Amendments to the Excise Tax Act, the Federal-Provincial Fiscal Arrangements Act, the Income Tax Act, the Debt Servicing and Reduction Account Act and Related Acts

Explanatory Notes

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PREFACE

These explanatory notes relate to amendments (contained in chapter 10 of the Statutes of Canada, 1997) to the *Excise Tax Act*, the *Federal-Provincial Fiscal Arrangements Act*, the *Income Tax Act*, the *Debt Servicing and Reduction Account Act* and related Acts. These amendments implement sales tax measures announced in April and October 1996. In addition, the legislation contains amendments to implement the Harmonized Sales Tax in accordance with agreements between the federal government and the governments of Nova Scotia, New Brunswick and Newfoundland and Labrador to harmonize the federal and provincial sales taxes, effective April 1, 1997.

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

It should be noted that amendments that come into force on December 17, 1990, the day on which the legislation that enacted the Goods and Services Tax received Royal Assent, are described in these notes as having effect as of January 1, 1991, the day on which the tax was implemented.

These explanatory notes are provided to assist in an understanding of the amendments to the *Excise Tax Act*, the *Federal-Provincial Fiscal Arrangements Act*, the *Income Tax Act*, the *Debt Servicing and Reduction Account Act* and related Acts. These notes are for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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PART I

EXCISE TAX ACT

This Part contains amendments to the *Excise Tax Act* to implement sales tax measures announced in April and October 1996. In addition, this Part contains technical amendments that clarify and correct the application of the *Excise Tax Act*. Amendments to implement the Harmonized Sales Tax (HST) are contained in Part II which, in some cases, further amends provisions of the Act that are amended by Part I.

Clause 1

Definitions

ETA
123

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

For ease of reference, all of the amendments to definitions contained in subsection 123(1) are described below in alphabetical order.

"charity"

The definition "charity" is amended to exclude "public institutions", which are newly defined in subsection 123(1) as persons that are registered charities for purposes of the *Income Tax Act* and are school authorities, public colleges, universities, hospital authorities or persons determined by the Minister of National Revenue to be municipalities for purposes of Part IX of the *Excise Tax Act*. After 1996, all references to a "charity" will no longer include a reference to a public institution. Therefore, a provision that applies to a "charity" will not apply to a public institution unless otherwise specifically provided. Many of the provisions that apply to these organizations are in fact amended to make specific reference to "public institutions" and thereby maintain their current application.

For example, section 2 of Part VI of Schedule V, which contains the existing general exemptions for supplies by a charity, is amended to apply only to "public institutions". New Part V.1 of Schedule V is added to set out the exemptions for charities, and that Part does not apply to public institutions.

The amended definition "charity" applies as of January 1, 1997. It also applies in relation to supplies made before that day for which consideration becomes due, or is paid without having become due, on or after that day.

"commercial activity"

The term "commercial activity" refers to those activities that are undertaken by a person that bring the person within the scope of the Goods and Services Tax (GST) system. Every person engaged in a commercial activity, other than small suppliers and certain non-residents, is required to register under the GST and collect and remit tax on supplies made in the course of a commercial activity. The registrant is also entitled to recover, through the input tax credit mechanism, tax paid on property and services acquired or imported for use in the commercial activity.

The amendments to paragraphs (*a*) and (*b*) of the definition "commercial activity" introduce a new profit test for a "personal trust", which is newly defined in subsection 123(1) (see commentary on the definition "personal trust"). The same test currently applies to proprietorships and partnerships, all the members of which are individuals. There must be a reasonable expectation of profit from the activities engaged in by such partnerships, proprietorships and personal trusts in order for the activities to be considered commercial activities.

This amendment comes into force on April 24, 1996.

"direct cost"

Part VI and new Part V.I of Schedule V set out the exemptions for supplies made by public service bodies (other than charities) and charities respectively. Section 6 of Part VI and section 5.1 of new Part V.1 exempt certain supplies made for nominal consideration –

that is, consideration that does not equal or exceed the direct cost of the supplies.

The existing definition "direct cost" is found in section 1 of Part VI of Schedule V. That definition is repealed and replaced by the new definition in subsection 123(1). For goods produced or manufactured by a person, the term "direct cost" refers to the cost of the materials incorporated into the goods or expended in making them, excluding overhead costs. Where a person purchases goods or services for resale, the direct cost of the goods or services is defined as the purchase price. In addition, in both cases, the direct cost includes any applicable tax under Part IX of the Act and any amount of provincial retail sales tax or other tax that is prescribed for purposes of section 154, and is not recovered or recoverable by the supplier.

The definition "direct cost" is amended to remove the reference to services other than those that are acquired for resale, as well as the references to admissions to a film, slide show or similar presentation. Sections 7 and 8 of Part VI of Schedule V, which contain the existing "direct cost" exemptions for these supplies are repealed (see commentary on clause 108).

These changes to the definition "direct cost" come into force on January 1, 1997 and also apply in relation to supplies made before that day for which consideration becomes due on or after that day, or is paid on or after that day without having become due. Further amendments to this definition are made as a consequence of the introduction of the Harmonized Sales Tax (see commentary on subclause 150(3)).

"financial instrument"

The definition "financial instrument" is relevant to the definition "financial service". Existing paragraph (*d*) of the definition "financial instrument" includes an interest in a partnership or a trust or any right in respect of such an interest. The amendment to paragraph (*d*) adds a reference to an interest in an estate of a deceased individual. This clarifies that the supply of an interest in an estate or any right in respect of such an interest is a financial service.

This amendment is effective January 1, 1991.

"financial service"

Under existing paragraph (*j*) of the definition "financial service", insurance adjustment services that are supplied by insurers, marine adjusters or provincially licensed adjusters are treated as financial services. Paragraph (*j*) is amended to extend this treatment to adjustment services that are supplied to an insurer or group of insurers by persons who are permitted by provincial laws to provide adjustment services without holding a licence for that purpose.

This change applies to supplies for which consideration becomes due or is paid without having become due after April 23, 1996.

Another amendment to paragraph (*j*) clarifies that it applies only to an adjustment service that relates to a claim made under a property and casualty insurance policy. Adjustment services relating to a claim under a life or accident and sickness policy are taxable. This amendment applies to supplies for which any consideration becomes due after April 23, 1996 or is paid after that day without having become due. It also applies to any supply for which all of the consideration became due or was paid on or before that day unless the supplier did not charge or collect an amount as or on account of tax in respect of the supply, or tax was charged or collected but, before that day, an application for a rebate under subsection 261(1) of the Act was received at a Revenue Canada office, or the supplier filed a return in which the supplier claimed a deduction for an adjustment of the tax credited to the recipient.

Paragraph (*j*.1) of the definition "financial service" is amended by the addition of the words "an insurer" to clarify and confirm the existing administrative practice of treating the provision of an appraisal to an "in-house" insurance adjuster of an insurance company as being a financial service.

The amendment applies to any supply for which consideration becomes due after April 23, 1996 or is paid after that day without having become due. It also applies to any supply for which all of the consideration became due or was paid on or before that day if the supply was treated as exempt (i.e., the supplier did not charge any amount as tax, the supplier issued a credit note for the tax and filed a return claiming a deduction for the amount before April 23, 1996 or the recipient paid an amount as tax and filed an application for a

refund of the amount under subsection 261(1) of the Act which was received at a Revenue Canada office before April 23, 1996).

Due to a previous amendment, paragraph (*j*.1) of the definition "financial service" read differently in relation to services provided before October 1992. That previous wording is also amended to include a reference to "an insurer".

The amendment to paragraph (*q*) of the definition "financial service" is intended to ensure that tax applies to management or administrative services provided to a corporation, trust or partnership whose principal activity is the investing of funds. This provision is also intended to ensure that the application of tax to such services is not circumvented by an "unbundling" of services provided to the entity. Therefore, the amended paragraph makes explicit reference to "any service" provided by a person who provides management or administrative services. This encompasses such services as brokerage services that might fall into the category of financial services if they were provided to someone other than a person described in paragraph (*q*).

Subparagraph (*q*)(ii) provides authority to prescribe services that may be excluded from the ambit of "any other service". It is proposed that the following services be prescribed for this purpose:

- the issuance of a financial instrument by, or the transfer of ownership of a financial instrument from, the person providing the management or administrative service to the corporation, partnership or trust (for example, the consideration for a mortgage sold to a mortgage fund by the manager of the fund would not be taxable);

- the operation or maintenance of a savings, chequing, deposit, loan, or other account that the corporation, partnership or trust holds with the provider of the management or administrative service; and

- the arranging for the issuance, renewal, variation or transfer of ownership of a financial instrument for a trust governed by a self-directed Registered Retirement Savings Plan or Registered Retirement Investment Fund.

The amendment to paragraph (*q*) applies to supplies for which any consideration becomes due or is paid after December 7, 1994. It also applies to supplies for which consideration became due or was paid on or before that day unless tax in respect of the supply was neither charged nor collected on or before that day. The proposed regulations would have the same application.

"hospital authority"

The definition "hospital authority" is amended to remove the reference to a "part" of an organization. This amendment is consequential to the addition of subsection 259(4.1), which provides specific rebate apportionment rules for a selected public service body such as a hospital authority that undertakes a range of activities in different capacities (see commentary on subclause 69(7)).

The amendment comes into force on April 24, 1996.

"improvement"

The term "improvement" is defined in subsection 123(1) as it relates to any capital property and in section 1 of Part I of Schedule V as it relates to real property. The amended definition "improvement" in subsection 123(1) combines both definitions and applies for all purposes of Part IX of the Act. The definition in the Schedule is repealed (see commentary on clause 85).

This amendment is effective on April 24, 1996.

"insurance policy"

Paragraph (*b*) of the definition" insurance policy" is amended to remove a redundant reference to "dental" insurance since the common industry definition of "accident and sickness" insurance already encompasses dental insurance.

This amendment is effective on January 1, 1991.

The definition "insurance policy" is also amended to add paragraph (*c*), which clarifies that construction bonds are treated in all cases as insurance policies. Specifically, bid bonds, maintenance

bonds, labour and material bonds, and performance bonds related to construction projects are treated as insurance policies.

This amendment is effective January 1, 1991.

"*inter vivos* trust"

The new definition "*inter vivos* trust" is relevant for the purposes of the definition "personal trust", (which is added to subsection 123(1)) and amended section 268. "*Inter vivos* trust" means a trust other than a testamentary trust. Therefore, an *inter vivos* trust is generally a trust other than one that has arisen on and as a consequence of the death of an individual.

This definition is effective January 1, 1991.

"mobile home"

The definition "mobile home" is relevant for the purposes of the definitions "builder", "real property", "residential unit", "residential complex", "residential trailer park", "single unit residential complex". and "trailer park".

The existing definition "mobile home" is obsolete and restrictive in that it does not encompass all structures that are commonly known as "mobile homes". Specifically, the size requirement and the requirement that the structure be towed on its own wheels to a site do not reflect current designs of these homes.

The definition is therefore amended to remove these two requirements. In addition, the existing exclusion of a "vehicle or trailer for recreational use" may be too broad since virtually any home may be for recreational use. The definition is amended so that the exclusion applies to vehicles or trailers that are "designed" for recreational use. Finally, the existing exclusion of "free-standing appliances or furniture" sold with the mobile home is removed. This reference is unnecessary because such items would not be considered to be part of the mobile home in any event. Of course, where these are incidental to, and supplied together with, the home for a single consideration, section 138 applies to deem the appliances and furniture to be part of the mobile home.

These changes will enable builders of certain structures that are excluded from the existing definition of "mobile home" to credit purchasers for the amount of a new housing rebate in respect of these homes. In addition, these builders will be subject to the same rules as builders of other types of residential property, such as the self - supply rules under section 191.

Under subsection 254(2), the GST New Housing Rebate is available to purchasers of single unit residential complexes. Under subsection 254(4), an individual who purchases a mobile home from a builder may receive an immediate credit for the amount of the rebate, which may subsequently be deducted from the builder's net tax.

A structure that does not qualify under the existing definition "mobile home" may qualify for a rebate for owner-built homes under section 256, provided that the structure qualifies as a "single unit residential complex" when affixed to land. However, the builder of such a structure would not currently be able to credit the amount of the rebate to the owner or purchaser because the structure would not qualify as a "single unit residential complex" at the time it is sold by the builder. The broadening of the definition "mobile home" will allow the rebate to be credited at the time of purchase in more instances.

This amendment is effective on April 24, 1996. However, the amendment will entitle builders to credit the amount of a new housing rebate in respect of a mobile home sold before that day where consideration for the home is invoiced or paid on or after that day.

A special transitional rule applies to the lease of a residential trailer park site on which a structure that newly qualifies as a mobile home is situated. In this case, two separate supplies would be deemed to occur under the lease. The first supply would be deemed to end on April 23, 1996 and the second supply would begin the following day. As a result, the amendment to the definition "mobile home" does not cause a supply by way of lease to become exempt prior to April 23, 1996 and a change in use of the site, if applicable, will be recognized only following that day. (Reference should also be made to section 198.1 for rules regarding changes in use of property as a result of an amendment to the Act.)

"non-profit organization"

The definition "non-profit organization" is amended to exclude a "public institution", which is newly defined in subsection 123(1) as a person that is a registered charity for purposes of the *Income Tax Act* and that is a hospital authority, university, public college, school authority or person determined by the Minister of National Revenue to be a municipality for purposes of Part IX of the *Excise Tax Act*. These entities are currently excluded from the definition "non-profit organization" by virtue of the fact that all charities are excluded. However, since the term "charity" is amended so that it no longer encompasses "public institutions", a specific reference to the latter is required in order to continue to carve them out of the definition "non-profit organization".

The amended definition "non-profit organization" applies as of January 1, 1997. It also applies in relation to supplies made before that day for which consideration becomes due or is paid without having become due on or after that day.

"office"

Existing subsection 123(1) defines the term "officer" for purposes of Part IX of the Act. This definition is relevant for purposes of the definitions "business" and "service". For greater clarity and for consistency with the *Income Tax Act*, the definition "office" is added to subsection 123(1) and the term "officer" is redefined accordingly as a person who holds an office.

The term "office" has the meaning assigned by subsection 248(1) of the *Income Tax Act*, which is consistent with the existing definition of "officer" in subsection 123(1) of the *Excise Tax Act.* However, the new definition "office" excludes, for greater certainty, the position of trustee in bankruptcy and of receiver (including persons who are receivers within the meaning of subsection 266(1)). It also excludes the positions of trustee of a trust and personal representative of a deceased individual where the person’s remuneration for acting in that capacity is treated as business income for income tax purposes. This definition of "office" is consistent with the practice of treating persons holding these positions as supplying services in performing duties in their official capacities.

This amendment applies as of January 1, 1991.

"officer"

The definition "officer" is amended as a consequence of the addition of the definition "office" in subsection 123(1) (see commentary above). "Officer" is defined as a person holding an office.

This amendment applies as of January 1, 1991.

"person"

The definition "person" in the English version of subsection 123(1) is amended to clarify that the reference to an estate is a reference only to an "estate of a deceased individual" as opposed to other kinds of estates, such as the estate of a bankrupt.

This amendment applies as of January 1, 1991.

"personal representative"

The new definition "personal representative", which is essentially the same definition as "executor" in existing subsection 267(2), is added to subsection 123(1) to provide consistency in the terms used in the Act to describe an executor of a will or administrator of an estate of a deceased individual. The definition "personal representative" is relevant for the purposes of the trust and estate rules in new section 267.1 and in amended section 270 (see commentary on clauses 73 and 74 respectively).

This amendment applies as of January 1, 1991.

"personal trust"

The new definition "personal trust" is relevant for purposes of section 190 and the exemptions for sales of real property by trusts under section 9 of Part I of Schedule V, paragraph 1(*k*) of new Part V.1 of that Schedule and section 25 of Part VI of that Schedule. For trusts, the existing exemptions are limited to those whose beneficiaries are charities or individuals. The term "personal trust" is used in the amended exempting provisions (see commentary on clauses 90 and 102 and subclause 116(1)). The result is that the

condition with respect to beneficiaries applies only to *inter vivos* trusts since the definition "personal trust" includes all testamentary trusts.

The effect of the amendment in section 9 of Part I of Schedule V is that sales of real property by a testamentary trust created on the death of an individual will receive the same treatment that would have applied had the individual sold the property before the individual's death. This change applies to sales made after April 23, 1996. It also applies to sales made on or before that day unless the supplier charged or collected an amount as or on account of tax in respect of the supply before that day.

Another effect of using the term "personal trust" in the exempting provision is to restrict the exemption, in the case of *inter vivos* trusts, to cases where no beneficial interest in the trust is acquired for consideration payable to the trust or to persons who have made a contribution to the trust by way of transfer, assignment or other disposition of property. This restriction in respect of *inter vivos* trusts applies only to sales made after April 23, 1996.

The definition "personal trust" is also used in the amended definition "commercial activity" in subsection 123(1) (see commentary on the definition "commercial activity"). As of April 24, 1996, the profit test in that definition that applies to individuals and certain partnerships also applies to personal trusts.

"public college"

The amendment to the definition "public college" clarifies that, to qualify as such, an organization must receive funding from a government or municipality to support the ongoing delivery of educational services by the organization to the general public. This contrasts with monies that are paid to an organization under special agreements between the organization and a government or municipality for the provision of training to a particular group of students. For example, funding under a program such as the Canadian Jobs Strategy program would not satisfy the criteria of being paid to support the ongoing delivery of educational services to the general public.

The definition "public college" is also amended to remove the reference to "part" of an organization. This amendment is consequential to the addition of subsection 259(4.1), which provides specific rebate apportionment rules for selected public service bodies, such as public colleges, that undertake a range of activities in different capacities (see commentary on subclause 69(7)).

The amended definition "public college" applies for purposes of determining any rebate under section 259 for which an application is filed at a Revenue Canada office on or after April 23, 1996. For all other purposes, the amendment applies as of January 1, 1997.

"public institution"

The definition "public institution" is added to refer to a person that is both a registered charity within the meaning of the *Income Tax Act* and either a hospital authority, public college, school authority, university (all within the meaning of subsection 123(1)) or person determined by the Minister of National Revenue to be a municipality for all purposes of Part IX.

"Public institutions" are excluded from the amended definition "charity" in subsection 123(1) (see the commentary above on that definition). Therefore, after 1996, any reference to "charity" in Part IX will no longer include a reference to the organizations newly defined as public institutions. However, most of the provisions that apply to charities under the existing legislation are amended to continue to apply to public institutions by explicit reference to the latter. For example, existing section 2 of Part VI of Schedule V (the general exemptions for supplies by charities) is amended to apply only to public institutions. Separate rules for "charities" are set out in new Part V.1 of Schedule V (see commentary on clause 102).

The definition "public institution" comes into force on January 1, 1997. Any person who, on that day, falls within that definition will be subject to the rules relating to public institutions, as opposed to charities, in relation to any supply for which consideration becomes due or is paid without having become due on or after that day. For example, the exemption for supplies of parking spaces by charities provided for under new Part V.1 of Schedule V would not apply to a person who is a registered charity for income tax purposes but who is defined to be a public institution if the consideration for the supplies

becomes due to the person after 1996, even if the agreement for the supply was entered into before 1997. In that case, the supply would continue to be taxable.

"residential complex"

The definition "residential complex" is relevant to, among other things, the determination of whether supplies of accommodation qualify for exemption under Part I of Schedule V to the Act. One of the criteria used to determine whether a building or part of a building is a residential complex for this purpose is whether the building or part constitutes a hotel, motel, inn or similar premises and all or substantially all of the supplies by way of lease, licence or similar arrangement in the building or part are made for periods of less than sixty days. The amendment to the definition "residential complex" clarifies that the test is based on periods of continuous use or possession.

This clarification is consistent with similar wording changes made to the definitions "residential trailer park" in subsection 123(1) and "long-term lease" in subsection 254.1(1) as well as to sections 6, 7 and 8.1 of Part I of Schedule V and subparagraph 25(*f*)(i) of Part VI of that Schedule.

For consistency, these wording changes are all effective on, or in relation to supplies made on or after, September 15, 1992, the date as of which subparagraph 25(*f*)(i) was last amended. However, these amendments do not apply for the purposes of determining any deduction under subsection 232(1) claimed in a return under Division V, or any rebate claimed in an application under Division VI, that was received at a Revenue Canada office before April 23, 1996.

Since the definition "residential complex" was previously amended, as of September 30, 1992, the wording of that definition between September 15, 1992 and September 30, 1992 is, for consistency, also amended to refer to "continuous possession or use".

"residential trailer park"

The definition "residential trailer park" is relevant for purposes of determining whether a lease of a site in a trailer park, or a sale of a

trailer park, qualifies for exemption under Part I of Schedule V to the Act. One of the criteria used to determine whether a trailer park qualifies as a residential trailer park for this purpose is whether the park operator intends to give possession or use of the trailer sites for periods of at least one month in the case of mobile homes and other residential units and twelve months in the case of travel trailers, motor homes and other similar units. The amendment to the definition "residential trailer park" clarifies that the test is based on periods of continuous use or possession.

This clarification is consistent with similar wording changes made to the definitions "residential complex" in subsection 123(1) and "long-term lease" in subsection 254.1(1) as well as to sections 6, 7 and 8.1 of Part I of Schedule V and subparagraph 25(*f*)(i) of Part VI of that Schedule.

For consistency, these wording changes all apply on, or in relation to supplies made on or after, September 15, 1992, the date as of which subparagraph 25(*f*)(i) was last amended. However, these amendments do not apply for the purposes of determining any amount claimed as a deduction under subsection 232(3) in a return under Division V, or as a rebate in an application under Division VI, that was received at a Revenue Canada office before April 23, 1996.

"residential unit"

This definition is amended to replace the expressions "elderly persons" and "infirm persons" with the more generally accepted expressions "seniors" and "individuals with a disability".

This change comes into force on Royal Assent.

"school authority"

The definition "school authority" is amended to remove the reference to "part" of an organization. This amendment is consequential to the addition of subsection 259(4.1), which provides specific rebate apportionment rules for a selected public service body such as a school authority that undertakes a range of activities in different capacities (see commentary on subclause 69(7)).

This amendment comes into force on April 24, 1996.

"self-contained domestic establishment"

This definition is being added for purposes of subsection 191(7), which relates to remote work sites, and new paragraph (*a*.1) of subsection 170(1), which limits the availability of input tax credits in respect of expenses incurred in relation to home office expenses, consistent with limitations on deductions for income tax purposes. The definition "self-contained domestic establishment" has the meaning assigned by subsection 248(1) of the *Income Tax Act*.

This definition applies as of January 1, 1991.

"short-term accommodation"

The definition "short-term accommodation" in subsection 123(1) is amended to amalgamate it and the definition of that term that is found in existing subsection 252.1(1). The latter provision adds to, and excludes from, the definition "short-term accommodation" certain types of accommodation only for purposes of determining rebates payable to non-resident persons under sections 252.1 and 252.4.

The definition is also amended to exclude, for purposes of those non-resident rebates, residential complexes or units supplied under a timeshare arrangement. Therefore, GST paid on the acquisition of a timeshare right will not be rebatable. The rebates were designed to promote Canada as a tourist destination and site for foreign business conventions. Timeshare rights are commonly acquired for investment purposes.

This amendment applies for purposes of determining any rebate under section 252.1 or 252.4 in respect of a supply of a complex or unit other than a supply under a timeshare arrangement entered into in writing before April 23, 1996.

Wording changes are also reflected in the amended definition to clarify that a supply of a residential complex or unit by way of lease, licence or similar arrangement constitutes a supply of "short-term" accommodation if the period of "continuous" occupancy of the complex or unit by the individual for whom the accommodation was acquired is less than one month.

This clarification is consistent with similar wording changes made to the definitions "residential complex" and "residential trailer park" in subsection 123(1) and "long-term lease" in subsection 254.1(1) as well as to sections 6, 7 and 8.1 of Part I of Schedule V and subparagraph 25(*f*)(i) of Part VI of that Schedule. For consistency, these wording changes are generally effective on, or in relation to supplies made on or after, September 15, 1992, the date as of which the latter subparagraph was last amended.

"telecommunication service"

The definition "telecommunication service" is added to subsection 123(1). This definition is relevant for purposes of the place of supply rules in new section 142.1 and the zero-rating provision in new section 22.1 of Part V of Schedule VI (see commentary on clauses 7 and 145 respectively).

The definition encompasses such services as local and long-distance telephone services, cable and pay television, facsimiles and electronic mail, video, audio and computer link-ups and data transmission. The definition also specifies that providing access to a telecommunications facility such as a dedicated line is a telecommunication service whether or not the facility is used. The definition does not include services that are related to telecommunication services, such as translation services, charges for the relocation of services, 1-900 numbers, wire news services or directory assistance.

A distinction must be made between telecommunication services and services that happen to be delivered by means of telecommunications but by their nature are not dependent on that mode. For example, an individual dialling a 1-900 number for information is billed for the service of receiving the requested information, not for a telecommunication service. The provider of the information service is the consumer of the telecommunication service, which is a means of delivering the information.

The definition applies in relation to services supplied after April 23, 1996.

"telecommunications facility"

The definition "telecommunications facility" is added to subsection 123(1). A telecommunications facility is any facility, apparatus or other thing that is used or is capable of being used for telecommunications. The definition is broad in scope, including items such as satellites, downlink and uplink earth stations, fibre-optic transmission systems, telephones and fax machines.

This definition is relevant for purposes of the new definition "telecommunication service" in subsection 123(1), the place of supply rules in new section 142.1, as well as new section 22.1 of Part V of Schedule VI (see the commentary on the definition "telecommunication service" as well as the commentary on clauses 7 and 145).

This definition applies in relation to supplies made after April 23, 1996.

"testamentary trust"

The new definition "testamentary trust" is relevant for purposes of the definition "personal trust", which is also added in subsection 123(1), and the definition "settlor" in new subsection 9(1) of Part I of Schedule V. "Testamentary trust" has the meaning assigned by subsection 248(1) of the *Income Tax Act*, which refers to the definition in subsection 108(1) of that Act. A "testamentary trust" is a trust or estate arising as a consequence of the death of an individual, with certain additional criteria relating to the contribution of property by a person other than an individual.

This definition is effective January 1, 1991.

"university"

The definition "university" is amended to remove the reference to "part" of an organization. This amendment is consequential to the addition of subsection 259(4.1), which provides specific rebate apportionment rules for a selected public service body such as a university that undertakes a range of activities in different capacities (see commentary on subclause 69(6)).

This amendment comes into force on April 24, 1996.

"used tangible personal property"

The expression "used tangible personal property" refers to tangible personal property that has, at any time, been used in Canada. This definition is amended to remove any reference to "used specified tangible personal property" as that expression will no longer be used in the Act. Under the existing legislation, the expression is relevant for purposes of section 176 (purchase of used goods), which is amended to, among other things, remove all special rules for used specified tangible personal property (see commentary on clause 25). The expression is also used in existing sections 183 and 184 in relation to the rules governing supplies of such property by creditors and insurers respectively. Those rules are amended to refer to all specified tangible personal property as opposed to referring only to such property that is used (see commentary on clauses 33 and 34).

The amendment to the definition is effective on April 24, 1996.

Clause 2

Person Resident in Canada

ETA
132(1)

The country in which a supplier or recipient of a supply resides is relevant to the application of a number of provisions in Part IX of the Act. For example, certain supplies are zero-rated under Part V of Schedule VI as exports where they are made to non-resident persons. In addition, non-residents are entitled to a rebate of tax paid on exported goods under section 252 and on accommodation under section 252.1.

Existing section 132 deals with the question of residency for GST purposes. The determination of residency is ordinarily based on criteria established by jurisprudence. Nonetheless, section 132 sets out certain special rules for particular circumstances.

New paragraph 132(1)(*d*) deems those individuals who are deemed to be resident in Canada under subsection 250(1) of the *Income Tax Act*, other than sojourners deemed resident by virtue of paragraph (*a*) of that subsection, to be resident in Canada for GST purposes. This amendment ensures that government personnel living abroad will be treated as residents of Canada for GST purposes.

This amendment applies after April 23, 1996.

Clause 3

Sponsorships of Public Sector Bodies

ETA
135

Existing section 135 of the Act provides that where a public service body supplies a service (other than certain advertising services), or a right to use a copyright, trade-mark, trade-name or other similar property, to a sponsor of an activity of the body in order to publicize the sponsor's business, the public service body is deemed not to be making a supply for GST purposes. Prior to the amendment to the definition "non-profit organization", which applied after September 1992, section 135 applied to agents of the Crown that operated on a not-for-profit basis. However, the amendment to that definition explicitly excluded such agents from being considered "non-profit organizations". This had the unintentional effect of excluding them from the application of section 135. The section is therefore amended to apply to "public sector bodies" which includes governments and Crown agents.

This amendment applies to supplies made after September 1992.

Clause 4

Combined Supply of Real Property

ETA
136(2)

Subsection 136(2) provides that, where a supply is made of real property that includes a residential complex and other real property, the provision of the residential complex is treated as a separate supply. This ensures that, if the residential complex would have been exempt under Part I of Schedule V when supplied on its own, it will be exempt when supplied together with taxable real property.

The amendment extends this rule to a supply of real property that includes a residential trailer park and other real property.

This amendment is effective January 1, 1991.

Clause 5

Input Apportionment Rules

ETA
141.01

Subsection 141.01(1) Meaning of "endeavour"

The term "endeavour" is defined in subsection 141.01(1) for purposes of subsections 141.01(2) to (4), which set out rules for determining the extent to which property and services used in "endeavours" are used in commercial and non-commercial activities.
Paragraph 141.01(1)(*a*) is amended to delete the exclusion for businesses that do not involve or intend to involve the making of supplies. Consequently, such activities are subject to the rules of section 141.01, which provide that inputs to activities that do not involve the making of supplies are not considered to be for consumption, use or supply in the course of a commercial activity and therefore are not eligible for input tax credits. For example, a non-profit organization that is involved in lobbying for particular

causes but that does not make supplies would not be entitled to claim input tax credits.

This amendment applies as of April 24, 1996.

Subsection 141.01(1.1) Meaning of "consideration"

The rules in section 141.01 are amended to stipulate that the taxable supplies referred to therein are those that are made for consideration (see commentary below on subsections (2), (3) and (5)). New subsection 141.01(1.1) provides that supplies for nominal consideration are to be treated the same as supplies for no consideration since the reference to "consideration" does not include a reference to nominal consideration.

The subsection applies as of January 1, 1991.

Subsection 141.01(1.2) Grants and Subsidies

The amendments to subsections 141.01(2), (3) and (5) described below clarify that it is only the making of taxable supplies for consideration that gives rise to input tax credit entitlements. However, this would unintentionally restrict the input tax credit entitlements of certain grant recipients who incur expenses in carrying out activities that are fully funded by grants or subsidies, such as individual consultants providing counselling services to eligible recipients under a government employment program. New subsection 141.01(1.2) ensures that these grant recipients are entitled to claim input tax credits in respect of their activities that involve the making of taxable supplies. This is consistent with the general policy that the receipt of grants and subsidies should not affect a registrant’s input tax credit entitlement.

New subsection 141.01(1.2) applies as of January 1, 1991.

Subsections 141.01(2), (3) and (5) Apportionment Rules

Section 141.01 is amended by specifying that the "taxable supplies" referred to in subsections 141.01(2), (3) and (5) are supplies made "for consideration". This reinforces the basic pro-rating rule followed by businesses that make exempt supplies. Specifically, they must look to the taxable and exempt output of their business in

determining their input tax credit entitlement. They are entitled to claim input tax credits in respect of their business inputs only to the extent that those inputs are acquired or imported for the purpose of making taxable supplies for consideration in the course of their business. Pursuant to subsection 141.01(4), however, there may be an entitlement to input tax credits in relation to property or services supplied for nominal (or nil) consideration (referred to as "free supplies") depending on the purpose for which the free supply is made.

These amendments are effective January 1, 1991. A consequential amendment is also made under clause 272 to amend the coming-into-force provision for subsection 141.01(4) so that it is also effective as of January 1, 1991.

Clause 6

Place of Supply

ETA
142

Section 142 sets out the general rules for determining when a supply is made in or outside Canada. The section is amended with respect to the rules relating to intangible personal property and telecommunication services.

Subclause 6(1)

Intangible Personal Property

ETA
142(1)(*c*)(i)

Existing paragraph 142(1)(*c*) deems a supply of intangible personal property such as intellectual property to be made in Canada if the property may be used in whole or in part in Canada and the recipient of the supply is either resident in Canada or is registered under the GST. The existing rule does not address the situation where a supply of intangible personal property may be used in whole or in part in

Canada and the recipient of the supply is an unregistered non-resident person.

The amendment to subparagraph 142(1)(*c*)(i) removes the reference to a person resident in Canada or registered for the GST so that the determination of the place of supply for intangible personal property is based only on use in whole or in part in Canada.

This amendment applies to supplies made after April 23, 1996.

Subclauses 6(2) and (3)

Place of Supply of a Telecommunication Service

ETA
142(1)(*e*) and 142(2)(*e*)

Existing paragraphs 142(1)(*e*) and (2)(*e*) set out the general rules for determining whether a supply of a telecommunication service is made in or outside Canada. These amendments repeal both paragraphs. New section 142.1 sets out the place of supply rules for telecommunication services, which are newly defined in subsection 123(1) (see commentary on clause 7).

The amendment applies to supplies made after April 23, 1996.

Clause 7

Telecommunication Services – Place of Supply Rules

ETA
142.1

New section 142.1 sets out the place of supply rules for telecommunication services, which are newly defined in subsection 123(1) (see commentary on the definition "telecommunication service" under clause 1).

Subsection 142.1(1) Billing Location

New subsection 142.1(1) provides rules for determining when the "billing location" for a telecommunication service is considered to be in Canada. The billing location is, in some cases, relevant to the determination of the place of supply of the telecommunication service under subsection 142.1(2).

The billing location for a telecommunication service is considered to be in Canada if the fee for the service is charged or applied by the telecommunications company to an account of the recipient that relates to a telecommunications facility ordinarily located in Canada. The term "telecommunications facility" is newly defined in subsection 123(1) (see commentary on the definition of that term under clause 1). The billing location is not necessarily the billing address or the place to which the invoice is sent. For example, if a business traveller made a long-distance call from a telephone in the United States and used a calling card to have the call charged to the business' number in Canada, the billing location would be considered to be in Canada, even if the business had arranged to have its telephone billings sent to its U.S. branch office for processing.

