Explanatory Notes Relating to the Excise Tax Act, the Income Tax Act, the First Nations Goods and Services Tax Act, the Yukon First Nations Self-Government Act, and Related Acts

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

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Canada

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Preface

These explanatory notes describe proposed amendments to the *Excise Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Excise Act*, the *Income Tax Act*, the *Budget Implementation Act, 2005*, the *First Nations Goods and Services Tax Act* and the *Yukon First Nations Self-Government Act*. These explanatory notes describe these amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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

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Excise Tax Act

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Part 1

Amendments Relating to the GST / HST Rate Reduction

Excise Tax Act

Clause 2

Definition "basic tax content"

ETA
Subsection 123(1)

Subsection 123(1) of the *Excise Tax Act* (the "Act") contains definitions used in Part IX of the Act relating to the goods and services tax and the harmonized sales tax (GST/HST). The "basic tax content" of a person's property is generally the amount of tax under Part IX that the person was required to pay on the property and improvements thereto, after deducting any amounts (other than input tax credits) that the person was entitled to recover by rebate, remission or otherwise and after taking into account any depreciation in the value of the property. The basic tax content is generally used for the purposes of determining a person's liability for tax or eligibility for input tax credits in a number of cases where the person is deemed under Part IX to have supplied or acquired property.

Special rules apply to determine the basic tax content of selected listed financial institutions (as defined in subsection 225.2(1)) given the special rules applicable to those entities under Part IX of the Act. The description of G in subparagraph (*a*)(v) of the definition "basic tax content" in subsection 123(1) and the description of P in paragraph (*b*) of the definition "basic tax content" in subsection 123(1) that apply to selected listed financial institutions are amended. The amendments replace all references to 7 per cent with references to 6 per cent in respect of any amount of tax that the selected listed financial institution reports for the purposes of subsection 225.2(2) in reporting periods that end on or after July 1, 2006. The amendments to the definition "basic tax content" are consequential to the reduction of the GST rate from 7 per cent to 6 per cent.

These amendments come into force on July 1, 2006.

Clause 3

Charging provision

ETA
165

Section 165 is the basic charging provision that imposes GST, or the federal component of the HST in participating provinces, on the recipient of a taxable supply made in Canada.

Subclause 3(1)

Imposition of goods and services tax

ETA
165(1)

Existing subsection 165(1) imposes tax on recipients of taxable supplies made in Canada at the rate of 7 per cent on the value of the consideration for the supply.

This subsection is amended to reduce the rate at which tax is imposed under it from 7 per cent to 6 per cent.

Coming into force provisions provide the rules described below for determining whether, and the extent to which, tax imposed under subsection 165(1) applies at the rate of 7 or 6 per cent in respect of a particular taxable supply.

Subclause 3(2)(*a*)

Supplies made on or after July 1, 2006

ETA
165(1)

Tax imposed under subsection 165(1) applies at the rate of 6 per cent for taxable supplies that are made on or after July 1, 2006. This rule does not apply to a supply by way of sale of real property that is deemed to be made under section 191. Specific transitional rules, which are outlined below, apply to determine the application of amended subsection 165(1) to these deemed supplies and to supplies made before July 1, 2006.

Reference should be made to the provisions of the Act, such as section 133, that apply in determining when a supply is made, to establish whether a supply is made on or after July 1, 2006, and thus is subject to this transitional rule.

Subclause 3(2)(*b*)

Supplies made before July 1, 2006

ETA
165(1)

This transitional rule provides for the application of the 6-per-cent rate of tax imposed under subsection 165(1) to supplies that are made before July 1, 2006, but only in respect of that portion of the tax that either becomes payable on or after July 1, 2006, and is not paid on or before that day, or is paid, without having become payable, on or after that day. This rule does not apply in respect of a supply by way of sale of real property.

Reference should be made to the provisions of the Act, such as section 133, that apply in determining when a supply is made, to establish whether a supply is made before July 1, 2006, and thus is subject to this transitional rule.

Subclause 3(2)(*c*)

Sales of real property

ETA
165(1)

With respect to taxable supplies by way of sale of real property, the transitional rule does not depend upon the time at which tax becomes payable or is paid.

This transitional rule applies to supplies by way of sale of real property, other than any of the following:

- a sale of real property that is made on or after July 1, 2006,
- a sale of real property that is deemed under Part IX of the Act to have been made, or
- a sale of a residential complex under an agreement of purchase and sale, evidenced in writing, entered into on or before May 2, 2006.

It should be noted that other transitional rules may apply to impose tax at the rate of 6 per cent even if this rule does not. For example, a supply by way of sale of real property made on or after July 1, 2006, other than a supply deemed under section 191 of the Act to have been made, is subject to the transitional rule in subclause 3(2)(*a*).

An example of the application of this transitional rule is a purchaser who signs an agreement to purchase a new home on May 15, 2006, with transfer of ownership and possession of the complex under the agreement taking place on July 2, 2006. Since transfer of ownership and possession take place on or after July 1, 2006, tax is imposed on the value of the consideration for the supply at the rate of 6 per cent. If instead, transfer of ownership had taken place on June 30, 2006, with transfer of possession still taking place on July 2, 2006, tax would be imposed on the value of the consideration for the supply at the rate of 7 per cent.

A purchaser of a residential complex who enters into an agreement of purchase and sale, evidenced in writing, of the complex on or before May 2, 2006, and does not acquire ownership and possession of the complex until on or after July 1, 2006, is required to pay tax imposed under subsection 165(1) at the rate of 7 per cent on the value of the consideration for the supply, but may be eligible to claim a transitional rebate in respect of the purchase under new section 256.3 of the Act.

