayer carried on a business in Canada and that Act applied to the qualifying taxpayer,

(*d*) in the case of a qualifying taxpayer referred to in paragraph (*a*) of the definition "qualifying taxpayer", any qualifying compensation of an employee paid in a taxation year by the qualifying taxpayer if

(i) at any time in the taxation year, any of the duties performed by the employee are, in whole or in part, performed outside Canada (in this subsection referred to as "duties performed outside Canada") at a permanent establishment (as defined in subsections 123(1) or 132.1(2)) of the qualifying taxpayer or of a person related to the qualifying taxpayer, and

(ii) all or substantially all of the duties performed outside Canada by the employee are not performed elsewhere than at such a permanent establishment, and

(*e*) in the case of a qualifying taxpayer referred to in paragraph (*b*) of the definition "qualifying taxpayer",

(i) any allocation by the qualifying taxpayer under the *Income Tax Act* of an outlay or expense as an amount in respect of a business carried on in Canada by the qualifying taxpayer,

(ii) any outlay or expense that the qualifying taxpayer would be required under the *Income Tax Act* to allocate as an amount in respect of a business carried on in Canada by the qualifying taxpayer if

(A) the qualifying taxpayer's income were computed in accordance with that Act,

(B) anything done by the qualifying taxpayer through a qualifying establishment of the qualifying taxpayer were a business carried on in Canada by the qualifying taxpayer, and

(C) that Act applied to the qualifying taxpayer,

(iii) any outlay or expense that may reasonably be regarded under the *Income Tax Act* as an amount that is applicable to a qualifying establishment of the qualifying taxpayer if the qualifying establishment were a permanent establishment for purposes of that Act, or would be so regarded if the qualifying taxpayer carried on a business in Canada and that Act applied to the qualifying taxpayer, and

(iv) any qualifying compensation of an employee paid in a taxation year by the qualifying taxpayer.

Series of transactions

(4) For the purposes of this Division, if there is a reference to a series of transactions, the series is deemed to include any related transactions completed in contemplation of the series.

Taxation year

(5) For the purposes of this section, section 218.01, subsection 218.1(1.2) and section 218.3, "taxation year" of a qualifying taxpayer means

(*a*) in the case of a qualifying taxpayer that is described in paragraph (*a*) or (*b*) of the definition "taxation year" in subsection 123(1), the taxation year of the qualifying taxpayer as defined in that subsection;

(*b*) in the case of a qualifying taxpayer that is a registrant but is not described in paragraph (*a*) or (*b*) of the definition "taxation year" in subsection 123(1), the fiscal year of the qualifying taxpayer; and

(*c*) in any other case, the calendar year.

Qualifying rule for credits

(6) If an amount of qualifying consideration for a taxation year of a qualifying taxpayer in respect of an outlay made, or expense incurred, outside Canada is greater than zero (in this subsection referred to as a "qualifying expenditure") and, during a reporting period of the qualifying taxpayer during which the qualifying taxpayer is a registrant, tax under section 218.01 or subsection 218.1(1.2) in respect of the qualifying expenditure becomes payable by the qualifying taxpayer or is paid by the qualifying taxpayer without having become payable, the following rules apply for the purpose of determining an input tax credit of the qualifying taxpayer:

(*a*) the whole or part of property or of a qualifying service in respect of which the qualifying expenditure is attributable (in this subsection referred to, respectively, as an "attributable property" and an "attributable qualifying service") is deemed to have been acquired by the qualifying taxpayer at the time at which the outlay was made or the expense was incurred;

(*b*) the tax is deemed to be tax in respect of a supply of the attributable property or attributable qualifying service, as the case may be, in respect of which the qualifying expenditure is attributable; and

(*c*) the extent, if any, to which the qualifying taxpayer acquired the attributable property or attributable qualifying service for consumption, use or supply in the course of commercial activities of the qualifying taxpayer is deemed to be the same extent as that to which the whole or part of the outlay or expense, which corresponds to the qualifying expenditure, was made or incurred to consume, use or supply the attributable property or attributable qualifying service in the course of commercial activities of the qualifying taxpayer.

Input tax credits

(7) For the purpose of determining an input tax credit of a qualifying taxpayer under section 169 in respect of property or a qualifying service, the reference in that section to "property or a service" is to be read as a reference to "attributable property or an attributable qualifying service".

Qualifying taxpayer throughout a year

(8) For the purposes of this Division, a person is a qualifying taxpayer throughout a taxation year of the person if the person is a qualifying taxpayer at any time in the taxation year.

(2) Subsection (1) applies to any taxation year of a qualifying taxpayer that ends after November 16, 2005. However, for the purposes of applying that subsection to the taxation year of a qualifying taxpayer that includes November 17, 2005, paragraph (*k*) of the description of B of the definition "qualifying consideration" in subsection 217.1(1) of the Act, as enacted by subsection (1), shall be read without the reference to "or loading" if the consideration for the specified non-arm's length supply referred to in that paragraph becomes due, or is paid without having become due, before that day.

5. (1) The Act is amended by adding the following after section 218:

Imposition of goods and services tax

218.01 Subject to this Part, every qualifying taxpayer shall, for each taxation year of the qualifying taxpayer, pay to Her Majesty in right of Canada tax calculated at the rate of 6% on the total of all amounts, each of which is an amount of qualifying consideration that is greater than zero.

(2) Subsection (1) applies to any taxation year of a qualifying taxpayer that ends after November 16, 2005, except that if the taxation year begins before July 2006, section 218.01 of the Act, as enacted by subsection (1), shall be read as follows:

218.01 Subject to this Part, every qualifying taxpayer shall, for each taxation year of the qualifying taxpayer, pay to Her Majesty in right of Canada tax equal to the amount determined by the formula

$$[A \times (B/C) \times D] + [A \times ((C - B)/C) \times E]$$

where

A is the total of all amounts, each of which is an amount of qualifying consideration that is greater than zero;

B is the number of days in the taxation year before July 2006;

C is the total number of days in the taxation year;

D is 7%; and

E is 6%.

6. (1) Section 218.1 of the Act is amended by adding the following after subsection (1.1):

Tax in a participating province

(1.2) Subject to this Part, every qualifying taxpayer that is, within the meaning of subsection (1.3), resident in a particular participating province shall, for each participating province in which the qualifying taxpayer is resident and for each taxation year of the qualifying taxpayer, pay to Her Majesty in right of Canada, on each amount of qualifying consideration that is greater than zero, in addition to the tax otherwise payable under section 218.01, tax for the taxation year of the qualifying taxpayer equal to the amount determined by the formula

$$A \times B \times C$$

where

A is the tax rate for the particular participating province;

B is the amount of the qualifying consideration; and

C is the extent (expressed as a percentage) to which the whole or part of the outlay or expense, which corresponds to the amount of the qualifying consideration, was made or incurred to consume, use or supply the whole or part of property or of a qualifying service, in respect of which the amount of the qualifying consideration is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer in the particular participating province.

Qualifying taxpayer resident in a province

(1.3) Despite section 132.1 and for the purposes of subsection (1.2), a qualifying taxpayer is deemed to be resident in a province at any time if

(*a*) in the case of a qualifying taxpayer referred to in paragraph (*a*) of the definition "qualifying taxpayer" in subsection 217.1(1), the qualifying taxpayer is

(i) a corporation incorporated or continued under the laws of the province and not continued elsewhere,

(ii) a partnership, an unincorporated society, a club, an association or an organization (in this subparagraph referred to as an "entity") or a branch of the entity and the member of the entity or the branch is, or a majority of the members having management and control of the entity or the branch are, resident in the province at that time, or

(iii) a trust, carrying on activities as a trust in the province, that has a local office or branch in the province; or

(*b*) in any case, the qualifying taxpayer has a qualifying establishment in the province.

(2) The portion of subsection 218.1(2) of the Act before paragraph (*a*) is replaced by the following:

Selected listed financial institutions

(2) If tax under subsection (1) or (1.2) would, in the absence of this subsection, become payable by a person when the person is a selected listed financial institution, that tax is not payable unless it is an amount of tax that

(3) Subsections (1) and (2) apply to any taxation year of a qualifying taxpayer that ends after November 16, 2005.

7. (1) Section 218.2 of the Act is replaced by the following:

When tax payable

218.2 Tax under this Division (other than tax under section 218.01 or subsection 218.1(1.2)) that is calculated on an amount of consideration for a supply that becomes due at any time, or is paid at any time without having become due, becomes payable at that time.

When tax payable

218.3 Tax under section 218.01 and subsection 218.1(1.2) that is determined for a taxation year of a qualifying taxpayer becomes payable by the qualifying taxpayer on

(*a*) if the qualifying taxpayer is required under Division I of the *Income Tax Act* to file a return of income for the taxation year of the qualifying taxpayer, the last day on or before which that return is required to be filed; and

(*b*) in any other case, the day that is six months after the end of the taxation year of the qualifying taxpayer.

(2) Subsection (1) applies to any taxation year of a qualifying taxpayer that ends after November 16, 2005.

8. (1) The portion of section 219 of the Act before paragraph (*b*) is replaced by the following:

Filing of returns and payment of tax

219. Where tax under this Division is payable by a person,

(*a*) if the person is a registrant but not a qualifying taxpayer, the person shall, on or before the day on or before which the person's return under section 238 for the reporting period in which the tax became payable is required to be filed, pay the tax to the Receiver General and report the tax in that return;

(*a.1*) if the person is a registrant and a qualifying taxpayer, the qualifying taxpayer shall, on or before the day on or before which the qualifying taxpayer's return under section 238 for the reporting period in which the tax became payable is required to be filed, pay the

tax to the Receiver General and file with the Minister in prescribed manner a return in respect of the tax in prescribed form containing prescribed information; and

(2) Subsection (1) applies to any taxation year of a qualifying taxpayer that ends after November 16, 2005.

9. (1) Section 220 of the Act is replaced by the following:

Definitions

220. (1) The following definitions apply in this section.

"intangible capital" « *capital incorporel* »

"intangible capital" of a specified person means all or part of a labour activity of the specified person, all or part of property (other than intangible personal property described in paragraph (*a*) or (*b*) of the definition "intangible resource") or all or part of a service, any of which is consumed or used by the specified person in the process of creating, developing or bringing into existence intangible personal property.

"intangible resource" « *ressource incorporelle* »

"intangible resource" of a specified person means

(*a*) all or part of intangible personal property supplied to the specified person that is not support capital of the specified person,

(*b*) all or part of intangible personal property created, developed or brought into existence by the specified person that is not support capital of the specified person,

(*c*) intangible capital of the specified person, or

(*d*) any combination of the items referred to in paragraphs (*a*) to (*c*).

"labour activity" « *activité de main-d'œuvre* »

"labour activity" of a specified person means anything done by an individual who is or agrees to become an employee of the specified person in the course of, or in relation to, the office or employment of that individual.

"specified business" « *entreprise déterminée* »

"specified business" means a business of a specified person carried on in Canada through a permanent establishment of the specified person at any time in a taxation year of the specified person.

"specified person" « *personne déterminée* »

"specified person" means a person that, at any time in a taxation year of the person, carries on a business through a permanent establishment of the person outside Canada and, at any time in the taxation year, carries on a business through a permanent establishment of the person in Canada.

"support capital" « *capital d'appui* »

"support capital" of a specified person means all or part of intangible personal property that is consumed or used by the specified person in the process of creating, developing or bringing into existence property (other than intangible personal property) or in supporting, assisting or furthering a labour activity of the specified person.

"support resource" « *ressource d'appui* »

"support resource" of a specified person means

(*a*) all or part of property (other than intangible personal property) supplied to the specified person that is not intangible capital of the specified person,

(*b*) all or part of a service supplied to the specified person that is not intangible capital of the specified person,

(*c*) all or part of a labour activity of the specified person that is not intangible capital of the specified person,

(*d*) all or part of property (other than intangible personal property) created, developed or brought into existence by the specified person that is not intangible capital of the specified person,

(*e*) support capital of the specified person, or

(*f*) any combination of the items referred to in paragraphs (*a*) to (*e*).

Internal use

(2) For the purposes of this section,

(*a*) internal use of a support resource of a specified person occurs during a taxation year of the specified person if

(i) at any time in the taxation year, the specified person uses or puts to use outside Canada any part of the support resource in relation to carrying on a specified business of the specified person, or

(ii) for the taxation year, the specified person is permitted under the *Income Tax Act*, or would be so permitted if that Act applied to the specified person, to allocate as an amount in respect of a specified business of the specified person

(A) any part of an outlay made, or expense incurred, by the specified person in respect of any part of the support resource, or

(B) any part of an allowance, or allocation for a reserve, in respect of any part of that outlay or expense; and

(*b*) internal use of an intangible resource of a specified person occurs during a taxation year of the specified person if

(i) at any time in the taxation year, the specified person uses or puts to use outside Canada any part of the intangible resource in relation to carrying on a specified business of the specified person, or

(ii) for the taxation year, the specified person is permitted under the *Income Tax Act*, or would be so permitted if that Act applied to the specified person, to allocate as an amount in respect of a specified business of the specified person

(A) any part of an outlay made, or expense incurred, by the specified person in respect of any part of the intangible resource, or

(B) any part of an allowance, or allocation for a reserve, in respect of any part of that outlay or expense.

Dealings between permanent establishments

(3) If internal use of a support resource of a specified person occurs during a taxation year of the specified person, the following rules apply:

(*a*) for the purposes of this Division, the specified person is deemed to

(i) have rendered, during the taxation year, a service of internally using the support resource at a permanent establishment of the specified person outside Canada in the course of carrying on a specified business of the specified person,

(ii) be the person to whom the service was rendered,

(iii) be the recipient of a supply made outside Canada of the service, and

(iv) in the case of a non-resident specified person, be resident in Canada;

(*b*) for the purposes of this Division, the supply is deemed not to be a supply of a service that is in respect of

(i) real property situated outside Canada, or

(ii) tangible personal property that is situated outside Canada at the time the service is performed;

(*c*) for the purposes of this Division, the value of the consideration for the supply is deemed to be the value that would be fair market value of the consideration for a supply of the support resource made to the specified person by a person dealing at arm's length with the specified person if the specified person had obtained the use of the support resource from that person during the taxation year;

(*d*) for the purposes of this Division, the consideration for the supply is deemed to have become due and to have been paid, on the last day of the taxation year, by the specified person; and

(*e*) for the purpose of determining an input tax credit of the specified person under this Part, the specified person is deemed to have imported the service for the same purpose as that for which the support resource, in respect of which internal use occurred during the taxation year, was acquired, consumed or used by the specified person.

Dealings between permanent establishments

(4) If internal use of an intangible resource of a specified person occurs during a taxation year of the specified person, the following rules apply:

(*a*) for the purposes of this Division, the specified person is deemed to

(i) have made available, during the taxation year, at a permanent establishment of the specified person outside Canada intangible personal property in the course of carrying on a specified business of the specified person,

(ii) be the person to whom the property was made available,

(iii) be the recipient of a supply made outside Canada of the property, and

(iv) in the case of a non-resident specified person, be resident in Canada;

(*b*) for the purposes of this Division, the supply is deemed not to be a supply of property that relates to real property situated outside Canada, to a service to be performed wholly outside Canada or to tangible personal property situated outside Canada;

(*c*) for the purposes of this Division, the value of the consideration for the supply is deemed to be the value that would be fair market value of the consideration for a supply of the intangible resource made to the specified person by a person dealing at arm's length with the specified person if the specified person had obtained the use of the support resource from that person during the taxation year;

(*d*) for the purposes of this Division, the consideration for the supply is deemed to have become due and to have been paid, on the last day of the taxation year, by the specified person; and

(*e*) for the purpose of determining an input tax credit of the specified person under this Part, the specified person is deemed to have imported the property for the same purpose as that for which the intangible resource, in respect of which internal use occurred during the taxation year, was acquired, consumed or used by the specified person.