Where the fee for the service is not charged or applied to an account that the recipient has with the telecommunications company, the billing location is considered to be in Canada if the telecommunications facility used to initiate the service is located in Canada. For example, if a telephone call is paid for by depositing coins in a pay phone or by using a credit card issued by a financial institution, the billing location for the call would be in Canada if the telephone used by the caller is in Canada.

It should be noted that the fact that a billing location for a service is not in Canada does not necessarily mean that the supply of the service is not made in Canada. Under the place of supply rules described below, the billing location is a factor only where the telecommunication is not both emitted and received in Canada. For example, if a person were to make a long-distance call from one place in Canada to another place in Canada but charged it to a number in the United States using a calling card, the supply would be considered to be made in Canada and would therefore be taxable, regardless of the fact that the billing location was not in Canada.

Subsection 142.1(2) Place of Supply

New subsection 142.1(2) sets out the rules for determining when a supply of a telecommunication service is made in Canada. The subsection overrides the general place of supply rules for determining when a supply is made in Canada under section 142 but remains subject to section 143 which deems supplies made by non-resident persons to be made outside Canada in certain circumstances.

New paragraph 142.1(2)(*a*) provides that, where the telecommunication service consists of making a telecommunications facility available for use, the supply of the service is made in Canada if the facility or any part of the facility is located in Canada. This applies whether or not the telecommunications facility is used. Thus, the supply of a dedicated line that is partly located in Canada is a supply of a telecommunication service made in Canada.

New subparagraph 142.1(2)(*b*)(i) provides that, in the case of a telecommunication service other than the supply of the facilities, the service is considered to be supplied in Canada when the telecommunication is both emitted and received in Canada. For example, a telephone call from one location in Canada to another location in Canada is a supply made in Canada, even if the telecommunications facility used to make the call is normally located outside Canada (such as a cellular phone with a non-Canadian billing location).

New subparagraph 142.1(2)(*b*)(ii) provides that a supply of a telecommunication service is made in Canada when the telecommunication is either emitted or received in Canada and the billing location is in Canada.

New section 142.1 applies to services supplied after April 23, 1996.

Clause 8

Partnerships

ETA
145

Existing section 145 sets out certain rules with respect to partnerships. This section is repealed and replaced by amended and more comprehensive rules in new section 272.1 (see commentary on clause 76).

The repeal of section 145 applies as of April 24, 1996.

Clause 9

Small Suppliers

ETA
148

This section sets out the rules to determine whether a supplier qualifies as a "small supplier" for purposes of Part IX of the Act. Small suppliers are relieved from the requirement to register for GST purposes. Those who choose not to register do not have to charge and remit GST, and they are not entitled to input tax credits.

Generally, public service bodies (as defined in subsection 123(1)) qualify as "small suppliers" if they make $30,000 or less in taxable supplies per year. Paragraph 148(1)(*b*) is amended to increase this threshold to $50,000 or less in taxable supplies per year. Public service bodies that have branches or divisions designated as eligible divisions under section 129 may continue to apply this test on a branch-by-branch basis.

Existing subsection 148(2) provides that where the amount of taxable supplies made by a person and its associates exceeds the threshold of $30,000 at any time during a calendar quarter, the person ceases to be treated as a small supplier immediately before that time and will not be a small supplier for the remainder of the quarter. Consistent with

the amendment to paragraph 148(1)(*b*), this threshold is also increased to $50,000.

The amendments come into force on April 23, 1996. Reference should be made to the transitional rules set out in clauses 256 and 257 relating to the de-registration of public service bodies and the designation of small supplier divisions.

Clause 10

Charities and Public Institutions as Small Suppliers

ETA
148.1

This section provides an additional test to the one set out in section 148 under which a charity may qualify as a "small supplier" for purposes of Part IX of the Act. Small suppliers are relieved from the requirement to register for purposes of the tax. Those who choose not to register do not have to charge and remit GST, and they are not entitled to input tax credits.

Subsection 148.1(2) is amended as a consequence of the amended definition "charity", which excludes "public institutions". A public institution is newly defined in subsection 123(1) as a person that is a registered charity for purposes of the *Income Tax Act* and that is a university, public college, school authority, hospital authority or person determined by the Minister of National Revenue to be a municipality for purposes of Part IX of the *Excise Tax Act* (see commentary on the definitions "charity" and "public institution" under clause 1). Specific reference is made to public institutions in subsection 148.1(2) to ensure that they continue to be eligible to be small suppliers under section 148.1.

The reference to "public institution" is added as of January 1, 1997.

Section 148.1 is further amended to increase the threshold level of gross revenue below which charities and public institutions qualify as small suppliers. Under existing section 148.1, charities having annual gross revenue in the preceding year of $175,000 or less qualify as "small suppliers". This test is easier for charities to apply than the

test under section 148 because it is based only on their gross revenue as determined for income tax reporting purposes. Charities and public institutions can qualify as small suppliers under this test or under the test set out in section 148, and they are not required to meet both tests to qualify. The amendment to section 148.1 increases the gross revenue threshold to $250,000 per year.

This amendment applies as of April 23, 1996.

Clause 11

Financial Institutions

ETA
149

Section 149 sets out rules for determining whether a person will be treated as a financial institution for the purposes of Part IX of the Act. Financial institutions are given special treatment under various provisions of that Part such as the change-in-use rules for capital property, the election under section 150 with respect to supplies between closely related corporations, and the rules in section 185 affecting entitlement to input tax credits for inputs used in the provision of financial services relating to commercial activities.

Under subsection 149(1), there are two categories of financial institutions, those that are described in paragraph 149(1)(*a*) (referred to as "listed financial institutions") and those that meet a "*de minimis*" threshold test under paragraph 149(1)(*b*). The subsection is amended to create two categories of "*de minimis*" financial institutions under amended paragraph 149(1)(*b*) and new paragraph 149(1)(*c*).

Subclause 11(1)

De Minimis Financial Institutions

ETA
149(1)(*b*) and (*c*)

Under existing paragraph 149(1)(*b*), a person is treated as a financial institution throughout a taxation year of the person if the person's

income for income tax purposes in the preceding year from interest and dividends and separate fees or charges for financial services exceeded either $10 million or 10 per cent of the total of the person's income from such sources and from supplies other than sales of capital property and financial services. For purposes of this test, a person's income excludes certain types of dividends and, for individuals, is limited to such income from a business. This test is amended so that the total income from such dividends, interest and fees or charges for financial services in the preceding year must exceed both $10 million and 10 per cent of the registrant's total income so defined.

This amendment has the effect of raising the threshold and therefore reducing the number of persons that would fall into the category of financial institution under the *de minimis* test in paragraph 149(1)(*b*). However, a person might still qualify as a financial institution under a new test that is added in paragraph 149(1)(*c*).

The new *de minimis* test in paragraph 149(1)(*c*) looks to the type of financial revenue earned by a person. A person will be considered a financial institution throughout a taxation year of the person if the person's income comprised of interest, fees or other charges, in respect of credit cards or charge cards issued by the person and loans, advances or credit granted by the person, exceeded $1 million in the preceding year. For this purpose, the allowance of an interest-free period between the billing date for an account receivable and the date on which payment is due would not be considered the granting of credit. As well, penalties levied by a vendor for late payment of an account receivable generated in the normal course of the vendor's business would not be considered to be a charge for the provision of credit. The acceptance of a debt that is supported by a negotiable instrument, such as a promissory note, or by a conditional sales agreement is an example of what would be considered the provision of credit.

Whether a person is considered to be a financial institution because of paragraph 149(1)(*b*) or new paragraph 149(1)(*c*) will affect the extent to which the person will be entitled to claim input tax credits in respect of inputs used in the provision of financial services. As under the existing rules, a person that meets the test under paragraph 149(1)(*b*) will not be able to claim input tax credits in respect of property or services to the extent that these are for

consumption, use or supply in the provision of any exempt financial service.

As a result of amendments to sections 185 and 198, however, persons that are financial institutions only because of new paragraph 149(1)(*c*) will be able to claim input tax credits in respect of inputs used in the provision of financial services related to their commercial activities except to the extent that the inputs are for consumption, use or supply in the course of activities that involve the granting of advances, loans or credit or in the course of activities that relate to credit cards or charge cards issued by them (see commentary on clauses 35 and 40 for explanation of amendments to sections 185 and 198 respectively).

These amendments apply to taxation years beginning after April 23, 1996.

Subclause 11(2)

Exclusions

ETA
149(4) and (4.1)

Existing subsection 149(4) provides that, in determining whether a person is a financial institution based on the threshold test under paragraph 149(1)(*b*), interest and dividends from related corporations are to be ignored in calculating the total financial income under subparagraph (i) of that paragraph. The amendment to this subsection is consequential to the amendments to subsection 149(1) and will apply the same rule for purposes of the calculation under new paragraph 149(1)(*c*).

New subsection 149(4.1) replicates the rule, found under the preamble to existing paragraph 149(1)(*b*), that charities, non-profit organizations treated like charities under section 259, municipalities, school authorities, hospital authorities, public colleges, universities and qualifying non-profit organizations are excluded from the "*de minimis*" financial institution category.

These amendments apply to taxation years beginning after April 23, 1996.

Clause 12

Election for Exempt Supplies

ETA
150

Section 150 entitles two corporations that are members of the same closely related group that includes a listed financial institution (i.e., a person described in paragraph 149(1)(*a*) of the Act) to make an election to treat certain supplies of property and services between them as exempt supplies of financial services. The effect is that the supplying member bears the tax on any inputs attributable to the provision of the property or services to the related member. The supplying member is not entitled to claim input tax credits in respect of those inputs and does not charge tax to the related member.

This election is not intended to exempt "imported taxable supplies" (as defined in section 217), which are subject to tax under Division IV on a self-assessment basis. Applying the closely-related group election to those supplies would result in both parties to the election avoiding tax altogether, thereby creating a bias in favour of importing over acquiring inputs domestically. For this reason, existing subsection 150(1) does not apply for the purposes of Division IV of the Act. The amendment to section 150 is intended merely to clarify this exception. The reference to Division IV in subsection 150(1) is substituted with an exclusion for imported taxable supplies in subsection 150(2).

It should be noted that, while the imported supply received by an importer who is a party to an election under section 150 is not itself exempt, any re-supply of an imported service to another party to the election continues to be treated as an exempt supply of a financial service. Therefore, the importer is engaged in the making of an exempt supply and, as such, is subject to the self-assessment rules under Division IV with respect to the imported service.

The amendment to section 150 applies to payments for imported taxable supplies that become due or are made without having become due after December 7, 1994. Where one or more payments for a supply became due on or before that day and further payments for the

same supply become due, or are made without having become due, after that day, the amendment applies only to the latter payments.

Clause 13

Used Tangible Personal Property Trade-Ins

ETA
153(4)

New subsection 153(4) provides that, where a supplier who is a registrant accepts a used good (or a leasehold interest therein) as full or partial consideration for another good, the supplier has to collect GST only on the *net* value if the property being accepted as a trade-in is for consumption, use or supply by the supplier in the course of commercial activities and the person trading in the property is not required to collect tax on it. For example, a car dealer who accepts a trade-in from a consumer as partial consideration for a new car will charge tax only on the difference between the value of the new car and the value of the used car.

When a good is traded in by a registrant who is required to charge tax, the existing rules apply. The trade-in is treated as two transactions – a sale by the registrant of a used good and a sale by the supplier of the new good – and tax is collectible in respect of both supplies.

The new trade-in rule is added as a consequence of the amendment to section 176, which eliminates notional input tax credits except for certain returnable containers (see commentary on clause 25). Charging tax on the net value prevents tax cascading when a used good, for which no input tax credit was claimed, is accepted as a trade-in by a supplier and is subsequently resold on a taxable basis.

If the supplier and recipient are not dealing with each other at arm's length and the value attributed to the used good is greater than its fair market value, the tax is to be calculated on the difference between the value of the new good and the fair market value of the good being traded in.

New subsection 153(5) provides for an exception to the rule under new subsection 153(4) which deems the consideration for a supply of property for which a trade-in is accepted to be an amount net of the value of that trade-in. That rule does not apply in determining whether any condition of a provision of Part IX or the related Schedules that compares an amount of consideration to any other value is satisfied. For example, the denial, under section 170, of an input tax credit in respect of property acquired by an employer for the purpose of resupply to an employee depends on whether the resupply is made for consideration equal to the fair market value of the property. For purposes only of determining whether section 170 applies, the value of consideration for the supply to the employee would be determined based on the actual value as opposed to the value net of any trade-in accepted by the employer as partial consideration paid by the employee. Subsection 153(4) would still apply for purposes of determining the tax collectible by the employer in respect of the supply to the employee.

The deeming rule under subsection 153(4) also does not apply for the purposes of determining whether a person satisfies certain thresholds under section 148 (small supplier rule) or section 249 (reporting periods).

In addition, new subsection 153(4) does not apply to any supply of property as a trade-in that is a zero-rated supply (e.g., a trade-in of zero-rated farming equipment), a supply made outside Canada (e.g., a trade-in delivered outside Canada to the supplier of the new good), a supply that is otherwise deemed to have been made for no consideration because of an election under section 156 or a supply of a trade-in to which paragraph 167(1.1)(*a*) applies and therefore no tax is payable because it is supplied as part of a sale of a business.

The amendments to section 153 apply to supplies made after April 23, 1996 except where a supplier accepted a trade-in under an agreement in writing entered into before July 1, 1996 and charged or collected tax based on the value of the new good without taking into account the value of the trade in. In other words, if a supplier followed the rules that applied in respect of trade-ins accepted before April 23, 1996 as consideration for a supply of another good made under such an agreement, those previous rules apply. (Reference should also be made to the amendments, under clause 25, to section 176, which also applies in such cases).

Clause 14

Taxes, Duties and Fees

ETA
154

Section 154 provides that, for purposes of determining the tax payable on a supply of property or a service, the consideration for the supply includes all federal and provincial taxes, duties and fees that are imposed either on the supplier or on the recipient in respect of that property or service but excludes a tax, duty or fee prescribed under the *Taxes, Duties and Fees (GST) Regulations*.

Section 154 is amended to clarify that the prescribed taxes, duties and fees in issue for exclusion from the consideration for a supply are those that are payable by the recipient of the supply. Taxes applied earlier in the chain – for example, on the manufacturer – form part of the cost of the property or service and are therefore already reflected in the consideration for the supply.

In addition, section 154 is amended to clarify that taxes, duties or fees that are collectible by a vendor at any level of the marketing chain also form part of the consideration for the supply by the vendor, even though they are imposed on the final consumer, unless they are specifically prescribed under the section. For example, taxes on tobacco and gasoline payable by final consumers are pre-collected by wholesalers and are subject to tax under Part IX of the Act at the time they become collectible.

These amendments are effective January 1, 1991.

Clause 15

Non-Arm's Length Supplies

ETA
155

Subsection 155(1) provides an anti-avoidance rule whereby certain non-arm's length supplies made for less than fair market value or for no consideration are deemed to have been made for fair market value.

Subsection 155(2) is amended to clarify that this anti-avoidance rule does not apply to supplies to employees or shareholders or persons related thereto when the supply gives rise to a taxable benefit in respect of which GST is remittable under section 173. As a result, the GST remittance is determined on the basis of the employee benefit rules under section 173 and not under section 155.

Subsection 155(2) is also amended to clarify that the anti-avoidance rule does not apply in situations where subsection 170(1) or 172(2) would otherwise apply. These provisions deal with cases where property or services are acquired or appropriated by a person for certain individuals with whom the person is not dealing at arm's length. They apply only to the extent that a taxable supply of the property or service is not made for consideration equal to its fair market value.

The amendments relating to sections 170, 172 and 173 apply to supplies made after April 23, 1996.

Existing subsection 155(2) also provides that the anti-avoidance rule does not apply to supplies that are otherwise exempt under any of sections 6 to 10 of Part VI of Schedule V, which contain the nominal consideration exemptions applicable to public sector bodies. This subsection is amended to refer to new Part V.1 of Schedule V, which sets out the amended exemptions for charities (see commentary on clause 102). In addition, the reference to sections 7 and 8 of Part VI of that Schedule is removed as a consequence of the repeal of those sections (see commentary on clause 108), and replaced with a reference to Part VI in general.

This amendment applies with respect to supplies for which any consideration becomes due on or after January 1, 1997 or is paid on or after that day without having become due.

Clause 16

Donations to Charities and Registered Parties

ETA
164

Existing section 164 provides that, where a charity or a registered party makes a supply of a right of admission to a dinner, ball, concert or similar fund-raising event, no GST applies on the portion of the admission price that can reasonably be considered a gift or contribution. In these cases, "charity" refers to a registered charity or a registered Canadian amateur athletic association within the meaning of the *Income Tax Act*, while "registered party" includes a political party, local party association, candidate or referendum committee. This section also excludes from the tax the portion of the price of other property or services supplied by a registered party for which a political contribution deduction or tax credit can be claimed for income tax purposes.

This provision is repealed. In its place, an exemption is provided covering the entire price of admissions where a charitable receipt could be issued, or a political contribution deduction taken, for income tax purposes. In addition, an exemption is added to cover the entire purchase price of other property or services where any portion of the price can reasonably be considered a political contribution for income tax purposes. The exemptions applicable to charities, public institutions (as newly defined in subsection 123(1)) and registered parties are set out in section 2 of new Part V.1 of Schedule V, and section 3 and new section 18.2 of Part VI of that Schedule respectively (see commentary on clauses 102, 105, and 113.1 respectively).

The amendment applies to supplies made on or after January 1, 1997 but does not apply to admissions to events for which any admissions have been supplied before that day.

Clause 17

Imposition and Computation of Tax

ETA
165

Section 165 imposes tax on recipients of taxable supplies and sets out rules for how to compute the tax in special cases.

Subclause 17(1)

Pay Telephone Services

ETA
165(3)

Subsection 165(3) contains special rules for calculating the amount of GST payable on telephone services paid for by depositing coins into a coin-operated telephone. Under the existing legislation, the tax is zero where the amount deposited is less than 70 cents. The amended subsection provides that the tax is zero where the amount deposited is 25 cents or less. In other cases, the tax is calculated as 7 per cent of the amount deposited but where the resulting product is a multiple of 5 cents and a fraction of 5 cents, the product is rounded to the nearest 5 cents.

This amendment applies to any call placed at a coin-operated telephone and paid for by depositing coins in the phone after April 23, 1996.

Subsection 165(3), as amended, is repealed and replaced, under Clause 160, with new section 165.1.

Subclause 17(2)

Coin-Operated Devices

ETA
165(3.1)

New subsection 165(3.1) provides rules for calculating the amount of tax payable on goods or services supplied through mechanical coin-operated devices that are built in such a way that they can accept only a single coin as the total consideration for the supply.

Under these rules, the tax payable for the supply is zero where the tax otherwise determined in accordance with the general rules of the legislation is less then 2.5 cents, and is 5 cents where the tax otherwise determined is 2.5 cents or more but less than 5 cents. Tax is rounded to the nearest cent where the tax otherwise determined is 5 cents or more.

This amendment applies to supplies made after April 23, 1996. Due to the operation of section 160, this amendment will therefore apply to any supply where the consideration for the supply is removed from the coin-operated device after that day. However, subsection 165(3.1) is repealed and replaced as of April 1, 1997 under clause 160 (see commentary on clause 160).

Clause 18

Supply of Business Assets of Deceased

ETA
167(2)

Existing subsection 167(2) provides for an election to have a tax-free roll-over of business assets of a deceased individual from the individual's estate to a beneficiary of the estate who is an individual and a registrant provided the beneficiary is acquiring the assets for consumption, use or supply in the course of a commercial activity.

For greater certainty, subsection 167(2) is amended to refer to the estate – i.e., as opposed to the deceased's personal representative – as

the supplier and the party to the election since the estate is treated as a person for GST purposes.

This amendment is effective January 1, 1991.

Clause 19

Required Documentation

ETA
169(4)(*b*)

Subsection 169(4) provides that a GST registrant is not permitted to claim an input tax credit unless the registrant has sufficient evidence to support the claim. Furthermore, where the registrant is required, under subsection 228(4), to remit the tax on real property purchased by the registrant, subsection 169(4) stipulates that the special return, which accounts for the tax and is required under subsection 228(4), must be filed before the input tax credit in respect of that property may be claimed.

The amendment to paragraph 169(4)(*b*) is consequential to the amendment to subsection 228(4), which eliminates the requirement for registrants to file a separate return unless the registrant acquires real property for use or supply otherwise than in the course of the registrant's commercial activities (see commentary on clause 47). Where the property is for use or supply primarily in the course of the registrant's commercial activity, the tax must be reported in the registrant's regular GST return.

This amendment is effective January 1, 1997.

Clause 20

Restrictions on Input Tax Credits

ETA
170(1)(*a*.1)

Subsection 170(1) lists certain importations and taxable supplies received by a registrant that do not give rise to any input tax credit entitlement.

New paragraph 170(1)(*a*.1) is added. This paragraph is consistent with subsection 18(12) of the *Income Tax Act*, which denies a deduction of expenses incurred by an individual in respect of a home office where it is neither the individual's principal place of business nor a place that is both used exclusively by the individual to earn income from a business and used on a regular and continuous basis for meeting clients, customers or patients. This amendment provides for a similar denial of input tax credits in such circumstances.

For imported goods, the amendment applies to importations after April 23, 1996 and, in other cases, to supplies for which all of the consideration becomes due after that day or is paid after that day without having become due.

Clause 21

Benefits to Shareholders, etc.

ETA
172(2)

Subsection 172(2) provides a self-supply rule where property (other than capital property) or services are appropriated for the benefit of a shareholder, beneficiary, partner or member of a corporation, trust, partnership, charity or non-profit organization that is a registrant. Where there is such an appropriation, the registrant is considered to have made a supply of the property or service at its fair market value and, except where the supply is an exempt supply, to have collected GST on that amount.

Subsection 172(2) is amended as a consequence of the amendments to the definition "charity" in subsection 123(1) and the addition to that subsection of the definition "public institution" (see commentary on the definitions of those terms under clause 1). The amendment to subsection 172(2) ensures that the self-supply rule will continue to apply to the same entities to which it currently applies.

This amendment comes into force on January 1, 1997.

Clause 22

Taxable Benefits

ETA
173

Under existing section 173, where a registrant makes a supply, other than an exempt supply, of property or a service to an employee or shareholder of the registrant and the supply gives rise to a taxable benefit for income tax purposes, GST applies to the value of the benefit, excluding any provincial tax component. To simplify the calculation of the GST to be remitted, the amendments to section 173 provide for the calculation of GST on a value that includes the provincial sales tax and GST included in the taxable benefit for income tax purposes. Further changes include streamlining the treatment of reimbursements for the use or operation of an automobile, as well as extending the election under subsection 173(2) to automobile operating costs. These changes are explained below.

Related amendments are made to sections 6, 12 and 15 of the *Income Tax Act* (see commentary on clauses 267 to 269).

Subclause 22(1)

Employee and Shareholder Benefits

ETA
173(1)

Under the existing legislation, where expenses relating to the use or operation of an automobile in a taxation year are fully reimbursed by

an employee or shareholder, section 173 does not apply. Rather, GST is payable by the employer or corporation on each reimbursement as it is received from the employee or shareholder. No amount is included as an employee or shareholder benefit for income tax purposes in determining the income of the individual.

New paragraph 173(1)(*b*) provides that section 173 does apply in this circumstance. GST remains payable on the reimbursements received but, under new subparagraph 173(1)(*d*)(v), these reimbursements are aggregated and the tax thereon is deemed, under subparagraph 173(1)(*d*)(vii), to have been collected only at the end of February in the following year or, in the case of shareholders, at the end of the taxation year of the corporation.

New paragraph 173(1)(*c*) replicates the rules set out in existing paragraph 173(1)(*d*) and ensures that the provision applies to employee or shareholder benefits arising out of the provision of property to persons related to the employee or shareholder.

New subparagraphs 173(1)(*d*)(i) to (iv) list the circumstances in which the employer or corporation would not be required to remit GST on the benefit. Under the existing legislation, these exceptions are set out in subparagraphs 173(1)(*e*)(i) to (v). One such exception is where an election under subsection 173(2) is made in respect of a passenger vehicle or aircraft. Existing subparagraph 173(1)(*e*)(ii) requires that this election be in effect at the time the supply is made. This would pose a problem if, for example, a vehicle were leased to an employer and made available to an employee in a taxation year prior to that in which the employer wished to make the election. To address this, new subparagraph 173(1)(*d*)(ii) provides that the election needs to be in effect only at the beginning of the taxation year for which the benefit is calculated.

The calculation of the GST remittance in respect of an employee or shareholder benefit is simplified under new subparagraph 173(1)(*d*)(v), which replaces existing subparagraph 173(1)(*e*)(v). The existing provision requires that any provincial sales tax (PST) included in the benefit amount for income tax purposes be subtracted before determining the GST to be remitted by the employer or corporation. This will no longer be required under the amended provision. Instead, under new

subparagraph 173(1)(*d*)(vi), the GST remittance is based on the GST- and PST-included total benefit reported for income tax purposes.

As noted above, the amendments also affect the treatment of reimbursements paid by employees and shareholders in respect of the use or operation of an automobile. Under the existing legislation, GST is collectible on these reimbursements in respect of employee or shareholder benefits in the reporting period in which they are made. Under the revised rules in new subparagraph 173(1)(*d*)(v), the reimbursements are aggregated to form part of the total consideration used in calculating the GST remittable by the employer or corporation at the end of the year. Under new subparagraph 173(1)(*d*)(vii), which replaces existing subparagraph 173(1)(*e*)(vi), the GST in respect of the total consideration is deemed to have been collected on the last day of February in the following taxation year or, in the case of shareholders, on the last day of the corporation's taxation year. As a result, GST will no longer be collectible on reimbursements in respect of automobile operating costs in the reporting period in which they are paid.

For purposes of determining the amount of GST to be remitted by the employer or corporation in respect of any benefit other than the automobile operating cost benefit, a factor of 6/106 will apply to the amount determined to be the tax-included total consideration. In the case of the latter benefits, the prescribed percentage – currently five per cent – applies to the amount determined to be the total consideration. (Further amendments are made under clause 165 to adjust these factors for the HST. See commentary on that clause.)

Further wording changes reflected in new subparagraph 173(1)(*d*)(v) address the situation where property is made available to an individual over two or more taxation years. In this case, each of the taxable benefit amounts (and reimbursements for automobile operating expenses) for those years is treated as part of the consideration for the supply of the property and is subject to tax in the year it arises. In determining the GST remittance in respect of a particular year's benefit (or reimbursement in the case of automobile benefits), it is not necessary to refer to the total consideration for the supply. Rather, new subparagraph 173(1)(*d*)(v) refers only to the total consideration for the particular year's use of the property.

These amendments apply to the 1996 and subsequent taxation years.

Subclauses 22(2) and (3)

Effect of Election

ETA
173(3)

Subsection 173(3) sets out the rules that apply where an election under subsection 173(2) is made in respect of a passenger vehicle or aircraft. Generally, the effect of the election is that, while a GST component is included in the employee or shareholder benefits for income tax purposes, GST is not required to be remitted by the employer or corporation in respect of those benefits, and the registrant forgoes input tax credits for the lease or acquisition costs of the vehicle or aircraft.

Paragraph 173(3)(*a*) is amended to replace the reference to paragraph (1)(*d*) with the reference to paragraph (1)(*c*) as a consequence of the re-structuring of subsection 173(1) where the rule formerly found in paragraph (1)(*d*) is set out in amended paragraph (1)(*c*). This amendment applies to the 1996 and subsequent taxation years.

New paragraph 173(3)(*d*) broadens the scope of the election under subsection 173(3) so that it applies to the operating expenses of the vehicle or aircraft. In effect, registrants who make such an election in respect of a vehicle or aircraft will no longer claim input tax credits for supplies, such as gas and repairs, used in the operation of the vehicle or aircraft during a period in which the election is in effect. In turn, no GST is required to be remitted in respect of benefits arising from the operation of such vehicles or aircraft. New paragraph 173(3)(*e*) provides for a recapture where an input tax credit has already been claimed in respect of expenses relating to the operation of the vehicle or aircraft in a period during which an election is in effect.

This amendment applies for the purpose of determining net tax for reporting periods ending after 1995. It applies to existing elections as if they were made on January 1, 1996 so that only those expenses

that are attributable to periods after 1995 are ineligible for input tax credits or subject to the recapture rule.

Clause 23

Travel and Other Allowances

ETA
174

Section 174 deals with allowances paid to employees, partners and volunteers for expenses incurred by them and deems the person paying the allowance to have received a supply and to have paid tax.

Subclauses 23(1) and (2)

ETA
174(*a*)(iii) and (*c*)(ii)

Subparagraphs 174(*a*)(iii) and (*c*)(ii) are amended to refer to a "public institution" as a consequence of the amendment to the definition "charity" in subsection 123(1) and the addition to that subsection of the definition "public institution". The latter refers to a registered charity (within the meaning of the *Income Tax Act*) that is a school authority, hospital authority, public college, university or person determined by the Minister of National Revenue to be a municipality for the purposes of Part IX of the Act (see commentary on the definitions "charity" and "public institution" under clause 1). The amendments to subparagraphs 174(*a*)(iii) and (*c*)(ii) ensure that section 174 will continue to apply to all entities that are registered charities for income tax purposes.

These amendments apply as of January 1, 1997.

Subclause 23(3)

ETA
174(*d*) to (*f*)

The purpose of section 174 is to enable a person who is an employer, partnership, charity or public institution to claim an input tax credit or

rebate in respect of allowances paid for certain expenses to the same extent as would have been the case had the person incurred the expense directly. Section 174 is amended to achieve this more directly by deeming, in new paragraph 174(*d*), the person to have received a supply of the property or service and by deeming, in new paragraph 174(*e*), the use of the property or service by the employee, partner or volunteer to be that of the employer, partnership, charity or public institution, as the case may be. New paragraph 174(*f*) is added to clarify that the time at which the person is considered to have paid tax in respect of the supply is the time at which the allowance is paid.

These amendments are effective as of January 1, 1991, except that they do not apply to claims for input tax credits or rebates that are received at a Revenue Canada office before April 23, 1996.

Clause 24

Reimbursements

ETA
175 and 175.1

Section 175 Employee, Partner or Volunteer Reimbursements

Section 175 applies where a person who is an employer, partnership charity or public institution reimburses an employee, partner or volunteer for expenses incurred in relation to the person's activities. The purpose of the provision is to enable the person to claim an input tax credit or rebate in respect of the reimbursed expense to the same extent as would have been the case had the person incurred the expense directly. The provision is amended to achieve this more directly by deeming the person to have received a supply of the property or service and by deeming the use of the property or service by the employee, partner or volunteer to be that of the employer, partnership, charity or public institution.

The provision is amended to make reference to a "public institution" as a consequence of the change to the definition "charity" in subsection 123(1) and the addition to that subsection of the definition "public institution". The latter refers to a registered charity (within

the meaning of the *Income Tax Act*) that is a school authority, hospital authority, public college, university or person determined by the Minister of National Revenue to be a municipality for the purposes of Part IX of the Act (see commentary on clause 1). This amendment to section 175 ensures that it will continue to apply to all persons that are registered charities for income tax purposes.

Existing paragraph 175(*c*) refers to "tax paid or payable" in respect of a reimbursed expense. New subsection 175(1) refers only to the tax paid in respect of the expense.

The substantive change reflected in new subsection 175(1) is in the manner of determining the amount of the reimbursement that represents tax deemed to have been paid by the employer, partnership, charity or public institution. This amount is used in the determination of an input tax credit or rebate payable to that person. Under existing section 175, it is the amount included in the reimbursement and paid on account of tax. Under new subsection 175(1), it is determined by multiplying the total tax paid by the employee, member or volunteer by the lesser of the percentage of the total expense that is reimbursed and the percentage of the total use for which the property or service was acquired or imported that relates to the activities of the person paying the reimbursement.

The changes to subsection 175(1) are effective January 1, 1991 but do not apply for the purpose of determining any amount claimed (other than an amount deemed to have been claimed) in a return or application received at a Revenue Canada office before April 23, 1996. Also, the reference to "public institution" applies only after 1996.

New subsection 175(2) has the effect of denying an input tax credit to a partnership in respect of a reimbursed expense incurred by a partner where the partner has already claimed an input tax credit in respect of the same expense by virtue of new paragraph 272.1(2)(*b*) (see commentary on clause 76). This subsection is effective as of January 1, 1991 but does not apply for the purpose of determining any amount claimed (other than an amount deemed to have been claimed) in a return or application received at a Revenue Canada office before April 23, 1996. On or before that day, however, the reference to new paragraph 272.1(2)(*b*) shall be read as a reference to existing subsection 145(2), which the new paragraph replaces.

Section 175.1 Warrantee Reimbursement

New section 175.1 ensures that a warrantor can claim input tax credits in respect of the tax portion of reimbursements it has made to the warranty holder, who is referred to as the "beneficiary" in the legislation, for property or services such as repairs provided under the terms of a warranty and supplied by a third party. This could occur where charges for repairs and tax are initially paid by the warranty holder instead of the warrantor due to an emergency or due to the distance from the warrantor's own authorized repair facility.

The input tax credit is calculated based on the portion of the total cost that is reimbursed by the warrantor. To be entitled to the input tax credit, the warrantor must provide written indication with the reimbursement that a portion of the reimbursement is on account of the GST.

New section 175.1 also addresses the situation where a warranty holder is a registrant that has claimed an input tax credit or rebate for the property or service and is subsequently reimbursed an amount on account of the tax by the warrantor. In this situation, the section provides for the recapture, from the warranty holder, of the tax reimbursed, in proportion to the percentage of the total tax payable that was claimed as an input tax credit or rebate.

New section 175.1 applies to amounts reimbursed after April 23, 1996.

Clause 24.1

Used Goods

ETA
Heading before section 176

The heading "Used or Specified Tangible Personnel Property" before section 176 is replaced, as of April 24, 1996, with the heading "Used Returnable Containers" as a consequence of the repeal of the rules dealing with used goods in general and specified tangible personal property in section 176 (see commentary on clause 25).

Clause 25

Used Tangible Personal Property

ETA
176

Existing section 176 deems tax to have been paid by a registrant, in certain circumstances, where the registrant has acquired used tangible personal property from a person not required to charge tax. This enables the registrant to claim notional input tax credits in respect of these purchases to the extent that they are for consumption, use or supply in a commercial activity. The notional input tax credit mechanism was intended to notionally remove the portion of the current fair market value of the used goods representing tax that was originally paid on the goods and not recovered.