Subclause 3(2)(*d*)

Self-supply of single unit residential complex or residential condominium unit

ETA
165(1)

Where subsection 191(1) applies, builders of newly constructed or substantially renovated single unit residential complexes (for example, detached and semi-detached houses) and residential condominium units must self-assess tax calculated on the fair market value of the residential complex or condominium unit. To trigger this self-assessment, subsection 191(1) treats the builder as having made and received a taxable supply of the complex or unit at a time specified in the subsection when certain conditions in respect of the complex or unit are first met and to have collected and paid tax at that time calculated on the fair market value of the complex or unit.

If the specified time at which the supply is deemed to have been made and received under subsection 191(1) is on or after July 1, 2006, tax imposed under subsection 165(1) of the Act applies at the rate of 6 per cent on the fair market value of the complex or unit. For example, a person who substantially completes construction of a detached home for rental purposes and first gives possession of the home to a tenant on July 1, 2006, is deemed to have paid and collected tax imposed under subsection 165(1) at the rate of 6 per cent on the fair market value of the home on that date. If possession of the complex were instead given on June 30, 2006, tax would be imposed under subsection 165(1) at the rate of 7 per cent.

An exception to the application of this transitional rule applies if the triggering event causing the deemed supply on or after July 1, 2006, is the giving of possession of the complex or unit to a person under an agreement entered into on or before May 2, 2006, for the supply by way of sale of the building or part of the building in which the residential unit forming part of the complex is situated. This would be the case, for example, when a person purchases a house and leases the land on which it is situated from the builder of the house under an agreement entered into on May 2, 2006, and acquires possession of the house under the agreement on or after July 1, 2006. If this exception to the transitional rule applies, tax on the deemed supply under subsection 191(1) is imposed under subsection 165(1) at the rate of 7 per cent. The purchaser of the building, or part of the building, in which the complex or unit is situated may be eligible to claim a rebate in respect of the purchase under new section 256.4 of the Act.

Subclause 3(2)(*e*)

Self-supply of residential condominium unit

ETA
165(1)

Subsection 191(2) applies when the builder of a substantially completed residential condominium unit has given possession of the unit, before registration of the condominium complex in which it is situated, to a purchaser under an agreement of purchase and sale, the purchaser has occupied or rented out the unit and the agreement is terminated (otherwise than by performance of the agreement) without entering into a new agreement. Under these circumstances, subsection 191(2) treats the builder of the unit as having made and received a taxable supply of the unit at the time the agreement is terminated and as having collected and paid tax at that time calculated on the fair market value of the unit.

Under this transitional rule, if the agreement is terminated on or after July 1, 2006, then tax imposed under subsection 165(1) applies at the rate of 6 per cent, unless possession of the unit is transferred to the purchaser before that day.

Subclause 3(2)(*f*)

Self-supply of multiple unit residential complex

ETA
165(1)

When subsection 191(3) applies, builders of newly constructed or substantially renovated multiple unit residential complexes, such as apartment buildings, are treated as having made and received a taxable supply of the complex at a time specified in the subsection when certain conditions in respect of the complex are first met and as having collected and paid tax at that time calculated on the fair market value of the complex.

If the specified time at which the supply is deemed to have been made and received under subsection 191(3) is on or after July 1, 2006, then tax imposed under subsection 165(1) applies at the rate of 6 per cent on the fair market value of the complex. For example, a builder who completes construction of an apartment building and triggers a deemed supply on July 1, 2006, on first giving possession of an apartment in the building to a tenant would be deemed to have paid and collected tax imposed at the rate of 6 per cent on the fair market value of the building on that day. If first possession of an apartment in the building had instead been given on June 30, 2006, tax would have been imposed under subsection 165(1) at the rate of 7 per cent.

An exception to the application of this transitional rule applies if the triggering event causing a deemed supply on or after July 1, 2006, is the giving of possession of a residential unit in the complex to a person under an agreement for the supply by way of sale of the building or part of the building forming part of the complex and the supply by way of lease, or assignment of a lease, of the land forming part of the complex, and either that agreement was entered into on or before May 2, 2006, or another similar agreement entered into with another person was entered into on or before that day and that similar agreement was not terminated before July 1, 2006.

If this exception to the transitional rule applies, tax on the deemed supply under subsection 191(3) is imposed under subsection 165(1) at the rate of 7 per cent. A purchaser of the building or part of the building that forms part of a multiple unit residential complex to which the exception to the transitional rule applies may, however, be eligible to claim a rebate in respect of the purchase under new section 256.5 of the Act and the builder who is required to self-assess under subsection 191(3) may be eligible to claim a rebate under new section 256.6 of the Act.

Subclause 3(2)(*g*)

Self-supply of addition to multiple unit residential complex

ETA
165(1)

When subsection 191(4) applies, a builder of a newly constructed addition to an existing multiple unit residential complex, such as an additional floor added to an apartment building, is treated as having made and received a taxable supply of the addition at a time specified in the subsection when certain conditions in respect of that addition are first met and as having collected and paid tax at that time calculated on the fair market value of the addition.

If the specified time at which the supply is deemed to have been made and received under subsection 191(4) is on or after July 1, 2006, then tax is imposed under subsection 165(1) of the Act at the rate of 6 per cent on the fair market value of the addition. For example, a builder who substantially completes construction of an addition and triggers a deemed supply on July 1, 2006, on first giving possession of an apartment in the addition to a tenant would be deemed to have paid and collected tax imposed under subsection 165(1) at the rate of 6 per cent on the fair market value of the addition on that date. If first possession of an apartment in the addition had instead been given on June 30, 2006, tax would have been imposed under subsection 165(1) at the rate of 7 per cent.