Specified throughout a year

(5) For the purposes of this section,

(*a*) a business is a specified business of a specified person throughout a taxation year of the specified person if the business is a specified business of the specified person at any time in the taxation year; and

(*b*) a person is a specified person throughout a taxation year of the person if the person is a specified person at any time in the taxation year.

(2) The definition "specified person" in subsection 220(1) of the Act, as enacted by subsection (1), is replaced by the following:

"specified person" « *personne déterminée* »

"specified person" throughout a taxation year means a person (other than a financial institution) that, at any time in the taxation year of the person, carries on a business through a permanent establishment of the person outside Canada and carries on a business through a permanent establishment of the person in Canada.

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

(4) Subsection (2) applies to any taxation year of a person that ends after November 16, 2005.

10. (1) Paragraph (*a*) in the description of A in subsection 225.2(2) of the Act is replaced by the following:

(*a*) all tax (other than a prescribed amount of tax) that became payable under any of subsection 165(1) and sections 212, 218 and 218.01 by the financial institution during the particular reporting period or that was paid by the financial institution during the particular reporting period without having become payable,

(2) Subsection (1) applies to any taxation year of a qualifying taxpayer that ends after November 16, 2005.

11. (1) Section 301 of the Act is amended by adding the following after subsection 301(1.2):

Input tax credit allocation

(1.21) If a financial institution to which subsection (1.2) does not apply objects to an assessment and the objection relates in any manner to the application of section 141.02, the notice of objection shall

(*a*) reasonably describe each issue to be decided in respect of that section;

(*b*) specify in respect of each issue the relief sought, expressed as the change in any amount that is relevant for the purposes of the assessment; and

(*c*) provide the facts and reasons relied on by the financial institution in respect of each issue.

(2) Subsection 301(1.3) of the Act is replaced by the following:

Late compliance

(1.3) Despite subsection (1.2) or (1.21), if a notice of objection filed by a person to whom that subsection applies does not include the information required by paragraph (1.2)(*b*) or (*c*) or (1.21)(*b*) or (*c*) in respect of an issue to be decided that is described in the notice, the Minister may in writing request the person to provide the information, and those paragraphs shall be deemed to be complied with in respect of the issue if, within 60 days after the request is made, the person submits the information in writing to the Minister.

(3) The portion of subsection 301(1.4) of the Act before paragraph (*b*) is replaced by the following:

Limitation on objections

(1.4) Despite subsection (1.1), if a person to whom subsection (1.2) or (1.21) applies has filed a notice of objection to an assessment (in this subsection referred to as the "earlier assessment") and the Minister makes a particular assessment under subsection (3) pursuant to the notice of objection, except where the earlier assessment was made under subsection 274(8) or in accordance with an order of a court vacating, varying or restoring an assessment or referring an assessment back to the Minister for reconsideration and reassessment, the person may object to the particular assessment in respect of an issue

(*a*) only if the person complied with subsection (1.2) or (1.21) in the notice with respect to that issue; and

12. The portion of subsection 306.1(1) of the Act before paragraph (*b*) is replaced by the following:

Limitation on appeals to the Tax Court

306.1 (1) Despite sections 302 and 306, if a person to whom subsection 301(1.2) or (1.21) applies has filed a notice of objection to an assessment, the person may appeal to the Tax Court to have the assessment vacated, or a reassessment made, only with respect to

(*a*) an issue in respect of which the person has complied with subsection 301(1.2) or (1.21) in the notice, or

Draft Input Tax Credit Allocation Methods (GST/HST) Regulations

DRAFT INPUT TAX CREDIT ALLOCATION METHODS (GST/HST) REGULATIONS

Interpretation

1. The definitions in this section apply in these Regulations.

"Act"
« *loi* »

"Act" means the *Excise Tax Act*.

"bank"
« *banque* »

"bank" in respect of a fiscal year does not include a person that is at any time in the fiscal year an insurer.

"insurer"
« *assureur* »

"insurer" in respect of a fiscal year means a person that is an insurer (as defined in subsection 123(1) of the Act) and that carries on at any time in the fiscal year an insurance business as the principal business of the person in Canada.

"securities dealer"
« *courtier en valeurs mobilières* »

"securities dealer" in respect of a fiscal year means a person that

(*a*) carries on at any time in the fiscal year a business as a trader or dealer in, or as a broker or salesperson of, securities as the principal business of the person in Canada;

(*b*) is registered under the laws of Canada or a province to carry on in Canada at any time in the fiscal year a business as a trader or dealer in, or as a broker or salesperson of, securities; and

(*c*) is not a bank or an insurer at any time in the fiscal year.

Prescribed classes

2. The following classes of financial institutions are prescribed for the purposes of the definition "qualifying institution" in subsection 141.02(1) and for the purposes of subsections 141.02(3), (8) and (9) of the Act:

(*a*) banks;

(*b*) insurers; and

(*c*) securities dealers.

Prescribed amounts

3. The following amounts are prescribed for the purposes of the definition "qualifying institution" in subsection 141.02(1):

(*a*) in the case of banks, $500,000;

(*b*) in the case of insurers, $500,000; and

(*c*) in the case of securities dealers, $500,000.

Prescribed percentages

4. The following percentages are prescribed for the purposes of the definition "qualifying institution" in subsection 141.02(1) and for the purposes of subsections 141.02(8) and (9) of the Act:

(*a*) in the case of banks, 12%;

(*b*) in the case of insurers, 10%; and

(*c*) in the case of securities dealers, 15%.

APPLICATION

5. Sections 1 to 4 of these Regulations are deemed to have come into force on April 1, 2007.

Explanatory Notes

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

Clause 1

Method of Determining Extent of Use, etc.

ETA
141.01(5)

Section 141.01 of the *Excise Tax Act* (the Act) clarifies and reinforces the requirement to apportion the use of inputs based on the extent to which the inputs are used or consumed, or acquired, imported or brought into a participating province for consumption or use, for the purpose of making taxable supplies for consideration or for other purposes. This apportionment is relevant to the determination of input tax credits. Subsection 141.01(5) essentially provides that the method used by a person to apportion inputs must be fair and reasonable and used consistently throughout a year.

Subsection 141.01(5) is amended so that it applies subject to new section 141.02 of the Act. The latter provides more specific rules regarding the input tax credit allocation methods that are to be used by financial institutions.

The amendment to subsection 141.01(5) comes into force on April 1, 2007.

Clause 2

Input Tax Credit Allocation Methods for Financial Institutions

ETA
141.02

New section 141.02 of the Act sets out rules that apply to financial institutions respecting the requirement to apportion the use of inputs based on the extent to which the inputs are used or consumed, or acquired, imported or brought into a participating province for consumption or use for the purpose of making taxable supplies for consideration or for other purposes. These specific rules, in addition to the more general existing rules contained in subsection 141.01(5) of the Act, are intended to apply to financial institutions, which include both listed and *de minimis* financial institutions described in subsection 149(1) of the Act.

Section 141.02 applies for the purposes of determining the net tax of a person for any reporting period of the person included in fiscal years of the person beginning after March 2007, with the exception of subsections 141.02(18) to (22), which apply for the purposes of determining the net tax of a person for any reporting period of the person included in fiscal years of the person beginning after March 2008. In addition, special coming-into-force rules apply in the case of the definition "qualifying institution" in subsection 141.02(1) and subsection 141.02(9), which are explained in the notes to those two provisions. As well, subsections 141.02(25) and (27) come into force on Royal Assent.

Subsection 141.02(1) — Definitions

New subsection 141.02(1) contains definitions that are used throughout section 141.02.

"direct attribution method"

Under this definition, a "direct attribution method" means a method of determining in the most direct manner the operative extent and the procurative extent (as those terms are defined in this subsection) of an input (property or a service) of a person. A direct attribution method must conform to criteria, rules, terms and conditions specified by the Minister of National Revenue. Such criteria, rules, terms and conditions could be contained in an interpretation bulletin issued by the Canada Revenue Agency.

“direct input”

A “direct input” means property or a service that is acquired, imported or brought into a participating province but that is not an excluded input, an exclusive input or a non-attributable input (as those three terms are defined in this subsection). Generally, direct inputs are inputs that are not capital property, that can be attributed to the making of specific outputs and that are consumed or used both for the purpose of making taxable supplies for consideration and for purposes other than making taxable supplies for consideration.

“excluded input”

An “excluded input” generally includes property (both personal and real) that is used as capital property, in addition to any property or services that are acquired, imported or brought into a participating province by the person for use as improvements to capital property. An “excluded input” also may include a prescribed property or service, though no such property or services are currently prescribed.

“exclusive input”

An “exclusive input” of a person means property or a service that is used or consumed directly and exclusively by the person for making taxable supplies for consideration or that is used or consumed directly and exclusively for purposes other than making taxable supplies for consideration. It is important to note that, as defined in subsection 123(1) of the Act, the term “exclusively” means 100% in the case of financial institutions. Specifically carved out from the definition “exclusive input” are excluded inputs, which are defined in this subsection as being capital property, improvements to that capital property and any prescribed property or services. An example of an exclusive input would be an appraisal service which is used solely to provide an exempt financial service of issuing mortgage loans to homebuyers in Canada and is in no way used to provide a taxable supply for consideration.

“non-attributable input”

A “non-attributable input” means property or a service that is acquired, imported or brought into a participating province, that is not attributable to the making of any particular supply or a purpose other than making a supply and that is neither an excluded input nor an exclusive input (as those terms are defined in this subsection). Non-attributable inputs are therefore inputs that are consumed or used both for the purpose of making taxable supplies for consideration and for purposes other than making taxable supplies for consideration. Furthermore, they are inputs that are neither capital personal property nor capital real property (nor improvements to those capital properties) and that cannot be attributed to any specific supply or cost centre that relates to specific supplies. An example of a non-attributable input would be certain overhead expenses related to board of directors meetings.

“operative extent”

Under this definition, an “operative extent” means, in respect of property or a service, the extent to which the consumption or use of the property or service is for the purpose of making taxable supplies for consideration. Alternatively, it also means the extent to which the consumption or use of the property or service is for purposes other than making taxable supplies for consideration.

“procurative extent”

Under this definition, a “procurative extent” means, in respect of property or services, the extent to which property or a service is acquired, imported or brought into a participating province by the person for the purpose of making taxable supplies for consideration. Alternatively, it also means the extent to which the property or service is acquired, imported or brought into a participating province by the person for purposes other than making taxable supplies for consideration.

“qualifying institution”

Under this definition, a “qualifying institution” means a financial institution that, for a particular fiscal year of the financial institution, meets the requirements of paragraphs (*a*), (*b*) and (*c*) of the definition.

Paragraph (*a*) requires that the financial institution be, throughout the particular fiscal year, a financial institution of a prescribed class. Currently, there are three prescribed classes of financial institutions: banks, insurers and securities dealers. Under subsection 141.02(3), a person is a financial institution of a prescribed class throughout a particular fiscal year of the person if the person is a financial institution of that class at any time in the particular fiscal year.

Paragraph (*b*) requires that, for each of the two fiscal years immediately preceding the particular fiscal year, the financial institution have a “tax credit amount” (as defined in this subsection) equal to or exceeding the prescribed amount for the prescribed class of financial institutions of the person for the particular fiscal year. Currently, the prescribed amount for each of the three prescribed classes of financial institutions is $500,000.

Paragraph (*c*) requires that, for each of the two fiscal years immediately preceding the particular fiscal year, the financial institution have a “tax credit rate” (as defined in this subsection) equal to or exceeding the prescribed percentage for the prescribed class of financial institutions of the person for the particular fiscal year. Currently, the prescribed percentage is 12% for banks, 10% for insurers and 15% for securities dealers.

The definition “qualifying institution” applies for the purposes of determining the net tax of a person for any reporting period of the person included in fiscal years of the person beginning after March 2007. However, for the purpose of determining if a financial institution is a qualifying institution, paragraphs (*b*) and (*c*) of the definition “qualifying institution” are to be read as if new section 141.02 and amended subsection 141.01(5) had come into force on April 1, 2005. As a result, in its first two fiscal years that begin after March 2007, a financial institution must, in order to determine if it will be a qualifying institution throughout any of those fiscal years, calculate its tax credit amount and tax credit rate for the two preceding fiscal years as if it had been governed by these new rules during that time.

“residual input”

Under this definition, a “residual input” means property or a service that is either a “direct input” or a “non-attributable input” (as those terms are defined in this subsection). As a result, a residual input of a person is a property or a service of the person, which is neither an “excluded input” nor an “exclusive input” (as those terms are defined in this subsection). Residual inputs are therefore inputs that, are consumed or used both for the purpose of making taxable supplies for consideration and for other purposes and which are neither capital personal property nor capital real property (nor improvements to those capital properties).

“specified method”

Under this definition, a “specified method” means a type of method of determining the “operative extent” and the “procurative extent” (as those terms are defined in this subsection) of an input (property or a service) of a person. A specified method must conform to criteria, rules, terms and conditions specified by the Minister. Such criteria, rules, terms and conditions could be contained in an interpretation bulletin issued by the Canada Revenue Agency.

“tax credit amount”

New definition “tax credit amount” means, generally, the total of all input tax credits that a person is entitled to claim, in respect of that person’s “residual inputs” (defined in this subsection as including both direct inputs and non-attributable inputs), for a particular fiscal year. In the case of the majority of financial institutions (i.e., those financial institutions that for a particular fiscal year use specified methods, direct attribution methods and/or methods authorized by the Minister under subsection 141.02(20) to determine their input tax credit entitlement in respect of residual inputs), their tax credit amount for the particular fiscal year is the actual total of all input tax credits that the financial institution is entitled to claim in respect of residual inputs for the particular fiscal year.

However, where a person that is a financial institution has determined its input tax credit entitlement respecting residual inputs for a particular fiscal year using the prescribed percentage method, it must determine its tax credit amount respecting these residual inputs as if it were instead governed by subsections 141.02(10), (11), (12), (13), (16) and (17). This means that such a financial institution is required to use a specified method for each non-attributable input under subsection 141.02(10), or where a specified method does not apply to the input, another method as provided in subsection 141.02(11). Similarly, it must use a direct attribution method for each direct input under subsection 141.02(12), or where a direct attribution method does not apply to the input, another method as provided in subsections 141.02(13). Any method used by the financial institution must conform to subsection 141.02(16) and can, pursuant to subsection 141.02(17) be altered or substituted with another method only with the written consent of the Minister. The tax credit amount calculated on the above basis is used to determine if a person is a qualifying institution under subsection 141.02(1) for each particular fiscal year.

Paragraph (*a*) of the definition applies to a financial institution that made an election under subsection 141.02(9) in respect of a fiscal year of the financial institution. This election permits the financial institution to use the prescribed percentage to determine its input tax credit entitlement respecting residual inputs. Paragraph (*a*) provides that the financial institution’s tax credit amount for that fiscal year is the total of all amounts each of which is an input tax credit in respect of a residual input that, in the absence of subsection 141.02(9), it would have been entitled to claim in that year for the tax in respect of the residual input that either became payable during that year without having been paid before that year or was paid during that year without having become payable. In other words, paragraph (*a*) provides that the financial institution’s tax credit amount is the amount that would be the tax credit amount of the financial institution if it had not made the election and was therefore required to determine its input tax credit entitlement respecting residual inputs for that year using the provisions of subsections 141.02(10), (11), (12), (13), (16) and (17).