These amendments replace subsections 176(1) to (3) with the provision for used returnable containers and repeals the notional input tax credit system for other used goods. Nonetheless, notional input tax credits continue to be provided in the case of seizures and repossessions by creditors (section 183) and for property transferred to an insurer on the settlement of a claim (section 184).

As a result of the elimination of notional input tax credits for used goods traded in by a person who is not required to charge tax, a new provision respecting trade-ins is introduced in new subsection 153(4) (see commentary on clause 13).

Eliminating notional input tax credits removes the need for special rules for supplies of specified tangible personal property (such as works of art and jewellery). As a result, specified tangible personal property will receive the same GST treatment as other tangible personal property, except in the case of property seized or repossessed or transferred to an insurer on settlement of a claim.

For example, a registrant purchasing a work of art from a dealer for an office will be able to claim an input tax credit if engaged in commercial activities. If the artwork were subsequently resold, it would be taxable. Registrants holding specified tangible personal property on April 24, 1996 may be able to claim previously denied input tax credits through the operation of the change-in-use rules

(subsection 199(3)) since the property will, at that time, no longer be deemed to be used otherwise than in commercial activities.

The elimination of notional input tax credits also removes the need for the recapture of input tax credits in respect of specified tangible personal property acquired by a registrant for export or otherwise supplied by the registrant on a zero-rated basis. Therefore, registrants who have claimed actual or notional input tax credits for used specified tangible personal property acquired on or before April 23, 1996 will not have to self-assess the tax if they subsequently export the property.

Subclause 25(1)

Acquisition of Used Returnable Containers

ETA
176(1)

Subsection 176(1) is amended to make reference only to returnable containers used in the delivery of property that is not zero-rated, such as soft drink bottles.

The rules with respect to returnable containers remain the same. Where a registrant purchases a returnable container from a person who is not required to charge tax (for example, where a consumer returns used containers to a retailer in exchange for a deposit refund), this subsection allows the registrant to claim a notional input tax credit equal to 7/107ths of the amount paid to the person. (This factor is amended under clause 169 to reflect the HST rate. See commentary on that clause.) It should be noted that no notional input tax credit may be claimed in respect of a container used for a zero-rated good, such as milk, as tax would not have been charged on the deposit for such a container.

A registrant cannot claim a notional input tax credit in respect of a purchase of a used container unless the registrant pays the same amount for the empty container as the amount (including tax) that the registrant receives when returning the empty container to suppliers. This rule does not apply to a registrant who buys and sells beverage containers only when they are empty (such as the operator of a bottle depot).

The amendment repealing the notional input tax credit under section 176 for other than returnable containers generally applies to supplies made after April 23, 1996. However, the amendment does not apply in respect of any used good supplied as a trade-in under an agreement in writing entered into before July, 1996 if the registrant who accepted the used good as full or partial consideration for another good charged or collected tax on that other good calculated on the basis of its consideration before deducting any amount on account of the trade-in. In that event, the registrant is still entitled to claim a notional input tax credit in respect of the used good. The amendment also does not apply to any supply of a used good made to a registrant before July 1996 otherwise than as a trade-in.

Subclause 25(2)

Exports, Returnable Containers and Value of Used Goods

ETA
176(2) to (4.1)

Subsection 176(2), which outlines the treatment of exports of used goods, is repealed consequential to the elimination of most notional input tax credits for used goods. Subsection 176(3), which sets out rules for returnable containers, is repealed and replaced by amended subsection 176(1).

Subsection 176(4) is renumbered as subsection 176(2) and is retained for the purposes of the returnable container rules. It is a valuation rule that ensures that a registrant cannot claim excessive notional input tax credits on containers acquired in a non-arm's-length transaction. The repeal of subsection 176(4.1) is consequential to the repeal of the rules relating to specified tangible personal property.

These amendments apply to supplies made after April 23, 1996.

Subclause 25(3)

Restriction on Input Tax Credits

ETA
176(5) to (7)

Subsections 176(5) to (7), which restrict the availability of input tax credits for specified tangible personal property, are repealed. This amendment is consequential to the repeal of the rules relating to specified tangible personal property.

The restrictions on input tax credits under the existing provision will not apply after April 23, 1996. Registrants who hold specified tangible personal property on April 24, 1996 may be able to claim previously denied input tax credits under the change-of-use rules for capital property because the deemed use of the property in non-commercial activities under existing subsection 176(5) will no longer apply.

Clause 26

Agents and Auctioneers

ETA
177

Section 177 deals with supplies made by agents, including auctioneers, on behalf of principals. The existing rules provide for different treatment depending on whether the principal is disclosed or undisclosed and is a registrant or non-registrant. They also set out special rules for auctioneers.

Amended subsection 177(1) sets out the new rules that apply where an agent, acting in the course of a commercial activity, makes a supply of tangible personal property (other than an exempt or zero-rated supply) otherwise than by auction on behalf of a principal who, but for this subsection, would not be required to collect tax on the supply (i.e., the principal is an unregistered person or did not last acquire or use the property in the course of a commercial activity).

Amended subsection 177(1) deems these supplies to be taxable. Tax applies on the full selling price of the property.

The general case is that the agent is deemed to have made the supply of the property to the recipient and is therefore the one responsible for accounting for the tax. Under this general rule, the agent is deemed not to have made a supply to the principal. As a result, the agent's service supplied to the principal (i.e., the agent's commission) will not be taxable. The supply made by the agent is deemed not be a supply for the purposes of Part IX of the Act other than section 180, which deals with the situation where a non-resident unregistered person is the legal importer of a good to be sold by an agent on the non-resident's behalf and the non-resident is required to pay tax on the importation. The intention of section 180 is to treat the agent in these cases as having paid the tax the non-resident (i.e., the principal) was required to pay. This would allow the agent to claim an input tax credit for the tax paid by the principal.

An exception to the general case described above is provided where the principal who is not required to collect tax in respect of a particular supply of property is nevertheless a registrant and the property was last used or acquired for consumption or use in a business or adventure or concern in the nature of trade of the principal or in making a taxable supply by way of sale of real property. Some principals in this circumstance may prefer to account for the tax on the property instead of having the agent do so (e.g., where a mixture of items is being sold, and the principal must account for the tax on some of the items because they were used in a commercial activity). In that event, the principal and the agent may elect in writing to have the principal account for the tax. The result is that the principal charges and reports the tax on the supply of the property, pays tax on the agent's services and is entitled to claim an input tax credit for the tax on the agent's services, but not for tax on any other property or service that might be attributable to the supply in respect of which the election was made.

Except where an election is made under new subsection 177(1.1) described below, in all cases where an agent makes a supply on behalf of a principal who is required to collect tax in respect of the supply, the same rules apply as if the supply were made by the principal directly, whether or not the principal is disclosed to the recipient of the supply. The principal will be required to account for

that tax in the principal's return, will pay tax on the agent's services, if those are taxable, and may claim the appropriate input tax credits.

New subsection 177(1.1) permits an agent who makes a supply (otherwise than by auction) on behalf of a principal who is required to collect tax in respect of the supply (otherwise than as a consequence of the application of paragraph (1)(*d*)) to elect jointly with the principal to account for the tax collectible on the supply as if the tax were collectible by the agent. Thus, the agent is responsible for collecting, reporting and remitting the tax on the supply. However, the agent and the principal are jointly and severally liable for all obligations that arise upon or as a consequence of the tax becoming collectible or any failure to account for or remit the tax.

The amendments to subsections 177(1) and (1.1) generally apply to supplies made after April 23, 1996 by an agent to a recipient on behalf of a principal and to any supply made by the agent to the principal of the services relating to the supply to the recipient. However, the amendments do not apply to a supply of goods where

- the goods were sold by an auctioneer before July, 1996 on behalf of a principal who would not have been required to collect tax if the principal had sold the goods directly, and the auctioneer at any time pays or credits to the principal an amount equivalent to the notional input tax credit available to the auctioneer;

- the goods were sold, otherwise than by auction, before July, 1996 by an agent on behalf of a disclosed principal who would not have been required to collect tax if the principal had sold the goods directly, provided that tax was not charged or collected on the supply; or

- the goods were sold, otherwise than by auction, by an agent on behalf of an undisclosed principal who would not have been required to collect tax, provided the sale was made before July, 1996, and the principal is paid or credited an amount equivalent to the notional input tax credit available to the agent.

The above amended rules, including the application rules described above, apply to supplies of goods by auction made before April 1997 (in relation to which amended subsections 177(1) and (1.1) are to be read without reference to the words "otherwise than by auction").

However, effective for supplies made after March 1997, amended subsection 177(1.2) sets out the rules that apply where an auctioneer, acting on behalf of a principal, in the course of commercial activity of the auctioneer, makes a supply of tangible personal property by auction to a recipient. The supply of tangible personal property is deemed to be made by the auctioneer. Therefore, the auctioneer will be responsible for collecting and remitting the tax on the supply. Also, the auctioneer will be deemed not to have made a supply to the principal. As a result, the auctioneer's service supplied to the principal (i.e., the auctioneer's commission) will not be taxable. The supply made by the auctioneer is deemed not be a supply for the purposes of Part IX of the Act other than section 180, which deals with the situation where a non-resident unregistered person is the legal importer of a good to be auctioned and is required to pay tax on the importation. The intention of section 180 is to treat the auctioneer in these cases as having paid the tax the non-resident (i.e., the principal) was required to pay. This would allow the auctioneer to claim an input tax credit for the tax paid by the principal.

New subsection 177(1.3) enables an auctioneer and principal to jointly elect to not have the rules in subsection 177(1.2) apply. This election may be made with respect to an auction where all or substantially all of the consideration for supplies made at that auction by the auctioneer on behalf of the principal is attributable to supplies of prescribed property. Where this election is made, the principal would account for and remit the tax and the auctioneer's commission would be taxable.

Amendments are also proposed to the *Credit Note Information Regulations* and the *Input Tax Credit Information Regulations*. These amendments will ensure that an invoice issued by any intermediary who is making a supply on behalf of another person may satisfy the documentation requirements that the recipient of the supply must meet in order to be eligible for an input tax credit. This will apply whether or not the intermediary is a legal agent of the other person. The amended regulations will apply in relation to supplies made after April 23, 1996.

Clause 27

Expenses Incurred in Supply of Service

ETA
178

Existing section 178 deals with expenses for which a person is reimbursed by the recipient of a supply of a service made by the person. Where the expense was incurred as an agent of the recipient, it is deemed not to be part of the consideration for the supply of the service, while if the expense was not incurred as an agent of the recipient, it is deemed to be part of the consideration for the service.

Section 178 is unnecessary as the treatment it provides already accords with the legal nature of these transactions. The section is therefore repealed.

This amendment is deemed to have come into force on April 24, 1996.

Clause 28

Approval for Direct Seller

ETA
178.3

Section 178.3 sets out rules for an alternate collection method which allows direct sellers (who have received approval from the Minister of National Revenue to follow this method) to calculate their net tax liabilities for GST purposes as if they made their sales directly to final consumers at the suggested retail price of their products. Their sales to independent sales contractors (who purchase the products from the direct seller for resale to consumers) are disregarded under this method and the independent sales contractors are not required to account for GST on the direct seller's exclusive products.

Subsection 178.3(3) Adjustments to Direct Seller's Net Tax

Existing subsection 178.3(3) provides that where an independent sales contractor supplies an exclusive product of a direct seller to the direct seller, the direct seller may claim a deduction in determining the direct seller's net tax. The existing provision allows the deduction to be claimed in a return for the particular reporting period in which the supply is made or in any subsequent reporting period that ends on or before the day that is four years after the day the particular reporting period ends.

Amended subsection 178.3(3) provides that the deduction must be claimed in a return filed by the direct seller under Division V of Part IX within four years after the due date of the return for the reporting period in which the independent sales contractor made the supply.

Subsection 178.3(4) Adjustments for Amounts Paid or Credited

Existing subsection 178.3(4) provides that a direct seller may claim a deduction in determining the direct seller's net tax where an independent sales contractor has made a supply of an exclusive product of the direct seller in circumstances that result in the supply not being subject to tax. A deduction may also be taken where the supply is for consideration less than the suggested retail price of the product. The existing provision allows the deduction to be claimed in the return for the particular reporting period in which the direct seller credits the contractor for the tax or in any subsequent reporting period that ends on or before the day that is four years after the day the particular reporting period ends.

Amended subsection 178.3(4) provides that the deduction must be claimed in a return filed by the direct seller under Division V of Part IX within four years after the due date of the return for the reporting period in which the credit was given.

These amendments apply to deductions in respect of supplies of exclusive products made by independent sales contractors after June 1996.

Clause 29

Approval for Distributor

ETA
178.4

Section 178.4 sets out the rules for an alternate collection method which allows distributors of direct sellers to ignore, for GST purposes, sales to independent sales contractors and, instead, calculate their net tax liabilities as if the sales had been made directly to the final purchasers for the suggested retail price of the products. The method may be used by a distributor who received an approval from the Minister of National Revenue.

Subsection 178.4(3) Adjustments to Distributor's Net Tax

Existing subsection 178.4(3) provides that where an independent sales contractor supplies an exclusive product of a direct seller to a distributor of the direct seller, the distributor may claim a deduction in determining its net tax. The existing provision allows the deduction to be claimed in a return for the particular reporting period in which the supply is made or in any subsequent reporting period that ends on or before the day that is four years after the day the particular reporting period ends.

New subsection 178.4(3) provides that the deduction must be claimed in a return filed by the distributor under Division V of Part IX within four years after the due date of the return for the reporting period in which the independent sales contractor made the supply.

Subsection 178.4(4) Adjustment for Amounts Paid or Credited

Existing subsection 178.4(4) provides that a distributor of a direct seller may claim a deduction in determining net tax where an independent sales contractor has made a supply of an exclusive product of the direct seller in circumstances which result in the supply not being subject to tax. A deduction may also be taken where the supply is for consideration less than the suggested retail price of the product. The existing provision allows the deduction to be claimed in the return for the particular reporting period in which the distributor credits the contractor for the tax or in any subsequent

reporting period that ends on or before the day that is four years after the day the particular reporting period ends.

Amended subsection 178.4(4) provides that the deduction must be claimed in a return filed by the distributor under Division V of Part IX within four years after the due date of the return for the reporting period in which the credit was given.

These amendments apply to deductions in respect of supplies of exclusive products made by independent sales contractors after June, 1996.

Clause 30

Drop Shipments

ETA
179

The overall purpose of section 179 is to ensure that GST applies to goods in Canada that are supplied by an unregistered non-resident person for final consumption in Canada in the same way as tax would apply to the goods if they were acquired from the non-resident outside Canada and imported for that purpose. To achieve this, subsection 179(1) sets out the general rule that, where a registrant transfers physical possession of the goods to another person in Canada on behalf of an unregistered non-resident person, the registrant is liable to collect tax from the non-resident, generally calculated on the fair market value of the property at that time. Provision is made, through a system of drop-shipment certificates, for registrants to avoid having to account for tax on the goods as long as they are transferring them to other registrants in Canada.

Subclause 30(1)

Exclusion of Property from the Drop-Shipment Rules

ETA
179(1)(*a*)(*i*)

Subsection 179(1) requires a registrant making a drop-shipment of goods (i.e., transferring physical possession of the goods) to a person in Canada on behalf of an unregistered non-resident person to account for tax on the goods. Specifically, the registrant is treated as having made a taxable supply of the goods to the non-resident. These rules ensure that tax is payable in respect of goods transferred to consumers and other unregistered persons by Canadian suppliers on behalf of unregistered non-residents.

The amendment to subparagraph 179(1)(*a*)(*i*) ensures that tax does not apply twice on the same transaction. Under the existing provision, where a non-resident registered person, such as a publisher, contracts with an unregistered non-resident person for services (such as mailing house services) and the unregistered non-resident in turn sub-contracts the service to a registered business in Canada, tax applies twice in respect of the same goods. In this example, the non-resident publisher would have to apply tax on the invoice to the Canadian customer and the registered sub-contractor of the non-resident mailing house would have to charge tax on the fair market value of the publication. To avoid this result, the amendment ensures that the drop-shipment rules in subsection 179(1) do not apply to property of a person who is registered for purposes of the tax.

This amendment is effective January 1, 1991.

Subclause 30(2)

Value of Consideration

ETA
179(1)(*c*)

Existing paragraph 179(1)(*c*) sets out the value of the consideration for the taxable supply of property that is deemed to be made by a

registrant to a non-resident person in a drop-shipment situation described by paragraphs 179(1)(*a*) and (*b*). The amendment to paragraph 179(1)(*c*) combines existing subparagraphs (*c*)(ii) and (iii) since, with respect to transfers to consignees, existing subparagraph (*c*)(ii) deals with cases also described in existing subparagraph (*c*)(iii). In addition, the reference to consideration for a supply of a service that is not included in the fair market value of the property is deleted because that fair market value reflects the value of the service.

This amendment applies to supplies made after April 23, 1996.

Subclause 30(3)

Storing or Shipping Service

ETA
179(1)(*d*)

The supply of a service of storing or shipping goods is intended to be taxable in all cases unless it qualifies for zero-rated treatment under Schedule VI. Hence, these services are not relieved of tax under existing subsection 179(2), even where tax on the goods themselves is relieved with the use of the drop-shipment certificate. Consistent with this policy, paragraph 179(1)(*d*) is amended to ensure that it does not apply to the supply of storing or shipping.

This amendment applies to supplies made after April 23, 1996.

Clause 31

International Travel

ETA
180.1

Existing section 5 of Part VII of Schedule VI to the Act zero-rates charges to passengers for goods delivered or services performed on board an international flight while the flight is in Canada; however, the Act is silent on the treatment of supplies on board international vessels. New section 180.1 replaces the existing zero-rating provision

with a provision that deems certain supplies made on board an international aircraft or vessel to be made outside Canada.

This amendment applies to supplies made after April 23, 1996.

Subsection 180.1(1) Definitions

New subsection 180.1(1) contains the definition "international flight", which replaces existing section 1 of Part VII of Schedule VI to the Act (see commentary on clause 147). This term refers to a flight of a commercially-operated aircraft where the flight either begins or ends outside Canada. This subsection also contains the definition "international voyage", which refers to a voyage of a commercially-operated vessel where the voyage either begins or ends outside Canada.

Subsection 180.1(2) Delivery While on International Travel

New subsection 180.1(2) deals with supplies to individuals of goods delivered to the individuals, or services wholly performed, on board an aircraft or vessel on an international flight or voyage. This would include, for example, charges for food and beverages served on board the vessel. As the supply is deemed to be made outside Canada, it is beyond the scope of the GST (see the commentary on clause 148 for related changes).

Clause 32

Forfeitures and Extinguished Debt

ETA
182

Section 182 deals with the situation where, as a consequence of the breach, modification or cancellation of an agreement for the making of a taxable supply, amounts are paid or forfeited by a person to a registrant otherwise than as consideration for the supply. The section also deals with situations where a debt or other obligation of a registrant to a person is reduced or extinguished without payment on account of the debt or obligation. In both cases, the registrant is treated as having made a taxable supply to the other person and as

having collected tax equal to 7/107ths of the amount paid, forfeited, reduced or extinguished. The person paying or forfeiting the amount is deemed to have paid tax and, if a registrant, may be entitled to an input tax credit for that tax.

Subsection 182(1) Forfeiture and Extinguishment of Debt

Subsection 182(1) is amended to merge the current subsections 182(1) and (2). New subsection 182(1) sets out the rules where an amount is paid or forfeited to a registrant or a debt or other obligation of the registrant is reduced or extinguished.

Amended subsection 182(1) specifies that the consideration fraction of the amount paid or forfeited, or by which the debt or obligation is reduced or extinguished, is deemed to be consideration for the supply under the agreement that was breached, modified or terminated. In addition, the amended subsection clarifies that it is the recipient of the supply under that original agreement that is considered to have paid consideration equal to the paid or forfeited amount or amount by which the debt was reduced or extinguished. That recipient would then be entitled to claim an input tax credit for the tax on that deemed consideration provided all other conditions for claiming the credit are satisfied, such as the condition that the original supply was for consumption, use or supply by the recipient in the course of a commercial activity of the recipient. If a third party makes a damage payment in respect of the supply to the original recipient, the third party is not eligible for an input tax credit in respect of the payment.

Subsections 182(2) and (2.1) Transitional

New subsection 182(2) simply replaces the transitional rules contained in existing paragraphs 182(1)(*b*) and (2)(*b*).

New subsection 182(2.1) specifies that the transitional rules in Division IX that applied for purposes of the introduction of the GST do not apply for the purposes of subsection 182(1). This provision is not necessary under the existing legislation because existing subsection 182(1) deems a new supply to be made and the transitional rules for the GST specify that the tax applies to any supply deemed to have been made. In contrast, amended subsection 182(1) treats the amount paid or forfeited or amount by which the debt or obligation is reduced or extinguished as

consideration for the original supply. Therefore, new subsection 182(2.1) is added to continue to ensure that the deemed consideration under subsection 182(1) for a taxable supply does not fall outside the scope of the tax because of the transitional rules.

The amendments to section 182 come into force on April 24, 1996.

Clause 33

Seizures and Repossessions

ETA
183

Section 183 provides rules for the application of the GST to property seized or repossessed by a creditor.

Subclause 33(1)

ETA
183(1)(*d*)

Paragraph 183(1)(*d*) provides that, where a creditor seizes or repossesses real property from a debtor that would have been entitled to a credit under section 193 or a rebate under section 257 if the debtor had instead sold the property under taxable conditions, the debtor is able to claim the credit or rebate based on the fair market value of the property at the time it is seized or repossessed. This removes tax embedded in the value of the property so that the property is not subject to double tax – i.e., when the debtor originally purchased the property and when the creditor resupplies it on a taxable basis after the seizure or repossession.

Paragraph 183(1)(*d*) is amended as a result of the addition of new Part V.I of Schedule V, which sets out exemptions for charities that are found in existing section 25 of Part V of that Schedule. This amendment ensures that paragraph 183(1)(*d*) continues to apply to the same supplies of real property that are covered under the existing wording.

This amendment applies to supplies deemed to have been made by debtors to creditors after 1996.

Subclauses 33(2) and (3)

ETA
183(5)(*a*) and (6)(*a*)

Subsections 183(5) and (6) apply where a creditor appropriates for the creditor's own use property that the creditor seized or repossessed. The amendments to paragraphs 183(5)(*a*) and (6)(*a*) are consequential to the repeal of the special rules under section 176 pertaining to specified tangible personal property such as artwork (see commentary on clause 25). As a result of the changes to section 176, specified tangible personal property having a fair market value in excess of a prescribed amount will no longer be deemed to be used in activities that are not commercial activities. Accordingly, these deeming rules in the case of seized or repossessed property are repealed.

If specified tangible personal property was seized or repossessed from a person who would have been required to charge tax had they sold the property, the creditor will continue to be required to self-assess tax when the property is appropriated for the creditor's own use. However, as a result of the amendment, the creditor will be entitled to claim an input tax credit for the self-assessed tax if the property is used in commercial activities. As is the case under the existing rules, the creditor is not entitled to a notional input tax credit in respect of such property for any tax previously paid by the debtor from whom the property was seized or repossessed. Finally, if the creditor uses the specified tangible personal property in commercial activities, the creditor will have to charge tax on any subsequent resale of the property.

Also, the *Specified Tangible Personal Property (GST) Regulations* will be amended to apply for the purposes of section 183 instead of section 176. There will be no changes to the prescribed amounts.

The amendments apply after April 23, 1996. Registrants who on April 24, 1996 hold specified tangible personal property as capital property in commercial activities that, prior to the amendment, were deemed not to be commercial activities for this purpose may be able

to claim previously denied input tax credits under the change-of-use rules for capital property because the deemed use of the property in non-commercial activities under existing subsections 183(5) and (6) no longer applies as of that day.

Furthermore because of the repeal of the deeming rules in subparagraphs 183(5)(*a*)(ii) and (6)(*a*)(ii), all specified tangible personal property held on April 24, 1996 will be subject to tax on any resupply of the property as long the last use of it before that resupply is in commercial activities.

Subclause 33(4)

ETA
183(7)

Subsection 183(7) applies where a creditor sells property that was previously seized or repossessed. The amendment to subsection 183(7) removes a reference to supplies deemed to have been made under section 177 and is consequential to the amendments to section 177 (see commentary on clause 26). Since section 177 no longer deems a supply to be made between a principal and an agent, the reference to that section is no longer necessary.

The amendment applies to property that is supplied by the creditor after April 23, 1996.

Subclauses 33(5) and (6)

ETA
183(7)(*b*) and (8)(*b*)

The amendments to subparagraphs 183(7)(*b*) and (8)(*b*) are consequential to the repeal of the special rules under section 176 pertaining to specified tangible personal property (see commentary on clause 25). That section will no longer refer to prescribed amounts in respect of such property. The *Specified Tangible Personal Property (GST) Regulations* will be amended to apply for the purposes of section 183 instead of section 176. There will be no changes to the prescribed amounts.

Also, the reference to "used specified tangible personal property" has been replaced by a reference to "specified tangible personal property". As a result, if a creditor seizes or repossesses specified tangible personal property that had been held as inventory of an unregistered small supplier, the creditor will not be eligible for a credit under this section on the resupply of the property.

The amendment applies to property that is supplied by a creditor after April 23, 1996.

Subclause 33(7)

Debt Security, etc.

ETA
183(10)

Existing subsection 183(10) provides that powers of sale and other similar rights exercisable under a debt security in respect of a property will be treated as seizures and repossessions.

As currently drafted, the deeming provisions contained in this subsection apply only for the purposes of section 183. Subsection 183(10) is amended to provide that the deeming provisions apply for the purposes of all of Part IX.

The subsection is also amended to clarify, for greater certainty, that the deeming rules apply in circumstances where a creditor causes a supply of property as a result of the creditor exercising the creditor's right under an Act of Parliament or of the legislature of a province. For example, where a municipality is causing the supply of property as a consequence of the non-payment of municipal taxes, the deeming rules apply. The wording changes also more accurately describe a right under a debt security as a right under an agreement relating to the debt security.

The amendments to subsection 183(10) apply to supplies made after April 23, 1996. They also apply to supplies made on or before that day unless the supply was treated as non-taxable – i.e., either no amount was, on or before that day, charged or collected as tax or an amount was so charged or collected but, before that day, the Minister

of National Revenue received an application under subsection 261(1) for a rebate of that amount.

Subclause 33(8)

Redemption of Property

ETA
183(10.1)

Amended subsection 183(10) clarifies that powers of sale and other similar rights exercisable under the law of Canada or a province, or under an agreement relating to a debt security, in respect of a property are treated as seizures and repossessions. However, there are situations where the person from whom the property was transferred has, under such a law or agreement, a right to redeem the property.

New subsection 183(10.1) provides rules relating to cases where a property is redeemed by an original debtor after the creditor has caused a supply of the property to a purchaser who has paid tax with respect to that supply.

To illustrate how the rules apply in this circumstance, consider the example of a municipality that causes the supply of property of one of its residents (the "original debtor") as a consequence of the resident’s non-payment of municipal taxes. Assume the property is purchased by a purchaser at an auction. Assume also that, under the applicable law, the original debtor has a right to redeem the property within a certain period of time. In those circumstances, new subsection 183(10.1) provides that the redemption of the property is considered to be a supply by way of sale by the auction purchaser for no consideration. The result is that the original debtor is not required to pay tax twice on the same property – when the debtor originally purchased it and when the debtor redeems it. Except for purposes of section 183, the debtor is deemed not to have ever supplied the property or to have re-acquired it. Therefore, the seizure and redemption does not affect the result of any future changes in use or sales of the property by the debtor. Also, where the original debtor reimburses the auction purchaser or the municipality an amount on account of the GST the auction purchaser paid in acquiring the property, the original debtor is deemed to have paid tax in error equal

to the amount so reimbursed. This enables the debtor to claim a rebate under section 261 for the amount.

As far as the auction purchaser in this example is concerned, when that purchaser is reimbursed by the original debtor for an amount on account of the GST the purchaser paid, new subsection 183(10.1) provides that any input tax credit or rebate that the purchaser claimed with respect to that tax is added back in determining the purchaser's net tax for the reporting period in which the property is redeemed. This rule ensures that the auction purchaser does not, in effect, recover the same amount of tax twice. Furthermore, new subsection 183(10.1) precludes the auction purchaser from claiming the tax paid on the property as an input tax credit or rebate after the redemption occurs.

Related amendments are also made to sections 193 and 257 to ensure that the original debtor cannot claim an input tax credit or a rebate pursuant to those sections in respect of the deemed seizure or repossession until the time limit for redeeming the property has expired without the redemption right being exercised (see commentary on clauses 39 and 68).

New subsection 183(10.1) applies to redemptions of property occurring after April 23, 1996.

Clause 34

Supply of Real Property to Insurer on Settlement of Claim

ETA
184

Section 184 provides rules for the treatment of property transferred to an insurer in the course of settling an insurance claim.

Subclause 34(1)

ETA
184(1)(*d*)

Paragraph 184(1)(*d*) provides that, where an insurer seizes or repossesses real property from an insured that would have been entitled to a credit under section 193 or a rebate under section 257 if the insured had instead sold the property under taxable conditions, the insured is able to claim the credit or rebate based on the fair market value of the property at the time it is transferred to the insurer.

Paragraph 184(1)(*d*) is amended as a result of the addition of new Part V.I of Schedule V, which sets out exemptions for charities that are found in existing section 25 of Part VI of that Schedule. This amendment ensures that paragraph 184(1)(*d*) will continue to apply to the same supplies of real property that are covered under the existing wording.

This amendment applies to supplies deemed to have been made by insured persons to insurers after 1996.

Subclauses 34(2) and (3)

ETA
184(4)(*a*) and (5)(*a*)

Subsections 184(4) and (5) apply where an insurer appropriates for the insurer's own use property that was transferred to the insurer on the settlement of a claim. The amendments to paragraphs 184(4)(*a*) and (5)(*a*) are consequential to the repeal of the special rules under section 176 pertaining to specified tangible personal property such as artwork (see commentary on clause 25). As a result of the changes to section 176, specified tangible personal property having a fair market value in excess of a prescribed amount will no longer be deemed to be used in activities that are not commercial activities. Accordingly, these deeming rules in the case of property transferred to an insurer are repealed.

If specified tangible personal property was transferred to the insurer from a person who would have been required to charge tax had they sold the property, the insurer will continue to be required to

self-assess tax when the property is appropriated for the insurer's own use. However, as a result of the amendment, the insurer will be entitled to claim an input tax credit for the self-assessed tax if the property is used in commercial activities. As is the case under the existing rules, the insurer is not entitled to a notional input tax credit in respect of such property for any tax previously paid by the claimant from whom the property was transferred to the insurer. Finally, if the insurer uses the specified tangible personal property in commercial activities, the insurer will have to charge tax on any subsequent resale of the property.

Also, the *Specified Tangible Personal Property (GST) Regulations* will be amended to apply for the purposes of section 184 instead of section 176. There will be no changes to the prescribed amounts.

The amendments apply after April 23, 1996. Insurers who on April 24, 1996 hold specified tangible personal property as capital property in commercial activities that, prior to the amendment, were deemed not to be commercial activities may be able to claim previously denied input tax credits under the change-of-use rules for capital property because the deemed use of the property in non-commercial activities under existing subsections 184(4) and (5) no longer applies as of that day. Furthermore, because of the repeal of the deeming rules in subparagraphs 184(4)(*a*)(ii) and (5)(*a*)(ii), all specified tangible personal property held on April 24, 1996 will be subject to tax when resupplied as it long as the last use of the property before the resupply is in commercial activities.

Subclause 34(4)

ETA
184(6)

Subsection 184(6) applies where an insurer sells property that was previously transferred to the insurer on settlement of a claim. The amendment to subsection 184(6) removes a reference to supplies deemed to have been made under section 177 and is consequential to the amendments to section 177 (see commentary on clause 26). Since section 177 no longer deems a supply to be made between a principal and an agent, the reference to that section is no longer necessary.

The amendment applies to property that is supplied by an insurer after April 23, 1996.

Subclauses 34(5) and (6)

ETA
184(6)(*b*) and (7)(*b*)

The amendments to subparagraphs 184(6)(*b*) and (7)(*b*) are consequential to the repeal of the special rules under section 176 pertaining to specified tangible personal property (see commentary on clause 25). That section will no longer refer to prescribed amounts in respect of such property. The *Specified Tangible Personal Property (GST) Regulations* will be amended to apply for the purposes of section 184 instead of section 176. There will be no changes to the prescribed amounts.

Also, the reference to "used specified tangible personal property" has been replaced by a reference to "specified tangible personal property". As a result, if an insurer acquires specified tangible personal property on settlement of a claim that had been held as inventory of an unregistered small supplier, the insurer will not be eligible for a credit on the resupply of the property.

The amendment applies to property that is supplied by an insurer after April 23, 1996.

Clause 35

Financial Services – Input Tax Credits

ETA
185

Existing subsection 185(1) simplifies the operation of the tax for persons that are not financial institutions and that, in the course of their commercial activity, also provide some incidental financial services. The section 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.

Under amended subsection 185(1), listed financial institutions and persons that are financial institutions because of paragraph 149(1)(*b*) will continue to be excluded from this treatment. Nonetheless, the amended section permits persons that are financial institutions only because of new paragraph 149(1)(*c*) (see commentary on clause 11) to be treated like non-financial institutions except with respect to their activities related to credit cards or charge cards issued by them, or activities involving the granting of advances, loans or credit.

For example, if a registrant, in the course of its commercial activity of retailing goods, made over $1 million of income from interest and fees on its credit card accounts, it would be a financial institution because of paragraph 149(1)(*c*). Assuming the registrant did not also exceed the financial income threshold under paragraph 149(1)(*b*), it would be able to claim input tax credits in respect of inputs for use in its commercial activities and for use in related financial activities, such as its investment or capital raising activities, except those in respect of the credit card operations.

This amendment applies to property and services acquired or imported in taxation years beginning after April 23, 1996.

Clause 36

Conversion of Real Property to Residential Use

ETA
190(1)(*f*)(ii)

Subsection 190(1) applies where a person converts non-residential real property into a residential complex without constructing or substantially renovating the complex. Under paragraph 190(1)(*f*), the person is deemed to be a builder. Nonetheless, an exception to that rule is made for a trust, all the beneficiaries of which are individuals and all the contingent beneficiaries of which are individuals or charities, where the trust converts the property for the purpose of using it as a place of residence for a beneficiary.