An exception to the application of this transitional rule applies if the triggering event causing a deemed supply on or after July 1, 2006, is the giving of possession of a residential unit in the addition to a person under an agreement for the supply by way of sale of the building or part of the building forming part of the complex and the supply by way of lease, or assignment of a lease, of the land forming part of the complex, and either that agreement was entered into on or before May 2, 2006, or another similar agreement entered into with another person was entered into on or before that day and that similar agreement was not terminated before July 1, 2006.

If this exception to the transitional rule applies, tax on the deemed supply under subsection 191(4) is imposed at the rate of 7 per cent. The purchaser of the building portion of a residential unit in an addition to a multiple unit residential complex to which the exception to the transitional rule applies may, however, be eligible to claim a rebate in respect of the purchase under new section 256.5 of the Act and the builder who is required to self-assess under subsection 191(4) may be eligible to claim a rebate under new section 256.6 of the Act.

Subclause 3(2)(*h*)

Selected listed financial institutions

ETA
165(1)

Section 225.2 provides for adjustments to net tax that are required to be made by selected listed financial institutions in determining net tax for a reporting period. One of these adjustments requires the calculation of amounts of tax in respect of supplies received by the financial institution from another person with whom the financial institution has made an election under section 150, which election allows those supplies to be treated as exempt. The selected listed financial institution and the other person can elect under subsection 225.2(4) for

the financial institution to calculate tax in respect of these supplies using a method provided for under paragraph (*c*) of element A in subsection 225.2(2) based upon a calculation of tax on certain costs to the other person of making the exempt supplies.

Under the transitional rule, selected listed financial institutions calculating tax on costs under paragraph (*c*) of the description of A in subsection 225.2(2) for reporting periods that end on or after July 1, 2006, will use the rate of 6 per cent for calculating tax under subsection 165(1) regardless of when the costs of the other person were actually incurred.

Subclause 3(2)(*i*)

Determining and calculating other amounts

ETA
165(1)

This transitional rule applies only if none of the other transitional rules for amended subsection 165(1) in subclauses 3(2)(*a*) to (*h*) apply. An example of its application is the case of a registrant who acquires capital property in respect of which an election under section 167 of the Act applies. As a result of the election, no tax is actually payable in respect of the consideration for supply of the property; however, in calculating the basic tax content of the property (within the meaning assigned by subsection 123(1)) the registrant is required to determine an amount equal to the tax that would have been payable in respect of the supply, but for the operation of section 167. If the tax that would have been payable under subsection 165(1) in respect of the supply would have been payable on or after July 1, 2006, then this transitional rule provides that the rate of 6 per cent applies in making that determination.

Clause 4

Employee and shareholder benefits

ETA
173(1)

Section 173 sets out the rules for determining the amount of tax to be remitted on a supply by a registrant to an employee or shareholder of the registrant when that supply gives rise to a taxable benefit for income tax purposes. In particular, the formula in clause 173(1)(*d*)(vi)(B) provides the manner for calculating tax to be remitted on a taxable employee or shareholder benefit, other than an automobile operating expense benefit to which a prescribed percentage applies.

Currently, clause 173(1)(*d*)(vi)(B) provides that where the recipient is a shareholder who is resident in a participating province at the end of the taxation year or where the recipient is an employee and the last establishment of the employer at which the employee ordinarily worked or to which the employee ordinarily reported in the year was located in a participating province, the tax remittance is to be calculated by multiplying the total consideration for the benefit by the factor 14/114. In any other case, the total consideration is multiplied by the factor 6/106.

Clause 173(1)(*d*)(vi)(B) is amended to adjust the base percentage to 5 per cent for determining the factors that are used for calculating the tax on a taxable employee or shareholder benefit. This amendment is consequential to the amendment to subsection 165(1) that reduces the rate of tax imposed under that subsection from 7 per cent to 6 per cent. As a result, the new factors will be 5/105 and 13/113 for the GST and HST respectively.

The amendment to clause 173(1)(*d*)(vi)(B) applies to the 2006 and subsequent taxation years of an individual, except that with respect to the 2006 taxation year, the reference to "5%" cent shall be read as "5.5%".

Clause 5

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. In respect of an allowance paid by a person, the person is deemed to have paid tax in the amount as determined by the formula in paragraph 174(*e*) of the French version of the Act and in paragraph 174(*f*) of the English version.

The formula in paragraph 174(*e*) and in paragraph 174(*f*) of the French and English versions respectively currently employs the factor of 15/115, reflecting supplies that would have been taxable at the HST rate of 15 per cent, where all or substantially all of the supplies for which the allowance is paid were made in participating provinces or the allowance is paid for the use of a motor vehicle in participating provinces. In this case, the amount of tax deemed to have been paid is equal to the amount of the allowance multiplied by the factor 15/115. In any other case, the amount of tax that is deemed to have been paid is determined by the factor 7/107, reflecting supplies that would have been taxable at the rate of 7 per cent.

Paragraph 174(*e*) of the French version and paragraph 174(*f)* of the English version are amended to ensure that the formula in those paragraphs employs the rate specified in subsection 165(1) for the GST or the federal component of the HST. These amendments are consequential to the amendment to subsection 165(1) that reduces the rate of tax imposed under that subsection from 7 per cent to 6 per cent.

The amendments to paragraph 174(*e*) of the French version and paragraph 174(*f*) of the English version apply in respect of an allowance paid by a person on or after July 1, 2006.