Paragraph (*b*) of the definition applies to a financial institution that is a qualifying institution that was required by subsection 141.02(8) to use the prescribed percentage to determine its input tax credit entitlement respecting residual inputs in respect of a particular fiscal year of the financial institution. Paragraph (*b*) provides that the financial institution’s tax credit amount for that fiscal year is the total of all amounts each of which is an input tax credit in respect of a residual input that the financial institution would have been entitled to claim in that fiscal year for the tax in respect of the residual input that either became payable during that year without having been paid before that year or was paid during that year without having become payable. This calculation must be made as if the qualifying institution were a financial institution that was not a qualifying institution and that had not made the election under subsection 141.02(9). In other words, paragraph (*b*) provides that the financial institution’s tax credit amount is the amount that would be the tax credit amount of the financial institution if the financial institution were not a qualifying institution, had not made the election under subsection 141.02(9) and were therefore required to determine its input tax credit entitlement respecting residual inputs for that year using the provisions of subsections 141.02(10), (11), (12), (13), (16) and (17).

Paragraph (*c*) of the definition applies in cases where paragraphs (*a*) and (*b*) do not apply (i.e., where, in a fiscal year, the person determined its input tax credit entitlement for residual inputs using any method other than the prescribed percentage method). Paragraph (*c*) provides that the person's tax credit amount for the fiscal year is the total of all amounts each of which is an input tax credit in respect of a residual input that the person would have been entitled to claim in the fiscal year for the tax in respect of the residual input that either became payable during that year without having been paid before that year or was paid during that year without having become payable. This is the case where that entitlement was determined in accordance with provisions in subsections 141.02(7), (10), (11), (12), (13), (16), (17) and (21).

"tax credit rate"

New definition "tax credit rate" means, generally, the percentage of tax payable, or paid without having become payable, by a person during a particular fiscal year in respect of residual inputs that the person is entitled to claim as input tax credits. The tax credit rate of a person for a particular fiscal year is determined by dividing that person's "tax credit amount" (as defined in this subsection) by the total of the tax that was payable, or paid without having become payable, by the person in the particular fiscal year in respect of residual inputs.

Subsection 141.02(2) — Meaning of "consideration"

New subsection 141.02(2) provides that supplies for nominal consideration are to be treated the same as supplies for no consideration since it provides that for the purposes of section 141.02 the term "consideration" does not include nominal consideration. Therefore, if a person acquires, imports or brings into a participating province property or a service for the purpose of making taxable supplies for nominal consideration, that person is considered for the purposes of section 141.02 to have acquired, imported or brought into a participating province that property or service for purposes other than making taxable supplies for consideration and not for the purpose of making taxable supplies for consideration.

Subsection 141.02(3) — Financial Institution Throughout a Year

New subsection 141.02(3) provides that, for the purposes of section 141.02, a person is a financial institution of a prescribed class throughout a fiscal year of the person if the person is a financial institution of that class at any time in the fiscal year. As a result, if a corporation is a financial institution of the prescribed class of insurers at any time in a fiscal year, the financial institution is, for the purposes of section 141.02, considered to be an insurer throughout that fiscal year even if its insurance business ceased to be its principal business in Canada during the fiscal year.

Subsection 142.02(4) — Mergers and Amalgamations

New subsection 141.02(4) assists in the determination of whether a corporation, which is the result of a merger or amalgamation ("the new corporation"), may in a year subsequent to the merger or amalgamation be a "qualifying institution" (as defined in subsection 141.02(1)) or be eligible to make an election under subsection 141.02(9). However, subsection 141.02(4) applies only for the purposes of determining the tax credit amount and the tax credit rate of the new corporation and subsection 142.02(4) in no way affects the input tax credit entitlement of any corporation in respect of any period prior to the merger or amalgamation.

New subsection 141.02(4) applies to a new corporation that is the result of a merger or amalgamation in circumstances where section 271 of the Act would apply to that merger or amalgamation. However, new subsection 141.02(4) deems new rules to apply despite any deeming rules in section 271.

Paragraph 141.02(4)(*a*) deems the new corporation to have two fiscal years immediately preceding the first fiscal year of the new corporation (i.e., the fiscal year of the new corporation that begins on the day of the merger or amalgamation). Paragraph 141.02(4)(*b*) deems the tax credit amount of the new corporation for the deemed prior year of the new corporation (the deemed year immediately preceding the first fiscal year of the new corporation) to be equal to the total of all amounts each of which is a tax credit amount of a predecessor corporation ("predecessor") for the prior year of the predecessor. The prior year of a predecessor means the last full fiscal year that is generally a 365-day year ending before the merger or amalgamation and not any final

"stub" fiscal year of the predecessor that had duration of less than a full year and ended the day before the time of the merger or amalgamation. Paragraph 141.02(4)(*c*) similarly deems the tax credit amount of the new corporation for the deemed second prior year of the new corporation (the deemed year immediately preceding the prior year of the new corporation) to be equal to the total of all amounts each of which is a tax credit amount of a predecessor for the second prior year of the predecessor that is immediately preceding the prior year of the predecessor.

Paragraphs 141.02(4)(*d*) and (*e*) deem the tax credit rate of the new corporation for each of its prior year and second prior year to be the percentage that is determined by dividing the tax credit amount of the new corporation for, respectively, the first prior year and second prior year of the new corporation (as determined by, respectively, paragraphs 141.02(4)(*b*) and (*c*)) by the total of all amounts each of which is an amount of tax in respect of a supply, importation or bringing into a participating province of a residual input that, in respect of each predecessor, became payable, or was paid without having become payable, by that predecessor during, respectively, the prior year and the second prior year of the predecessor.

Subsection 142.02(5) — Winding-up

New subsection 141.02(5) applies where a subsidiary (referred to in subsection 141.02(5) as the "particular corporation") is wound up by its parent corporation (referred to in subsection 141.02(5) as the "other corporation") in circumstances where section 272 of the Act applies to the wind-up. Subsection 141.02(5) assists in the determination of whether the parent may in a subsequent year be a "qualifying institution" (as defined in subsection 141.02(1)) or be eligible to make an election under subsection 141.02(9). However, subsection 141.02(5) applies only for the purposes of determining the tax credit amount and the tax credit rate of the parent, and the subsection in no way affects the input tax credit entitlement of either the parent or the subsidiary in respect of any period prior to the wind-up. These new rules in subsection 141.02(5) apply despite any deeming rules in section 272.

Paragraph 141.02(5)(*a*) deems the tax credit amount of the parent for its "specified year" (the fiscal year that includes the wind-up) to be the total of the amount that would, in the absence of this subsection, be the tax credit amount of the parent for that fiscal year and of the amount that is the tax credit amount of the subsidiary for the prior year of the subsidiary (meaning the last full fiscal year that is, generally, a 365-day year ending before the wind-up, not any final "stub" fiscal year of the predecessor that had duration of less than a full year and ended on the wind-up). Paragraph 141.02(5)(*b*) similarly deems the tax credit amount of the parent for the prior year of the parent (the year immediately prior to its specified year) to be equal to the total of the amount that would, in the absence of this subsection, be the tax credit amount of the parent for that prior year and of the amount that is the tax credit amount of the subsidiary for its second prior year (the fiscal year of the subsidiary immediately preceding the prior year of the subsidiary).

Paragraph 141.02(5)(*c*) deems the tax credit rate of the parent for its specified year to be the percentage that is determined by dividing the tax credit amount of the parent for the specified year of the parent (as determined by paragraph 141.02(5)(*a*)) by the total of all amounts each of which is an amount of tax in respect of a supply, importation or bringing into a participating province of a residual input that became payable without having been paid, or was paid without having become payable, either by the parent during the specified year or by the subsidiary during its prior year. In the same manner, paragraph 141.02(5)(*d*) deems the tax credit rate of the parent for its prior year to be the percentage that is determined by dividing the tax credit amount of the parent for the prior year of the parent (as determined by paragraph 141.02(5)(*b*)) by the total of all amounts each of which is an amount of tax in respect of a supply, importation or bringing into a participating province of a residual input that became payable without having been paid or was paid without having become payable, either by the parent during its prior year or by the subsidiary during its second prior year.

Subsection 141.02(6) — Allocation of Exclusive Inputs

New subsection 141.02(6) contains deeming rules that specify how a financial institution is to allocate an exclusive input (defined in new subsection 141.02(1) as property or a service, other than an excluded input, that is used or consumed either directly and exclusively for making taxable supplies for consideration or directly and exclusively for purposes other than making taxable supplies for consideration). As defined in subsection 123(1), the term "exclusive" in relation to financial institutions means 100%.

Paragraph 141.02(6)(*a*) provides that, if an exclusive input is acquired, imported or brought into a participating province for consumption or use directly and exclusively (i.e., 100%) for the purpose of making taxable supplies for consideration, the financial institution is deemed to have acquired, imported or brought into the participating province the whole of the exclusive input for consumption or use exclusively (i.e., 100%) in the course of commercial activities of the financial institution. As a result, for the purposes of determining an input tax credit in respect of that exclusive input under section 169 of the Act, the description of B in the formula in subsection 169(1) is, subject to any restrictions or subsequent adjustments set out in the Act (e.g., recapture of input tax credits respecting meals and entertainment expenses), equal to 100%.

Paragraph 141.02(6)(*b*) provides that, if an exclusive input is acquired, imported or brought into a participating province for consumption or use directly and exclusively for purposes other than making taxable supplies for consideration, the financial institution is deemed to have acquired, imported or brought into the participating province the whole of the exclusive input for consumption or use exclusively otherwise than in the course of commercial activities of the financial institution. As a result, for the purposes of determining an input tax credit in respect of that exclusive input under section 169, the description of B in the formula in subsection 169(1) is, subject to any subsequent adjustments set out in the Act, equal to 0%.

Subsection 141.02(6) does not apply to exclusive inputs of a qualifying institution in respect of a fiscal year where subsection 141.02(21) applies to that qualifying institution in respect of that fiscal year.

Subsection 141.02(7) — Residual Inputs — Election for Transitional Year

New subsection 141.02(7) provides a transitional election to persons that are qualifying institutions (as defined in subsection 141.02(1)) for their first fiscal year that begins after March 2007. It allows these persons to make an election in respect of that year to use a previously audited allocation method to determine input tax credits in respect of their "residual inputs" (as defined in subsection 141.02(1)) in that fiscal year. This election is not available in respect of any fiscal year subsequent to that first fiscal year that begins after March 2007.

To be eligible to make this election, a person must meet the following criteria: the person must be a qualifying institution for its first fiscal year that begins after March 2007; the person must have been audited in at least one of the four fiscal years that precede that first fiscal year; and the Minister must have accepted the input tax credit attribution methods used in one of the audited years referred to above (with such acceptance evidenced by the Minister's notice of assessment, subsequent assessment or reassessment in respect of that audited year not reflecting any inappropriateness in respect of the methods used by the person to determine any input tax credits in respect of its residual inputs). Also, those methods need to be fair and reasonable if used in the same manner by the person for the purposes of determining the "operative extent" and the "procurative extent" (as those terms are defined in subsection 141.02(1)) in respect of all of the person's residual inputs in that first fiscal year. When these conditions are met, the person may make an election to use those attribution methods to determine both the operative extent and the procurative extent in respect of all of the person's residual inputs for that first fiscal year. If the election is not made, the person will determine its operative extent and procurative extent in respect of its residual inputs in respect of that first fiscal year in accordance with new subsection 141.02(8).

In order to be valid, an election under subsection 141.02(7) must meet the conditions contained in subsection 141.02(23). Once made, an election under subsection 141.02(7) may be revoked provided the requirements contained in subsection 141.02(24) are met.

Subsection 141.02(8) — Residual Inputs — Prescribed Extent of Use

New subsection 141.02(8) provides rules governing input tax credit claims respecting residual inputs and applies to a financial institution that is a "qualifying institution" (as defined in subsection 141.02(1)) in a particular fiscal year of the financial institution. Where subsection 141.02(8) applies to residual inputs of a financial institution, the extent of use of each residual input of the person for the purpose of making taxable supplies for consideration is deemed to be equal to the prescribed percentage for the prescribed class to which the financial institution belongs. Currently, the following are the prescribed percentages for the three prescribed classes: 12% for banks, 10% for insurers and 15% for securities dealers. As a result, the percentage of tax that may be recovered as an input tax credit, subject to other restrictions that apply under Part IX of the Act, is deemed to be equal to that same prescribed percentage for the prescribed class to which the financial institution belongs.

Subsection 141.02(8) is a default rule that applies to a financial institution that is a qualifying institution in that particular fiscal year only if the financial institution has not received authorization from the Minister under subsection 141.02(20) to use methods specified in an election filed by the qualifying institution (as provided in subsections 141.02(18) and (19)) in respect of the particular fiscal year of the financial institution. If those conditions are met, the rules in paragraphs (*a*) to (*e*) apply in respect of each residual input of the qualifying institution.

Paragraph 141.02(8)(*a*) provides that the extent to which the consumption or use of each residual input of the qualifying institution is for the purpose of making taxable supplies for consideration is deemed to be equal to the prescribed percentage for the prescribed class of the qualifying institution.

Paragraph 141.02(8)(*b*) provides that the extent to which the consumption or use of each residual input of the qualifying institution is for purposes other than making taxable supplies for consideration is deemed to be equal to the difference between 100% and the prescribed percentage for the prescribed class of the qualifying institution.

Paragraph 141.02(8)(*c*) provides that the extent to which each residual input of the qualifying institution is acquired, imported or brought into a participating province by the qualifying institution for the purpose of making taxable supplies for consideration is deemed to be equal to the prescribed percentage for the prescribed class of the qualifying institution.

Paragraph 141.02(8)(*d*) provides that the extent to which each residual input of the qualifying institution is acquired, imported or brought into a participating province by the qualifying institution for purposes other than making taxable supplies for consideration is deemed to be equal to the difference between 100% and the prescribed percentage for the prescribed class of the qualifying institution.

Paragraph 141.02(8)(*e*) provides that the description of B in the formula in subsection 169(1) is deemed to be equal to the prescribed percentage for the prescribed class of the qualifying institution. For example, where subsection 141.02(8) applies to residual inputs of a bank, that bank could be able to recover as an input tax credit 12% of the tax payable, or paid without having become payable, during the fiscal year in respect of each residual input. The use of the prescribed percentage in subsection 169(1) would still be subject to other restrictions that apply for claiming input tax credits under Part IX of the Act (e.g., input tax credit restrictions that apply under section 170 of the Act).

Subsection 141.02(9) — Residual Inputs—Elected Extent of Use

New subsection 141.02(9) provides an election for persons that, for a particular fiscal year of the person, meet the conditions in paragraphs (*a*) and (*c*) of the definition "qualifying institution" in subsection 141.02(1) but not the condition in paragraph (*b*) of that definition. In other words, a person is eligible to make an election under subsection 141.02(9) if the person is, throughout that particular fiscal year, a financial institution of a prescribed class and if the tax credit rate of the person for its two fiscal years immediately preceding the particular fiscal year equals or exceeds the prescribed percentage for the prescribed class of financial

institutions of the person for the particular fiscal year. If the person's tax credit amount for each of the two fiscal years immediately preceding the particular fiscal year equals or exceeds the prescribed amount for the prescribed class of financial institutions of the person for the particular fiscal year, the person is not eligible to make the election.

Where an eligible person makes an election under subsection 141.02(9) for a particular fiscal year of the person, the extent of consumption or use of each residual input of that person in that year will be deemed to be equal to the prescribed percentage for the prescribed class of financial institutions of the person. Currently, the following are the prescribed percentages for the three prescribed classes: 12% for banks, 10% for insurers and 15% for securities dealers. As a result, the percentage of tax that may be recovered as an input tax credit, subject to other restrictions that apply under Part IX of the Act, is deemed to be equal to that same prescribed percentage for the prescribed class of financial institutions to which the person belongs. Where an eligible person makes the election under subsection 141.02(9) in respect of a particular fiscal year of the person, subsections 141.02(10), (11), (12) and (13) do not apply to the person in respect of that fiscal year. As well, if the election is made by the person, the rules in paragraphs (*a*) to (*e*) apply in respect of each residual input of the person.