Subparagraph 190(1)(*f*)(ii) is amended as a consequence of the new definition "personal trust" in subsection 123(1) (see commentary on the definition of that term under clause 1). As a result of the

amendment, the exception for trusts will apply to all testamentary trusts, but will not apply to *inter vivos* trusts, the beneficial interests in which are supplied by the trust or the settlor of the trust. The requirement under the existing legislation that a trust's beneficiaries (other than contingent beneficiaries) all be individuals and its contingent beneficiaries all be individuals, charities or public institutions, will continue to apply to *inter vivos* trusts but not to testamentary trusts.

This amendment applies after April 23, 1996.

Clause 37

Self-Supply of Real Property

ETA
191

The purpose of section 191 is to ensure that the GST applies to newly constructed or substantially renovated premises once they are rented or otherwise occupied as places of residences before being sold since the subsequent sales of those residences will generally be exempt as used housing. That section provides that, in these circumstances, the builder of a residential complex is treated as having sold and repurchased the complex. As a result, the builder is required to account for GST on the fair market value of the complex.

Subclause 37(1)

Exception for Communal Organizations

ETA
191(6.1)

New subsection 191(6.1) specifically excludes from the application of the self-supply rules certain religious communal organizations for which the *Income Tax Act* provides special treatment with respect to the businesses they carry on in support of their members. Typically, in these organizations, title to multiple-unit residential complexes is held by an incorporated entity. However, the residential complexes

are generally constructed by the members of these organizations for the personal use of the members.

This amendment is effective January 1, 1991.

Subclause 37(2)

Remote Work Sites

ETA
191(7)

Existing subsection 191(7) specifically excludes from the self-assessment rules under section 191 registrants who construct residential complexes at remote work sites for their employees where the employees could not reasonably be expected to establish and maintain a self-contained residence because of the remoteness of the work site.

Subsection 191(7) is amended to extend this exclusion to registrants who have constructed such residential complexes for their contractors sub-contractors, or employees thereof, or for individuals who are related to such employees, contractors or subcontractors.

This treatment complements the treatment available under the *Income Tax Act*, which provides for a deduction from employment income to a taxpayer for any expense incurred or allowance received for board and lodging at a remote work site where the taxpayer maintains a separate place of residence.

This amendment is effective as of January 1, 1991.

Clause 38

Subsidized Residential Complexes

ETA
191.1

Section 191 ensures that the GST applies to newly constructed or substantially renovated premises once they are rented or otherwise

occupied as places of residences before being sold, since the subsequent sales of those residences will generally be exempt as used housing. In these circumstances, the builder of a residential complex is treated as having sold and repurchased the complex. As a result, the builder is required to self-assess GST on the fair market value of the complex.

New section 191.1 provides for special self-supply rules for government-funded residential buildings designed to be occupied by individuals having special needs or limited financial resources, in recognition of the fact that it is often difficult to ascertain the "fair market value" of such buildings. This new provision ensures that the builder must account for an amount of tax that is at least equal to the total of all tax that was payable by the builder in respect of real property forming part of the complex or addition or in respect of improvements thereto. Where the builder is registered for the tax, the builder will have been entitled to claim input tax credits for these amounts so the net effect of section 191.1 will be to at least recapture the amount of those credits.

New section 191.1 generally applies after April 23, 1996. However, it does not apply if the construction or substantial renovation of a residential complex began on or before that day and is substantially completed within two years after that day where the builder, on or before that day, received government funding or has a reasonable expectation of receiving government funding in respect of the residential complex.

Clause 39

Redemption of Real Property

ETA
193(3)

Section 193 provides that, where a registrant makes a taxable sale of real property, the registrant may claim, at the time of the sale, an input tax credit for previously non-creditable or non-rebatable tax paid by the registrant in respect of the property.

New subsection 193(3) is consequential to the addition of new subsection 183(10.1), which deals with the situation where the original debtor has a right to redeem the property (see commentary on subclause 33(8)). New subsection 193(3) ensures that the input tax credit may not be claimed by the debtor upon the seizure or repossession of the property until the period during which the property may be redeemed has expired without that right being exercised. In the event that the period does so expire at a particular time, new paragraph 193(3)(*b*) deems the input tax credit of the debtor to be for the reporting period that includes that time.

Parallel amendments are made to section 257 in relation to property of a debtor that is a non-registrant (see commentary on clause 68).

This amendment is effective on April 24, 1996.

Clause 40

Capital Property Used in Supply of Financial Services

ETA
198

Under existing section 198, to the extent that a person that is not a financial institution uses capital property in the provision of financial services relating to the person's commercial activities, the property is treated as being used in those commercial activities. As a result, the person is not required to apportion inputs.

The amended section extends the treatment to persons that are financial institutions only because of new paragraph 149(1)(*c*) (see commentary on clause 11). However, they will be treated as using capital property in exempt activities to the extent it is used in activities related to credit cards or charge cards issued by them, or activities involving the granting of advances, loans or credit.

This amendment applies to the use of property in taxation years beginning after April 23, 1996.

Clause 40.1

Individual Beginning Use in Commercial Activities

ETA
208(2)

Input tax credits may not claimed in respect of real property to the extent that it is not for use in commercial activities. Furthermore, registrants who are individuals are not entitled to claim input tax credits in respect of real property that is primarily for the personal use or enjoyment of the registrant or a related individual. Subsection 208(2) is intended to enable a registrant to claim in input tax credit when increasing the use of such property in commercial activities, provided it is not primarily for the personal use or enjoyment of the registrant or a related individual. This is achieved by deeming the registrant to have acquired and paid tax in respect of the property.

This subsection was amended, effective October 1, 1992, to provide that the determination of the amount of tax that is deemed to have been paid by the registrant upon the change in use is based on the tax payable on the last acquisition of the property and improvements thereto. However, the wording changes also had the unintended effect of limiting the application of the provision to circumstances where the use of the property changed from being primarily personal use. A conversion from use in exempt business activities to use in commercial activities is no longer covered by the existing wording. To correct this, subsection 208(2) is amended, retroactive to October 1, 1992, to maintain its application to the latter case.

Clause 41

Rebate for Returned or Defective Goods

ETA
215.1

This section provides a rebate of tax to importers of goods in certain situations.

Subsection 215.1(1) Rebate for Returned Goods

Existing subsection 215.1(1) provides for a rebate of tax paid on goods imported on consignment or approval where the goods are exported within sixty days for return to the supplier without having been used or consumed in Canada except on a trial basis. Existing paragraph 215.1(1)(*c*) allows the rebate to be filed within four years after the tax was paid. Amended paragraph 215.1(1)(*c*) reduces the limitation period from four years to two years. This new limitation period is consistent with similar two-year limitation periods for abatements and refunds under the *Customs Act.*

Subsection 215.1(2) Rebate for Goods Damaged

Existing subsection 215.1(2) provides for a rebate of tax paid on goods imported under certain circumstances by an unregistered small supplier where an abatement or refund of the duties paid on the goods has been granted under the *Customs Act* because the goods were damaged, of inferior quality, defective, did not include the correct quantity or were not the goods ordered. Existing paragraph 215.1(2)(*d*) allows the rebate to be filed within four years after the tax was paid. Amended paragraph 215.1(2)(*d*) reduces the limitation period from four years to two years. This new limitation period is consistent with the current limitation period for abatements and refunds under the *Customs Act.*

Subsection 215.1(3) Rebate for Goods Not Subject to Duty

Existing subsection 215.1(3) provides for a rebate in the same circumstances (and subject to the same conditions) as set out in subsection 215.1(2) except that the goods in this case are not subject to duty. Existing paragraph 215.1(3)(*d*) allows the rebate to be filed within four years after the tax was paid. Amended paragraph 215.1(3)(*d*) reduces the limitation period from four years to two years.

These amendments apply after June 1996. However, the four-year limitation period will continue to apply where the tax was paid before July 1996.

Clause 41.1

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

ETA
216(5)

Subsection 216(5) provides that an appeal to the Tax Court of Canada from a determination of the tax status of goods (for purposes of Division III of Part IX) proceeds in a manner consistent with an appeal of an assessment under Division VII of the *Excise Tax Act*. This amendment is consequential on the renumbering of existing subsection 301(1) as subsection 301(1.1) under subclause 82(1).

The amendment applies to any appeal from a decision made under section 63 or 64 of the *Customs Act* in respect of a determination of tax status made after April 1996.

Clause 42

Tax on Imported Taxable Supplies

ETA
217

Division IV of Part IX applies tax to certain supplies made outside Canada, such as supplies of services and intangible personal property made to residents of Canada. It requires persons to self-assess and remit the tax. Section 217 contains definitions of terms that apply for purposes of Division IV.

Section 217 is amended by eliminating the definition "reporting period". The existing definition differs from that in subsection 123(1) only in that it permits non-registrants to have reporting periods that are calendar quarters for purposes of Division IV whereas they are assigned calendar month reporting periods for Division II purposes. The repeal of the definition "reporting period" in section 217 means that, for purposes of Division IV, non-registrants will have reporting periods determined under subsection 245(1) (i.e., calendar months). They are obliged to report and remit the self-assessed tax under Division IV within one month after the month in which it becomes

payable. It should be noted that the calendar month reporting period applies equally to non-registrants that are listed financial institutions due to the amendment to subsection 245(1) (see commentary on clause 55).

The amendments to the English and French versions of section 217 of the Act in subclauses 42(1) and (3) to (6) are consequential on the repeal of the definition "reporting period" in section 217.

Subclause 42(2) amends subparagraph 217(*a*)(iv) of the definition "imported taxable supply" in section 217 by adding a reference to a custodial or nominee service in respect of precious metals. The term "precious metal" is defined in subsection 123(1). As a result of this amendment, a resident of Canada that acquires such a service outside Canada, otherwise than for consumption, use or supply exclusively in commercial activities, is required to self-assess tax. Reference may also be made to the amendment to section 17 of Part V of Schedule VI zero-rating a custodial or nominee service in relation to precious metals when supplied in Canada to a non-resident person.

These amendments are effective January 1, 1997.

Clause 43

Preparation of Returns

ETA
219

Under section 219, each person liable to pay tax under Division IV of Part IX in respect of imported taxable supplies is required to file a return and account for the tax in that return.

The amendment to section 219 will allow a registrant to account for the Division IV tax becoming payable in a reporting period in the registrant’s return for that period under Division II. For non-registrants, however, the requirement that a special return be filed will remain, and the Division IV tax will have to be paid by the end of the month following the calendar month in which it becomes payable.

This amendment is effective January 1, 1997.

Clause 43.1

Collection of Tax

ETA
221(4)

Subsection 221(4) defines terms used in subsection 221(3) which absolves a carrier from having to collect tax on a supply of freight services in certain circumstances. Existing subsection 221(4) provides that the term "carrier" has the meaning assigned by Part VII of Schedule V. The subsection is amended to remove this reference to "carrier" since the latter term is no longer defined in that Part but in subsection 123(1) which applies to all of Part IX of the Act.

This amendment is effective January 1, 1991.

Clause 44

Remittance of Tax

ETA
225

Section 225 sets out the general rules for determining a person's net tax for a reporting period, including rules related to the claiming of input tax credits.

Subsection 225(3) Restriction

Subsection 225(3) ensures that there is no double counting of an amount that would reduce net tax for a reporting period. Subject to the special cases described in new paragraphs 225(3)(*a*) and (*b*), the amendment clarifies that once an amount has been "claimed" in a return, it cannot be claimed again, whether or not that amount was allowable as an input tax credit or deduction in the first return.

New paragraphs 225(3)(*a*) and (*b*) allow a person to claim an input tax credit a second time in certain cases. Paragraph 225(3)(*a*) allows a person to re-claim an input tax credit where the person was not entitled to make the previous claim because the documentation requirements of subsection 169(4) had not been met. Under paragraph 225(3)(*b*), where the Minister has not already disallowed the previous claim, the person claiming the input tax credit must notify the Minister that an error was made in making the previous claim. Where the error is not reported to the Minister at least three months before the time limited by subsection 298(1) for assessing the net tax for the period for which the amount was originally erroneously claimed, the person must also re-pay the input tax credit that was previously claimed and any applicable penalty and interest to the Receiver General.

The amendments to subsection 225(3) come into force on April 23, 1996.

Subsection 225(3.1) Restriction

This subsection provides that an amount otherwise qualifying in a particular period as an input tax credit may not be claimed if, before the end of the period, the amount was refunded or was remitted to the registrant under some other provision or pursuant to any other Act of Parliament. This rule replaces previous paragraph 225(3)(*b*) with the only difference being that the reference to the amount having previously become "refundable" is replaced with the reference to the amount having previously been "refunded". This removes a circularity problem that existed vis-a-vis paragraph 263(*b*) which provides that an amount is not refundable where it is recoverable by way of an input tax credit.

New subsection 225(3.1) comes into force on April 23, 1996.

Subsection 225(4) Limitation

Existing subsection 225(4) allows all registrants to claim an input tax credit within four years after the due date of the return for the reporting period in which the relevant tax became payable. The amended subsection sets out separate revised limitation periods for registrants that are not "specified persons", as defined by new

subsection 225(4.1), and registrants that are "specified persons". As well, it introduces new rules that apply to both types of registrants.

The amended subsection provides that, for registrants that are not "specified persons", the input tax credit generally must be claimed on or before the due date of the return for the last reporting period of the registrant that ends within four years after the end of the period in which the relevant tax becomes payable.

For registrants that are "specified persons" during the reporting period in which the relevant tax becomes payable, the general rule is that the input tax credit in respect of that tax must be claimed on or before the due date of the return for the last reporting period of the registrant ending within two years after the fiscal year that includes the reporting period in which the tax becomes payable.

There are two exceptions to this general rule for specified persons. First, where a supplier does not charge the tax in the specified person’s reporting period in which it becomes payable and the specified person pays that tax after that period and before claiming an input tax credit for it, the specified person will be allowed to claim the input tax credit in a return filed on or before the due date of the return for the person’s last reporting period that ends within two years after the end of the fiscal year in which the tax is charged. However, the credit generally cannot be claimed after the expiration of the general four-year period for claiming input tax credits allowed to non-specified persons. Second, where an input tax credit of a specified person is claimed in error by another person within the two-year period, the error may be corrected within the general four-year period provided to non-specified persons.

Finally, for all registrants, new paragraph 225(4)(*c*) provides that where a registrant’s supplier has failed to charge tax before the expiration of the four-year period commencing immediately after the period in which the tax became payable, the registrant is permitted to claim the input tax credit in the return for the period in which the tax is paid, provided that the supplier discloses in writing to the registrant that the Minister has assessed the supplier for that tax and the registrant pays that tax to the supplier before the input tax credit is claimed by the registrant.

Generally, amended 225(4) applies to all claims for input tax credits, other than input tax credits for reporting periods ending before July 1996 that are claimed in a return under Division V of Part IX of the Act filed before July 1998. However, the extended period for claiming input tax credits in new paragraph 225(4)(*c*) applies to all input tax credit claims described in that paragraph.

Subsection 225(4.1) Meaning of "specified person"

New subsection 225(4.1) defines "specified person" for the purposes of subsection 225(4). A person is a "specified person" during a reporting period if the person is a listed financial institution described in any of subparagraphs 149(1)(*a*)(i) to (x) during the period. In addition, a person is a "specified person" if their threshold amounts as determined under subsection 249(1) exceed $6 million in both the person's fiscal year that includes that period and the person's preceding fiscal year except if the person's supplies (other than supplies of financial services) in either of the person's two immediately preceding fiscal years are all or substantially all taxable supplies. Charities (within the meaning of amended subsection 123(1) which excludes municipalities, hospital authorities, school authorities, public colleges and universities) are excluded from the last test.

New subsection 225(4.1) comes into force on July 1, 1996.

Clause 45

Net Tax Calculation for Charities

ETA
225.1

New section 225.1 provides for a new simplified accounting method for charities to use in determining their net tax remittable. It should be noted that the definition "charity" in subsection 123(1) is amended, concurrent with the introduction of this section. The term "charity" will not include a "public institution", as newly defined in subsection 123(1). Consequently, this new method for determining net tax does not apply to persons that, although registered charities for income tax purposes, fall into the category of "public institution"

for GST purposes (see commentary on the definitions "charity" and "public institution" under clause 1).

Under the method set out in new section 225.1, charities registered for GST purposes will continue to charge and collect tax on all their taxable supplies but will remit only a portion of the tax collected on their leases, rentals and sales of non-capital property and services. This method will simplify compliance for charities as it will remove the need for them to apportion their inputs on the basis of taxable and exempt supplies. They will not claim input tax credits on their non-capital inputs nor on capital or real property that is not used primarily in commercial activities; but they will be entitled to claim a 50-per-cent rebate of tax paid on all those inputs. They will continue to claim full input tax credits on their capital and real property that is used primarily in commercial activities.

Paragraph 225.1(1) Meaning of "specified supply"

New subsection 225.1(1) defines a "specified supply", which is a supply in respect of which a GST-registered charity following the new simplified accounting method will charge tax at a rate of seven per cent but remit only 60 per cent of that tax. A specified supply is defined as a taxable supply other than:

- a sale of real property or capital property;

- a deemed supply as a result of the receipt of an amount under a warranty or of a rebate from a manufacturer or other vendor;

- a deemed supply of seized personal property;

- a deemed supply of property appropriated for the benefit of a member of the charity; and

- a supply to an employee of the charity that gives rise to a taxable benefit for income tax purposes.

Under this method, charities will not be required to account for tax in respect of amounts they receive under warranty claims or rebates from manufacturers or other vendors, nor will they have to account for tax if, as creditors, they seize personal property and take it for their own use.

Tax will be accounted for on their other supplies pursuant to the formula set out in new subsection 225.1(2).

Subsection 225.1(2) Net Tax

New subsection 225.1(2) sets out the formula for determining a charity's net tax for a reporting period under the simplified accounting method.

The amounts the charity must add in determining its net tax remittance in this manner are:

- 60 per cent of tax collectible on specified supplies as defined in new subsection 225.1(1), for example, taxable rentals and sales of services or non-capital property;

- the total seven-per-cent tax collectible on sales of capital and real property used primarily in commercial activities including deemed taxable sales of capital and real property;

- any tax deemed payable on property appropriated to or for the benefit of a member or relative of a member of the charity;

- any tax deemed payable on goods or services provided to an employee of the charity where that taxable supply gives rise to a taxable benefit for income tax purposes;

- any tax payable on supplies of goods the charity makes as agent on behalf of a principal with whom the charity has made an election to account for the tax on the supplies under new subsection 177(1.1);

- any amount required to be taken into account as tax as a result of the recovery of a bad debt relating to a taxable sale of real property or capital property by the charity;

- the total tax adjustments received in the period on acquisitions of real property or capital property for which the charity has previously claimed input tax credits; and

- any amount carried forward from a designated (dormant) reporting period and required under subsection 238.1(4) to be added to net tax.

The amounts that are deductible in determining the net tax remittance under this method for the reporting period are:

- input tax credits for purchases of, or improvements to, real property and capital property claimed for that reporting period;

- 60 per cent of the total of the tax adjustments given in the period to recipients of specified supplies made by the charity and of any rebates credited in the period by the charity to certain non-residents or to recipients of certain supplies relating to foreign conventions;

- any tax adjustment given, tax written off as a bad debt, or new housing rebate credited during the period in respect of the sale of real property or capital property by the charity; and

- any input tax credit that the charity was entitled to claim and is carried forward from a reporting period in respect of which the charity was not required to use this method in determining its net tax (i.e., a reporting period beginning before 1997 or a reporting period during which an election under subsection (7) by the charity was in effect).

Subsection 225.1(3) Restriction

New subsection 225.1(3) ensures there is no double inclusion of amounts required to be added in determining net tax.

Subsection 225.1(4) Restriction

New subsection 225.1(4) precludes a GST-registered charity from including any amount in the total deductions from net tax for a reporting period if the amount was claimed or included in determining net tax for a previous reporting period unless the charity was not entitled to claim the amount for that preceding period only because the charity did not satisfy the documentation requirements under subsection 169(4) and, where the previous claim was not already disallowed, the charity notifies Revenue Canada of the error in the previous return. Where the charity does not report the error at

least three months before the limitation period for assessing the preceding period expires, the charity must re-pay the credit previously claimed along with any applicable penalty and interest.

Subsection 225.1(5) Application

New subsection 225.1(5) provides that sections 231 to 236 do not apply to a GST-registered charity for purposes of determining the net tax of the charity under the new simplified method, except as otherwise provided in section 225.1.

Section 231 provides for bad-debt relief. The net tax formula in section 225.1 denies bad-debt relief to charities except with respect to their sales of real property and capital property on which they collect tax. To simplify the rules for charities, bad-debt relief on other supplies is reflected in the 60-per-cent remittance rate applicable to those supplies.

Similarly, under the formula in subsection 225.1(2), charities are restricted to claiming 60 per cent of the amount of their adjustments of tax under section 232 with respect to their taxable supplies of non-capital goods and services since they are required under this formula to remit only 60 per cent of the tax collectible on those supplies. Charities will be entitled to the full deduction under section 232 with respect to sales of real property or capital property.

The treatment of patronage dividends as set out in section 233 does not apply to charities following the method set out in section 225.1.

The net-tax formula in subsection 225.1(2) provides for deductions from net tax relating to assignments of the new housing rebate. However, with respect to assignments of non-resident rebates, charities will be entitled under this formula to deductions of only 60 per cent of any rebates paid or credited to the non-residents as provided in subsection 234(2) since the charities will be required to remit only 60 per cent of the tax on the supplies to those non-residents.

The rules relating to leased passenger vehicles in section 235 do not apply to registered charities using this method of determining net tax.

Finally, subsection 225.1(5) explicitly provides that section 236, which requires a recapture of input tax credits in respect of meals and entertainment, does not apply to a charity following the new simplified accounting method. This provision is for greater certainty only since, under the streamlined method of accounting, charities are not entitled to claim input tax credits in respect of meals, entertainment or allowances.

Subsection 225.1(6) Election

Subsection 225.1(6) allows charities that make supplies outside Canada or zero-rated supplies in the ordinary course of business and charities whose supplies are all or substantially all taxable supplies to elect not to use the method for determining net tax set out in new section 225.1. For these charities, the value of input tax credits in respect of all inputs attributable to their taxable (including zero-rated) supplies might exceed the administrative costs of apportioning inputs between taxable supplies and any exempt supplies they may have.

Any charity that opts out of the simplified accounting method under new section 225.1 will not be entitled to use any other streamlined accounting method prescribed under section 227, except for the streamlined input tax credit calculation, which smaller charities may use pursuant to new subsection 225.1(10).

Once a charity that is eligible to opt out of using the method under section 225.1 does so, it will not subsequently be forced to use the method if its circumstances change, such as if it were no longer to make zero-rated supplies or if it were to begin to make a greater percentage of exempt supplies. Therefore, once a charity has made this election, it does not have to keep track of whether it is still making supplies outside Canada or zero-rated supplies in the course of its business or the extent to which it still makes taxable supplies. The charity will continue following the general rules under section 225 until the charity chooses to revoke its election.

Subsection 225.1(7) Form and Content of Election

Subsection 225.1(7) sets out the rules for how and when an election by a charity under subsection (6) is to be filed.

Subsection 225.1(8) Revocation

Subsection 225.1(8) allows a charity to revoke an election made under subsection (6) which it may wish to do should the nature of the charity's activities change such that it no longer makes zero-rated supplies or it makes a greater percentage of exempt supplies. However, a charity cannot revoke an election if it has been in effect for less than one year.

Subsection 225.1(9) Restriction on Input Tax Credits

New subsection 225.1(9) provides that, where a charity was restricted from claiming an input tax credit or a deduction under subsection 232(3) or 234(2) while following the simplified method of determining net tax under subsection 225.1(2), the charity cannot subsequently claim the credit or deduction after it elects out of the method.

Subsection 225.1(10) Streamlined Input Tax Credits

Subsection 225.1(10) allows a charity that meets the test of being a prescribed person for purposes of subsection 259(12) to use the streamlined input tax credit (ITC) calculation, regardless of which method of determining net tax it is following.

A prescribed charity is one whose total taxable supplies did not exceed $500,000 in either its preceding fiscal year or in its preceding quarter (if the election to use the streamlined ITC method becomes effective after the first quarter in its current year). Furthermore, except for charities that had made this election effective for fiscal years beginning before July 1993, there is also a purchase threshold test they must meet. The charity's total purchases of taxable property and services (not including zero-rated or exempt purchases) in the preceding fiscal year must not have exceeded $2 million and it must be reasonable to expect that such purchases in the current year will not exceed $2 million.

Where an eligible charity chooses to use the streamlined ITC method, any input tax credit in respect of personal property or services that the charity is entitled to claim may be determined by applying a factor of 7/107 to the cost of the property or service, including provincial sales taxes, gratuities, late-payment penalties and duties.

New section 225.1 applies in determining the net tax of a charity for reporting periods of the charity beginning after 1996.

Clause 46

Election for Streamlined Accounting

ETA
227

Section 227 allows eligible registrants to elect to use a streamlined accounting method to determine net tax for a reporting period.

Subclause 46(1)

Election for Streamlined Accounting – Charities

ETA
227(1)

The amendment to subsection 227(1) precludes charities from making an election to use a streamlined accounting method set out in the *Streamlined Accounting (GST) Regulations* since a new simplified method of determining net tax for charities is provided in new section 225.1 (see commentary on clause 45). Any election under section 227 previously made by a charity ceases to have effect immediately before its first reporting period beginning after 1996. At that time, the charity will automatically switch to the new simplified method unless it qualifies to elect out of using that method and does so. Even then, it will not be permitted to use any other streamlined accounting method except the streamlined input tax credit calculation if it is eligible.

The amendment applies for purposes of determining the net tax of a charity for reporting periods beginning after 1996.

Subclause 46(2)

Application

ETA
227(6)

Existing section 227 is amended to add subsection 227(6), which provides that, for purposes of determining net tax by the methods set out in the *Streamlined Accounting (GST) Regulations*, sections 231 to 236 do not apply except as otherwise provided in those Regulations.

These sections contain rules for adding or deducting various amounts in determining net tax. This amendment is made for clarification purposes only and applies as of January 1, 1991, the implementation date of the streamlined accounting methods.

Clause 47

Calculation, Remittance and Refund of Tax

ETA
228

Section 228 deals with the requirement to calculate net tax in a return. In addition, this section deals with remittances and refunds of net tax.

Subclause 47(1)

Tax on Purchase of Real Property

ETA
228(4)

Subsection 228(4) deals with tax payable on the purchase of real property from a person who, under subsection 221(2), is not required to collect tax on the sale. Under the existing legislation, the purchaser is required to remit any tax payable on the purchase directly to the Receiver General and to file with the Minister of National Revenue a special return to account for the tax.

As of January 1, 1997, registrants purchasing property under these circumstances will not have to file a special return provided the property has been purchased for use or supply primarily in the course of the registrant's commercial activities. In these cases, tax will be reported in the registrant's regular return for the reporting period in which the tax became payable. The registrant will pay that tax not later than the filing-due date of that return. In any other case – i.e., where the purchaser is not a registrant or where the property is not acquired for supply or use primarily in commercial activities of the purchaser – the requirement that a special return be filed will remain, and the tax will have to be paid by the end of the month following the calendar month in which it becomes payable.

Further minor wording changes are made, effective on April 23, 1996, to specify the circumstances in which subsection 228(4) applies, thus obviating the need for the cross-reference to subsection 221(2) and the exclusion for deemed supplies. This change is made for clarification purposes only.

Subclause 47(2)

Set-Offs

ETA
228(6) and (7)

Subsection 228(6) provides for a mechanism to allow a person to offset any tax remittable by any net tax refund or rebate claimed by that person in another return. This prevents the situation where a person claiming a refund or rebate on one return or application is nonetheless required to remit tax reported on another return and wait until the first return or application has been processed before receiving the refund or credit. Subsection 228(7) provides authority for the tax payable or remittable at any time by a person to be offset by the amount of any refund or rebate to which a closely related person is entitled. The amendments to subsections 228(6) and (7) extend the application of the offset provisions to tax payable under Division IV of Part IX of the Act.

The wording of these subsections has also been amended to reflect the changes to section 219 and subsection 228(4), which remove, for most registrants, the requirement that special returns be filed to report

the tax remittable under subsection 228(4) or Division IV (see also commentary on clause 43).

The amendments to subsections 228(6) and (7) are effective on April 23, 1996.

Clause 48

Overpayment

ETA
230

Section 230 requires the Minister of National Revenue to pay a refund to a person of any amount paid on account of the person's net tax for a reporting period that exceeds the actual net tax remittable for the period.

Subsection 230(1) Refund of Overpayment

Existing subsection 230(1) requires the Minister to refund an overpayment for a reporting period with all due dispatch after the return for the period is filed. Amended subsection 230(1) clarifies that such an overpayment may arise from instalment payments or from other payments made on account of net tax. The amended provision also confirms that the refund must be claimed in a return for the reporting period.

Subsection 230(2) Restriction

Subsection 230(2) prohibits the Minister from refunding an overpayment to a person unless the person is up to date in filing GST returns. The change to subsection 230(2) is consequential to the changes to subsection 230(1) and reflects the revised wording of that subsection.

Subsection 230(3) Interest on Refund

Existing subsection 230(3) requires the Minister to pay interest on a refund from 21 days after the later of the day the person filed the return in which the refund was claimed and the day the person files

all outstanding GST returns. The change to subsection 230(3) is consequential to the changes to subsection 230(1) and reflects the revised wording of that subsection.

These amendments take effect on April 23, 1996 and apply to all payments made by the Minister on or after that day.

Clause 49

Special GST Credit for Certified Institutions

ETA
230.2(2)(*d*)

Existing section 230.2 provides a special GST credit to registered charities and not-for-profit organizations that were certified under the former federal sales tax system pursuant to Part XIV of Schedule III to the Act. Under the GST, certified institutions collect tax on their taxable supplies and are entitled to input tax credits in respect of their purchases. In determining the amount of tax remittable to the government, however, section 230.2 allows certified institutions to deduct a portion of the tax collectible during certain periods on their sales of manufactured goods. The section provides for a gradual decrease in the deductible portion over the period 1991 to 1994.

Amended paragraph 230.2(2)(*d*) extends the special GST credit for one additional year, until December 31, 1995. The amendment allows registered certified institutions to continue to claim a special credit equal to 25 per cent of the GST that became collectible or was collected by them in 1995 on specified sales.

The amendment was announced in the Department of Finance Press Release of December 9, 1994 and is effective on January 1, 1995.

Clause 50

Bad Debts

ETA
231

Subsection 231(1) Bad Debts

Currently, where an account receivable becomes a bad debt, the vendor may claim bad-debt relief if the bad debt is written off in the businesses' books. Subsection 231(1) provides that the vendor may claim a deduction equal to the tax fraction of the bad debt written off.

To clarify the amount that the vendor may claim, a formula is added to subsection 231(1). Specifically, the deduction is equal to the tax payable in respect of the supply multiplied by the ratio of the total amount of the bad debt written off, including GST and applicable provincial taxes, to the total amount payable for the supply including GST and applicable provincial taxes.

The new formula applies for the purpose of determining the net tax for any reporting period for which a return is filed after April 23, 1996.

Subsection 231(2) Closely Related Groups

Under the existing legislation, a deduction for bad debts written off in respect of a taxable supply is available to the person who made the supply or to a listed financial institution that is a member of a closely related group of which the supplier is a member and that purchased the receivable at face value on a non-recourse basis. Amended subsection 231(2) extends this rule to include persons that are not "listed financial institutions" but are financial institutions because of paragraph 149(1)(*b*) or new paragraph 149(1)(*c*).

This amendment applies to accounts receivable written off after April 23, 1996.

Subsection 231(3) Recovery of Bad Debt

Under the existing legislation, where a person has claimed a deduction from net tax in respect of a bad debt, and the debt is subsequently recovered, subsection 231(3) requires that an amount equal to the tax fraction of the amount recovered be added to the person's net tax.

To clarify the amount that is recoverable, a formula is added to the subsection. Specifically, the amount required to be added is equal to the bad debt recovered by the person in respect of a supply multiplied by the ratio of the tax payable in respect of the supply to the total amount paid or payable on the supply, including GST and applicable provincial taxes.

This amendment applies for the purpose of determining the net tax for any reporting period for which a return is filed after April 23, 1996.

Subsection 231(4) Limitation

Existing section 231 permits a person to claim the bad debt deduction in determining the person's net tax for any reporting period that ends within four years after the end of the reporting period in which the bad debt was written off. Under new subsection 231(4), the deduction must be claimed in a return filed within four years after the due date of the return for the reporting period in which the bad debt was written off.

This amendment applies for the purpose of determining the net tax for any reporting period for which a return is filed after April 23, 1996.

Clause 51

Refunds and Tax Adjustments

ETA
232(1)

Existing subsection 232(1) authorizes a supplier who has erroneously collected an amount as tax from a customer to refund it to the customer or provide the customer with a credit. Where the erroneous amount has been charged but not collected, the supplier may adjust the amount of tax charged. Under the existing rules, the refund, credit or adjustment may be made up to four years after the end of the reporting period in which the supplier charged or collected the amount in error. Amended subsection 232(1) reduces the limitation period for making the refund, credit or adjustment to two years from the day the amount was charged or collected.

This amendment applies to amounts charged or collected as tax after June 1996. This amendment also applies to amounts charged or collected as tax before July 1996 unless the amounts are adjusted, refunded or credited on or before June 30, 1998.

Clause 52

Deduction for Rebate

ETA
234(1)

The amendment adding the reference to subsection 252.41(2) in subsection 234(1) is consequential to the introduction of new section 252.41 (see commentary on clause 61). That section provides for a rebate to a non-resident person in respect of installation services acquired in Canada in certain circumstances. Under amended subsection 234(1), a registered supplier of an installation service who has paid or credited an amount on account of a rebate to a non-resident person in accordance with subsection 252.41(2) may deduct the amount in determining the installer's net tax.

This measure applies after April 23, 1996.

Clause 53

Food, Beverages and Entertainment

ETA
236(2)

Section 236 provides for a recapture of 50 per cent of the total of all input tax credits that a registrant is entitled to claim in a fiscal year in respect of meals and entertainment. This ensures that the GST treatment of meals and entertainment expenses is consistent with the income tax rules, which allow a registrant to deduct only 50 per cent of an amount paid or payable in respect of entertainment services, food or beverages, in determining income.