Clause 6

Acquisition of used returnable containers

ETA
176(1)

Subsection 176(1) deems tax to have been paid by a registrant acquiring used returnable containers, in certain circumstances, from a person not required to charge tax. For the purpose of calculating the deemed tax, subsection 176(1) sets out a formula, which is based on the existing GST rate of 7 per cent.

The formula in subsection 176(1) is amended so that the reference to 7 per cent is replaced with the expression, "the rate set out in subsection 165(1)". This amendment is consequential to the amendment to subsection 165(1) that reduces the rate of tax imposed under that subsection from 7 per cent to 6 per cent.

The amendment to subsection 176(1) applies to supplies made on or after July 1, 2006.

Clause 7

Coupons

ETA
181(1)

Section 181 sets out the rules for the sales tax treatment of supplies for which a coupon is accepted as full or partial consideration. For purposes of specifying the tax treatment of coupons under this section, subsection 181(1) provides a definition "tax fraction". The definition currently provides that the tax fraction is 15/115 in respect of coupons accepted as consideration for supplies made in participating provinces and, in any other case (i.e., in respect of supplies made in non-participating provinces), the tax fraction is 7/107.

Subsection 181(1) is amended to ensure that the formula within the definition "tax fraction" employs the rate specified in subsection 165(1) for the GST or the federal component of the HST. This amendment is consequential to the amendment to subsection 165(1) that reduces the rate of tax imposed under that subsection from 7 per cent to 6 per cent.

The amendment to subsection 181(1) applies in respect of a coupon that is accepted on or after July 1, 2006, in full or partial consideration for a supply.

Clause 8

Rebates

ETA
181.1

Existing section 181.1 deals with rebates, in respect of goods or services taxable at the rate of 7 per cent, offered directly to a customer acquiring the goods or services from the manufacturer or another vendor (e.g. a manufactures' rebate). Where the issuer of the rebate is a registrant and notifies the customer that the rebate includes GST, the rebate is deemed to include tax equal to the appropriate tax fraction (e.g. 7/107, or 15/115 for participating provinces), which the issuer may claim as an input tax credit (ITC). Conversely, certain customers are deemed to have made a taxable supply equal to the amount of the rebate and to have collected tax on that amount to the extent that the tax was claimed as an ITC. The tax fractions used in paragraphs 181.1(*a*) and (*b*) of the French version of the Act and 181.1(*e*) and (*f*) of the English version are based on the current GST rate of 7 per cent.

Paragraphs 181.1(*a*) of the French version and 181.1(*e*) of the English version are amended to ensure that the tax fractions employed in those paragraphs (and, indirectly, the tax fractions used in paragraphs 181.1(*b*) of the French version and 181.1(*f*) of the English version) are based on the rate set out in subsection 165(1). This amendment is consequential to the amendment to subsection 165(1) that reduces the rate of tax imposed under that subsection from 7 per cent to 6 per cent.

The amendments to paragraphs 181.1(*a*) of the French version and 181.1(*e*) of the English version apply to a supply of property or a service in respect of which tax became payable on or after July 1, 2006.

Clause 9

Forfeitures and extinguished debt

ETA
182(1)(*a*)

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 is deemed to have collected, and the person to have paid, tax on the consideration for the supply determined under paragraph 182(1)(*a*). That consideration is the amount paid, forfeited, reduced or extinguished, multiplied by the factor 100/115 if the supply was made in a participating province, or 100/107 in any other case.

The amendments to paragraph 182(1)(*a*) remove references to 107 per cent and replace them with the expression the total of “100% and the rate set out in subsection 165(1)”. Based on a GST rate of 6 per cent, the amended description of B will determine the consideration by applying factors of 100/114 in the case of a supply made in a participating province and 100/106 for a supply made in any other case. These amendments are consequential to the amendment to subsection 165(1) that reduces the rate of tax imposed under that subsection from 7 per cent to 6 per cent.

The amendments to paragraph 182(1)(*a*) apply to an amount that is paid or forfeited on or after July 1, 2006, and to a debt or other obligation that is reduced or extinguished, without payment on account of the debt or obligation, on or after that day.

Clause 10

Seizure and repossession

ETA
183(4), (5) and (6)

Section 183 provides rules for the application of the GST to property seized or repossessed by a creditor. At the time of seizure or repossession, the creditor is deemed to have acquired the property by way of sale for no consideration. Subsections 183(4), (5) and (6) deem a supply to be made and, except where that supply is an exempt supply, tax to be paid and collected by the creditor where property is seized or repossessed by the creditor and appropriated for the creditor’s own use. The tax is determined as a percentage of the fair market

value of the property. Subsection 183(4) applies to a taxable supply of real property, subsection 183(5) applies to personal property seized or repossessed before 1994 and subsection 183(6) applies to personal property seized or repossessed after 1993.

Subsections 183(4), (5) and (6) are amended to remove all references to 7 per cent and replace them with the expression, "the rate set out in subsection 165(1)". The result is that tax on the fair market value of the property is calculated at the rate of 14/114 if the property is situated in a participating province and at the rate of 6/106 in any other case. These amendments are consequential to the amendment to subsection 165(1) that reduces the rate of tax imposed under that subsection from 7 per cent to 6 per cent.

The amendments to subsections 183(4), (5) and (6) apply to property that is seized or repossessed by a creditor if the creditor begins, on or after July 1, 2006, to use the property otherwise than in the making of a supply of the property.