Paragraph 141.02(9)(*a*) provides that the extent to which the consumption or use of each residual input of the person is for the purpose of making taxable supplies for consideration is deemed to be equal to the prescribed percentage for the prescribed class of financial institutions of the person.

Paragraph 141.02(9)(*b*) provides that the extent to which the consumption or use of each residual input of the person is for purposes other than making taxable supplies for consideration is deemed to be equal to the difference between 100% and the prescribed percentage for the prescribed class of financial institutions of the person.

Paragraph 141.02(9)(*c*) provides that the extent to which each residual input of the person is acquired, imported or brought into a participating province by the person for the purpose of making taxable supplies for consideration is deemed to be equal to the prescribed percentage for the prescribed class of financial institutions of the person.

Paragraph 141.02(9)(*d*) provides that the extent to which each residual input of the person is acquired, imported or brought into a participating province by the person for purposes other than making taxable supplies for consideration is deemed to be equal to the difference between 100% and the prescribed percentage for the prescribed class of financial institutions of the person.

Paragraph 141.02(9)(*e*) provides that the description of B in the formula in subsection 169(1) is deemed to be equal to the prescribed percentage for the prescribed class of financial institutions of the person. For example, where subsection 141.02(9) applies to residual inputs of a bank, that bank could be able to recover as an input tax credit 12% of the tax payable, or paid without having become payable, during the fiscal year in respect of each residual input. The use of the prescribed percentage in subsection 169(1) would still be subject to other restrictions that apply for claiming input tax credits under Part IX of the Act (e.g., input tax credit restrictions that apply under section 170).

An election made under subsection 141.02(9) must comply with the requirements contained in subsection 141.02(23) and may be revoked under subsection 141.02(24).

Subsection 141.02(9) applies for the purpose of determining the net tax of a person for any reporting period of the person included in fiscal years of the person beginning after March 2007. However, for the purpose of determining if the tax credit rate of the person for each of its two fiscal years immediately preceding the first fiscal year of the person that begins after March 2007 equals or exceeds the prescribed percentage for the prescribed class of financial institutions of the person, subsection 141.02(9) is to be read as if new section 141.02 and amended subsection 141.01(5) had come into force on April 1, 2005. As a result, in its first two fiscal years that begin after March 2007, a financial institution must, in order to determine if it qualifies to make an election under subsection 141.02(9), calculate its tax credit rate for the two preceding fiscal years as if it had been governed by these new rules during that time.

Subsection 141.02(10) — Non-Attributable Inputs — Specified Method

New subsection 141.02(10) concerns the determination of the operative extent and the procurative extent of non-attributable inputs by certain financial institutions. It applies to a financial institution that, in respect of a particular fiscal year of the financial institution, is not a qualifying institution and has not made an election under subsection 141.02(9). If subsection 141.02(10) applies to a financial institution for a particular fiscal year of the financial institution, the financial institution is required, subject to the exception in subsection 141.02(11), to use a "specified method" (as defined in subsection 141.02(1)), in a manner consistent with the conditions contained in subsection 141.02(16), to determine, for that fiscal year, the operative extent and the procurative extent of each non-attributable input of the financial institution. The operative extent and the procurative extent will then be used to determine the extent to which the non-attributable input is used or consumed for the purpose of making taxable supplies for consideration. This extent, subject to any adjustments or limitations set out in Part IX of the Act, could then be used to determine the amount of any input tax credit that the financial institution may be entitled to claim under subsection 169(1) in respect of the non-attributable input.

Subsection 141.02(11) — Non-attributable Inputs — Exception

New subsection 141.02(11) applies in the case where a financial institution would, for a particular fiscal year of the financial institution, be required by subsection 141.02(10) to use a specified method to determine the operative extent and the procurative extent of a non-attributable input, but the financial institution cannot do so because no specified method applies to the particular non-attributable input. This would be the case if the Minister did not specify criteria or rules applicable to the particular type of non-attributable input. Where no specified method applies to a non-attributable input of a financial institution, the financial institution is required to use another method to determine the operative extent and the procurative extent of the non-attributable input. The operative extent and the procurative extent will then be used to determine the extent to which the non-attributable input is used or consumed for the purpose of making taxable supplies for consideration. This extent, subject to any adjustments or limitations set out in Part IX of the Act, could then be used to determine the amount of any input tax credit that the financial institution may be entitled to claim under subsection 169(1) in respect of the non-attributable input. While the financial institution can choose which method it will use for the purposes of this subsection, the financial institution must choose a method that satisfies the conditions contained in subsection 141.02(16).

Subsection 141.02(12) — Direct Inputs — Direct Attribution Method

New subsection 141.02(12) concerns the determination of the operative extent and the procurative extent of direct inputs by certain financial institutions. It applies to a financial institution that, in respect of a particular fiscal year of the financial institution, is not a qualifying institution and has not made an election under subsection 141.02(9). If subsection 141.02(12) applies to a financial institution for a particular fiscal year of the financial institution, the financial institution is required, subject to the exception in subsection 141.02(13), to use a "direct attribution method" (as defined in subsection 141.02(1)), in a manner consistent with the conditions contained in subsection 141.02(16), to determine, for that fiscal year, the operative extent and the procurative extent of each direct input of the financial institution. The operative extent and the procurative extent will then be used to determine the extent to which the direct input is used or consumed for the purpose of making taxable supplies for consideration. This extent, subject to any adjustments or limitations set out in Part IX of the Act, could then be used to determine the amount of any input tax credit that the financial institution may be entitled to claim under subsection 169(1) in respect of the direct input.

Subsection 141.02(13) — Direct Inputs — Exception

New subsection 141.02(13) applies in the case where a financial institution would be required by subsection 141.02(12) to use a direct attribution method to determine the operative extent and the procurative extent of a direct input, but cannot do so because no direct attribution method applies to the particular direct input. This would be the case if the Minister of National Revenue did not specify criteria or rules applicable

to the particular type of direct input. Where no direct attribution method applies to a direct input of a financial institution, the financial institution is required to use another method to determine the operative extent and the procurative extent of the direct input. The operative extent and the procurative extent will then be used to determine the extent to which the direct input is used or consumed for the purpose of making taxable supplies for consideration. This extent, subject to any adjustments or limitations set out in Part IX of the Act, could then be used to determine the amount of any input tax credit that the financial institution may be entitled to claim under subsection 169(1) in respect of the direct input. While the financial institution can choose which method it will use for the purposes of subsection 141.02(13), that method must satisfy the conditions contained in subsection 141.02(16).

Subsection 141.02(14) — Excluded Inputs — Specified Method

New subsection 141.02(14) concerns the determination of the operative extent and the procurative extent of excluded inputs by financial institutions. As defined in subsection 141.02(1), "excluded inputs" include capital property of the financial institution. Subsection 141.02(14) requires, subject to the exception in subsection 141.02(15), that the financial institution use a "specified method" (as defined in subsection 141.02(1)), in a manner consistent with the conditions contained in subsection 141.02(16), to determine the operative extent and the procurative extent of each excluded input of the financial institution. The operative extent and the procurative extent will then be used to determine the extent to which the excluded input is used or consumed for the purpose of making taxable supplies for consideration. This extent, subject to any adjustments or limitations set out in Part IX of the Act, could then be used to determine the amount of any input tax credit that the financial institution may be entitled to claim under subsection 169(1) in respect of the excluded input.

Subsection 141.02(14) does not apply to excluded inputs of a qualifying institution in respect of a fiscal year if subsection 141.02(21) applies to that qualifying institution in respect of that fiscal year.

Subsection 141.02(15) — Excluded inputs — Exception

New subsection 141.02(15) applies in the case where a financial institution would be required by subsection 141.02(14) to use a specified method to determine the operative extent and the procurative extent of an excluded input, but the financial institution cannot do so because no specified method applies to the particular excluded input. This would be the case if the Minister did not specify criteria or rules applicable to the particular type of excluded input. Where no specified method applies to an excluded input of a financial institution, the financial institution is required to use another method to determine the operative extent and the procurative extent of the excluded input. The operative extent and the procurative extent will then be used to determine the extent to which the excluded input is used or consumed for the purpose of making taxable supplies for consideration. This extent, subject to any adjustments or limitations set out in Part IX of the Act, could then be used to determine the amount of any input tax credit that the financial institution may be entitled to claim under subsection 169(1) in respect of the excluded input. While the financial institution can choose which method it will use for the purposes of this subsection, the financial institution must choose a method that satisfies the conditions contained in subsection 141.02(16).

Subsection 141.02(15) does not apply to excluded inputs of a qualifying institution in respect of a fiscal year if subsection 141.02(21) applies to that qualifying institution in respect of that fiscal year.

Subsection 141.02(16) — Attribution Method — Conditions

New subsection 141.02(16) provides conditions that a method used by a financial institution, in accordance with subsection 141.02(10), (11), (12), (13), (14) or (15), must meet.

Paragraph 141.02(16)(*a*) requires that such a method be fair and reasonable.

Paragraph 141.02(16)(*b*) requires that such a method be used consistently throughout the financial institution's fiscal year (i.e., a financial institution cannot change a method partway through its fiscal year). The conditions in paragraphs 141.02(16)(*a*) and (*b*) are the same as those found in subsection 141.01(5), which apply to input tax credit allocation methods in general.

Paragraph 141.02(16)(*c*) requires that the method used for the purposes of subsection 141.02(10), (11), (12), (13), (14) or (15) for a particular fiscal year be determined by the financial institution no later than the day on or before which the financial institution is required to file its return for the first reporting period of the fiscal year. For example, if a financial institution is an annual filer and has a fiscal year that is a calendar year, it would be required to determine the method in respect of the January 1- December 31, 2008 fiscal year by March 31, 2009 (the date on which it must file its return for that year). If instead it were a monthly filer, it would be required to determine the method in respect of that fiscal year by February 29, 2008 (the date on or before which it must file its return for the first reporting period in that year).

Subsection 141.02(17) — Alteration or Substitution of Method

New subsection 141.02(17) provides that the attribution method used by a financial institution for the purposes of subsection 141.02(10), (11), (12), (13), (14) or (15) in respect of a fiscal year may not be altered or be substituted with another method for that year at any time after the day the financial institution is required to file its return for the first reporting period of that fiscal year, unless the Minister consents in writing to the alteration or substitution. This rule is consistent with the policy intent underlying subsection 141.01(5) and existing practice that a person, once it has used a method in a year for the purposes of that subsection, to not subsequently or retroactively alter that method in respect of that year without the consent of the Minister.

Subsection 141.02(18) — Application for Pre-approved Method

New subsection 141.02(18) allows a person that is a "qualifying institution" (as defined in subsection 141.02(1)) for a particular fiscal year to apply to the Minister to use particular methods to determine for the fiscal year the "operative extent" and the "procurative extent" (as those terms are defined in subsection 141.02(1)) in respect of all property and services of the person.

A person may make a multi-year application that provides for methods applying to several fiscal years. Even if the Minister has authorized the person's application under subsection 141.02(20) in respect of a fiscal year, the person will not be able to use that pre-approved method if the person subsequently does not in fact meet all the requirements set out in the definition "qualifying institution" in that fiscal year.

Subsection 141.02(19) — Form and Manner of Filing Application

New subsection 141.02(19) provides the requirements that a person must meet to make a valid application under subsection 141.02(18).

Paragraph 141.02(19)(*a*) requires that the application be made in prescribed form and contain prescribed information.

Paragraph 141.02(19)(*b*) requires that the application specify which method is proposed to be used for each input (property or a service) of the person. As a result, the application must propose methods to cover the entirety of the person's property and services in the fiscal year in question. However, the provision allows, where appropriate, the person to apply to use different methods in respect of different categories of inputs.

Paragraph 141.02(19)(*c*) requires that the person files its application under subsection 141.02(18) in prescribed manner and that it be filed with the Minister on or before the day that is 180 days before the first day of the fiscal year to which it applies. However, subparagraph 141.02(19)(*c*)(ii) gives the Minister the discretion to accept an application that is filed after that day.

Subsection 141.02(20) — Authorization

New subsection 141.02(20) describes the Minister's authority and obligations in respect of an application made by a person under subsection 141.02(18). It requires the Minister to consider the application and, within 180 days of receiving the application, to either authorize or refuse the use of the methods specified in the application. The provision also requires the Minister to provide notice of the decision to the person that has made the application within 180 days of receiving the application. Such notification must be made in writing and be sent by registered or certified mail.

Subsection 141.02(21) — Effect of Authorization

New subsection 141.02(21) sets out certain rules and conditions that apply if the Minister has authorized an application made under subsection 141.02(18). The conditions are that the Minister's authorization, for the use of the methods specified in the application made by the person, is in respect of a fiscal year of the person and that the person is a qualifying institution for that fiscal year. For example, if the Minister has authorized an application made in respect of several fiscal years, these conditions will apply for each fiscal year.

Paragraph 141.02(21)(*a*) provides that, where the above conditions are met, the methods specified in the application to determine the operative extent and the procurative extent in respect of the property and services of the person are to be used consistently, and in the manner specified in the application, by the person throughout the fiscal year. The operative extent and the procurative extent will then be used to determine the extent that the input is used or consumed for the purpose of making taxable supplies for consideration. This extent, subject to any adjustments or limitations set out in Part IX of the Act, could then be used to determine the amount of any input tax credit that the person may be entitled to claim under subsection 169(1) in respect of the input.

Paragraph 141.02(21)(*b*) provides that, where the above conditions are met, subsections 141.02(6), (8), (14) and (15) do not apply in respect of the property and services of the person in that fiscal year.

Subsection 141.02(22) — Revocation

New subsection 141.02(22) provides for a revocation of an authorization granted to a person under subsection 141.02(20) in respect of a fiscal year of a person. It applies where the person had earlier made an application under subsection 141.02(18) to use methods in a particular fiscal year of the person, and the Minister had authorized the application, but prior to the start of that fiscal year either the Minister or the person wish to revoke the authorization and therefore end the effect of that authorization provided in subsection 141.02(21). The Minister may revoke the authorization by sending a notice of revocation to the person on or before the day that is 60 days before the beginning of the fiscal year. Alternatively, the person may revoke the authorization by filing in prescribed manner with the Minister a notice of revocation in prescribed form containing prescribed information, provided that the notice is received by the Minister on or before the day that is 60 days before the beginning of the start of the fiscal year. When the revocation is made, the authorization granted under subsection 141.02(20) ceases to have effect on the first day of the fiscal year and instead subsections 141.02(6), (8), (14) and (15) will apply for the person's property and services in respect of the fiscal year.

Subsection 141.02(23) — Making of Election

New subsection 141.02(23) contains conditions which apply to an election made under either subsection 141.02(7) or (9).

Paragraph 141.02(23)(*a*) requires that the election be made in prescribed form and contain prescribed information. Paragraph 141.02(23)(*b*) requires that the form be filed with the Minister in prescribed manner, except where late filing is allowed by the Minister, on or before the day on or before which the person must file a return under Division V of Part IX for the first reporting period of the fiscal year in respect of which the election is made. For example, if a bank that is an annual filer and that is eligible to make the election under subsection 141.02(9) were to have a fiscal year which begins on November 1, it would be required to file an

election in respect of the November 1, 2008 - October 31, 2009 fiscal year by January 31, 2010 (the date on or before which it must file its return for that year). If instead the bank were a monthly filer, it would be required to file an election in respect of the November 1, 2008 - October 31, 2009 fiscal year by December 31, 2008 (the date on or before which it must file its return for the first reporting period in that year). However, on application by the person, subparagraph 141.02(23)(*b*)(ii) gives the Minister the discretion to accept a late-filed election form.