Subsection 236(2) provides that this rule does not apply to charities, which are defined in existing subsection 123(1) as entities that are registered charities for purposes of the *Income Tax Act*. The subsection is amended as a consequence of the amendment to the definition "charity" in subsection 123(1) (see commentary on the definition "charity" under clause 1). Persons that meet the new definition of "public institution" in subsection 123(1), such as school authorities, hospital authorities, universities and public colleges that are registered charities for income tax purposes, will not be considered "charities" for GST purposes. Accordingly, subsection 236(2) is amended to refer to public institutions so that they will continue to be excluded from the rules in section 236.

This amendment applies to supplies of food, beverages or entertainment that a registrant receives, and allowances paid by a registrant, after 1996.

Clause 54

Voluntary Registration

ETA
240

Section 240 sets out the registration requirements for purposes of the tax.

Subclause 54(1)

Registration Permitted

ETA
240(3)

Subsection 240(3) permits persons engaged in a commercial activity in Canada and certain other specified persons to apply to become registered for purposes of the GST. It enables a non-resident person who, in the ordinary course of business, solicits orders for the delivery of goods in Canada to apply for registration even though those activities may not constitute the carrying on of a business in Canada.

The amendment extends voluntary registration to non-residents who supply goods for export to, or delivery in, Canada. It also allows voluntary registration to non-residents who supply services to be performed in Canada. Further, it permits non-residents to register where they supply intangible personal property that is to be used in Canada, or that relates either to real or tangible personal property ordinary situated in Canada or to services to be performed in Canada.

This amendment applies after April 23, 1996.

Subclause 54(2)

Security

ETA
240(6) and (7)

Subsection 240(6) provides that, in the case of an application for registration by a non-resident person who carries on a commercial activity in Canada but does not have a "permanent establishment" in Canada, security has to be posted and maintained by the applicant in an amount and form satisfactory to the Minister that the person will collect and remit tax as required under Division V of Part IX.

The term "permanent establishment" in respect of a particular person is defined in subsection 123(1) as including not only a fixed place of business of the particular person, but also a fixed place of another person who acts in Canada on behalf of the particular person. Therefore, the particular person may be exempted from the application of subsection 240(6) even though the person does not have a fixed place of business in Canada.

This amendment extends the security requirements to all non-residents who are registered or are required to be registered and who do not make supplies through their own fixed place of business in Canada.

Subsection 240(6) is also amended to provide the Minister of National Revenue with the authority to require an amount of security from a person to cover all amounts payable or remittable by the person under Part IX.

New subsection 240(7) provides the Minister of National Revenue with the authority to retain, out of any GST refund or rebate to which a person is otherwise entitled, any amount of security that the person fails to give or maintain as required under subsection 240(6).

These amendments are effective on Royal Assent.

Clause 55

Reporting Period of Non-Registrant

ETA
245

Section 245 sets out the general rules for determining a registrant's reporting period for which GST returns are required to be filed.

Subclause 55(1)

ETA
245(1)

Existing subsection 245(1) provides that the reporting period of a person who is not a registrant is a calendar month. The only exception is for listed financial institutions, whose reporting periods are fiscal years. To provide uniform treatment for all non-registrants, this exception is eliminated.

This amendment applies to fiscal years of a listed financial institution beginning after April 23, 1996.

Subclauses 55(2) and (3)

ETA
245(2)(*a*)(ii)

Subsection 245(2) establishes the reporting periods for which GST returns are required to be filed by registrants.

The reporting periods that are deemed, under subsection 251(1), to be separate reporting periods upon becoming a registrant are ignored for the purposes of the rules in section 245. The amendment to the preamble to subsection 245(2) and to subparagraph 245(2)(*a*)(ii) clarifies that periods that are deemed to be separate periods by virtue of any of sections 265 to 267 dealing with trusts, bankruptcies and receiverships are also ignored.

These amendments apply after 1992.

Subclauses 55(4) to (8)

ETA
245(2)(*a*)(iii) and (*b*) to (*d*)

The amendment adding subparagraph 245(2)(*a*)(iii) ensures that charities (as newly defined in subsection 123(1)) are annual filers for GST purposes unless they elect to file quarterly or monthly. This change applies to fiscal years beginning after 1996.

New subparagraph 245(2)(*a*)(iv) replaces existing paragraph 245(2)(*c*), which is repealed. Paragraphs 245(2)(*b*) and (*d*) are amended as a consequence.

The amendment to subparagraph 245(2)(*b*)(i) ensures that a charity's reporting period will no longer depend on the amount of taxable supplies made by it in the preceding year.

These changes apply to fiscal years beginning after 1996.

Clause 56

Election for Fiscal Quarters

ETA
247

Section 247 entitles any person whose revenue in a fiscal year from taxable supplies does not exceed $6 million to elect to have fiscal quarters as reporting periods for purposes of filing GST returns in the following fiscal year. The amendments to section 247 ensure that charities (as newly defined in subsection 123(1)) are entitled to elect to file quarterly and to maintain that filing period, regardless of the value of their yearly taxable supplies.

These amendments apply to fiscal years of charities beginning after 1996.

The section is also amended, as of April 23, 1996, to clarify that persons who become registrants in a fiscal year can make the election, if they satisfy the threshold test, as of the day they become a

registrant. Note that subsection 251(1) treats that day as the first day of the person's first reporting period.

Clause 57

Election for Fiscal Years

ETA
248

Under existing section 248, a person may elect to file GST returns annually, generally where the total consideration becoming due for taxable supplies made by the person does not exceed $500,000 during the preceding year. The amendments to section 248 ensure that charities (as newly defined in subsection 123(1)) are entitled to elect, as of the first day of a fiscal year, to file annually, and to maintain that filing period, regardless of the value of their taxable supplies during the preceding year. This change applies to fiscal years beginning after 1996.

Subsection 248(1) is also amended to clarify that the election under that subsection is available only if the person is a registrant. This amendment applies to fiscal years beginning after March 31, 1994, the date as of which the subsection was last amended.

Clause 58

Non-Resident Rebate in Respect of Exported Goods

ETA
252(1)(*a*)

Paragraph 252(1)(*a*) excludes purchases of used specified tangible personal property from eligibility for non-resident rebates under section 252. This paragraph is repealed as a consequence of the elimination of special rules for used specified tangible personal property in section 176 (see commentary on clause 25). As a result, a non-resident person will be able to claim a rebate for tax on purchases made in Canada of specified tangible personal property that

is exported or taken by the person out of Canada within 60 days of the day it is delivered to that person.

This amendment applies to property acquired after April 23, 1996.

Clause 59

Rebate of Tax on Accommodation Supplied to Non-Residents

ETA
252.1

Existing section 252.1 provides a rebate of tax paid on short-term accommodation that is made available to non-resident consumers. The amendments to the section extend the rebate to non-resident businesses.

Subclause 59(1)

Definitions

ETA
252.1

Subsection 252.1(1) is amended by deleting the definition "short-term accommodation". That definition is amended and moved to subsection 123(1) (see commentary on the amended definition under clause 1).

This amendment is effective January 1, 1991.

Subclause 59(2)

Accommodation Rebate to Non-Resident Persons

ETA
252.1(2)

Existing subsection 252.1(2) provides for rebates to non-resident consumers for tax paid on short-term accommodation. Under the

existing legislation, a business cannot claim the rebate for employees travelling on business.

The amendment to paragraph 252.1(2)(*b*) removes the restriction that the accommodation be acquired otherwise than for use in the course of a business. Therefore the rebate is available where accommodation is made available to a non-resident proprietor or an employee travelling on business.

The amendment to paragraph 252.1(2)(*c*) replaces the word "consumer" with the word "individual" to ensure that the rebate is available where the accommodation is made available to a proprietor acquiring it in the course of his or her business. However, as under the existing provision, no rebate is available where the accommodation is acquired for supply in the ordinary course of a business (e.g., by a tour operator selling tour packages in Canada). The marginal note for subsection 252.1(2) has been modified to reflect the intent of the amended subsection.

This amendment applies to any rebate for which an application is received by the Minister of National Revenue after April 23, 1996.

Subclause 59(3)

Rebate for Unregistered Non-Resident Tour Operators

ETA
252.1(3)(*d*)

Subsection 252.1(3) entitles an unregistered non-resident tour operator to a rebate in respect of short-term accommodation that the operator acquires and resells to non-resident persons at a place outside of Canada at which the tour operator or the operator’s agent is conducting business. The existing subsection provides that a rebate may be claimed by an unregistered tour operator only to the extent that the accommodation is ultimately made available to a non-resident consumer. The amendment to paragraph 252.1(3)(*d*) ensures that the tour operator may claim the rebate to the extent the accommodation is made available to a non-resident individual, including, for example, where a non-resident business acquires accommodation to be made available to a non-resident employee.

This amendment applies to any rebate for which an application is received by the Minister of National Revenue after April 23, 1996.

Subclauses 59(4) and (5)

Calculation of Rebate for Accommodation Only

ETA
252.1(4)

This subsection provides a simplified method that non-resident consumers eligible for a rebate under subsection 252.1(2) in respect of short-term accommodation that is not part of a tour package may use to calculate that rebate. They can claim $5 per night instead of claiming the actual tax paid in respect of the short-term accommodation. The amendment ensures that this method of calculating the rebate is not available to businesses that acquire the accommodation for employees travelling on business. The rebate claimed in respect of such accommodation is to be calculated by the business based on the actual tax paid on the supply of the short-term accommodation.

The reference in subsection 252.1(4) of the French version of the Act to a consumer to whom the accommodation is made available is replaced by a reference to an individual. This addresses situations where the accommodation is not acquired by the individual but by an organization, such as a club, for the benefit of the individual but otherwise than for use in a business of the organization.

These amendments apply to any rebate for which an application is received by the Minister of National Revenue after April 23, 1996.

Subclauses 59(6) and (7)

Tax in Respect of Tour Package

ETA
252.1(5) of the French Version

Paragraphs 252.1(5)(*a*) and (*b*) of the French version of the Act refer to accommodation made available to a consumer. The reference to consumer is replaced by a reference to an individual to reflect the

change allowing a rebate to be paid to a non-resident person that is not an individual and that acquires accommodation for use by a non-resident individual.

This amendment applies to any rebate for which an application is received by the Minister of National Revenue after April 23, 1996.

Subclause 59(8)

Calculation of Accommodation Rebate in Respect of a Tour Package

ETA
252.1(5)(*b*)

Subsection 252.1(5) sets out the rules for calculating a rebate in respect of short-term accommodation included in a tour package. The amendment to the description of C in the formula set out in paragraph 252.1(5)(*b*) replaces references to "consumer" with references to "individual" since amended subsection 252.1(2) extends the rebate to cases where accommodation is made available to a non-resident individual travelling on business.

This amendment applies to any rebate for which an application is received by the Minister of National Revenue after April 23, 1996.

Subclause 59(9)

Multiple Supplies of Accommodation for the Same Night

ETA
252.1(6) and (7)

Existing subsections 252.1(6) and (7) provide that a person may not claim a rebate calculated on the basis of $5 per night for more than one supply of short-term accommodation from the same supplier for any given night. The amendments to subsection (6) clarify that this provision is applicable only in respect of accommodation acquired by a consumer.

The amendments to subsection (7) provide that the limitation on the use of the $5 per night formula in relation to accommodation included in a tour package does not apply to businesses, which can

claim more than one rebate on that basis for accommodation acquired from the same supplier for the same night.

This amendment applies to any rebate for which an application is received by the Minister of National Revenue after April 23, 1996.

Subclauses 59(10) and (11)

Deduction for Rebate Credited by a Registrant

ETA
252.1(8)(*a*) and 252.1(8)(*d*)(ii)(A) of the French Version

Section 252.1 provides that a supplier of short-term accommodation may claim a deduction from net tax equal to a rebate otherwise payable under subsection 252.1(2) or (3) to a customer. This, in many cases, relieves non-resident tour operators and individuals of having to file applications in order to obtain the benefit of the rebates.

The amendment to paragraph 252.1(8)(*a*) ensures that the deduction may be claimed where the non-resident recipient is not a consumer, in accordance with the extension of the rebate to businesses. Accordingly, subclause 59(11) amends the French version of the provision to replace a reference to a consumer by a reference to an individual.

These amendments apply to any rebate for which an application is received by the Minister of National Revenue after April 23, 1996.

Clause 60

Non-Resident Rebate for Short-Term Accommodation

ETA
252.2

Section 252.2 sets out restrictions on the claiming of rebates under section 252 or subsection 252.1(2) or (3).

Subclause 60(1)

General Restrictions on Rebate Claims

ETA
252.2(*d*.1) and (*e*)

Section 252.2 imposes certain restrictions on the claiming of rebates by non-resident persons for tax paid on exported goods and on certain short-term accommodation acquired by them while visiting Canada.

The amendment provides that a single application must be in respect of at least $200 of taxable (other than zero-rated) purchases. (The previous threshold was $7 of GST or $100 of purchases.) It also adds a new requirement that each receipt filed in support of the application be for taxable (other than zero-rated) purchases of at least $50.

These changes apply to rebate applications received by the Minister of National Revenue after June 1996.

Subclause 60(2)

Rebates for Short-Term Accommodation

ETA
252.2(*g*)

Existing paragraph 252.2(*g*) limits a rebate of tax paid on short-term accommodation included in a tour package to $75 where the application for the rebate is based on the $5-per-night formula. The paragraph is amended to provide that, for rebates claimed by businesses, the $75 limit applies to each individual for whom the claim is made.

This amendment applies to rebate applications received by the Minister of National Revenue after April 23, 1996.

Clause 61

Non-Resident Rebate Respecting Installation Services

ETA
252.41

New section 252.41 provides for a rebate to be paid in certain specified circumstances to a non-resident person who is not registered for GST purposes. The rebate is in respect of tax paid by the non-resident on the service of installing in Canada tangible personal property.

To qualify for the rebate, subsection 252.41(1) requires that tangible personal property be supplied on an installed basis by an unregistered non-resident person to a registered person. Also, the non-resident person who supplies the property or another unregistered non-resident person must be the recipient of a taxable supply in Canada of installing the tangible personal property in real property located in Canada for the use of the registered recipient of the tangible personal property.

For example, if a registered person purchased a generator from a non-resident supplier who was responsible for the installation of the generator in real property in Canada but who entered into an agreement with another registered person to perform the installation, the non-resident would be eligible for a rebate of GST paid on the installation service. The rebate is also available where the unregistered non-resident supplier of the tangible personal property acquires the installation service from an unregistered non-resident who in turn hires a registered installer to perform the installation service in Canada. In these circumstances, the non-resident recipient of the taxable installation service would be eligible for the rebate provided the other requirements of the provision are met.

Paragraph 252.41(1)(*a*) requires that the application for the rebate by the unregistered non-resident recipient of the installation service be filed within one year after the completion of the service.

Paragraph 252.41(1)(*b*) is relevant for purposes of the self-assessment rules relating to "imported taxable supplies" in Division IV of Part IX of the Act. The paragraph deems the registered recipient of the

tangible personal property supplied on an installed basis to have received from the unregistered non-resident supplier of the property a separate supply of the installation service. Also, the installation service is deemed not to be incidental to the supply of the property. Further, the supply of the installation service is deemed to be for consideration equal to that part of the total consideration paid or payable by the registered recipient for the property and its installation that can reasonably be attributed to the installation. This ensures that the registered recipient of the tangible personal property is required to self-assess the GST under subsection 218(1) on that portion of the consideration paid to the unregistered non-resident supplier that can be reasonably attributed to the installation service where the property is for use otherwise than exclusively in a commercial activity.

Subsection 252.41(2) provides that the unregistered non-resident recipient of the installation service may submit an application for a rebate to the registered installer, rather than to the Minister of National Revenue. In these circumstances, the installer may pay to or credit in favour of the non-resident the amount of the GST rebate. A consequential amendment to subsection 234(1) permits the installer to deduct the amount of GST paid or credited to the non-resident in determining the net tax of the installer for the reporting period in which the amount is paid or credited. The installer is required to submit the rebate application form to the Minister of National Revenue with the return filed for the reporting period in which the rebate was paid or credited to the non-resident.

Subsection 252.41(3) provides that, where an installer pays or credits the rebate to the non-resident recipient of the service and the installer knew or ought to have known that the non-resident was not entitled to the amount paid or credited as a rebate, the installer and the non-resident are jointly and severally liable to repay, to the Minister of National Revenue, the amount paid or credited in error to the non-resident.

The rebate is available for any supply of installation services made after April 23, 1996.

Clause 62

Employees and Partners

ETA
253(1)

Section 253 provides a rebate to certain employees and members of partnerships for the tax on expenses that are deductible in computing, for income tax purposes, the employee's income from employment, or the partner's income.

Paragraph 253(1)(*a*) is amended to ensure that, in the case of a member of a partnership, the rebate provision applies notwithstanding new subsection 272.1(1), which otherwise deems an acquisition or importation by the member for consumption, use or supply in the course of the partnership's activities to be made by the partnership and not by the member (see commentary on clause 76).

New paragraph 253(1)(*a*.1) is added to ensure that the expenses eligible for a rebate under section 253 are those that have not been incurred on the account of the partnership. Where the acquisition is made on the account of the partnership, the partnership may still be eligible to claim an input tax credit.

Existing paragraph 253(1)(*b*) refers to tax payable in respect of an acquisition or importation. Amended paragraph 253(1)(*b*) provides that the tax payable must have been paid before there is an entitlement to the rebate.

The formula in existing subsection 253(1) for calculating the rebate is amended to ensure that reimbursements that an employee or partner received or is entitled to receive from the employer or partnership are subtracted from the amount deducted under the *Income Tax Act* in computing the employee's or partner's income. This amendment addresses situations where the *Income Tax Act* does not already require a given expense deduction to be calculated net of reimbursements.

These amendments apply as of January 1, 1991 but do not apply for the purpose of determining any rebate for which an application was received at a Revenue Canada office before April 23, 1996.

Clause 63

New Housing Rebate

ETA
254

This section provides for a partial rebate of the GST paid by an individual who purchases a newly-constructed house, condominium unit or single-unit residential complex for use as a primary place of residence for the individual, a related individual or a former spouse.

Subsection 254(3) Application for Rebate

Existing subsection 254(3) allows an individual up to four years to claim the new housing rebate from the time the individual acquires ownership of the newly-constructed residential complex. Amended subsection 254(3) reduces the limitation period for claiming the rebate from four years to two years.

Subsection 254(4) Application to Builder

The vendor, at the time of the sale, may credit the amount of the new housing rebate against tax owing by the purchaser. Under existing paragraph 254(4)(*c*), if the purchaser was not credited the rebate at the time of purchase, he or she still has up to four years after taking ownership of the residential complex to claim the rebate by filing an application with the vendor. Amended paragraph 254(4)(*c*) reduces the limitation period for making application to the vendor from four years to two years.

These amendments apply to any rebate in respect of a residential complex where ownership of the complex is transferred to the applicant after June 1996. The four-year limitation period will continue to apply where ownership is transferred to the rebate applicant before July 1996.

Clause 64

New Housing Rebate for Building Only

ETA
254.1

Section 254.1 provides for a rebate to the purchaser of a new house who leases from the builder, on a long-term basis, the land on which the house is built.

Subclause 64(1)

Definition "long-term lease"

ETA
254.1(1)

The expression "long-term lease" is defined for purposes of section 254.1 which provides for a rebate to a purchaser of a new house on land leased from the builder under a long-term lease. One of the circumstances in which a lease qualifies as a "long-term lease" is where it has a term of at least twenty years. The amendment to the definition "long-term lease" clarifies that the test is based on the period of continuous possession provided under the lease.

This clarification is consistent with similar wording changes made to the definitions "residential trailer park" and "residential complex" in subsection 123(1) as well as to sections 6, 7 and 8.1 of Part I of Schedule V and subparagraph 25(*f*)(i) of Part VI of that Schedule.

For consistency, these wording changes all apply on, or in relation to supplies made on or after, September 15, 1992, the date as of which subparagraph 25(*f*)(i) was last amended. However, these amendments do not apply for the purposes of determining any amount claimed in a return under Division V, or in an application under Division VI, that was received at a Revenue Canada office before April 23, 1996.

Subclause 64(2)

Single Unit Residential Complexes and Condominium Units

ETA
254.1(2)

The amendment to paragraph 254.1(2)(*a*) extends the application of the rebate in respect of new housing built on leased land to sales of residential condominium units built on leased land.

This amendment applies to any rebate for which an application is filed with the Minister of National Revenue on or after April 23, 1996.

Subclause 64(3)

Exception

ETA
254.1(2.1)

New subsection 254.1(2.1) provides that a rebate under section 254.1 in respect of a residential complex is not available where the builder was deemed to have made a taxable supply of the complex under subsection 191(1) but is exempt under another Act or law from the payment of tax in respect of the deemed supply.

This amendment is effective January 1, 1991 but does not apply to a rebate for which an application was received at a Revenue Canada office before April 23, 1996.

Subclauses 64(4) and (5)

Applications

ETA
254.1(3) and (4)

Existing subsection 254.1(3) allows a purchaser of a residential complex up to four years from the time the purchaser takes possession of the complex to claim the rebate under section 254.1.

Amended subsection 254.1(3) reduces the limitation period for claiming the rebate from four years to two years.

Existing paragraph 254.1(4)(*b*) provides that if the amount of the rebate is not credited or paid by the builder to the purchaser, the purchaser has four years from the time possession is transferred to make an application to the builder for the rebate. Amended paragraph 254.1(4)(*b*) reduces the limitation period for making application to the builder from four years to two years.

These amendments apply to any rebate in respect of a residential complex where possession of the complex is transferred to the applicant after June 1996. The four-year limitation period will continue to apply where possession is transferred to the rebate applicant on or before the last day of that month.

Clause 65

Co-operative Housing Rebate

ETA
255

Section 255 provides a partial rebate of GST, comparable to that under section 254, where an individual purchases a share in a co-operative housing corporation for the purpose of using a new residential unit of the corporation as a primary place of residence for the individual, a related individual or a former spouse.

Existing subsection 255(3) provides that an individual has up to four years after the day the ownership of the share is transferred to claim the rebate. New subsection 255(3) reduces the limitation period for making application from four years to two years.

This amendment applies to a rebate in respect of a share of the capital stock of a cooperative housing corporation ownership of which is transferred to the applicant after June 1996. The four-year limitation period will continue to apply where ownership of the share is transferred to the rebate applicant before July 1996.

Clause 66

Rebate for Owner-Built Homes

ETA
256

Section 256 provides a partial rebate of the GST paid by an individual who builds or substantially renovates his or her own primary place of residence or hires another person to do so.

The amendment to paragraph 256(2)(*a*) extends the application of the rebate in respect of owner-built homes to residential condominium units.

New subsection 256(2.01) denies a rebate under section 256 in respect of any improvement to a residential complex that is under construction or substantial renovation if the tax on the improvement becomes payable more than two years after the day the complex is first occupied after the construction or substantial renovation is begun.

Existing subsection 256(3) provides that a rebate under section 256 in respect of a residential complex shall not be paid unless an application is filed within two years after the earlier of the following two dates:

- the day the complex is first occupied after its construction or substantial renovation is begun or the day ownership is transferred to another person without the complex having been occupied, as the case may require; and

- the day construction or substantial renovation of the complex is substantially completed.

Under this rule, if a complex that is being renovated is occupied before the work is substantially completed, the owner has only two years to apply for the rebate after taking occupation, even if it takes longer to complete the work. Any construction or renovation costs incurred after that two-year period would not qualify for the rebate.

Under the amended rule, in the case of a complex that is occupied while it is being constructed or renovated, the owner may apply for the rebate up to two years after the construction or renovation is substantially completed, provided that the complex is substantially completed within two years of the date of occupation. If the owner takes longer to complete the work, the time limit for filing the application is nevertheless four years from the date of occupation.

These changes apply to any rebate in respect of a residential complex for which an application is filed on or after April 23, 1996 except where:

- the complex was occupied as a place of residence or lodging between the time its construction or substantial renovation began and April 23, 1996,

- the construction or substantial renovation of the complex was substantially completed before April 23, 1996, or

- the complex was sold by the applicant, and ownership was transferred to the purchaser before April 23, 1996.

Clause 67

Rebate to Owner of Land Leased for Residential Purposes

ETA
256.1

This section provides a rebate of tax to a lessor of certain residential land where the tax was paid by the lessor in purchasing or improving the land. Generally, the rebate is available where the land has been leased under exempt conditions to a person who will be required to self-assess tax on the use of the land for residential purposes.

Existing subsection 256.1(2) provides that an application for the rebate must be filed before the day that is four years from the time the lessee self-supplies under section 190 or 191. New subsection 256.1(2) reduces the limitation period for filing the application from four years to two years. Under the new limitation

period, the application must be filed on or before the day that is two years after the self-supply occurs.

This amendment applies to any rebate in respect of land that is deemed to have been self-supplied after June 1996. The four-year limitation period will continue to apply where the self-supply occurs before July 1996.

Clause 68

Non-Registrant Sale of Real Property

ETA
257

Section 257 provides a rebate to a non-registrant who makes or is deemed to make a taxable supply of real property by way of sale. The rebate is based on the tax the non-registrant paid on the purchase of the property and that was not recovered by the non-registrant by way of an input tax credit or rebate.

Subsection 257(2) Application for Rebate

Existing subsection 257(2) provides that the application for rebate under this section must be made within four years after the day consideration for the sale was paid or became due to the non-registrant. Amended subsection 257(2) reduces the limitation period from four years to two years.

This amendment applies to any rebate in respect of a supply of real property for which all of the consideration becomes due, or is paid without having become due, after June 1996. Where all or part of the consideration becomes due or is paid before July 1996, the four-year limitation period will continue to apply.

Subsection 257(3) Redemption of Real Property

New subsection 257(3) addresses situations where the non-registrant's property has been seized or repossessed by a creditor but the non-registrant has a statutory right or a right under an agreement relating to a debt security to redeem the property. In this case, the

non-registrant is not entitled to claim the rebate under section 257 unless and until the time limit for redeeming the property has expired without the non-registrant exercising the right. A related amendment is made to section 183 (see commentary on subclause 33(8)).

Under new paragraph 257(3)(*d*), the non-registrant is treated as having become entitled to claim the rebate on the day the time limit for redemption expired. Therefore, the limitation period for claiming the rebate begins on that day.

Amendments similar to those explained above are also made to section 193 (see commentary on clause 39).

This amendment is effective on April 24, 1996.

Clause 69

Public Service Body Rebate

Section 259 of the Act entitles qualifying public service bodies to a rebate of the tax paid by them on inputs for which they are not entitled to claim an input tax credit.

Subclause 69(1)

Definition "claim period"

ETA
259(1)

The definition "claim period" in subsection 259(1) is used to identify the period in respect of which a rebate under section 259 can be claimed. It has the effect of limiting the number of rebate applications that can be made in a year. Under the existing legislation, non-registrants can claim a rebate in respect of each of their fiscal quarters. This amendment reduces the number of claims they can file each year to two. Their first and last two fiscal quarters will be their two claim periods.

This amendment applies to claim periods in fiscal years beginning after 1996.

Subclause 69(2)

Definition "non-creditable tax charged"

ETA
259(1)

The term "non-creditable tax charged" is defined in subsection 259(1) and refers to amounts that the rebate applicant is or was required to pay as tax (net of input tax credits) and that are therefore potentially rebatable.

Existing subparagraph (*a*)(ii) of the definition includes amounts that an applicant that is a registrant is deemed to have collected when, as a creditor, the registrant seizes property from a debtor and takes that property to the registrant's own use. The registrant is ordinarily then required to remit that tax. However, under the streamlined accounting method for charities set out in new section 225.1 (see the commentary on clause 45), charities following that method are not required to include tax deemed to have been collected in these cases in their net tax remittances. The reference to such tax is therefore removed from subparagraph (*a*)(ii) of the definition "non-creditable tax charged" and new subparagraph (*a*)(ii.1) of the definition adds the tax only where it is deemed to have been collected by a person other than a charity that determines its net tax under the new simplified method.

This amendment applies to tax deemed to have been collected by charities during reporting periods beginning after 1996.

Subclause 69(3)

Exclusion from "non-creditable tax charged"

ETA
259(1)

This amendment clarifies that amounts a person has received or is entitled to receive as a refund, rebate or remission under any other provision are excluded from "non-creditable tax charged".

This amendment applies for the purposes of determining rebates for claim periods beginning after 1996.

Subclause 69(4)

Definition "selected public service body"

ETA
259(1)

The definition "selected public service body" in subsection 259(1) is amended by adding the criterion, in relation to public colleges, that they be established and operated otherwise than for profit in order to be eligible for a rebate under the section. This is consistent with the criterion that currently applies to school authorities and universities.

This amendment applies for the purpose of determining rebates under section 259 in respect of non-creditable tax charged for claim periods beginning after April 23, 1996.

Subclause 69(5)

Rebate for Persons Other Than Designated Municipalities

ETA
259(3)

This subsection provides authority for the Minister of National Revenue to pay rebates to charities, qualifying non-profit organizations and selected public service bodies other than persons designated as municipalities under section 259. A similar rebate is available for the latter group under subsection 259(4).

This subsection is amended to provide that the calculation of the rebate is subject to the rules set out in new subsection 259(4.1) (see commentary on subclause 69(7)).

This amendment applies to rebates for which applications are received at a Revenue Canada office after April 23, 1996.

Subclause 69(6)

Rebate for Designated Municipalities

ETA
259(4)

This subsection provides authority for the Minister of National Revenue to pay rebates to organizations that are designated as municipalities in respect of certain activities for purposes of section 259.

This subsection is amended to provide that the calculation of the rebate is subject to the rules set out in new subsection 259(4.1) (see commentary on subclause 69(7)).

This amendment applies to rebates for which applications are received at a Revenue Canada office after April 23, 1996.

Subclause 69(7)

Apportionment of Rebates

ETA
259(4.1)

New subsection 259(4.1) is added to provide specific rebate apportionment rules for selected public service bodies that act in different capacities. These bodies include a hospital authority, school authority, university, public college or person determined under subsection 123(1), or designated under section 259, to be a municipality. Subsection 259(4.1) applies to any selected public service body that engages in activities as a charity, public institution (see commentary on the definition "public institution" under clause 1) or qualifying non-profit organization that are separate from other activities undertaken in its capacity as a selected public service body.

New subsection 259(4.1) requires these organizations to apportion inputs related to their exempt activities for purposes of determining the amount of their rebate. They are entitled to recover at least 50 per cent of the tax paid on these inputs. However, to the extent that inputs are for consumption, use or supply in operating their

respective facilities – for example, a hospital in the case of a hospital authority or a school in the case of a school authority – or, in the case of a municipality, fulfilling its responsibility as a local authority, they are entitled to apply the higher rebate rate applicable to the selected public service body category in which they fall. For example, if a religious order, as a charity, operated a hospital and undertook other activities that were unrelated to operating the hospital, the order would be entitled to an 83-per-cent rebate for inputs into exempt activities relating to the operation of the hospital and a 50-per-cent rebate in relation to other exempt activities.

Where an organization falls into more than one category of selected public service body and also engages in unrelated charitable or non-profit activities, it is also required to apportion rebates. For example, if a charity runs a hospital and a public college in addition to having other activities unrelated to the operation of either facility, it is required to apportion its rebate for exempt activities as follows: 83 per cent for its inputs relating to the operation of the hospital, 67 per cent for its inputs relating to the operation of the public college, and 50 per cent for all other exempt activities.

Where an organization acts in the capacity of more than one type of selected public service body (e.g., it operates a hospital and a university) but has no other activities, it must follow the apportionment rules set out in existing subsections 259(7) and (8). It need not concern itself with the rules in new subsection 259(4.1) as well.

For persons designated to be municipalities only for the purposes of section 259, these amendments apply as of January 1, 1991. In all other cases, these amendments apply to rebates for which applications are received at a Revenue Canada office after April 23, 1996.

Subclause 69(8)

Election for Streamlined Accounting

ETA
259(12)

Existing subsections 259(12) to (15) set out rules relating to an election by a public service body that meets certain prescribed size

criteria to determine its rebate under section 259 in a simplified manner. Under this method, it is not necessary to separate out the GST, provincial sales tax and gratuities paid in respect of a purchase in order to calculate the rebate.

The amendments remove the requirement for a formal election. Any public service body that qualifies as a prescribed person may determine its rebate in the simplified manner.

These amendments apply for the purpose of determining rebates for claim periods beginning after April 23, 1996.

Clause 69.1

Rebate for Printed Books

ETA
259.1

New section 259.1 of the Act provides for a 100-per-cent rebate of the GST that becomes payable after October 23, 1996 by specified persons upon their acquisition or importation of printed books, audio recordings of spoken readings of printed books and printed versions of religious scriptures.

Subsection 259.1(1) Definitions

New subsection 259.1(1) defines certain expressions used in new section 259.1.

"claim period"

This expression refers to the period for which an application for a rebate under section 259.1 may be made. The definition "claim period" currently used for the purpose of claiming rebates under section 259 will also be used for the purposes of new section 259.1. Thus, where the applicant is registered for GST purposes, the claim period is the registrant’s reporting period. For non-registrants, their claim periods are their first and last two fiscal quarters of their fiscal year.

"printed book"

The expression "printed book" will take on its ordinary meaning, subject to specific exclusions. For greater certainty, the expression is defined to exclude newspapers, as well as magazines and periodicals that either are not purchased by subscription by the rebate applicant or that have more than 5 per cent of their printed space devoted to advertising. Also excluded are books designed primarily for writing or drawing on or affixing thereto items, such as clippings, pictures, coins, stamps or stickers. Agendas, calendars, directories and rate books (e.g., insurance rate books) are excluded. It should be noted that an item (sometimes referred to as a "multi-media item") that consists of a book and another medium (e.g., a record, cassette or disc) that are packaged and sold together for an all-inclusive price is not generally considered a book.

"qualifying non-profit organization"

The definition "qualifying non-profit organization" that is currently used for the purposes of section 259 will also be used for the purposes of section 259.1. That term refers to non-profit organizations that receive government funding equal to at least 40 per cent of their gross annual revenue, as determined by rules set out in regulations made for the purposes of section 259.

"specified person"

The definition "specified person" is relevant in determining which persons are eligible for the rebate under new section 259.1. "Specified persons" are defined to be municipalities, universities, public colleges (within the meaning of subsection 123(1) as amended by subclause 1(7)) and school authorities, as well as charities, qualifying non-profit organizations and public institutions that operate a public lending library. In addition, authority is provided to prescribe a charity or qualifying non-profit organization whose primary purpose is the promotion of literacy to be a specified person for the purposes of the section.