Clause 11

Property transferred to insurer on settlement of claim

ETA
184(3), (4) and (5)

Section 184 applies when a person transfers property to an insurer in the course of settling an insurance claim. At the time of transfer, the insurer is deemed to have acquired the property by way of sale for no consideration. Subsections 184(3), (4) and (5) deem a supply to be made and, except where that supply is an exempt supply, tax to be paid and collected by the insurer where property is transferred to that insurer and appropriated for the insurer's own use. The tax is determined as a percentage of the fair market value of the property. Subsection 184(3) applies to a taxable supply of real property, subsection 184(4) applies to personal property transferred to an insurer before 1994 and subsection 184(5) applies to personal property transferred to an insurer after 1993.

Subsections 184(3), (4) and (5) are amended to remove all references to 7 per cent and replace them with the expression, "the rate set out in subsection 165(1)". The result is that tax on the fair market value of the property is calculated at the rate of 14/114 if the property is situated in a participating province and at a rate of 6/106 in any other case. These amendments are consequential to the amendment to subsection 165(1) that reduces the rate of tax imposed under that subsection from 7 per cent to 6 per cent.

The amendments to subsections 184(3), (4) and (5) apply to property that is transferred to an insurer if the insurer begins, on or after July 1, 2006, to use the property otherwise than in the making of a supply of the property.

Clause 12

Performance bonds

ETA
184.1(2)

Subsection 184.1(2) applies when a surety provides taxable supplies of construction services relating to the construction of real property situated in Canada if the construction services are carried on in full or partial satisfaction of the surety's obligation under a performance bond. A performance bond is a three-party agreement between a surety who issues a bond, an obligee who enters into a contract with a contractor, and a contractor who carries on construction. The surety, under the bond, agrees to remedy the contractor's default under the contract with the obligee. In some cases, the surety may step into the shoes of the defaulting contractor and carry on the construction. If the surety is at any time entitled to receive contract payments (within the meaning of paragraph 184.1(2)(*a*)) from the obligee by reason of the surety's agreeing to carry on the construction, the surety is deemed to be engaged in that construction. The input tax credits a surety may claim with respect to direct inputs (within the meaning of paragraph 184.1(2)(*c*)) that are consumed, used, or supplied exclusively and directly in the course of carrying on the particular construction are capped at 7 per cent or 15 per cent of the total of all contract payments.

Subsection 184.1(2) is amended to remove all references to 7 per cent and replace them with the expression, "the rate set out in subsection 165(1)". The result is that a surety may calculate input tax credits capped at 14 per cent of the total of all contract payments received by the surety in respect of its supply of construction services if the supply is made in a participating province or, in any other case, 6 per cent of the total of those contract payments. These amendments are consequential to the amendment to subsection 165(1) that reduces the rate of tax imposed under that subsection from 7 per cent to 6 per cent.

The amendments to subsection 184.1(2) apply to a person acting as a surety under a performance bond in respect of a contract for a particular taxable supply of construction services if a contract payment (within the meaning of paragraph 184.1(2)(*a*)) becomes due or is paid without having become due to the person on or after July 1, 2006, by reason of the person carrying on the particular construction. A special transitional rule adjusts the input tax credit cap to recognize that contract payments occur throughout the construction process. As a result, contract payments may become due or be paid without becoming due before July 1, 2006, and after July 1, 2006. In respect of a particular construction, the cap will take into account the reduction of the GST rate in respect of contract payments that become due or are paid without having become due before July 1, 2006, and in respect of contract payments that become due and are paid after July 1, 2006.

Clause 13

Bets and games of chance

ETA
187(*c*)

Section 187 deems the taking of a bet to be a supply of a service and paragraph 187(*c*) sets out the formula for calculating the consideration for that service. The existing formula, which nets out any provincial tax paid on the amount of the bet and multiplies the remaining amount by 100/107, or 100/115 for participating provinces, is based on the existing GST rate of 7 per cent.

The formula in paragraph 187(*c*) is amended to replace the references to 107 per cent with the sum of 100 per cent and the rate set out in subsection 165(1). This amendment is consequential to the amendment to subsection 165(1) that reduces the rate of tax imposed under that subsection from 7 per cent to 6 per cent.

The amendment to paragraph 187(*c*) is effective July 1, 2006.

Clause 14

Prizes

ETA
188(1)

Under subsection 188(1), if a registrant pays money as a prize or winnings to a bettor, the registrant is treated as having received a taxable supply of a service and as having paid tax on that service, and is therefore eligible to claim an input tax credit equal to the amount of tax that the registrant is treated as having paid. Existing subsection 188(1) calculates the tax by multiplying the total amount of money paid as a prize or winnings by the ”tax fraction” (i.e. 7/107ths).

Subsection 188(1) is amended to replace the existing calculation of tax with a formula that is based on the rate set out in subsection 165(1). This amendment is consequential to the amendment to subsection 165(1) that reduces the rate of tax imposed under that subsection from 7 per cent to 6 per cent.

The amendment to subsection 188(1) is effective April 1, 1997, to coincide with the repeal of the definition “tax fraction” in subsection 123(1).

Clause 15

Real property credits

ETA
193

Existing section 193 allows a registrant that makes a taxable supply by way of sale of real property to claim an input tax credit under certain circumstances in respect of previously unrecoverable tax relating to the property and improvements to it.

Subclause 15(1)

Sale of real property

ETA
193(1)

Subsection 193(1) provides for the input tax credit that can be claimed under certain circumstances by a registrant in respect of previously unrecoverable tax relating to a taxable sale of real property, other than a sale referred to in paragraphs 193(1)(*a*) or (*b*).

Subsection 193(1) is amended to make the input tax credit provided under it subject to new subsection 193(2.1), which applies when the sale of real property in respect of which the input tax credit is claimed is made by a public sector body to another person with whom the public sector body is not dealing at arm's length.