Subsection 141.02(24) — Revocation of Election

New subsection 141.02(24) allows a person to revoke a valid election made under either subsection 141.02(7) or 141.02(9). It provides that, in order for a revocation of such an election to be validly made, the revocation must be made in prescribed form and contain prescribed information. It must also be filed in prescribed manner with the Minister on or before the day on or before which the person must file a return under Division V of Part IX for the first reporting period of the fiscal year in respect of which the revocation is made. For example, if an insurer that is an annual filer with calendar years as fiscal years and that previously made an election under subsection 141.02(9) now wishes to revoke it, the insurer would be required to file the notice of revocation in respect of the January 1 - December 31, 2009 fiscal year by March 31, 2010 (the date on or before which it must file its return for that year). If instead the insurer were a monthly filer, it would be required to file the notice of revocation in respect of the January 1 - December 31, 2009 fiscal year by February 28, 2009 (the date on or before which it must file its return for the first reporting period in that year).

Subsection 141.02(25) — Financial Institution's Own Method — Burden of Proof

New subsection 141.02(25) contains rules relating to the burden of proof in an appeal under Part IX of the Act respecting an assessment for a reporting period in a fiscal year of a financial institution. These rules apply if the appeal is in respect of an issue relating to the determination of an operative extent or a procurative extent under subsection 141.02(10), (11), (12), (13), (14) or (15) of a non-attributable input, a direct input or an excluded input of the financial institution. Subsection 141.02(25) provides that the financial institution cannot succeed on such an appeal if it does not establish on the balance of probabilities that it meets the requirements in this subsection.

Paragraph 141.02(25)(*a*) requires the financial institution to establish, on the balance of probabilities, that it used a specified method consistently throughout the fiscal year to determine the extent (the operative extent and/or the procurative extent in respect of a non-attributable input or an excluded input), which is at issue in the appeal.

Paragraph 141.02(25)(*b*) applies where the financial institution did not use a specified method and instead used its own method, as provided in subsection 141.02(11) or (15), to determine the extent (the operative extent and/or the procurative extent in respect of a non-attributable input or an excluded input), which is at issue in the appeal. Paragraph 141.02(25)(*b*) requires the financial institution to establish, on the balance of probabilities, that it made every effort to use a specified method, that no specified method applied in the circumstances and that the method used by the financial institution to determine the extent is fair and reasonable and was used consistently by the financial institution throughout the fiscal year.

Paragraph 141.02(25)(*c*) requires the financial institution to establish, on the balance of probabilities, that it used a direct attribution method consistently throughout the fiscal year to determine the extent (the operative extent and/or the procurative extent in respect of a direct input), which is at issue in the appeal.

Paragraph 141.02(25)(*d*) applies where the financial institution did not use a direct attribution method and instead used its own method, as provided in subsection 141.02(13), to determine the extent (the operative extent and/or the procurative extent in respect of a direct input), which is at issue in the appeal. Paragraph 141.02(25)(*d*) requires the financial institution to establish, on the balance of probabilities, that it made every effort to use a direct attribution method, that no direct attribution method applied in the circumstances and that the other attribution method used by the financial institution to determine the extent is fair and reasonable and was used consistently by the financial institution throughout the fiscal year.

Subsection 141.02(26) — Ministerial Direction

New subsection 141.02(26) gives the Minister the authority to direct a financial institution to use another method instead of the method chosen by the financial institution. Subsection 141.02(26) applies in the case where a financial institution has used, for a particular fiscal year, a method for the purposes of subsection 141.02(10), (11), (12), (13), (14) or (15), but the Minister determines that the financial institution should instead use another method for the purposes of the subsection in question. For example, the Minister may direct a financial institution to replace the financial institution's method with another method chosen by the Minister if the Minister determines that the financial institution's method is not the most appropriate method for the purposes of the relevant subsection. The Minister may direct the financial institution to use the Minister's method throughout the particular fiscal year and/or throughout any subsequent fiscal year of the financial institution. However, the method chosen by the Minister must be fair and reasonable in the circumstances.

Subsection 141.02(27) — Method Directed by the Minister — Burden of Proof

New subsection 141.02(27) contains an exception to subsection 141.02(25). It provides that if the Minister makes a direction under subsection 141.02(26) that is in effect for a particular reporting period in a fiscal year of the financial institution in respect of a particular non-attributable input, direct input or excluded input, then subsection 141.02(25) will not apply in an appeal respecting an assessment for that particular reporting period in respect of a matter relating to the determination of an operative extent or a procurative extent (under subsection 141.02(10), (11), (12), (13), (14) or (15)) of the particular input. As a result, when the determination of an extent of a non-attributable input, a direct input or an excluded input is the subject of a Ministerial direction, the financial institution will not have to prove that it used either a specified method or a direct attribution method, or made every effort to do so, or that the method it used was fair and reasonable method, in determining that extent. This is because in the case of a method directed by the Minister, the burden of proof that applies is for the Minister to establish that the directed method is fair and reasonable, not that the financial institution's method is unfair or unreasonable, in the circumstances.

Clause 3

Financial Services — Input Tax Credits

ETA
185(1)

Subsection 185(1) of the Act simplifies the operation of the tax for persons, other than financial institutions, that, in the course of their commercial activities, also provide some incidental financial services. It deems the inputs relating to the incidental financial services to be for use in the person's commercial activities. As a result, the person is not required to apportion inputs. Subsection 185(1) also applies under certain conditions to persons that are financial institutions solely because of paragraph 149(1)(*c*) of the Act (which provides that a person is a financial institution throughout a year if its interest and credit-granting income exceeded $1 million in the preceding year). Subsection 185(1) does not apply to listed financial institutions or to persons that are financial institutions because of paragraph 149(1)(*b*) (which provides that a person is a financial institution throughout a year if its income in the preceding year from interest and dividends and separate fees or charges for financial services exceeded both $10 million and 10% of the total of the person's income from such sources and from supplies other than sales of capital property and financial services).

Subsection 185(1) provides that the extent to which properties and services are acquired or imported for consumption, use or supply in the course of making supplies of certain financial services is to be determined in accordance with subsection 141.01(2) of the Act. To that same extent, those properties and services are then deemed by subsection 185(1), subject to limitations for financial institutions, to have been acquired, imported or brought into a province for consumption, use or supply in the course of commercial activities.

Subsection 185(1) is amended to also provide that the extent to which properties and services are acquired, imported or brought into a participating province for consumption, use or supply in the course of making supplies of certain financial services is to be determined in accordance with new subsection 141.02(6) of the Act, which applies only to financial institutions. Subsection 141.02(6) deems exclusive inputs (as defined in new subsection 141.02(1)) acquired, imported or brought into a participating province for purposes other than making taxable supplies for consideration as being inputs that are so acquired, imported or brought into a participating province for consumption or use exclusively in the course of non-commercial activities (e.g., inputs that are directly and exclusively used or consumed for making supplies of exempt financial services). However, if conditions set out in subsection 185(1) are met, these exclusive inputs are deemed to have been acquired, imported or brought into a participating province for consumption, use or supply in the course of commercial activities. The amendment to subsection 185(1) affects only those persons that are financial institutions because of paragraph 149(1)(*c*).

The amendments to subsection 185(1) come into force on April 1, 2007.

Clause 4

Imported Supplies of Financial Institutions

ETA
217.1

New section 217.1 of the Act provides various definitions and interpretation rules for the self-assessment provisions in new section 218.01 and new subsection 218.1(1.2) of the Act. In general, section 218.01 requires financial institutions that come within the definition "qualifying taxpayer" (as defined in subsection 217.1(1)) to self-assess tax on certain outlays and expenses. These outlays and expenses include those made or incurred outside Canada that are in respect of Canadian activities to the extent that those outlays and expenses could be directly or indirectly deducted under the *Income Tax Act* in computing the qualifying taxpayer's income, or could be deducted if the qualifying taxpayer were required to compute its income in accordance with that Act, if the qualifying taxpayer carried on a business in Canada and if that Act applied to the qualifying taxpayer.

Section 217.1 applies to any taxation year of a qualifying taxpayer that ends after November 16, 2005. However, a transitional rule applies for the purposes of applying subsection 217.1 to the taxation year of a qualifying taxpayer that includes November 17, 2005. In this case, paragraph (*k*) of the description of B of the definition "qualifying consideration" in subsection 217.1(1) should be read without reference to the term "loading" (as defined in subsection 217.1(1)) if the consideration for the specified non-arm's length supply (as defined in subsection 217.1(1)) referred to in that paragraph becomes due, or is paid without having become due, before November 17, 2005. As a result, if the consideration for a specified non-arm's length supply becomes due, or is paid without having become due, after November 16, 2005, the definition "qualifying consideration" should continue to be read with reference to the term "loading".

Subsection 217.1(1) – Definitions

Subsection 217.1(1) defines the following terms for the purposes of Division IV of Part IX of the Act.

"Canadian activity"

Any activity of a qualifying taxpayer carried on, engaged in or conducted in Canada is a "Canadian activity" of the qualifying taxpayer if the qualifying taxpayer is resident in Canada. If, however, the qualifying taxpayer is a non-resident, a "Canadian activity" of the qualifying taxpayer is any activity of the non-resident qualifying taxpayer carried on, engaged in or conducted in Canada through a qualifying establishment (within the meaning of subsection 217.1(2)) of the non-resident qualifying taxpayer. The expression "carried on, engaged in or conducted in Canada" is intended to give the term "Canadian activity" a broad meaning.

“duty performed”

A “duty performed” by an employee includes anything done by the employee in the course of, or in relation to, the office or employment of the employee. If the duties performed by an employee of a qualifying taxpayer during a taxation year are performed primarily in Canada, a qualifying taxpayer may in certain circumstances be permitted to exclude, from the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2), certain compensation that is paid to that employee by the qualifying taxpayer.

“employee”

An “employee” includes an individual who agrees to become an employee (as defined in subsection 123(1) of the Act). In certain circumstances, compensation paid by a qualifying taxpayer to an employee forms part of the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2).

“loading”

The portion of the consideration for a “specified non-arm’s length supply” (as defined in subsection 217.1(1)) that comes within the definition “loading” generally forms part of the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2).

“Loading” includes any part of the consideration for a specified non-arm’s length supply that is attributable to the following:

- administrative expenses,
- an error or profit margin,
- business handling costs,
- commissions (other than commissions for a specified financial service, as defined in subsection 217.1(1)),
- communications expenses,
- claims handling costs,
- employee compensation or benefits,
- execution or clearing costs,
- management fees,
- marketing or advertising costs,
- occupancy or equipment expenses,
- operating expenses,
- acquisition costs,
- premium collection costs,
- processing costs, and
- any other costs or expenses of a person that makes the specified non-arm’s length supply.

However, there are certain risk estimates that may form part of the consideration for a specified non-arm’s length supply. If these estimates are part of the consideration for a specified non-arm’s length supply, they are specifically excluded from the definition “loading”. For example, if the financial service supplied in the specified non-arm’s length supply includes the issuance, renewal, variation or transfer of ownership of an insurance policy (but not of any other financial instrument), the estimate of the quantum that an insured is expected to claim under that insurance policy does not represent loading. Similarly, if the financial service supplied in the specified non-arm’s length supply includes the issuance, renewal, variation or transfer of ownership of a financial instrument (other than an insurance policy), the estimate of the default risk premium that is directly associated with that financial instrument does not represent loading. In circumstances where the

financial service supplied in the specified non-arm's length supply includes the issuance, renewal, variation or transfer of ownership of both an insurance policy and another financial instrument, it is the sum of the estimates described above that does not represent loading.

Inputs for a specified non-arm's length supply, which are largely administrative in nature, fall within the definition "loading" and, therefore, form part of the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2). However, the part of the consideration for a non-arm's length supply that is clearly and fundamentally financial in nature, like the specific estimates described above, generally do not fall within the definition "loading" and, therefore, generally do not form part of the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2).

"qualifying compensation"

Any salary, wages and other remuneration of an employee and any other amount that is, or is to be, included as income from an office or employment in computing the income of the employee for purposes of the *Income Tax Act* constitutes "qualifying compensation" of the employee for the purposes of Division IV of Part IX. In certain circumstances, all or part of the qualifying compensation paid by a qualifying taxpayer to an employee forms part of the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2). Generally, qualifying compensation of an employee is included in this tax base, unless the duties performed by the employee are performed primarily in Canada.

"qualifying consideration"

Section 218.01 requires a qualifying taxpayer to self-assess tax, for each of its taxation years, on the total of all amounts, each of which is an amount of "qualifying consideration" that is greater than zero. "Qualifying consideration" is an amount that must be determined by a qualifying taxpayer for its taxation year in respect of each outlay made, or expense incurred, outside Canada (within the meaning of subsection 217.1(3)). The interpretation rule in subsection 217.1(3) sets out various types of amounts that are included in the expression "outlay made, or expense incurred, outside Canada" for the purposes of Division IV of Part IX. In general, the "qualifying consideration" in respect of a particular outlay made, or expense incurred, outside Canada is the amount of that outlay or expense that forms part of the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2).

An amount of qualifying consideration for a taxation year of a qualifying taxpayer in respect of an outlay made, or expense incurred, outside Canada is determined by the formula A - B. The amount of an outlay made, or expense incurred, outside Canada that meets two conditions falls within the description of A of the formula. The first condition provides that the amount of the outlay or expense must be allowable as a deduction, an allowance or an allocation for a reserve under the *Income Tax Act* or that the amount of the outlay or expense would be so allowable if the qualifying taxpayer's income were computed in accordance with that Act, if the qualifying taxpayer carried on a business in Canada and if that Act applied to the qualifying taxpayer. This condition is intended to apply equally to all qualifying taxpayers, regardless of whether they are corporations, partnerships, trusts or individuals and regardless of whether they are required to pay any income tax. The second condition is met if the amount of the outlay or expense may reasonably be regarded as being applicable to a Canadian activity of the qualifying taxpayer. For example, if a non-resident qualifying taxpayer with a Canadian branch is allowed to deduct a particular expense that is allocated to that branch in computing the qualifying taxpayer's income, the amount of that expense is captured under the description of A of the formula.

The whole or part of the amount that is captured under the description of A may be deducted once under the description of B if that whole or part of the amount is any one of the carve-outs described below.

If the amount included in the description of A is consideration for a supply of property or a service, or the value of imported goods, upon which the Goods and Services Tax / Harmonized Sales Tax (GST/HST) became payable by the qualifying taxpayer (other than GST/HST under section 218.01 or subsection 218.1(1.2)), that amount included in the description of A may be excluded under the description of B. This carve-out is intended

to ensure that the consideration for a taxable supply would not be taxed twice. As well, the GST/HST that became payable by the qualifying taxpayer on the consideration for a taxable supply may be excluded under the description of B. For example, if a non-resident qualifying taxpayer with a Canadian branch acquired a license to use certain software from an American software provider that charged GST/HST to the qualifying taxpayer in respect of the supply of the license and the qualifying taxpayer allocated the consideration paid for this taxable supply of intangible personal property (including the GST/HST charged) to the Canadian branch, the total of the consideration and GST/HST charged, which is included in the description of A, may be excluded under the description of B.

If the amount included in the description of A is a prescribed provincial levy (as referred to in section 154 of the Act), which is payable by the qualifying taxpayer in respect of a taxable supply upon which GST/HST became payable, that amount included in the description of A may be excluded under the description of B. This carve-out is intended to ensure that a prescribed provincial levy, which ordinarily would not form part of the consideration for a taxable supply, does not form part of the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2) even if the prescribed provincial levy is included in the description of A.

If an amount that is deemed to be assistance (within the meaning of subsection 248(18) of the *Income Tax Act*) repaid by a qualifying taxpayer, in respect of property or a service in respect of which tax under Part IX became payable by the qualifying taxpayer, is included in the description of A, that amount of assistance may be excluded under the description of B. For instance, if a qualifying taxpayer is required to repay a previously received input tax credit and this credit amount forms part of the amount of the outlay or expense that is captured under the description of A, this credit amount may be carved-out under the description of B to ensure that the qualifying taxpayer is not required to self-assess GST/HST on it.