Subsection 259.1(2) Rebate

New subsection 259.1(2) provides authority for the Minister of National Revenue to pay to specified persons rebates equal to the

GST payable in respect of their acquisitions or importations of printed books (and their updates), audio recordings of spoken readings of such books and printed versions of religious scriptures, except where the specified persons have acquired or imported these items for the purpose of resale or to give away permanently.

Subsection 259.1(3) Application for Rebate

New subsection 259.1(3) provides that specified persons have up to four years after the end of their claim period in which the GST became payable to claim a rebate of that tax.

Subsection 259.1(4) Limitation

New subsection 259.1(4) provides that, except where a specified person is required to file separate applications for rebates under section 259 in respect of a branch or division, only one application for rebates under new section 259.1 can be made for a particular claim period of the person.

Subsection 259.1(5) Application by Branches or Divisions

New subsection 259.1(5) provides that, where a specified person's branches or divisions are required to file separate applications for rebates claimed under section 259, those branches or divisions are also required to file separate applications for rebates to which the specified person is entitled under section 259.1.

Clause 70

Charity Exports

ETA
260

Existing section 260 provides for a rebate to a charity for GST paid on goods or services for which it is not entitled to claim an input tax credit and that are exported by it for charitable purposes.

The amendment removes the reference to "charitable purposes" outside Canada. As a result, the rebate may be used by the charity to

recover tax paid on all exported goods and services that it acquires and exports, including those bought and exported in the course of a commercial activity of the charity. The rebate mechanism is needed to relieve these exports of tax because, under the new streamlined method of accounting provided to charities under subsection 225.1, charities following that method will be entitled to input tax credits only in respect of capital personal property and real property (see commentary on clause 45).

This change applies to goods or services on which tax becomes payable or is paid without having become due after April 23, 1996.

Section 260 is also amended, as of January 1, 1997, as a consequence of the new definition of "charity" in subsection 123(1) (see commentary on clause 1). The amended definition excludes entities that are registered charities for the purposes of the *Income Tax Act* and are "public institutions" as newly defined in subsection 123(1) (see commentary on the definition "public institution" under clause 1). Specific references to those institutions are added to section 260 to ensure that the rebate continues to be available to them.

Clause 71

Rebate of Payment Made in Error

ETA
261

This section provides that where a person pays or remits an amount of tax, net tax, penalty or interest that is later found not to be payable or remittable, the person may claim a rebate of that amount.

Existing subsection 261(3) provides that an application for the rebate must be filed by the person within four years after the amount was paid or remitted. Subsection 261(3) is amended to reduce the limitation period from four years to two years.

This amendment applies to amounts paid or remitted after June 1996. This amendment also applies to amounts paid or remitted before

July 1996 unless the amounts are claimed in an application filed on or before June 30, 1998.

Clause 72

Trustees in Bankruptcy

ETA
265(1)(*a*)

Section 265 sets out the rules that apply to trustees in bankruptcy and bankrupts. In essence, the trustee in bankruptcy is treated as an agent of the bankrupt. As such, acquisitions and supplies effected by the trustee but made in the course of a commercial activity of the bankrupt are treated as having been made by the bankrupt.

For greater certainty, paragraph 265(1)(*a*) is amended to expressly provide that, while acting in the capacity of the trustee in bankruptcy, a trustee is providing a service to the bankrupt and any amounts to which the trustee becomes entitled for doing so are consideration for the supply of the service.

This amendment applies as of January 1, 1991.

Clause 73

Estates and Trusts

ETA
267 to 269

Section 267 Estates

Existing section 267 sets out the rules dealing with the passing of property of a deceased individual to the executor of the individual's will or the administrator of the individual's estate.

Existing subsection 267(1) provides that the transfer of the property to the executor is treated for GST purposes as a supply for no consideration. The property is then treated as being used by the

executor immediately after its transferral for the same purposes as those for which it was used by the deceased before death. In addition, the executor is treated as having paid any tax on the property that was paid by the deceased and as having claimed any input tax credits that were claimed by the deceased. This allows the claiming of an input tax credit in appropriate circumstances in respect of tax paid by the deceased when the property is subsequently sold or distributed by the estate.

The existing rules in subsection 267(1) are intended to place the estate of a deceased individual in the same position that the individual was in. However, these rules fall short in that they address only the treatment of property. New section 267 serves to broaden the rules by deeming all the provisions of Part IX of the Act – subject to sections 267.1, 269 and 270 – to apply to the estate of the individual as though the individual had not died. As a result, rules that apply to individuals, such as the exclusion from the definition "builder" in subsection 123(1) and the New Housing Rebate under section 254, would also apply to the individual's estate.

To clarify the personal representative's filing responsibilities, new paragraphs 267(*a*) and (*b*) provide rules for determining reporting periods on the death of an individual. The individual's reporting period ends on the day the individual dies, and the estate's first reporting period begins the next day and ends on the day the individual's reporting period would have ended had the individual not died.

Section 267.1 Trusts

New section 267.1 sets out rules to clarify the GST treatment of the on-going operations of both testamentary and *inter vivos* trusts.

Subsection 267.1(1) Definitions

Since the same rules are to apply to trusts and estates, to avoid repetition, a reference in new section 267.1, or any of sections 268 to 270, to a "trust" also includes a reference to an estate of a deceased individual. Similarly, a reference in these sections to a "trustee" includes a reference to the personal representative of a deceased individual. "Personal representative" is newly defined in

subsection 123(1) (see commentary on the definition "personal representative" under clause 1).

Subsection 267.1(2) Trustee's Liability

Subsection 267.1(2) is added to clarify the obligations imposed on trustees including personal representatives of a deceased individual. Each trustee is liable to satisfy an obligation such as the requirement to file. However, the satisfaction of that obligation by one trustee removes the liability of the other trustees.

Subsection 267.1(3) Joint and Several Liability

Subsection 267.1(3) is added to clarify the extent of joint and several liability imposed on a trustee (or personal representative) with the trust (or estate). Such a liability exists for all amounts payable or remittable by the trust while the trustee acts as a trustee of the trust. The liability extends to periods before the trustee began acting as a trustee of the trust, but only to the extent of the property and money under the control of the trustee. Also, the joint liability is discharged to the extent of the amount that either the trust or trustee pays or remits in respect of the liability.

Subsection 267.1(4) Waiver

New subsection 267.1(4) provides the Minister of National Revenue with the authority to waive the requirement for a personal representative of a deceased individual to file a return for a reporting period of the individual ending on or before the day the individual died. This removes the burden on the representative to file a return where, for example, the representative has insufficient information with which to prepare a return.

Subsection 267.1(5) Activities of a Trustee

For greater certainty, new subsection 267.1(5) is added to explicitly provide that, when acting in the capacity as a trustee of a trust in the course of a business of doing so (i.e., the trustee is not an "officer" as newly defined in subsection 123(1)), the trustee supplies services to the trust, and any amounts to which the trustee is entitled for doing so are consideration for those supplies. In every other respect, however, anything done by a person in their capacity as a trustee of a

trust is considered to have been done by the trust. This provision also applies to executors of estates. This rule is consistent with the existing inclusion of trusts and estates in the definition "person" in subsection 123(1).

Section 268 *Inter Vivos* Trusts

Existing section 268 provides that, where property is settled by a person on an *inter vivos* trust, the transfer is to be treated for GST purposes as a sale of the property by the person to the trust. Consideration for the sale is equal to the amount determined for income tax purposes to be the proceeds of disposition of the property.

There are no substantial changes to section 268. For legislative consistency, the expression "shall be" is changed to the term "is".

Section 269 Distribution by Trust

Existing section 269 provides that, subject to sections 265 (bankruptcy rules), 266 (receivership rules) and 267 (rules pertaining to the passing of property from a deceased individual to the personal representative of the deceased), where a trustee distributes property of the trust to a beneficiary of the trust, the trust is treated as having made a supply of the property. The consideration for the supply is deemed to be the amount determined for income tax purposes to be the proceeds of disposition of the property.

The references to sections 265 to 267 are unnecessary and they are therefore removed in amended section 269. Section 265 already provides that the estate of a bankrupt is deemed not to be a trust or estate while, in section 266, a receiver is deemed not to be a trustee. The reference to section 267 is unnecessary since sections 267 and 269 do not conflict.

The new definitions "trust" and "trustee" in new subsection 267.1(1) ensure that section 269 applies to all estates of deceased individuals, including estates in which the property is not held in trust.

Section 269 is also amended to apply to distributions of property to persons who are not beneficiaries of the trust. As a result, where a beneficiary assigns or otherwise transfers title in the beneficiary’s interest in the trust or estate to another person, the distribution to that

person is deemed to be a supply made by the trust to the person for consideration equal to the amount determined under the *Income Tax Act* to be the proceeds of disposition of the property.

These amendments apply as of January 1, 1991 except for the change to section 269 dealing with distributions to persons who are not beneficiaries of the trust, which applies to distributions made after April 23, 1996, and the amendments to paragraphs 267(*a*) and (*b*) relating to the reporting periods of estates, which apply only where the estate is created on the death of an individual after April 23, 1996.

Clause 74

Representatives

ETA
270(1)

Section 270 provides that a "representative" handling the estate or administering or winding-up a commercial activity or a business of a person must obtain a certificate from the Minister of National Revenue before distributing any property or money under the representative's control. "Representative" is defined in existing subsection 270(1) to include, among other persons, an executor, within the meaning assigned by subsection 267(2), of an individual who is a registrant.

Paragraph (*b*) of the definition "representative" in subsection 270(1) is amended to replace the reference to an "executor" by a reference to a trustee of a trust that is a registrant. This amendment is consequential to the repeal of the definition "executor" in section 267 and the addition of new subsection 267.1(1), which provides that a reference to a trustee includes a reference to a personal representative. "Personal representative", as newly defined in subsection 123(1) (see commentary on the definition of that expression under clause 1), has essentially the same meaning as "executor" in existing subsection 267(2).

This amendment takes effect on April 24, 1996. The references in existing section 270 to an "executor" are replaced by references to a "personal representative".

Clause 75

ETA
Heading for Subdivision b of Division VII

This heading is changed to remove the reference to "joint ventures" as a consequence of the addition of a new separate subdivision b.1 containing the rules for both partnerships and joint ventures.

This amendment applies as of April 24, 1996.

Clause 76

Partnerships

ETA
272.1

New section 272.1, which replaces existing section 145, provides a more detailed set of rules pertaining to the activities, liabilities, formation and dissolution of a partnership.

Subsection 272.1(1) Things Done by Members

Under existing subsection 145(1), where a person engages in an activity as a member of a partnership, that activity is treated as an activity of the partnership rather than of the member. As a consequence, partners are not required to register separately for GST purposes. New subsection 272.1(1), which replaces existing subsection 145(1), similarly provides a general rule that anything done by a partner in his or her capacity as a partner is deemed to have been done by the partnership and not by the partner.

This amendment applies as of April 24, 1996.

Subsection 272.1(2) Acquisitions by Member

New subsection 272.1(2) provides exceptions to the general rule in subsection 272.1(1) where a partner acquires or imports property or services for consumption, use or supply in the course of the partnership's activities but not on the account of the partnership.

New paragraph 272.1(2)(*a*) deems the partnership not to have acquired or imported the property or service except as otherwise provided under subsection 175(1), which applies where there is a reimbursement by the partnership to the partner (see commentary on clause 24). Nevertheless, the partner may still be eligible to claim an input tax credit as explained below.

Under existing subsection 145(2), where a corporation that is a member of a partnership and registered for GST purposes incurs expenses outside the partnership but that relate to a commercial activity of the partnership, the corporation is treated as being engaged in the commercial activity. This has the effect of enabling the corporate partner to claim an input tax credit for the expenses.

New paragraph 272.1(2)(*b*), which replaces existing subsection 145(2), extends the input tax credit eligibility to any partner other than an individual. As a result, a partner such as a corporation, trust or other partnership, whether or not it engages in an activity separate from the partnership, is able to register (provided the partnership carries on a commercial activity) and claim input tax credits on its own GST returns for the tax payable by it on its purchases relating to commercial activities of the partnership. The partner would also account for any changes in use of the property as required under subdivision d of Division II. Individuals who are partners will continue to be eligible to claim the employee-partner rebate under section 253 (see commentary on clause 62).

This change applies as of April 24, 1996 and also applies for the purpose of determining any input tax credit for a reporting period beginning before that day that is claimed in a return received at a Revenue Canada office on or after April 23, 1996.

New paragraph 272.1(2)(*c*) applies where a partner incurs an expense relating to the partnership but not on the account of the partnership, and the partner is reimbursed by the partnership in circumstances in

which new subsection 175(2) applies. New paragraph 272.1(2)(*c*) provides that, in this case, any input tax credit that the partner claims in the partner's separate GST return must be reduced by the amount of the input tax credit that the partnership is entitled to claim in respect of the reimbursement. Pursuant to new subsection 175(2), the partnership is entitled to claim an input tax credit in respect of the expense only if the reimbursement is made before the partner files a return in which the partner claims an input tax credit for the expense (see commentary on clause 24).

Paragraph 272.1(2)(*c*) applies as of April 24, 1996. In addition, it applies to input tax credits for reporting periods that began before that day where they are claimed in returns received at a Revenue Canada office on or after April 23, 1996.

Subsection 272.1(3) Supply to Partnership

New subsection 272.1(3) is added to deem the amount of consideration for supplies made by a partner (or prospective partner) to a partnership otherwise than in the course of the partnership's activities. For example, this section would apply where a partner has a separate business and provides property or services from that business to the partnership.

Paragraph 272.1(3)(*a*) fixes the consideration for such a supply where the property or service is for use exclusively in commercial activities of the partnership. Any amount that is paid or credited to the partner is deemed to be consideration for the supply, whether it be cash or an increase in the supplying partner's interest in the partnership. The consideration is deemed to become due when the amount is so paid or credited.

Where the property or service is not for consumption, use or supply exclusively in the course of commercial activities of the partnership, paragraph 272.1(3)(*b*) provides that the consideration is deemed to be equal to the fair market value of the property or service that is so acquired by the partnership at the time the supply is made. The fair market value is determined as though the partner and partnership were dealing at arm's length and represents the value of the entire property or service, including the supplying partner's interest in it.

This provision applies to supplies made after April 23, 1996. Transitional rules are provided with respect to supplies made on or before that day. In this case, the existing rules apply for the purpose of determining whether there has been an underpayment of tax. However, the proposed rules will apply for the purpose of determining whether there has been an overpayment. If the tax charged or collected on a supply made on or before April 23, 1996 exceeds the amount payable under the existing rules and a rebate application under subsection 261(1) was received at a Revenue Canada office before that day, the amount of the rebate will be determined in accordance with the existing rules. However, if the application is received on or after that day, a rebate will be payable only to the extent that the amount charged or collected exceeds the amount payable under the new rules.

Subsection 272.1(4) Deemed Supply to Partner

Subsection 272.1(4) is added to clarify the GST treatment upon the disposal of property from a partnership to a person who ceases to be a member of the partnership or who, at the time the disposition was agreed to or arranged, was a partner or had agreed to become one. In these circumstances, the deemed appropriation rule in subsection 172(2) does not apply. Rather, the partnership is deemed to have made a supply of the property to the person for consideration equal to the fair market value of all of the partners' interests in the property at the time of the transfer.

This subsection applies to dispositions after April 23, 1996. Transitional rules are provided with respect to dispositions on or before that day. In this case, the existing rules apply for the purpose of determining whether there has been an underpayment of tax. However, the proposed rules will apply for the purpose of determining whether there has been an overpayment. If the tax charged or collected in respect of a disposition made on or before April 23, 1996 exceeds the amount payable under the existing rules and a rebate application under subsection 261(1) was received at a Revenue Canada office before that day, the amount of the rebate will be determined in accordance with the existing rules. However, if the application is received on or after that day, a rebate will be payable only to the extent that the amount charged or collected exceeds the amount payable under the new rules.

Subsection 272.1(5) Joint and Several Liability

Subsection 272.1(5) is added to specify the extent of joint and several liability imposed on a person who is a partner or former partner (other then a limited partner who is not a general partner). Such a liability exists for all amounts that become payable or remittable by the partnership before or during the period in which the person is a member of the partnership. Where the person was a member at the time of the dissolution of the partnership, the joint and several liability also extends to amounts that become payable or remittable after the dissolution. The liability of a person for amounts that became payable or remittable before the person became a partner is limited to the property and money of the partnership. Also, in all cases, the joint liability is discharged to the extent of the amount that any partner pays or remits in respect of the liability.

Such partners and former partners are also jointly and severally liable with the partnership for all other obligations for which the partnership is liable, such as filing returns.

This provision applies to amounts that become payable or remittable after April 23, 1996 and to all other amounts and obligations outstanding after that day.

Subsection 272.1(6) Continuation of Partnership

New subsection 272.1(6) is added to clarify the rules applicable to a partnership upon the addition or departure of a partner. For the purposes of the GST, the old partnership is deemed to continue to exist until its registration is cancelled.

This provision applies as of April 24, 1996.

Subsection 272.1(7) Continuation of Predecessor Partnership by New Partnership

New subsection 272.1(7) is added to establish rules applicable to partnership reorganizations such as the dissolution of a partnership into two separate partnerships. Unless the new partnership applies for a new registration, it is deemed to be a continuation of the predecessor where the majority of the members of the new partnership also formed a majority of the members of the predecessor

and together had more than a 50-per-cent interest in the capital of the predecessor. Further, those members must have transferred to the new partnership all or substantially all of the property distributed to them in settlement of their capital interests in the predecessor.

This amendment applies as of April 24, 1996.

Clause 77

Electronic Filing and Execution of Documents

ETA
278.1 and 279

Section 278.1 Electronic Filing

New section 278.1 provides for the use of electronic media for filing GST returns.

Under subsection 278.1(2), the Minister of National Revenue has authority to specify the format, etc., in which information is to be transmitted using electronic media in order to be compatible with, and meet the requirements of, Revenue Canada's systems. This subsection requires a person who wishes to file electronically to apply to the Minister for that purpose. Subsection 278.1(3) provides that, where the Minister is satisfied that the applicant meets the criteria for electronic filing, authorization may be given to file GST returns by means of electronic media. Subsection 278.1(4) enables the Minister to revoke such an authorization at the applicant's request, where the applicant fails to comply with any condition of the authorization or with the provisions of Part IX generally, or where the authorization is no longer required. Finally, subsection 278.1(5) stipulates that a return filed electronically is considered to have been received by the Minister in prescribed form only when the Minister acknowledges acceptance of it.

The new section applies after September 1994.

Section 279 Execution of Documents

Section 279 provides that any return, certificate or other document required to be provided under Part IX by a person other than an individual has to be signed by an individual duly authorized for that purpose. The amendment to this section, which is consequential to the introduction of electronic filing for GST returns, provides an exception to that requirement for returns that are filed electronically.

This amendment applies after September 1994.

Clause 78

Assessments

ETA
296

Section 296 authorizes the Minister of National Revenue to assess persons for their liabilities under Part IX of the Act and to take into account various amounts that the person has failed to claim as an input tax credit, deduction, refund or rebate and refund an overpayment or apply it against other liabilities under Part IX.

Paragraph 296(1)(*e*) Assessments

Existing subsection 296(1) provides the Minister of National Revenue with the authority to assess a person for net tax and other amounts payable or remittable under Part IX of the Act. The amendment to paragraph 296(1)(*e*) is consequential to the amendments to the partnership provisions of the Act under new section 272.1, which codify the joint and several liability of partners for partnership debts. The amendment is also consequential to the introduction of new subsection 177(1.1) whereby a person is jointly and severally liable if the person has elected with an agent to have the agent account for tax collectible (see commentary on clause 26). Amended paragraph 296(1)(*e*) also authorizes the Minister to assess members of a joint venture for their liabilities under the Act.

These amendments take effect on Royal Assent except for the reference to subsection 177(1.1) which comes into effect on April 1, 1997.

Subsection 296(2) Allowance of Unclaimed Credit

Existing subsection 296(2) authorizes the Minister to take unclaimed input tax credits and deductions into account in assessing a person's net tax for a reporting period, where the assessment is made within the standard four-year assessment period. Under amended subsection 296(2), the Minister shall, unless the person being assessed requests otherwise, continue to take an input tax credit for a reporting period (i.e., an input tax credit claimed to recover tax that became payable in the period) into account in determining the net tax for that period within the four-year period for assessing that period, even if the limitation period for claiming the credit has expired. However, an input tax credit for the period may not be allowed if the Act has been amended to disallow a claim for the credit for that period. The same rules apply to unclaimed deductions, although a deduction may be taken into account only if the limitation period for claiming it did not expire before the due date of the return for the reporting period.

Where the input tax credit or deduction results in an overpayment for the period, the overpayment may be applied against liabilities or refunded in accordance with amended subsection 296(3).

This amendment is effective on July 1, 1996.

Subsection 296(2.1) Allowance of Unclaimed Rebate

New subsection 296(2.1) authorizes the Minister to apply unclaimed rebates against any outstanding liabilities under Part IX of the Act. An unclaimed rebate shall, unless the person being assessed requests otherwise, be applied under this subsection provided the limitation period for claiming it has not expired before the outstanding liability arose and the Act would not disallow a claim for that rebate if it were claimed at the time notice of the assessment were sent, apart from the limitation period restrictions. Unapplied rebates shall, unless the person being assessed requests otherwise, be applied against other liabilities or refunded in accordance with amended subsection 296(3.1). New subsection 296(2.1) replaces the existing rebate offset provisions in existing subsections 296(4) and (4.1).

This amendment is effective on July 1, 1996.

Subsections 296(3) and (3.1) Application or Payment of Excess Credit or Rebate

Existing subsection 296(3) authorizes the Minister to apply an overpayment of net tax for a particular reporting period against any net tax liability for any other reporting period for which a return has been filed. Interest on the overpayment may also be applied. The interest accrues from 21 days after the later of the due date of the return for the particular period and the day the return for the particular period was filed, and accrues until the due date of the return for the other reporting period.

Amended subsection 296(3) also authorizes the Minister to apply an overpayment of net tax against net tax liabilities that arose before or after the reporting period to which the overpayment relates, whether the return for the other period has been filed or not. As well, the Minister shall, unless the person being assessed requests otherwise, apply the overpayment against other liabilities, such as unpaid taxes, penalty and interest. New subsection 296(3.1) also authorizes the Minister to apply unapplied rebates against these past and future liabilities. In cases where an overpayment of net tax arose from an excessive payment made after the return for the reporting period was filed, interest accrues from the date the excessive payment was made.

Existing subsection 296(3) authorizes the Minister to refund an overpayment of net tax to the extent that it has not been applied against other liabilities, with interest to the day the refund is paid. New subsection 296(3.1) also authorizes the Minister to refund unapplied rebates with interest. In cases where an overpayment of net tax arose from an excessive payment made after the return was filed, interest will accrue from the date the excessive payment was made.

This amendment is effective on July 1, 1996.

Subsection 296(4) Limitation on Refunding Overpayments

New subsection 296(4) restricts the application or refund of overpayments under subsection 296(3). An overpayment of net tax for a person’s reporting period can only be applied against liabilities

that arose within the period allowed for claiming input tax credits for that reporting period. Similarly, an overpayment of net tax for a reporting period shall not be refunded unless the assessment for the reporting period is issued before the expiration of the limitation period allowed to the person for claiming input tax credits for that reporting period and, consistent with existing sections 229 and 230, the person is up to date in filing returns.

This amendment is effective on July 1, 1996.

Subsection 296(4.1) Limitation on Refunding Allowable Rebates

Existing subsections 296(4) and (4.1) authorize the Minister to offset an unclaimed rebate of tax against an outstanding liability to pay that tax or a disallowed input tax credit that was claimed to recover that tax. These provisions are replaced by new subsection 296(2.1).

New subsection 296(4.1) restricts the application or refund of rebates under subsection 296(3.1). A rebate can only be applied against liabilities that existed at a time when the rebate could have been claimed in a rebate application. Similarly, a rebate shall not be paid to the person being assessed unless the assessment is issued at a time when the rebate could have been claimed in a rebate application and, consistent with existing sections 229 and 230 of the Act, the person is up to date in filing returns.

This amendment is effective on July 1, 1996.

Subsection 296(5) Deemed Claim or Application

Existing subsection 296(5) provides that where an amount is taken into account, applied or refunded in the course of making an assessment, the person being assessed is deemed to have applied for the amount and the Minister is deemed to have refunded it. Where it is applied against a liability of the person being assessed, the person is deemed to have satisfied the liability to the extent of the amount applied. The amendments to subsection 296(5) are consequential to the amendments to subsections 296(2) to (4) and ensure consistency in the terminology used throughout the amended subsections.

This amendment is effective on July 1, 1996.

Clause 79

Period for Assessment

ETA
298

Section 298 sets out the limitation periods with respect to assessments under section 296.

Subclause 79(1)

ETA
298(1)(*b*)

The amendment to paragraph 298(1)(*b*) is consequential to the amendment to subsection 228(4), which allows a registrant purchasing real property from a person not required to collect tax to account for the tax payable on the purchase in the registrant's regular return for the reporting period in which the tax became payable.

This amendment takes effect on Royal Assent.

Subclause 79(2)

ETA
298(1)(*d*)

The amendment to paragraph 298(1)(*d*) is consequential to the amendment to section 219, which allows a registrant to account for the tax payable under Division IV in respect of imported taxable supplies in the registrant's regular return for the reporting period in which the tax became payable.

This amendment takes effect on Royal Assent.

Subclause 79(3)

ETA
298(1)(*f*)

The amendment to paragraph 296(1)(*f*) is consequential to the addition of new subsection 177(1.1) which provides that where an agent has jointly elected with a principal to include the tax collectible in respect of a supply made by the agent on behalf of the principal in the agent's determination of net tax and not the principal's, the agent and the principal are jointly and severally liable for the amount.

The amendment to paragraph 296(1)(*f*) is also consequential on the amendment to paragraph 296(1)(*e*) of the Act, which authorizes the Minister to assess members of a partnership or joint venture for their liabilities under the Act, and on new section 267.1 which clarifies the obligations imposed on trustees and personal representatives.

Under amended paragraph 296(1)(*f*), the Minister generally will not be permitted to assess a person more than four years after the person became liable to pay the assessed amount.

This amendment takes effect on Royal Assent. However, before April 1, 1997, paragraph 298(1)(*f*) is read without reference to subsection 177(1.1) which comes into effect on that day.

Clause 80

Binding Effect of Assessment

ETA
299(3.1)

New subsection 299(3.1) is added to establish the scope of the binding effect of an assessment by the Minister of National Revenue on an unincorporated body – i.e., a person other than an individual or corporation – such as a trust, unincorporated association or partnership.

Paragraph 299(3.1)(*a*) provides that the assessment is valid even where one or more of the persons liable for the obligations of the body do not receive a notice of the assessment.

Paragraph 299(3.1)(*b*) provides that the assessment of a body is binding on each member of the body that is liable for the body's obligations, subject to a reassessment of the body and the rights of the body to appeal.

Finally, paragraph 299(3.1)(*c*) provides that the assessment of a member in respect of the same matter as the assessment of the body is binding on the member subject only to a reassessment of the member and to the member's rights of objection and appeal on certain grounds. Those grounds are that the member is not a person who is liable to pay or remit an amount for which the body is assessed, the body has been reassessed, or the assessment of the body has been vacated.

New subsection 299(3.1) applies on Royal Assent.

Clause 81

Notice of Assessment

ETA
300

Section 300 requires the Minister of National Revenue to send a notice of assessment to anyone who has been assessed and sets out what may be included in a notice of assessment.

Existing subsection 300(2) provides that a notice of assessment may include assessments of more than one reporting period or transaction. Amended subsection 300(2) provides that a notice of assessment may cover assessments of any number or combination of reporting periods, rebates, transactions or other amounts payable or remittable under Part IX of the Act.

This amendment takes effect on Royal Assent.

Clause 82

Objection to Assessment

ETA
301

Section 301 deals with objections and appeals to assessments under Part IX of the Act.

Subclause 82(1)

Meaning of "specified person"

ETA
301(1)

Existing subsection 301(1) gives a person who is dissatisfied with an assessment the right to file a notice of objection with the Minister of National Revenue within 90 days from the day of mailing of the notice of assessment. That subsection is renumbered as subsection 301(1.1).

New subsection 301(1) sets out the criteria for determining when a person is a "specified person", which is a person to whom the new rules set out in subsections 301(1.2) to (1.5) apply. Those rules require notices of objection to specify the issues in controversy and other information relevant in the resolution of the dispute.

A person is a "specified person" in respect of an assessment or notice of objection relative to a reporting period if the person is a listed financial institution described in any of subparagraphs 149(1)(*a*)(i) to (*x*) during the reporting period. In addition, a person is a "specified person" if their threshold amounts as determined under subsection 249(1) exceed $6 million in both the person’s fiscal year that includes the reporting period and the person’s previous fiscal year. This latter test does not apply to charities (within the meaning of amended subsection 123(1) which therefore excludes municipalities, hospital authorities, school authorities, public colleges and universities).

Specified persons will be subject to the new rules where they object to an assessment for which a notice of assessment is issued after April 1996.

Subclause 82(2)

ETA
301(1.2) to (1.6)

New subsection 301(1.2) requires each person who objects to an assessment in respect of which the person is a "specified person" (within the meaning or subsection 301(1)) 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.

New subsection 301(1.3) allows the Minister of National Revenue to request the taxpayer to provide the required information with respect to an issue where it was not provided in the notice of objection. If the taxpayer provides the information in writing within 60 days of the request, it will be treated as having been provided in the notice of objection.

New 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 "specified person", except where that assessment is made pursuant to a notice of objection to another assessment made under subsection 274(8). That subsection requires that the Minister of National Revenue consider, with all due dispatch, a request for reassessment submitted by a person who was party to a transaction to which the general anti-avoidance rule under subsection 274(2) applied where another person was reassessed in respect of the same transaction.

New subsection 301(1.5) provides that the limitation in subsection 301(1.4) does not apply to limit a person’s right to object to a new issue raised for the first time by Revenue Canada in an assessment made under subsection 301(3).

These amendments apply to any assessment where the notice of assessment is issued after April 1996, except if it is issued pursuant to a notice of objection in respect of an earlier assessment made before May 1996. For notices of objection filed before 1997, the reference to "charity" in paragraph 301(1)(*b*) is replaced with a reference to "charity (other than a school authority, a public college, a university, a hospital authority or a local authority determined under paragraph (*b*) of the definition "municipality" in subsection 123(1) to be a municipality)".

New subsection 301(1.6) precludes any person from filing a notice of objection with respect to an issue for which the person has waived, in writing, the right to object.

New subsection 301(1.6) applies after April 23, 1996 to waivers signed at any time.

Clause 83

Appeals

ETA
306.1

Section 306 provides that a person who has objected to an assessment may appeal to the Tax Court of Canada to have the assessment vacated or to have a reassessment made.

New subsection 306.1(1) precludes "specified persons" (within the meaning of new subsection 301(1)) 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(1.2). They are also precluded from revising the relief sought with respect to an issue. These restrictions do not apply if the issue was a new issue raised for the first time by Revenue Canada in an assessment made under subsection 301(3).

This amendment applies to appeals instituted after the day on which the amendment receives Royal Assent where a notice of assessment is issued after April 1996, except where the assessment is issued

pursuant to a notice of objection in respect of an earlier assessment made before May 1996.

New subsection 306.1(2) precludes any person from appealing an issue to the Tax Court of Canada on an issue in respect of which the person has waived, in writing, the right to object.

New subsection 306.1(2) applies after the day on which it receives Royal Assent to waivers signed at any time.

Clause 84

Proof of Return

ETA
335(12.1)

New subsection 335(12.1) provides that a document presented by the Minister of National Revenue purporting to be a print-out of information received by the Minister under new section 278.1 by means of electronic media is, in the absence of evidence to the contrary, *prima facie* proof that the return was received (see commentary on clause 77).

This new section applies after September 1994.

Clause 84.1

Self-Supply of Residential Condominium Unit by Limited Partnership

ETA
336(5) and (6)

Section 336 sets out special rules pertaining to supplies of real property that straddle the start-up of the GST. In particular, the section provides that GST is not payable in respect of the purchase of a single unit residential complex, a residential condominium unit or a condominium complex (all as defined in section 123(1)) made under a written agreement entered into before October 14, 1989. In these

cases, however, the builder is required to remit a special tax equal to 4 per cent of the selling price of the property.

New subsection 336(5) extends similar relief to the sale of interests in a limited partnership under a fixed-price offering memorandum issued before October 14, 1989, where the partnership is formed for the purpose of constructing and renting residential condominium units.

A typical example of this situation is where investors become limited partners for the purpose of developing and owning, through their partnership interest, a residential condominium rental complex. The limited partnership would enter into a number of fixed-price agreements including an agreement for the purchase of land and a separate agreement for the construction of the condominium. In this situation, where the interest in the limited partnership is sold under a fixed-price offering memorandum issued before October 14, 1989 and possession of a condominium unit is given to a person under a lease, licence or similar arrangement after 1990, the limited partnership, which is regarded as the builder of the complex, is subject to the self-supply rules under subsection 191(1).

Subsection 191(1) treats the limited partnership as having made a taxable supply of each unit as it is rented out. When this occurs, new subsection 336(5) requires the limited partnership to pay a special tax on the unit equal to 4 per cent of 80 per cent of the subscription price of the interest in the partnership that relates to the unit at the later of the time the construction or renovation is substantially completed and the time possession is given to another person under the rental agreement.

New subsection 336(6) sets out the definitions of "offering memorandum" and "subscription price" for purposes of subsection 336(5).

This amendment is effective as of January 1, 1991. However, it does not apply to residential condominium units owned by the partnership in a complex where possession of any unit was given to a residential tenant before December 1, 1996 under a lease, license or similar arrangement and the limited partnership self-assessed an amount of tax under subsection 191(1) which was included in a return received by Revenue Canada prior to December 1, 1996, if, as a result of the amendment, the taxpayer would be required to pay an additional

amount of tax. Where the amount self-assessed exceeds the tax owing under the amendment, the limited partnership will be allowed to apply for a refund of the excess tax paid, except where it applies for a rebate for the tax under section 261 of the Act. These rebates must be claimed before the later of January 1, 1998 and the expiration of the normal limitation period for rebates of tax paid in error.