Amended subsection 193(1) applies to any supply in respect of which tax becomes payable, or would have become payable, in the absence of section 167 of the Act, on or after July 1, 2006.

Subclause 15(2)

Sale by public sector bodies

ETA
193(2)

Existing subsection 193(2) provides for the input tax that can be claimed under certain circumstances by a registrant that is a public sector body, other than a financial institution, in respect of unrecoverable tax relating to a taxable sale of real property where an election under section 211 of the Act is in effect in respect of the property at the time when the sale is made.

Subsection 193(2) is amended to make the input tax credit provided under it subject to new subsection 193(2.1), which applies when the sale of real property in respect of which the input tax credit is claimed is made by a public sector body to another person with whom the public sector body is not dealing at arm's length.

Amended subsection 193(2) applies to any supply in respect of which tax becomes payable, or would have become payable, in the absence of section 167 of the Act, on or after July 1, 2006.

Subclause 15(3)

Limitation

ETA
193(2.1)

New subsection 193(2.1) applies if the sale of real property in respect of which a input tax credit is claimed under subsection 193(1) or (2) of the Act is made by a public sector body to another person with whom the public sector body is not dealing at arm's length.

When new subsection 193(2.1) applies, the value of A in subsection 193(1), or the input tax credit under subsection 193(2), as the case may be, shall not exceed the lesser of the basic tax content of the property at the time when the sale is made and the amount determined by the formula in paragraph 193(2.1)(*b*).

Subsection 123(1) defines the "basic tax content" of a person's property. It is generally the amount of tax under Part IX of the Act that the person was required to pay on the property and improvements to it, after deducting any amounts (other than input tax credits) that the person was entitled to recover by rebate, remission or otherwise, or would have been so entitled to recover if the property had been acquired for use exclusively in activities that are not commercial activities, and after taking into account any depreciation in the value of the property.

The formula in paragraph 193(2.1)(*b*) requires that the amount of tax payable in respect of the sale of real property (or that would be payable but for section 167 of the Act) be multiplied by the ratio that the actual basic tax content of the property at the time of the sale bears to the amount that would be the basic tax content of the property at that time if amounts (other than input tax credits) that the person was entitled to recover by rebate, remission or otherwise, or would have been so entitled to recover if the property had been acquired for use exclusively in activities that are not commercial activities, were not deducted in calculating the basic tax content.

New subsection 193(2.1) applies to any supply in respect of which tax becomes payable, or would have become payable, in the absence of section 167 of the Act, on or after July 1, 2006.

Clause 16

Incorrect statement

ETA
194(*a*)

Section 194 imposes a liability for tax on a supplier who makes a taxable sale of real property but incorrectly states or certifies that it is an exempt supply of a residential complex or an exempt supply of real property under section 9 of Part I of Schedule V to the Act. Unless the purchaser knew or ought to have known that it was not an exempt supply, the supplier is liable for tax in respect of the supply. The tax payable in respect of the supply depends upon whether the provincial component of the HST imposed under subsection 165(2) is payable in respect of the supply. If that is the case, the tax equals 15/115ths of the consideration. Otherwise, the tax equals 7/107ths of the consideration.

The amendment removes all references to 7 per cent and replaces them with the expression, “the rate set out in subsection 165(1)”. The result is that the tax payable in respect of the supply equals 14/114ths of the consideration for the supply if the supply was made in a participating province and 6/106ths of that consideration in any other case. The amendments to paragraph 194(*a*) are consequential to the amendment to subsection 165(1) that reduces the rate of tax imposed under that subsection from 7 per cent to 6 per cent.

These amendments apply to any supply of real property in respect of which ownership and possession under the agreement for the supply are transferred on or after July 1, 2006.

Clause 17

Non-exclusive use of passenger vehicle or aircraft

ETA
202(4)

Section 202 sets out rules for determining input tax credits in respect of passenger vehicles and aircraft, and improvements thereto, acquired or imported for use as capital property of a registrant. In this regard, subsection 202(4) provides that a registrant who is an individual or partnership may, at the end of a taxation year of the registrant, claim an input tax credit in respect of a passenger vehicle or aircraft that is capital property used otherwise than exclusively in commercial activities of the registrant. For the purposes of determining the credit, the registrant is deemed to have acquired the vehicle or aircraft on the last day of each

taxation year of the registrant and to have paid tax in respect of that acquisition in an amount as determined by the formula specified in subsection 202(4).

The formula in subsection 202(4) currently employs the factor of 7/107 where the vehicle or aircraft is acquired or imported, or deemed to have been acquired under subsection 202(5), in circumstances in which only the 7-per-cent GST rate applied. The factor 8/108 applies where the vehicle or aircraft (or improvement) is being brought into a participating province from a non-participating province or is acquired in such a non-participating province from an unregistered non-resident person who was not required to pay tax on the vehicle, aircraft or improvement, both of which are circumstances in which only the provincial component of the HST applies. Finally, the factor 15/115 applies where the acquisition, or importation, or deemed acquisition under subsection 202(5), is one to which the 15-per-cent HST rate applies.

Subsection 202(4) is amended to ensure that the formula employs the rate specified in subsection 165(1) for the GST or the federal component of the HST and the rate for a participating province as the circumstances apply. This amendment is consequential to the amendment to subsection 165(1) that reduces the rate of tax imposed under that subsection from 7 per cent to 6 per cent.

The amendment to subsection 202(4) applies in respect of a taxation year of a registrant that ends on or after July 1, 2006, except that, if the taxation year includes that day, then the factors for determining the input tax credit shall be read as 6.5/106.5, 8/108 and 14.5/114.5 for the GST, provincial component of the HST and the HST, respectively.