Generally, if the amount included in the description of A is consideration for an arm's length supply of property or a service (other than a financial service), that amount of consideration may be excluded under the description of B. However, this carve-out does not apply if either of two sets of circumstances is met. First, if GST/HST (other than GST/HST under section 218.01 or subsection 218.1(1.2)) became payable by the qualifying taxpayer on the consideration for the arm's length supply, this carve-out is not applicable because the consideration for a taxable supply (upon which GST/HST became payable by the qualifying taxpayer) is already excluded under the description of B through the application of another carve-out (see the example above regarding a taxable supply of intangible personal property). Secondly, if an activity that relates in any manner to the arm's length supply was carried on, engaged in or conducted outside Canada through a permanent establishment (as defined in subsections 123(1) or 132.1(2) of the Act) of the qualifying taxpayer or of a person related to the qualifying taxpayer, this carve-out is not applicable. For example, if the amount of the outlay or expense that is captured under the description of A is consideration for a cheque-processing service supplied to the qualifying taxpayer by an unrelated non-resident supplier that is not registered for GST/HST purposes, that amount may be excluded under the description of B. If, however, in making the arm's length supply, the unrelated supplier somehow used certain technology or equipment at a permanent establishment outside Canada of a corporation related to the qualifying taxpayer, this carve-out does not apply.

If the amount included in the description of A represents salaries and wages paid by a qualifying taxpayer in a taxation year to its employee who worked primarily in Canada during the year, those salaries and wages may be excluded under the description of B.

In general, if the amount included in the description of A is interest paid or payable by the qualifying taxpayer as the consideration for a supply of a financial service made to the qualifying taxpayer, that interest would represent a carve-out under the description of B. However, if that interest represents an amount paid or credited by the qualifying taxpayer, or deemed by Part I of the *Income Tax Act* to have been paid or credited by the qualifying taxpayer, to a person as, on account of or in lieu of payment of, or in satisfaction of, a management or administration fee or charge (within the meaning of subsection 212(4) of that Act), no carve-out applies.

To ensure that dividends do not form part of the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2), any dividends captured under the description of A may be excluded under the description of B.

If the amount included in the description of A is consideration for a supply of a financial service (other than a specified financial service, as defined in subsection 217.1(1)) made to the qualifying taxpayer as part of a transaction or series of transactions in which all participants deal at arm's length with the qualifying taxpayer, that amount may be excluded under the description of B. Similarly, if the amount included in the description of A is consideration for a financial service supplied to a qualifying taxpayer by an agent, salesperson or broker and that financial service is a service of arranging for the issuance, renewal, variation or transfer of ownership of a financial instrument that is property of a person other than the agent, salesperson or broker, that amount may also be excluded under the description of B. If, however, the amount included in the description of A is consideration for a supply of a financial service (other than a specified financial service) made to the qualifying taxpayer as part of a transaction or series of transactions in which any participant does not deal at arm's length with the qualifying taxpayer and that supply includes the issuance, renewal, variation or transfer of ownership of a financial instrument, only the portion of that amount that does not represent loading (e.g., only the portion that is clearly and fundamentally financial in nature) may be excluded under the description of B.

"qualifying service"

A "qualifying service" is any duty performed by an employee or any service (as defined in subsection 123(1)). The term "qualifying service" is intended to be broader than the term "service".

"qualifying taxpayer"

The self-assessment provisions in section 218.01 and subsection 218.1(1.2) are intended to apply only to qualifying taxpayers.

A person is a "qualifying taxpayer" if the person is a financial institution at any time in the person's taxation year and is resident in Canada at any time in the relevant taxation year. In the case of a person that is a non-resident financial institution, the non-resident financial institution is a "qualifying taxpayer" if it has, at any time in the relevant taxation year, a qualifying establishment in Canada (within the meaning of paragraph 217.1(2)(*a*)). In determining whether a person is a qualifying taxpayer, the deeming provisions in subsections 132(2) and (3) of the Act should not be taken into account. As well, under new subsection 217.1(8), if a person is a qualifying taxpayer at any time in the person's taxation year, the person is considered to be a qualifying taxpayer throughout that taxation year.

"specified arm's length supply"

A supply of a financial service (other than a specified financial service) is a "specified arm's length supply" if the supply is made to a qualifying taxpayer as part of a transaction or series of transactions in which all participants deal at arm's length with the qualifying taxpayer. In certain circumstances, a qualifying taxpayer is permitted to exclude the consideration for a specified arm's length supply from the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2).

"specified financial service"

A financial service is a "specified financial service" if the financial service is supplied to a qualifying taxpayer by an agent, salesperson or broker, and is a service of arranging for the issuance, renewal, variation or transfer of ownership of a financial instrument that is property of a person other than the agent, salesperson or broker. In certain circumstances, a qualifying taxpayer is permitted to exclude the consideration for a supply of a specified financial service from the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2). For instance, in certain circumstances, commissions (or similar fees) paid by a qualifying taxpayer to a broker who arranges for the transfer of ownership for the qualifying taxpayer of a security owned by a person other than the broker do not form part of the tax base that is subject to self-assessment provisions in section 218.01 and subsection 218.1(1.2).

“specified non-arm’s length supply”

A supply of a financial service (other than a specified financial service) is a “specified non-arm’s length supply” if the supply includes the issuance, renewal, variation or transfer of ownership of a financial instrument and the supply is made to the qualifying taxpayer as part of a transaction or series of transactions in which any participant does not deal at arm’s length with the qualifying taxpayer. In certain circumstances, a qualifying taxpayer is permitted to exclude, from the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2), the portion of the consideration for a specified non-arm’s length supply that does not come within the ambit of the definition “loading” in subsection 217.1(1).

“transaction”

The term “transaction” is defined to include an arrangement or event. The definition “transaction” is relevant for purposes of the definitions “specified arm’s length supply”, “specified non-arm’s length supply” and “qualifying consideration” as well as for certain interpretation rules relating to the self-assessment provisions in section 218.01 and subsection 218.1(1.2).

Subsection 217.1(2) – Meaning of Qualifying Establishment

New paragraph 217.1(2)(*a*) sets out rules for determining whether a person is treated as having a qualifying establishment in Canada for the purposes of Division IV of Part IX. A financial institution that is not resident in Canada falls within the definition “qualifying taxpayer” only if it has a qualifying establishment in Canada. This determination is also relevant for the purposes of several provisions in section 217.1 that apply to non-resident qualifying taxpayers.

Under paragraph 217.1(2)(*a*), there are two sets of circumstances in which a person is considered to have a qualifying establishment in Canada during a taxation year. One set of circumstances relates to a permanent establishment test as set out in subparagraph 217.1(2)(*a*)(i) and the other set of circumstances is described in subparagraph 217.1(2)(*a*)(ii). According to these subparagraphs, a particular person is treated as having a qualifying establishment in Canada if, at any time in a taxation year, the particular person:

- has a permanent establishment (as defined in subsections 123(1) or 132.1(2) of the Act) in Canada, or
- is carrying on activities in Canada and a majority of the persons having beneficial ownership of the property of the particular person are resident in Canada.

For example, if the qualifying taxpayer is a corporation that carries on an insurance business and is registered or licensed to do business in Canada or in any Canadian province, the qualifying taxpayer has a permanent establishment (as defined in paragraph 132.1(2)(*b*)) in Canada and, therefore, under subparagraph 217.1(2)(*a*)(i), the qualifying taxpayer is considered to have a qualifying establishment in Canada for the purposes of Division IV of Part IX. As well, under subparagraph 217.1(2)(*a*)(ii), a trust that is carrying on activities in Canada, but does not have a permanent establishment in Canada (as defined in subsections 123(1) or 132.1(2)), is considered to have a qualifying establishment in Canada if a majority of the trust’s unit-holders are resident in Canada.

New paragraph 217.1(2)(*b*) sets out a rule for determining whether a qualifying taxpayer is treated as having a qualifying establishment in a province for the purposes of Division IV of Part IX. Paragraph 217.1(2)(*b*) provides that a qualifying taxpayer is considered to have a qualifying establishment in a province during a taxation year of the qualifying taxpayer if, at any time in the taxation year, the qualifying taxpayer has a permanent establishment (as defined in subsections 123(1) or 132.1(2)) in the province. This rule is relevant for the purpose of determining whether a qualifying taxpayer is deemed to be resident in a province under subsection 218.1(1.3) and the determination of residency in a province under subsection 218.1(1.3) is relevant for the purposes of the self-assessment provision in subsection 218.1(1.2).

Subsection 217.1(3) – Outlay Made, or Expense Incurred, Outside Canada

For the purposes of Division IV of Part IX, the various amounts set out in new subsection 217.1(3) are to be treated as being outlays made, or expenses incurred, outside Canada. The interpretation rule under subsection 217.1(3) is relevant because an amount of "qualifying consideration" (as defined in subsection 217.1(1)) must be determined by a qualifying taxpayer for its taxation year in respect of each outlay made, or expense incurred, outside Canada. Subsection 217.1(3) provides that a reference in Division IV of Part IX to the expression "outlay made, or expense incurred, outside Canada" includes any of the amounts described below.

Under paragraph 217.1(3)(*a*), any outlay made, or expense incurred, by a qualifying taxpayer in respect of property that is (wholly or partially) transferred or of which possession or use is (wholly or partially) given or made available outside Canada to the qualifying taxpayer is considered to be an outlay made, or expense, incurred outside Canada. Similarly, any outlay made, or expense incurred, by a qualifying taxpayer in respect of a qualifying service (other than any duty performed by an employee) that is (wholly or partially) performed outside Canada for the benefit of, or rendered outside Canada to, the qualifying taxpayer is considered to be an outlay made, or expense incurred, outside Canada. In addition to the actual outlay or expense, any adjustment (within the meaning of subsection 247(2) of the *Income Tax Act*) to that outlay or expense is also considered under paragraph 217.1(3)(*b*) to be an outlay made, or expense incurred, outside Canada. For example, if data processing services are, in whole or in part, performed outside Canada for the benefit of a Canadian qualifying taxpayer by its foreign parent, any expense incurred by the qualifying taxpayer in respect of those services represents an expense incurred outside Canada and any adjustment, in accordance with transfer pricing rules under the *Income Tax Act*, to the expense incurred in respect of those services also represents an expense incurred outside Canada.

In addition, under paragraph 217.1(3)(*c*), the amount representing any expenditure or purchase in respect of a reportable transaction (as defined in section 233.1 of the *Income Tax Act*) in respect of which the qualifying taxpayer is required to file a return with the Minister of National Revenue (or would be so required if the qualifying taxpayer carried on a business in Canada and that Act applied to the qualifying taxpayer) is considered to be an outlay made, or expense incurred, outside Canada. As a result, if a qualifying taxpayer is required to report an amount, as an expenditure or purchase, on the return referred to in section 233.1 of the *Income Tax Act*, the reported amount represents an outlay made, or expense incurred, outside Canada for purposes of Division IV of Part IX.

In the case of a qualifying taxpayer that is resident in Canada, if two conditions under paragraph 217.1(3)(*d*) are met, any qualifying compensation (as defined in subsection 217.1(1)) of an employee paid in a taxation year by the resident qualifying taxpayer is considered to be an outlay made, or expense incurred, outside Canada. The first condition is met if, at any time in the taxation year, any of the duties performed by the employee are (wholly or partially) performed outside Canada at a permanent establishment (as defined in subsections 123(1) or 132.1(2)) of the resident qualifying taxpayer or of a person related to that qualifying taxpayer. For example, if the employee of a resident qualifying taxpayer does anything at an office of a branch outside Canada or at an office outside Canada of a related subsidiary, the actions of the employee are sufficient for the first condition to be met. The second condition is met if all or substantially all of those duties performed outside Canada by the employee are not performed elsewhere than at such a permanent establishment. In other words, for the second condition to be met, more than a marginal portion of all those duties performed outside Canada by the employee must be performed at such a permanent establishment. When both of these conditions are satisfied, any qualifying compensation of the employee paid in a taxation year by the resident qualifying taxpayer represents an outlay made, or expense incurred, outside Canada for purposes of Division IV of Part IX.

In the case of a non-resident qualifying taxpayer, any qualifying compensation of an employee paid in a taxation year by the non-resident qualifying taxpayer, regardless of where the employee performs its duties, is considered to be an outlay made, or expense incurred, outside Canada under subparagraph 217.1(3)(*e*)(iv). In addition to any qualifying compensation paid by a non-resident qualifying taxpayer, the non-resident qualifying taxpayer must include the allocations under subparagraphs 217.1(3)(*e*)(i) and (ii), described below, in the expression "outlay made, or expense incurred, outside Canada":

- any allocation by the non-resident qualifying taxpayer (under the Income Tax Act) of an outlay or expense as an amount in respect of a business carried on in Canada by the non-resident qualifying taxpayer; and
- any outlay or expense that the non-resident qualifying taxpayer would be required (under the Income Tax Act) to allocate as an amount in respect of a business carried on in Canada by the qualifying taxpayer if the qualifying taxpayer's income were computed in accordance with that Act, if anything done by the qualifying taxpayer through a qualifying establishment of the qualifying taxpayer were a business carried on in Canada by the qualifying taxpayer and if that Act applied to the qualifying taxpayer.

For a non-resident qualifying taxpayer to determine whether the above allocations are considered to be outlays made, or expenses incurred, outside Canada, it should be assumed that the non-resident qualifying taxpayer is required to compute its income in accordance with the *Income Tax Act* and that the determination is being made in the context of an allocation by the non-resident qualifying taxpayer of expenses as amounts in respect of a Canadian business. As a result, whether that Act actually applies to the non-resident qualifying taxpayer is not relevant in determining whether the above allocations represent outlays made, or expenses incurred, outside Canada for the purposes of Division IV of Part IX.

Also, in the case of a non-resident qualifying taxpayer, under subparagraph 217.1(3)(*e*)(iii), any outlay or expense that may reasonably be regarded (under the *Income Tax Act*) as an amount that is applicable to a qualifying establishment of the non-resident qualifying taxpayer is considered to be an outlay made, or expense incurred, outside Canada. For the non-resident qualifying taxpayer to determine whether a particular outlay or expense may reasonably be regarded as an amount that is applicable to its qualifying establishment, it should be assumed that the qualifying establishment of the non-resident qualifying taxpayer is a permanent establishment for purposes of the *Income Tax Act*, that the non-resident qualifying taxpayer carried on a business in Canada and that that Act applied to the qualifying taxpayer.

The various amounts that are set out in subsection 217.1(3) are intended to give the expression "outlay made, or expense incurred, outside Canada" a broad meaning for the purposes of Division IV of Part IX.

Subsection 217.1(4) – Series of Transactions

New subsection 217.1(4) provides that a reference in Division IV of Part IX to a series of transactions or events includes any related transaction or event completed in contemplation of the series.

Subsection 217.1(5) – Taxation Year

New subsection 217.1(5) defines the term "taxation year" of a qualifying taxpayer for the purposes of sections 217.1 and 218.01, subsection 218.1(1.2) and section 218.3 of the Act. If a qualifying taxpayer is described in paragraph (*a*) or (*b*) of the definition "taxation year" in subsection 123(1), the taxation year of the qualifying taxpayer for purposes of the provisions referred to above is the taxation year as defined in subsection 123(1). If, however, a qualifying taxpayer is not described in either of those paragraphs, but is a registrant for GST/HST purposes, the taxation year of the qualifying taxpayer for purposes of the provisions referred to above is the fiscal year of the qualifying taxpayer. In any other case, the taxation year of a qualifying taxpayer for purposes of the provisions referred to above is the calendar year. For instance, in the case of a trust that is not a registrant for GST/HST purposes, the calendar year would represent the relevant taxation year.