In addition, the limitation period for reassessments set out in section 298 is extended in circumstances covered by subsection 336(5). Where the Minister of National Revenue has already assessed a partnership for tax on residential condominium units affected by the amendment, the Minister may reassess the tax owing by the limited partnership in respect of these interests anytime before January 1, 1998 or the expiration of the normal limitation period for reassessments. This measure permits the Minister to reduce assessments to reflect the reductions in tax liability under the amendment.

Where a transitional FST rebate has been paid to a limited partnership in respect of a condominium complex and subsection 336(5) applies to interests in condominium units owned by the partnership in that complex, the Minister of National Revenue may reassess the rebate payable to the partnership notwithstanding the time limitations set forth in section 72 and section 81.11 of Part VII of the *Excise Tax Act*, provided that the reassessment or redetermination is made prior to 1998, or at the same time as an assessment of the partnership's GST liability is made. This will permit the Minister to reduce the amount of the FST rebate in circumstances where the rebate was calculated on the basis of the total value of the unit and a lower taxable value is established under new subsection 336(5).

Clause 85

Definition "improvement"

ETA
Schedule V, Part I, section 1

Existing section 1 of Part I of Schedule V defines the term "improvement" in relation to real property. The section is repealed

because the definition "improvement" in subsection 123(1) of the Act, which currently relates only to capital property, is amended to apply to property generally (see commentary on the definition "improvement" under clause 1).

This amendment is effective on April 24, 1996.

Clause 86

Exempt Residential Leases or Licences

ETA
Schedule V, Part I, section 6

Section 6 of Part I of Schedule V exempts long-term residential leases and supplies of residential accommodation by way of lease or licence where the consideration does not exceed $20 per day. In order for a long-term lease of a residential complex or unit to be exempt, it must be occupied by the same individual for a period of at least one month. The amendment to paragraph 6(*a*) clarifies that the test is based on a period of continuous occupation.

This clarification is consistent with similar wording changes made to the definitions "residential complex" and "residential trailer park" in subsection 123(1) and "long-term lease" in subsection 254.1(1) as well as to sections 7 and 8.1 of Part I of Schedule V and subparagraph 25(*f*)(i) of Part VI of that Schedule.

For consistency, these wording changes are all effective on, or in relation to supplies made on or after, September 15, 1992, the date as of which subparagraph 25(*f*)(i) was last amended. However, these amendments do not apply for the purposes of determining any amount claimed as a deduction under subsection 232(3) in a return under Division V, or as a rebate in an application under Division VI, that was received at a Revenue Canada office before April 23, 1996.

Clause 87

Lease of Real Property Where Exempt Re-Supply

ETA
Schedule V, Part I, paragraph 6.1(*b*)

Existing section 6.1 of Part I of Schedule V exempts leases of land or buildings to a person who, in turn, leases the property on an exempt basis. Subsection 148(1) of chapter 27, S.C. 1993 amended this section, effective January 1, 1993, to clarify the application of the section where the final lessee changes the use of the property during the lease interval. At the same time, the reference in paragraph (*b*) of the section to a building or part of a building consisting solely of residential units was replaced by a reference to "all or part of a building that forms part of a residential complex". This had the unintended effect of denying the exemption previously available for the lease of certain buildings, such as establishments used to provide short-term accommodation that is exempt under paragraph 6(*b*) of Part I of Schedule V (i.e., where consideration is $20 or less per day). Such a building, although consisting of residential units, is not a residential complex within the meaning of subsection 123(1) when it is being used as a hotel, motel or similar premises.

To correct this oversight, paragraph 6.1(*b*) is amended to continue to apply to the supply of a building or part of a building where the building or part, as the case may be, consists solely of residential units. As a result, the lease of such premises is exempt for any lease interval throughout which the re-supplies of residential units therein are exempt under paragraph 6(*b*).

This amendment is effective January 1, 1993, the effective date of the previous amendment to section 6.1.

Clause 88

Exempt Leases of Land or Trailer Park Sites

ETA
Schedule V, Part I, section 7

Section 7 of Part I of Schedule V exempts certain supplies by way of lease, licence or similar arrangement of land and residential trailer park sites for a period of least one month. The section is amended to clarify that the test is based on a period of continuous possession or use the land or site.

This clarification is consistent with similar wording changes made to the definitions "residential complex" and "residential trailer park" in subsection 123(1) and "long-term lease" in subsection 254.1(1) as well as to sections 6 and 8.1 of Part I of Schedule V and subparagraph 25(*f*)(i) of Part VI of that Schedule.

For consistency, these wording changes are all effective on, or in relation to supplies made on or after, September 15, 1992, the date as of which subparagraph 25(*f*)(i) was last amended. However, these amendments do not apply for the purposes of determining any amount claimed as a deduction under subsection 232(3) in a return under Division V, or as a rebate in an application under Division VI, that was received at a Revenue Canada office before April 23, 1996.

Clause 89

Parking Spaces

ETA
Schedule V, Part I, section 8.1

Section 8.1 of Part I of Schedule V exempts certain supplies of residential parking for a period of at least one month. The section is amended to clarify that the test is based on the period "throughout" which the parking space is made available.

This clarification is consistent with similar wording changes made to the definitions "residential complex" and "residential trailer park" in

subsection 123(1) and "long-term lease" in subsection 254.1(1) as well as to sections 6 and 7 of Part I of Schedule V and subparagraph 25(*f*)(i) of Part VI of that Schedule.

For consistency, these wording changes are all effective on, or in relation to supplies made on or after, September 15, 1992, the date as of which subparagraph 25(*f*)(i) was last amended. However, these amendments do not apply for the purposes of determining any amount claimed as a deduction under subsection 232(3) in a return under Division V, or as a rebate in an application under Division VI, that was received at a Revenue Canada office before April 23, 1996.

Clause 90

Personal Trust

ETA
Schedule V, Part I, section 9

Existing section 9 of Part I of Schedule V exempts the sale of real property by an individual or a trust – all the beneficiaries of which are individuals and all the contingent beneficiaries of which are individuals or charities – with certain exceptions. Section 9 is amended as a consequence of the addition of the definition "personal trust" in subsection 123(1) (see commentary on clause 1). Amended section 9 applies to sales by individuals and personal trusts.

A substantive effect of this change relates to testamentary trusts. Under the new definition "personal trust", the restrictions regarding the beneficiaries of a trust, which are found in existing section 9, do not apply to testamentary trusts. This change is effective January 1, 1991 but does not apply to sales for which an amount was charged or collected on account of tax on or before April 23, 1996.

It should also be noted that the combined effect of these amendments and amendments to section 267 (see commentary on clause 73) is that sales of real property by a deceased individual’s estate will be treated in the same manner under section 9 as if the sale had been made before the individual died. This change is also effective January 1, 1991 but does not apply to sales for which an amount was charged or collected on account of tax on or before April 23, 1996.

The use of the term "personal trust" in section 9 also affects the treatment of *inter vivos* trusts. A personal trust excludes such a trust where any beneficial interest in the trust is sold by the trust or by persons who contributed property to the trust. In this circumstance, the trust would not be able to avail itself of the exemption under section 9. This change applies to sales made after April 23, 1996. (See the coming-into-force provision for the definition "personal trust" in subsection 123(1) under subclause 1(15)).

Under existing section 9, the exemption is not available for capital real property used primarily in a business. Amended paragraph 9(2)(*a*) restricts the exception from exemption to cases where the business is carried on with a reasonable expectation of profit.

Finally, another exception is added to the exemption under section 9. The exception in new paragraph 9(2)(*c*) provides that the supply of a part of a parcel of land by a person who is an individual, a trust, or the settlor of a trust will not be exempt where the parcel was severed or subdivided by the person. New subsection 9(1) provides that, for the purposes of these rules, the settlor of a testamentary trust is the deceased individual upon whose death the trust was established.

There are two exceptions to this rule. Where the parcel of land was subdivided or severed into only two parts, and the person did not previously subdivide or sever it from another parcel of land, new paragraph (*c*) does not apply. This paragraph also does not apply in the case of a subdivision or severance where the recipient is related to or is a former spouse of the individual supplier or settlor, and the land is being acquired for the personal use and enjoyment of the recipient. Further, for purposes of determining whether land has been subdivided or severed, where the individual, trust or settlor supplies a part of a parcel of land to a person who has the right to acquire the land by expropriation, such as a municipality or utility commission, that part and the remainder of the parcel will not be considered to have been subdivided or severed from each other by the individual, trust or settlor.

New paragraph 9(2)(*c*) applies to supplies made after April 23, 1996.

Clause 91

Coin-Operated Washing Machines and Clothes-Dryers

ETA
Schedule V, Part I, section 13.3

New section 13.3 exempts the supply to a consumer of a right to use a washing machine or clothes-dryer located in a common area of a residential complex.

It should be noted that the change-in-use rules under Subdivision d of Division II of Part IX apply where capital personal property, such as the coin-operated machines, used primarily in commercial activities begin to be used primarily in exempt activities as a result of the amendment. (Reference should also be made to section 198.1 which is in effect until April 1, 1997.)

This amendment applies to supplies made after April 23, 1996. As a result of the application of section 160, this means that the exemption applies in respect of consideration removed from the machines after that day.

New section 13.4 exempts a supply by way of lease, licence or similar arrangement of the part of the common area of a residential complex that is for use as a laundry where the lessee is a person who supplies the use of the washing machines and clothes dryers in the laundry on an exempt basis under new section 13.3.

The exemption for the lease of the laundry area applies to lease payments attributable to periods after April 23, 1996. To achieve this in the case of a lease that straddles that date, the provision of the property for the part of the lease period that ends before that date and the provision of the property for the remainder of the lease period are each treated as separate supplies. Notwithstanding this exemption, the lessor is entitled to claim input tax credits that would otherwise have been available if the supply had remained a taxable supply for inputs acquired or imported on or before December 15, 1996 for consumption or use in the course of leasing the area.

Clause 92

Definitions Relating to Health Services Exemptions

ETA
Schedule V, Part II, section 1

Subclause 92(1)

Definition "health care facility"

The definition "health care facility" in section 1 of Part II of Schedule V is amended to replace the expression "the mentally disordered" with the more generally accepted expression "individuals with a mental health disability".

The amendment applies on Royal Assent.

Subclause 92(2)

Definition "practitioner"

The definition "practitioner", in section 1 of Part II of Schedule V identifies the types of persons who are not required to charge tax on their supplies of services itemized in section 7 and new section 7.1 of this Part (see commentary on clauses 94 and 95).

The amendment adds dieticians to this list of practitioners. The amendment results from criteria established to determine which services supplied by health care practitioners will continue to be exempt under section 7 when rendered to an individual and whether there are additional services that would qualify. First, if the service is covered by a health insurance plan in a given province, it is exempt in that province. Second, if a service is covered by a plan in two or more provinces, it is intended that it be exempt in all provinces. Finally, if a service is not covered by a provincial health insurance plan, but is rendered in the practise of a profession that is regulated as a health care profession in five or more provinces, it is intended to be exempt in all provinces. Services that do not meet these criteria are intended to be taxable.

The amendment adding dieticians to the list of practitioners applies as of January 1, 1997.

Existing section 7 includes services that are currently exempt but do not meet the above criteria, namely osteopathic and speech therapy services. These services will remain on the list of exempt services until the end of 1997. If, at that time, they meet these criteria for exemption, an amendment will be introduced to allow these services to remain exempt.

Clause 93

Air Ambulance Services

ETA
Schedule V, Part II, section 4

Amended section 4 of Part II of Schedule V exempts ambulance services but excludes international air ambulance services, which are zero-rated under new section 15 of Part VII of Schedule VI (see commentary on clause 149).

It should be noted that if, as a result of the retroactive zero-rating of international air ambulance services, an ambulance operator would, as of a particular time, be considered to have been using capital property primarily in making taxable or zero-rated supplies, the operator may be entitled to claim input tax credits that were previously denied because of the existing exemption for all ambulance services.

The amendment is deemed to have come into force on January 1, 1991.

Clause 93.1

Nurses' Services

Schedule V, Part II, section 6

Section 6 of Part II of Schedule V is amended to add registered psychiatric nurses to the list of nursing professions whose services are

exempt from tax. The designation "registered psychiatric nurse" is recognized under the legislation governing the nursing profession in several provinces. The section is also amended to add a reference to a "registered practical nurse" given that this is the term used in some provincial legislation in place of the term "registered nursing assistant", which is already referenced in the section.

The amendment to include "registered practical nurse" applies to supplies made after January 1, 1994, which is the day on which this designation came into effect in Ontario. The amendment to include "registered psychiatric nurse" applies to supplies made after 1996.

Clause 94

Exempt Health Care Services

ETA
Schedule V, Part II, section 7

Section 7 of Part II of Schedule V is amended to remove osteopathic and speech therapy services from the list of exempt health care services for supplies made after 1997. As noted in the commentary on the amendments to section 1 of this Part, these services do not meet the criteria for exemption described therein. If, at the end of 1997, these services do meet those criteria, an amendment will be introduced to allow them to continue to be exempt.

Clause 95

Dietetic Services

ETA
Schedule V, Part II, section 7.1

New section 7.1 of Part II of Schedule V adds dietetic services to the list of exempt health care services since these services satisfy the policy criteria enumerated above (see the commentary on clause 92 relating to the change to the definition "practitioner" in section 1 of this Part). The services are exempt when rendered to an individual (regardless of who the recipient of the supply is) or when the

recipient of the supply is a public sector body or operator of a health care facility within the meaning of section 1 of this Part.

It should be noted that the change-of-use rules under subdivision d of Division II may apply. For example, if capital personal property of a dietician that is used primarily in making taxable supplies begins to be used primarily in making exempt supplies as a result of the amendment, the change-of-use rules may apply. (Reference should also be made to section 198.1 of the Act.)

The amendment applies to supplies of dietetic services made after 1996.

Clause 96

Psychoanalytic Services

ETA
Schedule V, Part II, section 12

Existing section 12 exempts supplies of psychoanalytic services where the supplier has received the same training in the provision of such services as do medical doctors and is a member in good standing of a professional society that sets and maintains standards of practise for all members in respect of psychoanalytic services in Canada.

The commentary on the amendment to section 1 of this Part outlines the criteria established for determining which services provided by health care practitioners will be exempt of GST. Although the services of psychoanalysts do not currently meet those criteria, they will remain exempt until the end of 1997. If, at that time, the services of psychoanalysts meet the criteria, an amendment will be introduced to allow their services to remain exempt.

It should be noted that the change-of-use rules under section 199 will apply if the capital property of psychoanalysts that is used primarily in exempt activities begins to be used after 1997 primarily in making taxable supplies as a result of the amendment.

Clause 97

Definition "vocational school"

ETA
Schedule V, Part III, section 1

The definition "vocational school" in section 1 of Part III of Schedule V is relevant for purposes of the exemptions for educational services under sections 6 and 8 of this Part, and for purposes of paragraph 2(*l*) of Part VI of Schedule V. The definition is amended to remove the reference to institutions certified for the purposes of subsection 118.5(1) of the *Income Tax Act*. Accordingly, all institutions will have to satisfy the criterion of being established and operated *primarily* to provide courses that develop or enhance students' occupational skills in order to qualify as a vocational school under this Part. A number of organizations that were certified for the purposes of subsection 118.5(1) were not established primarily for that purpose. These organizations will no longer qualify as vocational schools for GST purposes.

It should be noted that the change-of-use rules under section 199 will apply if the capital property of an educational institution used primarily in exempt activities begins to be used primarily in making taxable supplies as a result of the amendment.

The amendment applies in relation to supplies made after 1996.

Clause 98

Supplies Through Vending Machines

ETA
Schedule V, Part III, section 3

Existing section 3 of Part III of Schedule V exempts supplies of food, beverages, services or admissions that are supplied by a school authority primarily to elementary or secondary school students as part of an extra-curricular activity organized by the school. This includes, for example, charges by a school to students for a school-organized visit to a museum or theatre. The exemption under this section does

not extend to sales of goods other than food and beverages. For example, sales to students of school rings or sweaters by a school authority that is registered for GST purposes are subject to tax in the normal manner.

Amended section 3 provides that the exemption does not extend to food or beverages that are supplied through vending machines or that may be prescribed under section 12 of this Part.

The amendment applies to supplies made after April 23, 1996.

Clause 99

Exempt Courses

ETA
Schedule V, Part III, paragraph 8(*c*)

Section 8 of Part III of Schedule V provides an exemption for certain courses leading to certificates, diplomas or licences. One of the criteria for exemption in certain circumstances is that the supplier is a non-profit organization or a charity.

Paragraph 8(*c*) is amended as a consequence of the addition of new Part V.1 to the Schedule. The paragraph is amended to replace the reference to "charity" with a reference to "public institution", which is newly defined in subsection 123(1) (see commentary on the definition "public institution" under clause 1). Public institutions are defined as those universities, public colleges, school authorities, hospital authorities and local authorities designated as municipalities for all purposes of the GST that are registered charities within the meaning of the *Income Tax Act*.

These types of courses, when supplied by charities, will continue to be exempt under section 1 of new Part V.1 of Schedule V (see the commentary on clause 102.)

This amendment applies to supplies made after 1996.

Clause 100

Meal Plans

ETA
Schedule V, Part III, section 13

Amended section 13 of Part III of Schedule V clarifies the exemption for meal plans offered by universities and public colleges. Under this provision, a meal plan that is sold to students is exempt if the amount paid for the plan is sufficient to provide a student with at least 10 meals per week for the period of the plan, which must not be less than one month. The cost per meal must be based on the average cost of a meal at the educational institution. The amendment ensures that meal plans that are sold to students in the form of a decreasing balance debit card or meal vouchers are eligible for the exemption.

It should be noted that this exemption does not depend on whether the student purchasing the meal plan lives on- or off-campus. Hence, university students living off-campus and purchasing meal plans are provided the same treatment as students living in university or college residences. However, the meal plan must be for use by university or public college students at a campus cafeteria or restaurant. A qualifying meal plan would not cover purchases at an on-campus mini-mart or convenience store.

The amendment applies to plans for which all of the consideration becomes due or is paid without having become due after June 1996.

Clause 101

Child and Personal Care Services

ETA
Schedule V, Part IV, section 2

Section 2 of Part IV of Schedule V is amended to replace the expression "disabled individuals" with the more generally accepted expression "individuals with a disability".

The amendment is effective on Royal Assent.

Clause 102

Supplies by Charities

ETA
Schedule V, Part V.1

Existing Part VI of Schedule V to the Act sets out exempt supplies by public sector bodies including charities, non-profit organizations, municipalities, universities and public colleges, school authorities, hospital authorities and governments. For purposes of these rules, charities are defined as registered charities or registered Canadian amateur athletic associations within the meaning of the *Income Tax Act*.

Existing section 2 of Part VI exempts all supplies of personal property and services by charities except for certain exceptions set out therein. Charities are currently required to look to other provisions in Part VI of Schedule V, which apply to public sector bodies in general, to determine whether supplies excluded from section 2 are nevertheless exempt under another provision.

To simplify the rules for charities, a separate set of rules is set out for those public colleges, universities, school authorities, hospital authorities and local authorities designated as municipalities for all purposes of Part IX that are registered charities under the *Income Tax Act*. These organizations are newly defined as "public institutions" in subsection 123(1) and are excluded from the definition "charity". In addition, existing Part VI of Schedule V is amended so that provisions therein that apply to "public institutions', "public sector bodies" or "public service bodies" no longer apply to "charities" as newly defined. Rather, new Part V.1 of Schedule V provides for exemptions specific to charities. Section 11 of Part VI of Schedule V is an exception which sets out an exemption (for admissions to amateur performances and events) which is not specific to any supplier and therefore also continues to apply to charities as well as to public sector bodies generally among others. Each section of new Part V.1 is described below in further detail.

With certain exceptions noted below, the provisions of new Part V.1 apply to supplies for which consideration becomes due or is paid without having become due after 1996.

Section 1 General Exemption

As is the case with existing section 2 of Part VI of Schedule V, section 1 of new Part V.I exempts all supplies made by a charity of personal property or services except those listed in the paragraphs under the section. Section 1 of new Part V.I also exempts supplies of real property by a charity which are currently exempt under section 25 of Part VI of the Schedule. In addition, some changes are made to the list of exemptions. The following supplies by charities, which are currently excluded from the general exemption, will become exempt:

- catering services (existing paragraph 2(*g*) of Part VI of Schedule V);

- leases or licenses of real property for less than a month, and any goods leased with that property (existing paragraphs 2(*f*) and 25(*f*) of Part VI of Schedule V); and

- parking (existing paragraph 25(*h*) of Part VI of Schedule V).

It should be noted that the above supplies will continue to be excluded from the general exemption when made by public institutions (see Part VI of Schedule V).

In addition, the "direct cost" exemptions set out in existing sections 6 to 8 of Part VI of Schedule V are, in the case of charities, replaced with the exemption under section 5.1 of new Part V.1. In addition, the overriding volunteer exemption under existing section 3 of Part VI of Schedule V is repealed, and a new fund-raising rule is added for charities. These exemptions are described below.

The following supplies are excluded from the general exemption for charities:

- a zero-rated supply. New paragraph 1(*a*) replicates existing paragraph 2(*a*) of Part VI of Schedule V.

- deemed supplies (i.e., any supply deemed under the legislation to have been made by the charity). New paragraph 1(*b*) parallels existing paragraph 2(*b*) of Part VI of Schedule V. However, this exclusion also ensures that, where a charity is deemed to have made a supply under section 187 (i.e., the taking of bets on games of chance), it will not be a taxable supply. This is not a new exemption as it is provided for in existing section 5.2 of Part VI of Schedule V.

- capital and non-capital personal property used in a commercial activity immediately prior to the supply. New paragraph 1(*c*) parallels existing paragraphs 2(*c*) and (*d*) of Part VI of Schedule V.

- new goods acquired, manufactured or produced for resupply, and services supplied in respect of such goods. Under the existing legislation, supplies by charities of new goods and services in respect thereof are generally taxable (paragraph 2(*e*) of Part VI of Schedule V) subject to the overriding exemptions including the nominal consideration exemption under section 6 of that Part. New paragraph 1(*d*) of Part V.1 preserves this treatment. The revised nominal consideration exemption is set out in new section 5.1.

- admissions to a place of amusement where the maximum admission price exceeds one dollar.

  That part of an admission charge that is not considered a charitable donation is generally subject to GST pursuant to existing paragraph 2(*m*) of Part VI of Schedule V where the admission is to a place of amusement or a fund-raising event. Nonetheless, this is currently subject to certain overriding exemptions under other provisions such as the volunteer exemption, the exemption for supplies of admissions made for one dollar or less, and the amateur event exemption under section 11.

  Similarly, paragraph 1(*e*) of new Part V.1 carves admissions exceeding one dollar out of the general exemption. However, admissions may be exempt under new section 2 or 3 of this Part in certain circumstances (see commentary on those sections below). The exemption for amateur events or

performances also continues to apply to charities under section 11 of Part VI.

- services or memberships entitling a person to supervision or instruction in recreational or athletic activities except where:

  · they are provided primarily to children 14 years of age or less, and overnight supervision is not provided throughout a substantial portion of the program; or

  · they are intended to be provided primarily to underprivileged individuals or individuals with a disability.

  Paragraph 1(*f*) parallels the treatment provided under existing paragraph 2(*j*) and section 12 of Part VI of Schedule V. For example, recreational classes for adults and any overnight camps continue to be taxable while day camps for children continue to be exempt where supplied by a charity. However, the provision is simplified for charities by removing the criterion that the services be part of a program consisting of a series of classes or activities.

- memberships in charities that entitle members to otherwise taxable admissions for no extra charge or that provide significant discounts to members.

  Paragraph 1(*g*) of new Part V.I parallels the exclusion from exemption set out in existing paragraph 2(*h*) of Part VI of Schedule V, while retaining the existing exemption for certain memberships provided primarily to children, underprivileged individuals or individuals with a disability.

  For example, tax would apply to a supply by a charity of a membership in a recreational club that supplies otherwise taxable admissions to members for no extra charge or at a significant discount.

- the professional services of performing artists. These services are taxable when provided under a contract with another organization that is staging a professional performance, for example, where a symphony orchestra supplies its services to an

opera company. In effect, this is a relieving provision as it allows the supplier to claim input tax credits in respect of the supply, recognizing that the purchaser (i.e., the opera company) can likewise claim input tax credits on its purchase. Paragraph 1(*h*) of new Part V.I parallels existing paragraph 2(*i*) of Part VI of Schedule V.

- sales of tickets or other rights to participate in a game of chance conducted by a prescribed lottery corporation.

  Paragraph 1(*i*) of new Part V.1 parallels the treatment of supplies of rights to participate in games of chance as provided under existing paragraph 2(*k*) and section 5.1 of Part VI of Schedule V.

- sales of residential complexes. Paragraph 1(*j*) of new Part V.1 continues to carve sales of residential complexes out of the general exemption for supplies by charities. Charities must continue to look to Part I of Schedule V to determine exemptions for sales of residential complexes.

- vacant land sold to an individual or a personal trust (i.e., land on which there is no structure that was used by the body in either taxable or exempt activities).

  Paragraph 1(*k*) of new Part V.1 maintains the taxable status of vacant land sold by a charity as provided under existing paragraph 25(*c*) of Part VI of Schedule V. However, the provision is amended to replace the description of trusts in that paragraph with a reference to "personal trust", which is newly defined in subsection 123(1) (see commentary on the definition of that term under clause 1).

  Personal trusts include the type of trust referred to in existing paragraph 25(*c*). The term is somewhat broader, however. Existing paragraph 25(*c*) applies to trusts whose beneficiaries are individuals or, in the case of contingent beneficiaries, charities. The amended provision retains that condition only for *inter vivos* trusts. It applies to all testamentary trusts regardless of who the beneficiaries are. Therefore, a sale of vacant land by a charity to a testamentary trust will not be exempt under this provision.

- real property for which the charity has claimed or is entitled to claim an input tax credit (i.e., where the property was used primarily in a commercial activity).

  Paragraph 1(*l*) of new Part V.1 maintains the taxable status of such supplies of real property by charities as provided under existing paragraph 25(*d*) of Part VI of Schedule V.

- a supply of real property for which the charity has filed an election under section 211 of the Act.

  Paragraph 1(*m*) of new Part V.1 maintains the exclusion from exemption for supplies of such real property by charities as provided under existing paragraph 25(*g*) of Part VI of Schedule V.

Section 2 Admissions

Existing section 164 provides that, where a charity makes a supply of an admission to a dinner, ball, concert or similar fund-raising event, no tax applies on the portion of the admission price that can be considered a gift or contribution. In these cases, the term "charity" refers to a registered charity or registered Canadian amateur athletic association within the meaning of the *Income Tax Act*.

Section 2 of new Part V.1 exempts the total admission charged by a charity in such cases. For example, where a person pays $100 for a fund-raising dinner sponsored by a charity and the charity is entitled to issue a $50 charitable donation receipt for income tax purposes in respect of the admission price, no part of the $100 admission will be subject to GST.

Similar exemptions are introduced for public institutions (as newly defined in subsection 123(1)) and registered political parties, including candidates and referendum committees (see commentary on clauses 105 and 113 respectively).

This amendment applies to supplies for which consideration becomes due, or is paid without having become due, after 1996. Nonetheless, the existing rules will apply to admissions to any event for which any admissions have been sold before 1997. This will ensure that the same treatment applies to all admissions to a particular event.

It should be noted that the exemption for certain admissions to events or performances involving amateurs remains applicable to charities under section 11 of Part VI of Schedule V.

Section 3 Fund-Raising Activities

Given that the small supplier thresholds for charities are increased significantly under the amendments to sections 148 and 148.1 (see commentary on clauses 9 and 10), many more charities than currently is the case will not be required to be registered to collect GST. As a result, fewer fund-raising activities will fall within the scope of the tax.

Section 3 of new Part V.1 is provided for those charities that are large enough to remain registered for the tax. It exempts most supplies made by such charities in the course of fund-raising activities that are not otherwise exempt under section 2 of that Part. Such supplies are exempt under section 3 where they are not made on a regular or continuous basis throughout the year or a significant portion of the year and do not entitle recipients to receive property or services from the charity throughout the year or a significant portion of the year. Also, the existing exclusions from the volunteer exemption will apply to this new exemption provision.

This exemption is intended to parallel the approach toward exemptions for fund-raising activities that is taken by many provinces for purposes of their sales taxes. For instance, where a charity operates a retail business year round or supplies admissions to performances held throughout its theatre season from May to October, the supplies will be taxable. However, if, for example, a charity had two fund-raising drives per year during which it sold chocolate bars, the supplies would be exempt.

A similar exemption is introduced for public institutions (see commentary on clause 105).

Section 4 Meal Programs

Section 4 of new Part V.1 exempts the supply of prepared meals by charities under programs, such as Meals on Wheels, that are designed to provide seniors, persons with disabilities or underprivileged persons with prepared food in their homes. The provision also

exempts the sale of prepared meals to the charity for the purpose of carrying out the program.

This provision parallels existing section 15 of Part VI of Schedule V, which continues to exempt similar supplies by other public sector bodies.

Section 5 Supplies for No Consideration

Existing section 10 of Part VI of Schedule V provides an overriding exemption for supplies of property or services ordinarily supplied free of charge by a public sector body, including a charity. Such supplies are not considered to be made in the course of a commercial activity.

Section 5 of new Part V.1 maintains this exemption for charities, with the exception that the supply of blood or blood derivatives will be zero-rated under Part I of Schedule VI, even where supplied free of charge.

This amendment is consistent with the amendment to section 10 of Part VI of Schedule V (see commentary on clause 109). That section is amended, as of January 1, 1991, for supplies by charities and other public sector bodies. After 1996, however, it will apply only to the other public sector bodies, and section 5 of new Part V.1 will apply to charities.

Section 5.1 Direct Cost Exemption For Charities

Existing section 6 of Part VI of Schedule V exempts certain supplies by public service bodies made for consideration that does not exceed the direct cost of the supplies. Under the existing legislation, "direct cost " is defined in section 1 of that Part under clause 1, an amendment is made to revise the definition of direct cost and move this definition to subsection 123(1) so that it also applies to new Part V.1, which sets out the exemptions specific to supplies by "charities" as newly defined in subsection 123(1) (see commentary on that definition under clause 1).

Under new paragraph 5.1(*a*), where a charity makes a supply of a new good or of a service that was acquired for resale and does not charge the recipient an amount as GST on that supply (though the charity may show a breakdown of its own costs which might include

GST paid on the purchase of the good or service), the supply is exempt as long as the total charge by the charity for the supply is equal to or less than the GST – and provincial sales tax – included direct cost of the supply (as newly defined in subsection 123(1)).

Pursuant to new paragraph 5.1(*b*), even where the charity does charge the recipient an amount as GST on the supply, the supply would still be exempt (and therefore the amount charged as GST will have been collected in error) if the consideration for the supply (which does not include GST on the supply) were less than the GST-excluded direct cost of the good or service (e.g., where the charity sells the good or service for less consideration than the charity paid for it).

Section 6 Admissions to Gambling Events

Section 6 of new Part V.I replicates the existing exemption for admissions to gambling events under section 5 of Part VI of Schedule V.

Clause 103

Definitions

ETA
Schedule V, Part VI, section 1

Section 1 of Part VI of Schedule V sets out definitions of terms used throughout the Part.

Subclause 103(1)

Definition "direct cost"

The definition "direct cost" in section 1 of Part VI of Schedule V is repealed and replaced by a new definition of the term in subsection 123(1) (see commentary on the definition of that term under clause 1). The new definition will therefore apply for purposes of amended section 6 of Part VI of Schedule V as well as section 5.1 of new Part V.I of that Schedule (see commentary on clauses 108 and 102 respectively).

This amendment is effective on January 1, 1997.

Subclause 103(2)

Definition "transit authority"

The definition "transit authority" in section 1 of Part VI of Schedule V is amended to replace the expression "the mentally disordered" with the more generally accepted expression "individuals with a disability".

The amendment is effective on Royal Assent.

Subclause 103(3)

Definitions "public sector body", "public service body" and "registered party"

Definition "public sector body"

Section 1 of Part VI of Schedule V is amended by adding a definition of "public sector body" for purposes of Part VI. The new definition provides that, for purposes of Part VI only, the term "public sector body" will not include a reference to a charity as newly defined in subsection 123(1). The reason for this is that the exemptions specific to supplies by charities are set out separately in new Part V.1 of the Schedule (see commentary on clause 102). The expression "public sector body" will continue to refer to non-profit organizations, municipalities and governments. It will also include universities, public colleges, school authorities and hospital authorities – including those that are public institutions as newly defined in subsection 123(1). Charities will continue to be public sector bodies for purposes of the rest of Part IX of the Act.

This definition comes into force on January 1, 1997 and also applies in relation to supplies made before that day for which consideration becomes due, or is paid without having become due, on or after that day.

Definition "public service body"

Section 1 of Part VI of Schedule V is also amended by adding a definition of "public service body" for purposes of Part VI. For purposes of Part VI only, the expression "public service body" will not include a reference to a charity as newly defined in subsection 123(1). The reason for this is that the exemptions specific to supplies by charities are set out separately in new Part V.1 of the Schedule (see commentary on clause 102). The term "public service body" will continue to include non-profit organizations, municipalities, universities and public colleges, school authorities and hospital authorities – including those that are public institutions as newly defined in subsection 123(1). Charities will continue to be public service bodies for purposes of the rest of Part IX of the Act.

This definition comes into force on January 1, 1997 and also applies to supplies made before that day for which consideration becomes due, or is paid without having become due, on or after that day.

Definition "registered party"

Section 1 of Part VI of Schedule V is amended to add a definition of "registered party". This expression will have the same meaning in Part VI as under existing section 164. That section deals with fund-raising events and other activities in respect of which a registered party receives political contributions or donations. That section is repealed (see commentary on clause 16), and the new rules for the treatment of supplies in respect of which donations are given to political parties, including referendum committees and candidates, are found in new section 18.2 of Part VI of Schedule V (see commentary on clause 113.1).

This definition comes into force on April 23, 1996 but also applies in relation to supplies made before that day for which consideration becomes due, or is paid without having become due, on or after that day.

Clause 104

General Exemptions for Public Institutions

ETA
Schedule V, Part VI, section 2

Section 2 of Part VI of Schedule V is amended to replace references to "charity" with references to "pubic institution". This is consequential to the addition of new Part V.I of the Schedule, which sets out exemptions specific to supplies by charities. The term "charity" is redefined in subsection 123(1) to exclude a "public institution", which is newly defined in that subsection to refer to a person that is a registered charity, within the meaning of the *Income Tax Act*, and that is a school authority, hospital authority, university, public college or person determined to be a municipality for purposes of Part IX.