Clause 18

Election for real property of a public service body

ETA
211

Existing section 211 allows a public service body to make elections on a property-by-property basis in respect of real property of the body described in any of paragraphs 211(1)(*a*) to (*c*). While the election is in effect, subsection 193(1), and section 206, apply in respect of the property, and section 209 does not apply. This generally has the effect of allowing the body to claim input tax credits in respect of its use of the property in commercial activities even when use in commercial activities is not more that 50 per cent of the total use of the property. Further, supplies of the property, that would otherwise be exempt under section 1 of Part V.1 of Schedule V to the Act, or section 25 of Part VI of that Schedule, are excluded from exemption under those sections.

A public service body that owns real property can generally benefit from making an election under section 211 in respect of real property when the tax charged on payments for supplies by way of lease, licence or similar arrangement of the property that become taxable as a result of making the election will be recoverable by the tenant, for example as input tax credits, and the public service body will itself become able to claim input tax credits in respect of its use of the property in making the taxable supplies.

Deemed sale where revocation

ETA
211(4)(*a*) and (*b*)

Under existing subsection 211(4), when an election made by a person under subsection 211(1) is revoked and ceases to be effective on a day, and the person does not cease to be a registrant on that day, the person is deemed under paragraphs 211(4)(*a*) and (*b*) to have made and received a taxable supply of the property by way of sale and to have collected and paid tax in respect of the supply equal to tax calculated on the fair market value of the property on that day. This deemed sale and purchase has the effect of requiring the person to remit tax calculated on the fair market value of the property to the extent that the person is unable to recover that tax, for example through claiming input tax credits or rebates.

Under amended paragraphs 211(4)(*a*) and (*b*) the amount of tax deemed to have been paid and collected in respect of the supply will be equal to the basic tax content of the property on the day the election is revoked and ceases to have effect rather than tax calculated on the fair market value of the property on that day. Subsection 123(1) defines the "basic tax content" of a person's property. It is generally the amount of tax under Part IX of the Act that the person was required to pay on the property and improvements to it, after deducting any amounts (other than input tax credits) that the person was entitled to recover by rebate, remission or otherwise and after taking into account any depreciation in the value of the property.

These amendments apply in respect of any election that is revoked and ceases to have effect on or after May 2, 2006.

Clause 19

Imposition of goods and services tax on imported goods

ETA
212

Existing section 212 imposes GST at the rate of 7 per cent on goods imported into Canada by a person who is liable under the *Customs Act* to pay duty on the goods, or would be so liable if the goods were subject to duty.

Section 212 is amended to implement the rate reduction of the GST and the federal component of the HST from 7 per cent to 6 per cent.

The amendment to section 212 applies to goods imported into Canada, or released (as defined in the *Customs Act*), on or after July 1, 2006.

Clause 20

Imposition of goods and services tax on imported taxable supplies

ETA
218

Section 218 imposes a liability on every recipient of an imported taxable supply (within the meaning of section 217) to pay tax at the rate of 7 per cent calculated on the value of the consideration for the supply. Imported taxable supplies include supplies of intangible personal property and services that are supplied outside Canada and certain supplies of tangible personal property by unregistered non-resident persons where the supply of the property is deemed to be made outside Canada but the property is delivered or possession of it is transferred in Canada without tax under Division II or III applying to it.

Section 218 is amended to implement the rate reduction of the GST and the federal component of the HST from 7 per cent to 6 per cent.

The amendment applies to any imported taxable supply made on or after July 1, 2006. The amendment also applies for the purposes of calculating tax in respect of any imported taxable supply made before July 1, 2006, but only in respect of consideration that becomes due on or after that day without having been paid before that day or that is paid, without having become due, on or after July 1, 2006. Finally, the amendment applies in situations not covered above for the purposes of determining or calculating tax that is not payable but would have been payable on or after July 1, 2006, in the absence of certain circumstances described in the Act, such as the fact that a person acquired property for consumption, use or supply exclusively in the course of commercial activities of the person.

Clause 21

Selected listed financial institution special attribution method

ETA
225.2(2)

Section 225.2 sets out rules for determining the net tax of selected listed financial institutions. Subsection 225.2(2) requires a selected listed financial institution to make an adjustment, determined by a formula, to its net tax, in respect of the provincial component of the HST, for each reporting period during which it is a selected listed financial institution. The formula requires the selected listed financial institution to determine its unrecoverable GST for a reporting period in question and then multiply that amount by the ratio of element D (the tax rate for the HST province) to element E (the GST rate of 7 per cent).

Element E of subsection 225.2(2) is amended to replace the reference to 7 per cent with the rate set out in subsection 165(1). This amendment is consequential to the amendment to subsection 165(1) that reduces the rate of tax imposed under that subsection from 7 per cent to 6 per cent.

The amendment to element E applies for the purposes of determining the net tax of a selected listed financial institution for a reporting period of the institution that ends on or after July 1, 2006.

Clause 22

Patronage dividends

ETA
233(2)

Section 233 sets out the rules whereby registrants issuing patronage dividends can choose to treat the dividends as not reducing the value of consideration for any supplies made to the dividend recipient or alternatively as price adjustments in respect of such supplies. If the issuer of a patronage dividend chooses, for GST/HST purposes, to treat the dividend as a price adjustment in respect of supplies made to the dividend recipient, the amount of the price adjustment is determined under subsection 233(2). In particular, the formulae in paragraph 233(2)(*a*) determine the portion of the patronage dividend that represents a price adjustment for tax purposes.