The definition "taxation year" in subsection 217.1(5) is relevant because the tax imposed under section 218.01 and subsection 218.1(1.2) is to be determined for each taxation year of a qualifying taxpayer.

Subsection 217.1(6) – Qualifying Rule for Credits

New subsection 217.1(6) sets out interpretation rules that are necessary for a qualifying taxpayer to determine whether an input tax credit may be claimed for tax imposed under section 218.01 or subsection 218.1(1.2) that becomes payable by the qualifying taxpayer (or is paid by the qualifying taxpayer without having become payable) during a reporting period of the qualifying taxpayer during which the qualifying taxpayer is a registrant.

A qualifying taxpayer generally makes an outlay, or incurs an expense, to acquire property or a qualifying service. If an outlay made, or expense incurred, outside Canada results in an amount of qualifying consideration for a taxation year of the qualifying taxpayer that is greater than zero, section 218.01 requires the qualifying taxpayer to self-assess tax on that amount of qualifying consideration. As each of these 'greater-than-zero' amounts relates to an outlay made, or expense incurred, outside Canada, each of these amounts is referred to as a "qualifying expenditure" in subsection 217.1(6). Since each qualifying expenditure corresponds to the whole or part of an outlay made, or expense incurred, outside Canada, each qualifying expenditure is attributable to the whole or part of the property or qualifying service in respect of which the whole or part of that outlay or expense was made or incurred. For purposes of subsection 217.1(6), the whole or part of the property in respect of which the qualifying expenditure is attributable is referred to as the "attributable property" and the whole or part of the qualifying service in respect of which the qualifying expenditure is attributable is referred to as the "attributable qualifying service".

In general, to determine whether an input tax credit may be claimed in a taxation year for tax imposed under section 218.01 and subsection 218.1(1.2), a qualifying taxpayer would be required to analyze the extent to which the qualifying taxpayer acquired an attributable property or attributable qualifying service for the purpose of making a taxable supply or for consumption or use during that taxation year in the course of the qualifying taxpayer's commercial activities.

Subsection 217.1(6) provides that the following rules would apply for the purpose of determining an input tax credit of a qualifying taxpayer under Part IX if a qualifying expenditure gives rise to tax under either of the self-assessment provisions in section 218.01 or subsection 218.1(1.2):

- the attributable property or attributable qualifying service is deemed under paragraph 217.1(6)(*a*) to have been acquired by the qualifying taxpayer at the time at which the outlay or expense (corresponding to the qualifying expenditure) was made or incurred outside Canada;
- the tax under section 218.1 or subsection 218.1(1.2) is deemed under paragraph 217.1(6)(*b*) to be tax in respect of a supply of the attributable property or attributable qualifying service (i.e., a supply of the whole or part of the property or service in respect of which the qualifying expenditure is attributable); and
- the extent, if any, to which the qualifying taxpayer acquired the attributable property or attributable qualifying service for consumption, use or supply in the course of its commercial activities is deemed under paragraph 217.1(6)(*c*) to be the same extent as that to which the whole or part of the outlay or expense (corresponding to the qualifying expenditure) was made or incurred to consume, use or supply the attributable property or attributable qualifying service in the course of its commercial activities.

Subsection 217.1(7) – Input Tax Credits

Consequential to the introduction of the concepts of "attributable property" and "attributable qualifying service" in subsection 217.1(6), new subsection 217.1(7) provides that a reference in section 169 of the Act to "property or a service" should be read as a reference to "attributable property or an attributable qualifying service" for the purpose of determining an input tax credit of a qualifying taxpayer under that section in relation to the tax that is self-assessed under section 218.01 or subsection 218.1(1.2).

Subsection 217.1(8) – Qualifying Taxpayer Throughout a Year

Under new subsection 217.1(8), a person that is a qualifying taxpayer at any time in a taxation year of the person is deemed to be a qualifying taxpayer throughout that taxation year.

Clause 5

Imposition of Goods and Services Tax

ETA
218.01

New section 218.01 of the Act is a self-assessment provision that applies to qualifying taxpayers (as defined in subsection 217.1(1) of the Act). If an outlay made, or expense incurred, outside Canada results in an amount of qualifying consideration for a taxation year of a qualifying taxpayer that is greater than zero, the qualifying taxpayer is required under this provision to self-assess tax on that amount of qualifying consideration. In general, section 218.01 requires the qualifying taxpayer, for each of its taxation years, to total all of the amounts of qualifying consideration that are greater than zero and to self-assess tax on that total.

The qualifying taxpayer is required to self-assess tax under section 218.01 at the rate of 6% for any taxation year of the qualifying taxpayer that ends after November 16, 2005. However, following the reduction of the GST rate and of the federal component of the HST from 7% to 6% on July 1, 2006, if the taxation year of the qualifying taxpayer begins before July 2006, the qualifying taxpayer is required to self-assess tax at the rate of 7% for the number of days before July 1, 2006 in the taxation year and to self-assess tax at the rate of 6% for the remaining number of days in the taxation year.

Clause 6

Tax in Participating Province

ETA
218.1

Section 218.1 of the Act is amended to include a self-assessment provision, in respect of the provincial component of the HST, applicable to qualifying taxpayers (as defined in subsection 217.1(1) of the Act) that are resident in a participating province. Section 218.1 is also amended to provide a rule that is necessary for a qualifying taxpayer to determine whether the qualifying taxpayer is considered to be resident in a province at any time for the purposes of new subsection 218.1(1.2). In the case of a qualifying taxpayer that is a selected listed financial institution (within the meaning of subsection 225.2(1) of the Act), section 218.1 is further amended to ensure that the exception for selected listed financial institutions under existing subsection 218.1(2) also applies to self-assessment of the provincial component of the HST under subsection 218.1(1.2).

These amendments to section 218.1 apply to any taxation year of a qualifying taxpayer that ends after November 16, 2005.

Subsection 218.1(1.2) – Tax in a Participating Province

New subsection 218.1(1.2) is a self-assessment provision that applies to qualifying taxpayers that are resident in a participating province. The tax imposed under this subsection is in addition to the tax imposed under section 218.01 and must be determined for each participating province in which the qualifying taxpayer is resident. In general, new subsection 218.1(1.2) requires a qualifying taxpayer that is resident in a particular participating province, for each of its taxation years, to analyze each amount of qualifying consideration that is greater than zero and to self-assess the provincial component of the HST on a certain extent of each greater-than-zero amount for each participating province in which the qualifying taxpayer is resident. The relevant extent, expressed as a percentage, is the extent to which the outlay or expense (corresponding to the amount of qualifying consideration) was made or incurred to consume, use or supply the whole or part of property or a qualifying service (in respect of which the amount of qualifying consideration is attributable) in carrying on, engaging in or conducting an activity of the qualifying taxpayer in the particular participating province. Since each amount of qualifying consideration that is greater than zero corresponds to the whole or part of an outlay made, or expense incurred, outside Canada, each of these amounts is attributable to the whole

or part of the property or qualifying service (as defined in subsection 217.1(1)) in respect of which the whole or part of that outlay or expense was made or incurred.

Subsection 218.1(1.3) – Qualifying Taxpayer Resident in a Province

The self-assessment provision in subsection 218.1(1.2) is intended to apply only to qualifying taxpayers that are resident in a participating province. New subsection 218.1(1.3) sets out rules for determining when a qualifying taxpayer is considered to be resident in a province for the purpose of subsection 218.1(1.2). These rules apply only for the purpose of subsection 218.1(1.2) and despite section 132.1 of the Act, which provides the general rules for determining when a person is considered to be resident in a province for the purposes of Part IX of the Act.

Under paragraph 218.1(1.3)(*a*), a qualifying taxpayer that is resident in Canada is deemed to be resident in a province under a number of circumstances. If the Canadian resident qualifying taxpayer is a corporation and the corporation is incorporated or continued under the laws of a province and not continued elsewhere, that qualifying taxpayer is deemed to be resident in that province. If the Canadian resident qualifying taxpayer is a partnership, an unincorporated society, a club, an association or an organization (referred to as an "entity") or a branch of the entity and a majority of the members, having management and control of the branch or the entity, are resident in a province, that qualifying taxpayer is considered to be resident in that province. As well, if the Canadian resident qualifying taxpayer is a trust that carries on activities as a trust in a province and has a local office or branch in that province, that qualifying taxpayer is deemed to be resident in that province.

In addition, only for the purposes of subsection 218.1(1.2), if a qualifying taxpayer (regardless of its residency) has a qualifying establishment in a province (within the meaning of paragraph 217.1(2)(*b*)), the qualifying taxpayer is considered under paragraph 218.1(1.3)(*b*) to be resident in that province.

Subsection 218.1(2) – Selected Listed Financial Institutions

Generally, under subsection 218.1(2), selected listed financial institutions (within the meaning of subsection 225.2(1)) are not required to self-assess tax imposed under subsection 218.1(1) (i.e., the provincial component of the HST) in respect of an imported taxable supply described in section 217 of the Act. This exception for selected listed financial institutions applies because these institutions account for the provincial component of the HST on their purchases through adjustments to their net tax calculation under subsection 225.2(2).

Subsection 218.1(2) is amended to ensure that the exception for selected listed financial institutions that applies in respect of the provincial component of the HST imposed under existing subsection 218.1(1) also applies in respect of the provincial component of the HST imposed under new subsection 218.1(1.2).

Clause 7

When Tax Payable

ETA
218.2 and 218.3

Section 218.2 of the Act provides that tax under Division IV of Part IX of the Act calculated on an amount of consideration becomes payable on the day on which that consideration is paid or becomes due, whichever is earlier.

Section 218.2 is amended so that this section does not apply for the purposes of new section 218.01 or new subsection 218.1(1.2) of the Act, but continues to apply for the purpose of determining the time at which the tax imposed under existing section 218 and existing subsection 218.1(1) of the Act is payable.

New section 218.3 of the Act provides that tax under section 218.01 and subsection 218.1(1.2) that is determined for a taxation year (within the meaning of subsection 217.1(5)) of a qualifying taxpayer becomes payable by the qualifying taxpayer on:

- in the case where the qualifying taxpayer is required under Division I of the Income Tax Act to file a return of income for the taxation year, the last day on which that return is to be filed; and
- in any other case, the day that is six months after the end of the taxation year of the qualifying taxpayer.

The amendment to section 218.2 and the new rule under section 218.3 apply to any taxation year of a qualifying taxpayer that ends after November 16, 2005.

Clause 8

Filing of Returns and Payment of Tax

ETA
219

Section 219 of the Act provides how and when a person must account for the tax under Division IV of Part IX of the Act.

Section 219 is amended to ensure that each qualifying taxpayer that is liable to pay tax under Division IV of Part IX in accordance with section 218.01 and subsection 218.1(1.2) of the Act is required to file a return and account for the tax in that return.

If the qualifying taxpayer is a registrant, new paragraph 219(*a.1*) allows the registrant to account for the self-assessed tax, which becomes payable in a reporting period, in a return (in prescribed form containing prescribed information) and requires the registrant to file that return with the Minister of National Revenue on or before the day on or before which the qualifying taxpayer is required to file its return under section 238 of the Act for that reporting period. Under existing paragraph 219(*b*), qualifying taxpayers that are non-registrants are also required to file a return with the Minister of National Revenue and their self-assessed tax under Division IV (including new section 218.01 and new subsection 218.1(1.2)) has to be paid by the end of the month following the calendar month in which that tax becomes payable.

This amendment applies to any taxation year of a qualifying taxpayer that ends after November 16, 2005.

Clause 9

Dealings Between Permanent Establishments

ETA
220

Section 220 of the Act sets out the GST/HST rules that relate to dealings between permanent establishments of a person outside Canada and a permanent establishment of that person in Canada. The deeming rules under section 220 ensure that Canadian branches of international organizations are required to self-assess tax under Division IV of Part IX of the Act on property or services received by them from the non-resident branches of the organization in the same way as they would if the property or services were acquired outside Canada from a separate legal entity and imported for consumption, use or supply in Canada.

In general, the clarifying amendment to section 220 requires an international organization to self-assess tax on the value of any organizational resource (i.e., any property or service, including labour performed by the organization's employees) that the organization uses or puts to use outside Canada in relation to carrying on a business in Canada through a permanent establishment of the organization. As was the case before the amendment, this self-assessment requirement is analogous to the requirement that would apply if the organization had obtained outside Canada a comparable resource from a separate legal entity and had imported that resource for consumption, use or supply in Canada.

The amendment to section 220 comes into force on December 17, 1990. However, the definition "specified person" in amended subsection 220(1) is further amended, for taxation years that end after November 16, 2005, to exclude a person that is a financial institution. Therefore, in the case of financial institutions, the amendment to section 220 only applies to taxation years that end before November 17, 2005.

Subsection 220(1) – Definitions

Subsection 220(1) defines the following terms, which are used in amended section 220.

"intangible capital"

Any of the following items represents "intangible capital" of a specified person (as defined in subsection 220(1)) if all or part of the item is consumed or used by the specified person in the process of creating, developing or bringing into existence intangible personal property:

- a labour activity (also defined in subsection 220(1)) of the specified person;
- property (other than intangible personal property that is captured within the definition "intangible resource", which is also defined in subsection 220(1)); or
- a service.

The intangible capital of a specified person is one of various items that forms part of the specified person's intangible resources.

"intangible resource"

An "intangible resource" of a specified person is any of the following items:

- all or part of intangible personal property supplied to the specified person, or created, developed or brought into existence by the specified person, that is not support capital (also defined in subsection 220(1)) of the specified person;
- intangible capital (also defined in subsection 220(1)) of the specified person; or
- any combination of the items above.

For example, a trademark that is developed by a specified person (including any tangible personal property, real property, service or anything done by the specified person's employees, any of which is used in the process of developing that trademark) represents an intangible resource of the specified person. Generally, if any internal use of a specified person's intangible resources occurs during a taxation year, the deeming rules under subsection 220(4) become applicable. Internal use of an intangible resource of a specified person is considered to occur during a taxation year if either of the conditions set out in paragraph 220(2)(*b*) is met.

"labour activity"

Anything done by an individual who is or agrees to become an employee of a specified person in the course of, or in relation to, the office or employment of that individual is a "labour activity" of the specified person. The term "labour activity" is used in the definitions "intangible capital", "support capital" and "support resource" in subsection 220(1).

"specified business"

A business of a specified person carried on in Canada through a permanent establishment of the specified person at any time in a taxation year of the specified person is a "specified business". This definition is relevant for purposes of the interpretation rules set out in subsection 220(2), as those rules only apply to a specified person that has a specified business. As well, under paragraph 220(5)(*a*), if a business is a specified business of a specified person at any time in the specified person's taxation year, the business is considered to be a specified business of the specified person throughout that taxation year for the purposes of section 220.

"specified person"

A person that, at any time in a taxation year of the person, carries on a business through a permanent establishment of the person outside Canada and, at any time in the taxation year, carries on a business through a permanent establishment of the person in Canada is a "specified person". In effect, a person that carries on business both in and outside Canada through a permanent establishment during the person's taxation

year is considered to be a specified person for the purposes of section 220, regardless of whether both these situations occur at the same time in the relevant taxation year. As well, under paragraph 220(5)(*b*), if a person is a specified person at any time in the person's taxation year, the person is considered to be a specified person throughout that taxation year for the purposes of section 220. However, for taxation years of a person that end after November 16, 2005, the definition "specified person" is amended to exclude persons that are financial institutions.

"support capital"

The "support capital" of a specified person is all or part of intangible personal property that is consumed or used by the specified person in the process of creating, developing or bringing into existence property (other than intangible personal property) or in supporting, assisting or furthering a labour activity of the specified person.

The term "support capital" is used in the definitions "intangible resource" and "support resource" in subsection 220(1).