These amendments apply to supplies for which consideration becomes due after 1996 or is paid after 1996 without having become due.

Clause 105

Overriding Volunteer Exemptions

ETA
Schedule V, Part VI, sections 3 and 3.1

Existing section 2 of Part VI of Schedule V sets out the general rule that supplies by charities of personal property or services are exempt unless specifically excluded from the exemption. As noted in the commentary on clause 104 above, after 1996, section 2 of Part VI of Schedule V will apply only to persons newly defined to be "public institutions" under subsection 123(1) since new Part V.I sets out exemptions specific to supplies by charities.

Existing section 3 of Part VI contains an overriding exemption, which provides that those supplies that are otherwise carved out of the exemption under section 2 are nevertheless exempt under section 3 if, generally, the day-to-day administrative and other functions involved in carrying out the activity in which the supplies are made are

performed exclusively – generally taken to mean 90 per cent or more – by volunteers.

The volunteer exemption has proven difficult to apply. To simplify the rules, the overriding volunteer rule is repealed, other exemptions are amended and added (as detailed in the commentary on new section 3.1 of Part VI of the Schedule) and the small suppliers' thresholds for public service bodies are increased (see commentary on clauses 9 and 10). These changes are made with the objective of preserving the non-taxable status of most supplies that currently fall under the volunteer rule but based on alternative tests that are easier to apply. It should be noted, however, that there may be cases where supplies formerly exempt under the volunteer rule will become taxable. For example, if a charity or public institution that exceeds the small supplier's threshold operates a gift shop using only volunteers, its sales of new goods made at the shop will become taxable.

New section 3 of Part VI of Schedule V exempts all admissions by public institutions to a dinner, ball, concert or similar fund-raising event where a portion of the admission price can be treated as a charitable donation for income tax purposes. The amendment to section 3 is consistent with the fund-raising rule applicable to charities in new section 2 of Part V.I of Schedule V (see commentary on clause 102).

New section 3.1 exempts most supplies by public institutions that are made in the course of fund-raising activities where such supplies are not made on a regular or continuous basis throughout the year or a significant portion of the year and do not entitle the recipients to receive property or services from the institution throughout the year or a significant portion of the year. Also, the exclusions that apply to the existing volunteer exemption will apply to this new exemption provision. This provision is consistent with the new fund-raising rule for charities in section 3 of new Part V.1 of the Schedule (see commentary on clause 102).

Existing section 3 is repealed and replaced in respect of supplies for which consideration becomes due, or is paid without having become due, after 1996 except that new section 3 does not apply to supplies of admissions to events for which admissions have been supplied

before 1997. In that case, the existing rules continue to apply so that all admissions to a particular event will receive the same treatment.

Clause 106

Bingos, Raffles, etc.

ETA
Schedule V, Part VI, section 5.1

Existing section 5.1 of Part VI of Schedule V exempts the gambling proceeds to a charity or non-profit organization that conducts a bingo, raffle or casino betting, or otherwise sells rights to play or participate in a game of chance. The exemption does not apply to sales of rights by any non-profit organization that is prescribed in the *Games of Chance (GST) Regulations*, nor does it apply to any sale by a charity or non-profit organization of rights to play or participate in lotteries or other games of chance conducted by prescribed persons.

Section 5.1 is amended to replace the reference to "charity" with a reference to a "public institution", which is a person that is a local authority designated as a municipality for all purposes of Part IX, university, public college, hospital authority or school authority and that is a registered charity for purposes of the *Income Tax Act* (see commentary on the definition "public institution" under clause 1). This amendment is consequential to the addition of new Part V.1 to Schedule V, which sets out the exemptions specific to supplies by charities. The exemption for gambling activities continues to apply to charities but under section 1 of new Part V.1, with the same exclusion for prescribed persons and games of chance in paragraph 1(*i*) of that Part (see the commentary on clause 102).

This amendment applies to supplies for which consideration becomes due, or is paid without having become due, after 1996.

Clause 107

Bets on Casino Games, Races, Etc.

ETA
Schedule V, Part VI, paragraph 5.2(*a*)

Existing section 5.2 of Part VI of Schedule V exempts the gambling proceeds to a charity or non-profit organization, other than a prescribed lottery corporation, that conducts a casino event. All pari-mutuel betting on horse races is also exempt under this section. Nonetheless, admissions to casinos or racetracks are taxable.

Paragraph 5.2(*a*) is amended to replace the reference to a "charity" with a reference to a "public institution", which is newly defined in subsection 123(1) as a person that is a local authority designated as a municipality for all purposes of Part IX, university, public college, hospital authority or school authority and that is a registered charity within the meaning of the *Income Tax Act* (see commentary on the definition "public institution" under clause 1). This amendment to section 5.2 is consequential to the addition of new Part V.1 to Schedule V, which sets out the exemptions specific to supplies by charities. The exemption for gambling activities continues to apply to charities but under section 1 of that Part, with the same exclusion for prescribed persons under new paragraph 1(*i*).

This amendment applies to supplies for which consideration becomes due, or is paid without having become due, after 1996.

Clause 108

Direct Cost Exemption for Public Service Bodies

ETA
Schedule V, Part VI, sections 6 to 8

Existing section 6 of Part VI of Schedule V exempts certain supplies by public service bodies made for consideration that does not exceed the direct cost of the supplies. Under the existing legislation, "direct cost " is defined in section 1 of that Part. Under clause 1, an amendment is made to move this definition to subsection 123(1) so

that it also applies to new Part V.1, which sets out the exemptions specific to supplies by "charities" as newly defined in subsection 123(1) (see commentary on that definition under clause 1). Accordingly, section 6 will apply only to public service bodies other than those defined to be charities.

Under new paragraph 6(*a*), where a public service body makes a supply of a service that was acquired for resale or of a good purchased or manufactured for resale and does not charge the recipient an amount as GST on that supply (though the body might show the breakdown of its own costs which might include GST paid on the purchase of the good or service), the supply is exempt provided the total charge by the body for the supply does not exceed the GST–and provincial sales tax–included direct cost of the supply (as newly defined in subsection 123(1)).

Under new paragraph 6(*b*), even where the body does charge the recipient an amount as GST on the supply, the supply would still be exempt (and therefore the amount will have been collected as GST in error) if the consideration for the supply (which does not include GST on the supply) is less than the GST-excluded direct cost of the good or service (e.g., where the body sells the good or service for less consideration than the body paid for it).

Existing section 7 of Part VI exempts services supplied by public service bodies for an amount equal to or less than direct cost in the course of special events or activities that are not part of an ongoing business. Section 7 is repealed as a consequence of the revised definition "direct cost" in subsection 123(1) (see commentary on that definition under clause 1). This definition applies, in the case of services, only where they are purchased for resale. The existing provision contemplates an exemption for services produced by the public service body. However, this exemption has proven difficult to apply and, as a result, simpler, more straightforward rules, such as the fund-raising rule set out in section 3 of Part VI, are introduced (see commentary on clause 105).

Existing section 8 of Part VI provides an exemption for admissions to a film, slide show or similar presentation supplied by a public service body where the total revenue for all admissions to the presentation could not reasonably be expected to exceed the "direct cost" of the presentation. In this context, the direct cost is essentially the total of

all costs of renting the film and equipment used in putting on the presentation.

Section 8 is repealed as a consequence of the new definition "direct cost", in subsection 123(1) which no longer applies to supplies of films, slide shows and similar presentations (see commentary on that definition under clause 1).

The amendments to section 6 and the repeal of existing sections 7 and 8 apply in respect of supplies for which all of the consideration becomes due, or is paid without having become due, after 1996.

Clause 109

Admissions Not Exceeding One Dollar and Supplies for Nil Consideration

ETA
Schedule V, Part VI, sections 9 and 10

Section 9 Admissions

Section 9 of Part VI of Schedule V exempts admissions supplied by a public sector body where the maximum charge does not exceed one dollar. The wording of this section is amended to be consistent with that of paragraph 1(*e*) of new Part V.I of the Schedule applicable to charities.

This amendment applies to supplies made after April 23, 1996.

Section 10 Nil Consideration

Section 10 of Part VI of Schedule V exempts supplies by a public sector body of property or services where all or substantially all of the body's supplies of the property or service are made free of charge. Such supplies are not considered to be made in the course of a commercial activity.

Section 10 is amended to exclude the supply of blood and blood derivatives from the exemption. This will ensure that such supplies

will continue to be zero-rated under Part I of Schedule VI, even though they are supplied free of charge.

This amendment is effective as of January 1, 1991.

The French version of section 10 is also amended, for supplies made after April 23, 1996, to replace the reference to "such" supplies with a more specific reference to "the" supplies, to be consistent with the wording of the English version.

It should be noted that, as a result of the amendment to the definition "public sector body" for purposes of Part VI of Schedule V, the provisions of that Part which refer to "public sector bodies" or "public service bodies" do not apply to a "charity" (as newly defined in subsection 123(1)) as of January 1, 1997 (see commentary on clause 103). Instead, a similar provision for charities is found in section 5 of new Part V.1 of Schedule V.

Clause 110

Recreational Services

ETA
Schedule V, Part VI, paragraph 12(*b*)

Paragraph 12(*b*) of Part VI of Schedule V is amended to replace the expression "mentally or physically disabled individuals" with the more generally accepted expression "individuals with a disability".

The amendment is effective on Royal Assent.

Clause 111

Recreational Camps

ETA
Schedule V, Part VI, section 13

Section 13 of Part VI of Schedule V is amended to replace the expression "mentally or physically disabled individuals" with the more generally accepted expression "individuals with a disability".

The amendment is effective on Royal Assent.

Clause 112

Meal Programs

ETA
Schedule V, Part VI, section 15

Section 15 of Part VI of Schedule V is amended to replace the expression "disabled individuals" with the more generally accepted expression "individuals with a disability". In addition, the term "aged" is replaced with the term "seniors".

The amendment is effective on Royal Assent.

Clause 113

Memberships and Other Supplies by Registered Parties

ETA
Schedule V, Part VI, section 17

Existing section 17 of Part VI of Schedule V provides for exemptions and elections for certain supplies of memberships in public sector bodies. Memberships supplied by charities, which excludes "public institutions" as newly defined in subsection 123(1), continue to be exempt but under new Part V.I of Schedule V (see commentary on clause 102). Memberships in public institutions are exempt under

amended section 2 of Part VI of Schedule V (see commentary on clause 104).

Section 17 is amended so as not to apply to memberships supplied by a registered party, which includes political parties, candidates and referendum committees. New section 18.1 exempts those memberships without providing for an election to treat the memberships as taxable.

Clause 113.1

Registered Parties

ETA
Schedule V, Part VI, sections 18.1 and 18.2

New section 18.1 exempts the supply of a membership in a registered party as newly defined in section 1 of this Part (see subclause 103(3)). Therefore, the registered party is not required to collect tax on the memberships and is not entitled to claim input tax credits for inputs relating to those supplies. There is no election to treat the supplies as taxable.

New section 18.2 of Part VI of Schedule V exempts any supply by a registered party where part of the consideration for the supply is a contribution to the registered party for which the recipient is entitled to claim a political contributions deduction or credit for income tax purposes. This broadens the existing relief provided under section 164, which provides that only that portion of the consideration that is a contribution is free of tax. New section 18 exempts the entire supply. Accordingly, no input tax credits will be available in respect of the inputs used in making the supply.

This provision is consistent with the revised treatment of supplies of admissions to dinners, balls, concerts and similar events by charities and public institutions (see the commentary on clauses 102 and 105 respectively).

New section 18.1 applies to any supply of a membership made after April 23, 1996 except where a written offer or invoice for that supply was issued before June 1996. New section 18.2 of Part VI of

Schedule V applies to supplies made after 1996 except for supplies of admissions to events for which any admissions are supplied before 1997. The existing rules will apply to the latter supplies.

Clause 114

Supplies by Municipalities and Governments

ETA
Schedule V, Part VI, section 20

Subclause 114(1)

Zoning and Assessment Information

ETA
Schedule V, Part VI, Paragraph 20(*e*)

Existing paragraph 20(*e*) of Part VI of Schedule V describes information services and certain documents that are exempt when supplied by a government, municipality or a board, commission or other body established by a government or municipality.

The amendment to paragraph 20(*e*) adds to the list of exempt services the supply of information, or any certificate or other document, in respect of the zoning of real property or any assessment in respect of property.

It should be noted that the change-of-use rules may apply where the capital property of municipalities used primarily in taxable activities begins to be used primarily in exempt activities as a result of the amendment. (Reference should also be made to section 198.1 of the Act.)

The amendment applies to supplies for which all of the consideration becomes due after 1996 or is paid after 1996 without having become due.

Subclause 114(2)

Garbage Collection

ETA
Schedule V, Part VI, paragraph 20(*h*)

Existing paragraph 20(*h*) of Part VI of Schedule V exempts garbage collection services provided by a government, municipality or a board, commission or other body established by a government or municipality, other than collection services that are not part of the basic service that is supplied on a regularly scheduled basis by the government or municipality. Amended paragraph 20(*h*) extends the exemption to all garbage collection services provided by such entities. For example, a special collection of used electrical appliances, which was not part of a regularly scheduled service, would be exempt when provided by these entities.

It should be noted that the change-of-use rules for capital property may apply where, as a result of this amendment, capital property of a municipality used primarily in taxable activities begins to be used primarily in exempt activities. (Reference should also be made to section 198.1 of the Act.)

The amendment applies to services performed after 1996.

Amended paragraph 20(*h*) also clarifies, as of January 1, 1991, that the collection of garbage includes the collection of recyclable materials. This exemption applies to the collection of recyclables as part of a curbside or neighbourhood collection program as well as to the delivery of such recyclables by the municipality, government or other body to a recycling facility. The processing of recyclables at material recycling facilities is considered to be a commercial activity, and the sale of recyclables by a registrant is taxable.

Clause 115

Municipal Services

ETA
Schedule V, Part VI, sections 21 to 24

Section 21 General Exemption for Municipal Services

Section 21 of Part VI of Schedule V contains a general exemption for standard municipal services provided to property owners in a particular locale. This includes such services as road building and street lighting. In most municipalities, these services are financed from general revenues. In some cases, the municipality may identify the cost of the service separately to the resident. This provision is intended to ensure that such charges are not taxable. Optional services supplied to individual households on a fee-for-service basis are not covered under the exemption and are taxable unless they are exempt under another section of the Schedule.

Amended section 21 clarifies that municipal services performed by or on behalf of a municipality or government as a result of an owner's or occupant's failure to comply with an obligation imposed under a law are treated as a non-optional service and therefore exempt. For example, if a homeowner or occupant fails to control the growth of weeds on his or her property, thereby violating a municipal by-law, and if the municipality cuts the weeds as a result of the owner or occupant's failure to do so and charges for the service, the service is exempt.

The amendment applies to supplies for which any consideration becomes due or is paid without having become due after April 23, 1996.

Section 21.1 Exempt Optional Services

New section 21.1 of Part VI of Schedule V exempts the supply of a number of services when made by a municipality or by a board, commission or other body established by a municipality. Services currently exempt under section 21 of this Part include road repair and maintenance, snow removal and tree pruning where they are provided to property owners as a standard municipal service. However,

section 21 does not exempt these services where they are supplied to individual households on a fee-for-service basis. New section 21.1 makes all supplies of these services exempt when provided by a municipality or by a body established by a municipality.

It should be noted that the change-of-use rules may apply where capital property used primarily in taxable activities begins to be used primarily in exempt activities as a result of the amendment (reference should also be made to section 198.1 of the Act.)

New section 21.1 applies to supplies for which any consideration becomes due or is paid without having become due after 1996.

Section 22 Water, Sewerage or Drainage Services

Section 22 of Part VI of Schedule V exempts the supply of a service of installing, repairing or maintaining a water distribution, sewerage or drainage system that is for the use of an owner or occupant of real property where the supply is made by a municipality or by an organization that operates such a system and is designated as a municipality by the Minister of National Revenue for the purposes of this section. Under the existing provision, where a separate fee is charged to a property owner or occupant to repair or maintain part of an existing system that is for the sole use of the owner or occupant, the supply is taxable.

Section 22 is amended to eliminate the exception and also to exempt the service of interrupting the operation of such a system. For example, where a municipality repairs that part of a water distribution system that is for the sole use of a homeowner, and the municipality bills the homeowner, the fee will not be subject to tax.

It should be noted that the change-of-use rules may apply where the capital property of a municipality used primarily in taxable activities begins to be used primarily in exempt activities as a result of the amendment (reference should also be made to section 198.1 of the Act).

The amendment applies to supplies for which any consideration becomes due after 1996 or is paid after 1996 without having become due.

Section 23 Supplies of Unbottled Water

Section 23 of Part VI of Schedule V exempts certain supplies of unbottled water when made by a person other than a government or by a government designated by the Minister of National Revenue to be a municipality for the purposes of this section.

The amendment clarifies that the service of delivering the water is also exempt only where the delivery is made by the person who supplies the water, and that supply of water is exempt.

The amendment applies to supplies for which all of the consideration becomes due or is paid without having become due after April 23, 1996.

Section 24 Municipal Transit Services

Section 24 of Part VI of Schedule V exempts a supply of a municipal transit service. "Municipal transit service" is defined in section 1 of this Part as a public passenger transportation service supplied by a transit authority all or substantially all of whose services are provided within a particular municipality and its surrounding areas. "Transit authority" is also defined in section 1 of this part. A municipal transit service does not include a charter service or a service that is part of a tour. For example, where a school charters a city bus for a special field trip, or a local transit authority offers sight-seeing tours of a city, the service is taxable. The Minister of National Revenue is given the authority to designate a particular public transportation service to be an exempt municipal transit service.

This provision is intended to exempt only services supplied directly to the public. For example, if an organization contracts with a municipality to provide transit services to the public on behalf of the municipality, the charges to the public are exempt. However, any charges by the organization to the transit authority for the provision of these services are intended to be taxable. Rather than relying on this as a criterion of designation, the section is amended to specify therein that the supply must be made to a member of the public.

The amendment applies to supplies for which all of the consideration becomes due or is paid without having become due after April 23, 1996.

Clause 116

Supplies of Real Property by Public Service Bodies

ETA
Schedule V, Part VI, section 25

Section 25 of Part VI of Schedule V lists exempt supplies of real property by public service bodies. It should be noted that, as a result of the amendment to the definition "public service body" in section 1 of Part VI, section 25 will not apply to charities (as newly defined in subsection 123(1)) as of January 1, 1997. Rather, as of that day, the special exemptions for supplies of real property by charities are contained in section 1 of new Part V.1 of Schedule V (see commentary on clause 102).

Subclause 116(1)

Sales of Vacant Land

ETA
Schedule V, Part VI, paragraph 25(*c*)

Paragraph (*c*) of section 25 of Part VI of Schedule V excludes from the exemption under that section sales of vacant land to an individual or a trust all of the beneficiaries of which are individuals and all the contingent beneficiaries of which are individuals or charities.

Paragraph 25(*c*) is amended as a consequence of the new definition "personal trust" in subsection 123(1) (see commentary on the definition of that term under clause 1). The term "personal trust" encompasses the type of trust referred to in existing paragraph 25(*c*). However, this term is somewhat broader in that it includes all testamentary trusts, regardless of who the beneficiaries are. As a result, a sale by a public service body of vacant land to a testamentary trust will not be exempt under this provision.

This amendment applies to supplies made after April 23, 1996.

Subclause 116(2)

Short-Term Leases

ETA
Schedule V, Part VI, paragraph 25(*f*)

Paragraph 25(*f*) excludes supplies made under a lease with a term of less than one month from the exemption for supplies of real property by a public service body. The amendment clarifies that the test is based on a period of continuous possession or use.

This clarification is consistent with similar wording changes made to the definitions "residential complex" and "residential trailer park" in subsection 123(1) and "long-term lease" in subsection 254.1(1) as well as to sections 6, 7 and 8.1 of Part I of Schedule V.

For consistency, these wording changes are all effective on, or in relation to supplies made on or after, September 15, 1992, the date as of which subparagraph 25(*f*)(i) was last amended. However, these amendments do not apply for the purposes of determining any amount claimed as a deduction under subsection 232(3) in a return under Division V, or as a rebate in an application under Division VI, that was received at a Revenue Canada office before April 23, 1996.

Subclause 116(3)

Sales of Seized or Repossessed Real Property

ETA
Schedule V, Part VI, paragraph 25(*i*)

New paragraph 25(*i*) of Part VI of Schedule V is added to carve out of the exemption for supplies of real property by a public service body any supply of property that the body has, as a creditor, seized or repossessed in circumstances where subsection 183(1) of the Act applied.

For example, a municipality can, under the law of some provinces, cause the supply of real property of a person who defaults in paying municipal taxes. According to the rules set out in subsections 183(1) and (10), the municipality in this case would be deemed to have

seized the property and would be considered to be the person making the supply. New paragraph 25*(i)* of Part VI of Schedule V ensures that the supply is not subject to the exemption under section 25.

This amendment applies to supplies made after April 23, 1996. It also applies to any supply made on or before that day unless no amount of tax was, on or before that day, charged or collected in respect of the supply, or, if an amount of tax was charged or collected before that day, the Minister of National Revenue received, before that day, an application under subsection 261(1) for a rebate in respect of that amount or a return in which a deduction under subsection 232(1) was claimed.

Clause 117

Inter-Municipal Supplies

ETA
Schedule V, Part VI, section 28

Section 28 of Part VI of Schedule V exempts certain supplies between municipalities and their "para-municipal" organizations (which are defined in section 1 of that Part). This exemption recognizes that many municipalities provide municipal services through semi-autonomous bodies that they establish, such as irrigation authorities or fire departments. These organizations are generally referred to as para-municipal organizations.

New paragraph (*f*) of section 28 excludes from the inter-municipal supply rules a supply of electricity, gas, steam or telecommunication services made by a para-municipal organization (as defined in section 1 of this Part) that acts as a public utility, or a branch or division of such an organization that acts in that capacity. The amendment will ensure consistency in the GST treatment of supplies by public utility organizations. Under the existing legislation, municipalities that own or control a public utility organization are able to purchase electricity, gas, steam or telecommunications services on an exempt basis while municipalities that do not own or control a public utility organization must pay tax on these supplies. The amendment eliminates this inequity.

It should be noted that the change-in-use rules under Subdivision d of Division II may apply, e.g., where the capital personal property of public utilities used primarily in exempt activities begins to be used primarily in taxable activities as a result of the amendment.

While the supply of electricity, gas, steam or telecommunications services by a public utility organization to a municipality is excluded from the exemption, supplies of property or services by a municipality to a public utility organization that it owns and controls may continue to qualify for the exemption. For example, a municipality will continue to be able to provide such services such as legal or accounting services on an exempt basis to the public utilities that it owns or controls.

New paragraph 28(*f*) applies to supplies of electricity, gas, steam or telecommunications services for which consideration becomes due, or is paid without having become due, after April 23, 1996.

Clause 118

Definitions – Prescription Drugs and Biologicals

ETA
Schedule VI, Part I, section 1

Section 1 of Part I of Schedule VI defines several terms that are used throughout the Part.

Subclause 118(1)

Definition "practitioner"

ETA
Schedule VI, Part I, section 1

The term "practitioner" used in Part I of Schedule VI is repealed and replaced by the term "medical practitioner" for consistency with the terminology used in Part II of Schedule V to describe the same type of individual.

The amendment applies as of April 23, 1996.

Subclause 118(2)

Definition "prescription"

ETA
Schedule VI, Part I, section 1

The amendment to the definition "prescription" in section 1 of Part I of Schedule VI is consequential to the amendment to the definition "practitioner" in this section. The term "practitioner" is replaced by the term "medical practitioner".

This amendment applies as of April 23, 1996.

Subclause 118(3)

ETA
Schedule VI, Part I, Definition "medical practitioner"

The definition "medical practitioner" is added for purposes of Part I of Schedule VI. The term replaces the term "practitioner" for consistency with Part II of Schedule V.

This amendment applies as of April 23, 1996.

Clause 119

Supply of a Drug

ETA
Schedule VI, Part I, section 3

The amendments to paragraphs (*a*) and (*b*) of section 3 of Part I of Schedule VI are consequential to the amendment to the definition "practitioner" in section 1 of this Part (see commentary on clause 118). The amendment replaces the term "practitioner" with the term "medical practitioner" for consistency with the term used in Part II of Schedule V.

The amendment applies to supplies made after April 23, 1996.

Clause 120

Medical and Assistive Devices

ETA
Schedule VI, Part II, heading

The heading for Part II of Schedule V is amended, effective on Royal Assent, to read "Medical and Assistive Devices", to better describe the types of property that are zero-rated under this Part.

Clause 121

Definition "practitioner"

ETA
Schedule VI, Part II, section 1

The definition "practitioner" in section 1 of Part II of Schedule VI is amended to read "medical practitioner" for consistency with the term used in Part II of Schedule V.

The amendment applies as of April 23, 1996.

Clause 122

Medical Devices

ETA
Schedule VI, Part II, sections 2 to 4

Section 2 Communication Devices

Amended section 2 of Part II of Schedule VI is an amalgamation of existing section 2 and existing subparagraph 2(*d*)(iv) of the *Medical Devices (GST) Regulations*, which will be repealed. Amended section 2 therefore applies to all communication devices that are specially designed for use by an individual with a hearing, speech or vision impairment, and no longer contains a prescription requirement

for communication devices for use with a telegraph or telephone apparatus.

The amendment applies to supplies for which consideration becomes due, or is paid without having become due, after April 23, 1996.

Section 3 Heart Monitoring Device

Section 3 of Part II of Schedule VI is amended to replace the term "practitioner" with the term "medical practitioner". This amendment is consequential to the repeal of the definition "practitioner" in this Part (see commentary on clause 121).

The provision is also amended to ensure that devices supplied under a prescription issued to a consumer are zero-rated regardless of who the legal recipient of the supply is.

The amendments apply to supplies for which consideration becomes due or is paid without having become due after April 23, 1996.

Section 4 Hospital Beds

Existing section 4 of Part II of Schedule VI zero-rates the supply of a hospital bed to individuals when the supply is made on the written order of a medical practitioner or to hospital authorities. The amendment extends the unconditional zero-rating to operators of any health care facilities. This would include long-term care facilities.

The intent of the legislation is to zero-rate only beds that are specially designed for patient care, which are similar to those used in hospitals. Beds with adjustable mattresses that can be purchased by individuals at department stores and are designed primarily to provide increased comfort are not zero-rated.

The section is also amended to replace the term "practitioner" with the term "medical practitioner" as a consequence of the amendment to section 1 of this Part (see commentary on clause 121).

These amendments apply to supplies for which consideration becomes due, or is paid without having become due, after April 23, 1996.

Clause 123

Artificial Breathing Apparatus

ETA
Schedule VI, Part II, section 5 of French Version

The French version of section 5 of Part II of Schedule VI is amended to replace the reference to a person "suffering" from a respiratory disorder with a reference to a person "having" such a disorder.

This amendment is effective on Royal Assent.

Clause 124

Aerosol Chamber and Respiratory Monitor

ETA
Schedule VI, Part II, sections 5.1 and 5.2

Section 5.1 Aerosol Chamber

Section 5.1 of Part II of Schedule VI is amended to replace the term "practitioner" with the term "medical practitioner". This amendment is consequential to the repeal of the definition "practitioner" in this Part (see commentary on clause 121).

The section is also amended to ensure that the devices described therein are zero-rated when supplied under a prescription issued to a consumer, regardless of who the legal recipient of the supply is.

These amendments apply to supplies made after April 23, 1996.

Section 5.2 Respiratory Monitor

New section 5.2 of Part II of Schedule VI zero-rates a supply of a respiratory monitor, nebulizer, tracheostomy supply, gastro-intestinal tube, dialysis machine, infusion pump or intravenous apparatus, that can be used in the residence of an individual. Specifically, the devices are zero-rated when they are specially designed to be used in an environment outside the hospital.

New section 5.2 incorporates references to medical devices contained in existing paragraph 2(*a*) of the *Medical Devices (GST) Regulations*, which will be repealed.

The amendment applies to supplies made after April 23, 1996.

Clause 125

Zero-Rated Assistive Devices

ETA
Schedule VI, Part II, sections 7 and 8

Section 7 Device to Convert Sound to Light Signals

Section 7 of Part II of Schedule VI is amended to replace the term "practitioner" with the term "medical practitioner". This amendment is consequential to the repeal of the definition "practitioner" in this Part (see commentary on clause 121).

The section is also amended to ensure that the devices described therein are zero-rated when supplied under a prescription issued to a consumer, regardless of who the legal recipient of the supply is.

These amendments apply to supplies made after April 23, 1996.

Section 8 Selector Control Device

Section 8 of Part II of Schedule VI is amended to replace the expression "physically disabled individual" with the more generally accepted expression "individual with a disability".

The amendment is effective on Royal Assent.

Section 9 Eye Glasses and Contact Lenses

Section 9 of Part II of Schedule VI is amended to ensure that eye glasses and contact lenses are zero-rated when supplied, for the treatment or correction of a defect of vision, under a prescription issued to a consumer, regardless of who the legal recipient of the supply is.

This amendment applies to supplies made after April 23, 1996.

Clause 126

Orthodontic Appliances

ETA
Schedule VI, Part II, section 11.1

New section 11.1 of Part II of Schedule VI unconditionally zero-rates a supply of an orthodontic appliance. Under the existing legislation, these appliances are zero-rated unconditionally under section 23 of this Part as an orthopaedic brace.

The amendment applies to supplies for which all of the consideration becomes due or is paid without having become due after April 23, 1996.

Clause 127

Aids to Locomotion and Patient Lifters

ETA
Schedule VI, Part II, sections 14 and 15

Sections 14 and 15 of Part II of Schedule VI are amended to replace the expression "disabled individual" with the more generally accepted expression "individual with a disability".

These amendments are effective on Royal Assent.

Clause 128

Medical Devices

ETA
Schedule VI, Part II, sections 18 to 20

Section 18 Auxiliary Driving Control

Section 18 of Part II of Schedule VI is amended to replace the expression "physically disabled individual" with the more generally accepted expression "individual with a disability".

The amendment is effective on Royal Assent.

Section 18.1 Vehicles Adapted for Use with a Wheelchair

Existing section 18.1 of Part II of Schedule VI zero-rates the service of modifying a motor vehicle such as a car or a mini-van to meet the needs of an individual with a disability and requiring the use of a wheelchair. Goods supplied in conjunction with the service would also be zero-rated where these are necessary to the modification of the vehicle for the stated purpose.

Existing section 18.1 requires the vehicle to be owned by an individual. Amended section 18.1 eliminates this restriction and extends the zero-rating to cases where the vehicle is owned by non-individuals, such as corporations, associations, or municipal or governmental organizations.

The amendment applies to supplies for which any consideration becomes due after April 23, 1996 or is paid after that day without having become due.

Sections 19 and 20 Patterning Device and Toilet-, Bath- or Shower-Seat

Sections 19 and 20 of Part II of Schedule VI are amended to replace the expression "disabled individual" with the more generally accepted expression "individual with a disability".

These amendments are effective on Royal Assent.

Clause 129

Extremity Pumps and Catheters

ETA
Schedule VI, Part II, sections 21.1, 21.2 and 21.3

Sections 21.1 and 21.2 of Part II of Schedule VI are amended to replace the term "practitioner" with the term "medical practitioner". This amendment is consequential to the repeal of the definition "practitioner" in this Part (see commentary on clause 121).

These sections are also amended to ensure that the devices described therein are zero-rated when supplied under a prescription issued to a consumer, regardless of who the legal recipient of the supply is.

These amendments apply to supplies made after April 23, 1996.

In addition, the reference to the supply of a lancet has been deleted from section 21.2 and included in new section 21.3. This means that the zero-rating of lancets will no longer be contingent on the supply being made to a consumer on the written order of a practitioner.

This amendment applies to supplies of lancets for which consideration becomes due or is paid after 1996.

Clause 130

Orthotic and Orthopaedic Devices

ETA
Schedule VI, Part II, sections 23 and 23.1

Amended section 23 of Part II of Schedule VI combines sections 23 and 23.1 to clarify the treatment of orthotic and orthopaedic devices. Amended section 23 unconditionally zero-rates the supply of orthotic or orthopaedic devices that are made to order for an individual. It should be noted that orthodontic appliances are unconditionally zero-rated under new section 11.1. All other orthotic and orthopaedic devices will be zero-rated only where they are purchased under a

prescription issued by a medical practitioner to a consumer. Therefore, items, such as cradle arm slings, cervical collars, knee braces and obus forms, are taxable at a rate of seven per cent unless purchased on the written order of a medical practitioner.

As of April 23, 1996, the term "medical practitioner" is used instead of "practitioner" for consistency with the terminology used in Part II of Schedule V. The other amendments apply to supplies for which all of the consideration becomes due, or is paid without having become due, on or after May 14, 1996.

Clause 131

Appliance for Individual with Crippled or Deformed Foot

ETA
Schedule VI, Part II, section 24 of French version

Section 24 of Part II of Schedule VI to the French version of the Act is amended to replace the reference to persons "suffering" from a disability or deformity of the foot or ankle with a reference to persons "having" such a disability or deformity of the foot or ankle.

This amendment is effective on Royal Assent.

Clause 132

Specially Designed Footwear

ETA
Schedule VI, Part II, section 24.1

Existing paragraph 2(*c*) of the *Medical Devices (GST) Regulations* zero-rates footwear that is specially designed for an individual with a crippled or deformed foot or similar disability. That provision will be repealed and replaced with new section 24.1 of Part II of Schedule VI, which requires that such footwear be supplied on the written order of a medical practitioner in order to be zero-rated.

New section 24.1 applies to supplies for which all of the consideration becomes due or is paid without having become due after 1996.

Clause 133

Cane or Crutch

ETA
Schedule VI, Part II, section 27

Section 27 of Part II of Schedule VI is amended to replace the expression "physically disabled individual" with the more generally accepted expression "individual with a disability". In addition, the word "specially" has been added before the term "designed" to make it consistent with the wording of similar provisions in this Part.

The amendment is effective on Royal Assent.

Clause 134

Articles Specially Designed for Blind Individuals

ETA
Schedule VI, Part II, section 30

Section 30 of Part II of Schedule VI is amended to replace the term "practitioner" with the term "medical practitioner". This amendment is consequential to the repeal of the definition "practitioner" in this Part (see commentary on clause 121).

In addition, the expression "the blind" is replaced by the more generally accepted expression "blind individuals".

The amendment applies to supplies made after April 23, 1996.