"support resource"

A "support resource" of a specified person is any of the following items:

- all or part of property (other than intangible personal property) supplied to the specified person, or created, developed or brought into existence by the specified person, that is not intangible capital of the specified person;
- all or part of a service supplied to the specified person that is not intangible capital of the specified person;
- all or part of a labour activity of the specified person that is not intangible capital of the specified person;
- support capital of the specified person; or
- any combination of the items above.

For example, a report produced by the employees of a specified person (including any intangible personal property used in the process of creating that report or in assisting the production of that report) represents a support resource of the specified person. Generally, if any internal use of a specified person's support resources occurs during a taxation year, the deeming rules under subsection 220(3) become applicable. Internal use of a support resource of a specified person is considered to occur during a taxation year if either of the conditions set out in paragraph 220(2)(*a*) is met.

Subsection 220(2) – Internal Use

Paragraph 220(2)(*a*) sets out rules for determining whether internal use of a support resource of a specified person is treated as having occurred during a taxation year of the specified person. If this type of internal use is considered to have occurred during the relevant taxation year, the deeming rules under subsection 220(3) apply.

For the purposes of amended section 220, internal use of a support resource of a specified person is considered to have occurred during a taxation year of the specified person if either of two possible conditions is met. The first possible condition is met if, at any time in the taxation year, the specified person uses or puts to use outside Canada any part of the support resource in relation to carrying on a specified business of the specified person. The second possible condition is met if, for the taxation year, the specified person is permitted (under the *Income Tax Act*) to allocate as an amount in respect of a specified business of the specified person any part of an outlay made, or expense incurred, by the specified person in respect of any part of the support resource, or any part of an allowance, or allocation for a reserve, in respect of any part of that outlay or expense.

For a specified person to determine whether the second possible condition under paragraph 220(2)(*a*) is met, it should be assumed that that the specified person is required to compute its income in accordance with the *Income Tax Act* and that the determination is being made in the context of an allocation by the specified person of expenses as amounts in respect of a Canadian business. As a result, whether that Act actually applies to the specified person is not relevant in determining whether the second possible condition under paragraph 220(2)(*a*) is met.

Essentially, if a specified person uses a support resource in relation to carrying on its specified business or is permitted to allocate in respect of its specified business any part of an expenditure, allowance or allocation for a reserve in respect of a support resource, the deeming rules in subsection 220(3) apply to the specified person for the purposes of Division IV of Part IX.

Similar to paragraph 220(2)(*a*), paragraph 220(2)(*b*) sets out rules for determining whether internal use of an intangible resource of a specified person is treated as having occurred during a taxation year of the specified person. If this type of internal use is considered to have occurred during the relevant taxation year, the deeming rules under subsection 220(4) apply.

For the purposes of amended section 220, internal use of an intangible resource of a specified person is considered to have occurred during a taxation year of the specified person if either of two possible conditions is met. The first possible condition is met if, at any time in the taxation year, the specified person uses or puts to use outside Canada any part of the intangible resource in relation to carrying on a specified business of the specified person. The second possible condition is met if, for the taxation year, the specified person is permitted (under the *Income Tax Act*) to allocate as an amount in respect of a specified business of the specified person any part of an outlay made, or expense incurred, by the specified person in respect of any part of the intangible resource, or any part of an allowance, or allocation for a reserve, in respect of any part of that outlay or expense.

For a specified person to determine whether the second possible condition under paragraph 220(2)(*b*) is met, it should be assumed that the specified person is required to compute its income in accordance with the *Income Tax Act* and that the determination is being made in the context of an allocation by the specified person of expenses as amounts in respect of a Canadian business. As a result, whether that Act actually applies to the specified person is not relevant in determining whether the second possible condition under paragraph 220(2)(*b*) is met.

In effect, if a specified person uses an intangible resource in relation to carrying on its specified business or is permitted to allocate in respect of its specified business any part of an expenditure or allowance in respect of an intangible resource, the deeming rules in subsection 220(4) apply to the specified person for the purposes of Division IV of Part IX.

Subsection 220(3) – Dealings Between Permanent Establishments

If a specified person meets either of the conditions set out in paragraph 220(2)(*a*), internal use of a support resource of the specified person is treated as having occurred during a taxation year of the specified person. Subsection 220(3) provides that a number of rules apply for the purposes of Division IV of Part IX when internal use of a support resource of the specified person is considered to have occurred during a taxation year.

First, the specified person is deemed to have rendered, during the relevant taxation year, a service of internally using the support resource at a permanent establishment of the specified person outside Canada in the course of carrying on a specified business of the specified person. Second, the specified person is deemed to be the person to whom the service described above was rendered, to be the recipient of a supply made outside Canada of that service and, in the case of a non-resident specified person, to be resident in Canada. Third, the supply made outside Canada is deemed not to be a supply of a service that is in respect of real property situated outside Canada or of tangible personal property that is situated outside Canada at the time the service is performed.

In addition to the deeming rules above, subsection 220(3) provides that the value of the consideration for the supply made outside Canada is deemed to be the value that would be fair market value of the consideration for a supply of the support resource made to the specified person by a person dealing at arm's length with the specified person if the specified person had obtained the use of the support resource from that person during the relevant taxation year. That consideration is deemed to have become due on the last day of the relevant taxation year and the specified person is deemed to have paid that consideration on that day.

Generally, under subparagraphs 220(3)(*a*)(i) and (ii), if internal use of a support resource of a specified person is considered to have occurred during the specified person's taxation year, the specified person is treated as having rendered a service of internally using that support resource outside Canada in the course of carrying on a business in Canada through a permanent establishment and treated as being the person to whom that service was rendered. Accordingly, the service that a specified person is treated as having rendered outside Canada corresponds to a particular support resource. For the purpose of determining an input tax credit of the specified person under Part IX, the specified person is deemed to have imported that service for the same purpose as that for which the corresponding support resource was acquired, consumed or used by the specified person.

In effect, any time a specified person meets either of the conditions set out in paragraph 220(2)(*a*) in respect of a support resource, the specified person is treated as being the recipient of a supply made outside Canada of a service for which the specified person is treated as having paid fair market value consideration on the last day of the taxation year in respect of which the relevant condition was met. If the supply of a service that the specified person is considered to have received represents a taxable supply, the specified person is required to pay tax on a self-assessment basis under Division IV of Part IX the same way that would be required if the specified person had received outside Canada a comparable taxable supply from a third party for consumption, use or supply in Canada.

Subsection 220(4) – Dealings Between Permanent Establishments

If a specified person meets either of the conditions set out in paragraph 220(2)(*b*), internal use of an intangible resource of the specified person is treated as having occurred during a taxation year of the specified person. Subsection 220(4) provides that a number of rules apply for the purposes of Division IV of Part IX when internal use of an intangible resource of the specified person is considered to have occurred during a taxation year.

First, the specified person is deemed to have made available, during the relevant taxation year, at a permanent establishment of the specified person outside Canada intangible personal property in the course of carrying on a specified business of the specified person. Second, the specified person is deemed to be the person to whom the intangible personal property described above was made available, to be the recipient of a supply made outside Canada of that intangible personal property and, in the case of a non-resident specified person, to be resident in Canada. Third, the supply made outside Canada is deemed not to be a supply of property that relates to real property situated outside Canada, to a service to be performed wholly outside Canada or to tangible personal property situated outside Canada.

In addition to the deeming rules above, subsection 220(4) provides that the value of the consideration for the supply made outside Canada is deemed to be the value that would be fair market value of the consideration for a supply of the intangible resource made to the specified person by a person dealing at arm's length with the specified person if the specified person had obtained the use of the intangible resource from that person during the relevant taxation year. That consideration is deemed to have become due on the last day of the relevant taxation year and the specified person is deemed to have paid that consideration on that day.

Generally, under subparagraphs 220(4)(*a*)(i) and (ii), if internal use of an intangible resource of a specified person is considered to have occurred during the specified person's taxation year, the specified person is treated as having made intangible personal property available outside Canada in the course of carrying on a business in Canada through a permanent establishment and treated as being the person to whom that property was made available. Accordingly, the intangible personal property that a specified person is treated as having made

available outside Canada corresponds to a particular intangible resource. For the purpose of determining an input tax credit of the specified person under Part IX, the specified person is deemed to have imported that intangible personal property for the same purpose as that for which the corresponding intangible resource was acquired, consumed or used by the specified person.

In effect, any time a specified person meets either of the conditions set out in paragraph 220(2)(*b*) in respect of an intangible resource, the specified person is treated as being the recipient of a supply made outside Canada of intangible personal property for which the specified person is treated as having paid fair market value consideration on the last day of the taxation year in respect of which the relevant condition was met. If the supply of intangible personal property that the specified person is considered to have received represents a taxable supply, the specified person is required to pay tax on a self-assessment basis under Division IV of Part IX the same way that would be required if the specified person had received outside Canada a comparable taxable supply from a third party for consumption, use or supply in Canada.

Subsection 220(5) – Specified Throughout a Year

New paragraph 220(5)(*a*) of the Act deems a business to be a specified business of a specified person throughout a taxation year of the specified person if that business is a specified business of the specified person at any time in that taxation year. Similarly, under new paragraph 220(5)(*b*), a person that is a specified person at any time in a taxation year of the person is deemed to be a specified person throughout that taxation year.

Clause 10

Adjustment to Net Tax

ETA
225.2(2)

Section 225.2 of the Act sets out rules for determining the net tax of selected listed financial institutions. Subsection 225.2(2) requires a financial institution to make an adjustment to its net tax for each reporting period during which it is a selected listed financial institution.

The amendment to paragraph (*a*) of the description of A in subsection 225.2(2) is consequential to the addition of new section 218.01 of the Act. Since it is possible for a selected listed financial institution to be a qualifying taxpayer (as defined in subsection 217.1(1) of the Act), paragraph (*a*) of the description of A in subsection 225.2(2) is amended to also include all tax that became payable under new section 218.01 by a qualifying taxpayer during a particular reporting period or that was paid by the qualifying taxpayer during that period without having become payable.

The amendment applies to any taxation year of a qualifying taxpayer that ends after November 16, 2005.

Clause 11

Notice of Objection

ETA
301

Section 301 of the Act deals with objections and appeals to assessments under Part IX of the Act. Section 301 is amended to provide new rules that apply to objections and appeals of financial institutions (other than financial institutions subject to existing subsection 301(1.2)) where they object to an assessment that relates in any manner to the application of new section 141.02 of the Act. The amendments to section 301 come into force on Royal Assent.

Subclause 11(1)

Input Tax Credit Allocation

ETA
301(1.21)

New subsection 301(1.21) applies to a financial institution, other than a financial institution to which existing subsection 301(1.2) applies, that objects to an assessment that relates in any manner to the application of new section 141.02. It requires the financial institution, in its notice of objection, to specify the issue in controversy, and the facts and reasons relied on, in the notice of objection and to provide an estimate of the change in any amount relevant for the purposes of the assessment, such as an increase in allowable input tax credits, should the objection be successful.

Subclause 11(2)

Late Compliance

ETA
301(1.3)

Existing subsection 301(1.3) allows the Minister of National Revenue to request a person to provide information required by paragraphs 301(1.2)(*b*) or (*c*) with respect to an issue if it was not provided in the notice of objection. Subsection 301(1.3) is amended to also allow the Minister to request a financial institution to provide information required by new paragraphs 301(1.21)(*b*) or (*c*) with respect to an issue if it was not provided in the notice of objection.

Subclause 11(3)

Limitation on Objections

ETA
301(1.4)

Existing subsection 301(1.4) precludes appellants from raising new issues or revising the relief sought with respect to an issue in an objection to an assessment made under subsection 301(3) in respect of which the appellant is a person to whom subsection 301(1.2) applies. Subsection 301(1.4) is amended so that it also precludes an appellant from raising new issues or revising the relief sought with respect to an issue in an objection to an assessment made under subsection 301(3) in respect of which the appellant is a person to whom new subsection 301(1.21) applies. This preclusion, respecting persons to whom subsection 301(1.2) or 301(1.21) applies, does not apply in certain circumstances, for example, where the assessment is made pursuant to a notice of objection to another assessment made under subsection 274(8) of the Act.

Clause 12

Limitation on Appeals to the Tax Court

ETA
306.1(1)

Existing subsection 306.1(1) of the Act contains limitations that preclude persons from appealing an assessment to the Tax Court of Canada in certain cases. Existing subsection 306.1(1) precludes “specified persons” (as defined in subsection 301(1) of the Act) from appealing an assessment to the Tax Court of Canada if the issue to be decided was not specified in the notice of objection to the assessment in the manner required by subsection 301(1.2). They are also precluded from revising the relief sought with respect to an issue.

Subsection 306.1(1) is amended to preclude, in addition to "specified persons", also the persons referred to in new subsection 301(1.21) from appealing an assessment to the Tax Court of Canada if the issue to be decided was not specified in the notice of objection to the assessment in the manner required by new subsection 301(1.21). They are also precluded from revising the relief sought with respect to an issue.

The amendments to subsection 306.1(1) come into force on Royal Assent.

Draft Input Tax Credit Allocation Methods (GST/HST) Regulations

The *Input Tax Credit Allocation Methods (GST/HST) Regulations* (the "Regulations") prescribe classes of financial institutions, as well as amounts and percentages in respect of financial institutions of prescribed classes, for the purposes of section 141.02 of the *Excise Tax Act* (the "Act").

The *Input Tax Credit Allocation Methods (GST/HST) Regulations* are deemed to have come into force on April 1, 2007.

1 — Definitions

Section 1 of the Regulations adds new definitions that are used throughout the Regulations.

"Act"

New definition "Act" means the *Excise Tax Act*.

"bank"

New definition "bank" has the same meaning as the definition "bank" in subsection 123(1) of the Act except that it does not include an "insurer" (as defined in this section of the Regulations). If a person is a "bank" as defined in subsection 123(1) at any time in a fiscal year and also falls within the definition "insurer" in this section of the Regulations, that person will be an insurer and not a bank throughout that fiscal year for the purposes of these Regulations and for section 141.02 of the Act.

"insurer"

New definition "insurer" has a more restrictive meaning than the definition of "insurer" in subsection 123(1). To be an "insurer" under this section, a person must not only be an insurer as defined in subsection 123(1) but must also in fact carry on an insurance business as the principal business of the person in Canada. As a result, a person, such as a foreign bank, which is authorized to carry on an insurance business in its home jurisdiction but does not in fact carry on an insurance business in Canada, will not be an insurer for the purposes of these Regulations though it might be an insurer as defined in subsection 123(1).

"securities dealer"

Under this new definition, a "securities dealer" is a person that, in respect of a fiscal year, carries on a business as a trader or dealer in, or as a broker or salesperson of, securities; has that business as its principal business in Canada during that fiscal year; and is registered under the laws of either Canada or a province to carry on that business. However, a person will be excluded from the definition "securities dealer" if that person is, at any time in the same fiscal year, either a "bank" or an "insurer" (as those terms are defined in this section of the Regulations).

2 — Prescribed classes

Section 2 of the Regulations sets outs the prescribed classes of financial institutions for the purposes of new section 141.02 of the Act. The prescribed classes of financial institutions are "banks", "insurers" and "securities dealers" (as those terms are defined in section 1 of the Regulations).

3 — Prescribed amounts

Section 3 of the Regulations sets out, for the purposes of new section 141.02 of the Act, the prescribed amounts in respect of financial institutions of a prescribed class. The prescribed amount is $500,000 in respect of each of the three prescribed classes of financial institutions (banks, insurers and securities dealers).

4 — Prescribed percentages

Section 4 of the Regulations sets out, for the purposes of new section 141.02 of the Act, the prescribed percentages in respect of financial institutions of a prescribed class. The prescribed percentages in respect of the three prescribed classes of financial institutions are 12% for banks, 10% for insurers and 15% for securities dealers.