The formulae in paragraph 233(2)(*a*) currently employ the factor of 100/115 where the dividend is in respect of supplies made in participating provinces, reflecting supplies that were taxable at the HST rate of 15 per cent, and where the dividend is in respect of supplies made in non-participating provinces, the factor of 100/107 is utilized, reflecting supplies that were taxable at the GST rate of 7 per cent.

Subsection 233(2) is amended to ensure that the formulae employ the rate specified in subsection 165(1) for the GST or the federal component of the HST. This amendment is consequential to the amendment to subsection 165(1) that reduces the rate of tax imposed under that subsection from 7 per cent to 6 per cent.

The amendment to subsection 233(2) applies in respect of patronage dividends paid on or after July 1, 2006.

Clause 23

Employee and partner rebates

ETA
253

Section 253 provides for the payment of rebates to employees and partners in respect of tax paid by them on certain property or services acquired or imported on their personal account and for which they can deduct an amount for income tax purposes.

Subclause 23(1)

Employees and partners

ETA
253(1)

For the purposes of determining, under subsection 253(1), the amount of rebate in respect of tax paid on property or services acquired or imported by an employee or partner, the formula of this subsection currently applies the factor 7/107, 8/108 or 15/115, depending on whether the tax in question paid by the partner or employee was calculated at the rate of 7 per cent, 8 per cent or 15 per cent, respectively.

Subsection 253(1) is amended to ensure that the formula employs the rate specified in subsection 165(1) for the GST or the federal component of the HST and the rate for a participating province as the circumstances apply. This amendment is consequential to the amendment to subsection 165(1) that reduces the rate of tax imposed under that subsection from 7 per cent to 6 per cent.

Subclauses 23(2) and (3)

Restriction on rebate to partner

ETA
253(2)(*a*)(ii) and (*c*)(ii)

The rebate payable under subsection 253(1) to an individual who is a member of a partnership may not exceed the amount that would be an input tax credit of the partnership if the expenses had been incurred and the taxes paid by the partnership. For the purposes of determining the amount of credit that would have been available, subparagraphs 253(2)(*a*)(ii) and (*c*)(ii) currently specify the tax paid by the partnership to be the tax fraction multiplied by the expense that can be deducted from the individual's income for income tax purposes.

Subparagraphs 253(2)(*a*)(ii) and (*c*)(ii) are amended to delete the reference to "tax fraction" since the definition of that term in subsection 123(1) is repealed. Instead, the subparagraphs provide a formula, which employs the rate specified in subsection 165(1) for the GST or the federal component of the HST and the rate for a participating province as the circumstances apply, for the determination of tax paid. These amendments are consequential to the amendment to subsection 165(1) that reduces the rate of tax imposed under that subsection from 7 per cent to 6 per cent.

Subclauses 23(4) and (5)

Application

ETA
253(1) and (2)

The amendment to subsection 253(1) under subclause 23(1) applies for the purposes of determining a rebate for a calendar year after 2005, except that, for the 2006 calendar year, the factors for determining a rebate, as provided in the description of element A in the formula, shall be read as 6.5/106.5, 8/108 and 14.5/114.5 in respect of the GST, provincial component of the HST and the HST, respectively.

The amendments to subparagraphs 253(2)(*a*)(ii) and (*c*)(ii) under subclauses 23(2) and (3) are deemed to have come into force on April 1, 1997, except that for the purposes of determining a rebate under subsection 253(2) for the calendar year 2006, the expression, "the rate specified in subsection 165(1)" shall be read as "6.5%".

Clause 24

New housing rebate

ETA
254(2)(*h*) and (*i*)

Section 254 provides for a partial rebate of the tax paid by an individual acquiring from a builder a single-unit residential complex or residential condominium unit that has been newly constructed or substantially renovated for use as a primary place of residence of the individual, a related individual or a former spouse of the individual.

Existing paragraphs 254(2)(*h*) and (*i*) include a reference to $8,750, which is the current maximum rebate available and is roughly equivalent to 36 per cent of the total tax paid under subsection 165(1), currently calculated at 7 per cent, on a house priced at $350,000. As a result of the amendment to subsection 165(1), which reduces the rate at which tax is calculated from 7 per cent to 6 per cent, these paragraphs are amended to reduce the maximum rebate available to $7,560, which is equivalent to 36 per cent of the tax paid at the rate of 6 per cent on a house priced at $350,000.

The amendments to paragraphs 254(2)(*h*) and (*i*) apply to rebates in respect of residential complexes, the ownership of which is transferred on or after July 1, 2006, unless the tax under subsection 165(1) in respect of the supply of the complex applied at the rate of 7 per cent.

Clause 25

New housing rebate for building only

ETA
254.1(2)(*c*), (*h*) and (*i*)
254.1(2.1)(*a*)

Section 254.1 provides for a rebate to an individual who purchases a building that forms part of a single unit residential complex or a residential condominium unit located on leased land. Subsection 254.1(2) provides for a partial rebate of an amount equivalent to the tax under subsection 165(1) embedded in the price of the building. Subsection 254.1(2.1) provides for a partial rebate of the provincial component of the HST embedded in the price of the building where the complex or unit is situated in Nova Scotia and is acquired by a qualifying purchaser who also qualifies for the rebate under subsection (2).

Existing paragraphs 254.1(2)(*c*), (*h*) and (*i*) have references to amounts that parallel the ones found in section 254, which provides for a rebate where a residential complex, including the land that forms part of the complex, is purchased from a builder. Existing paragraph 254.1(2.1)(*a*) also refers to the value of the complex at which a purchaser ceases to qualify for the rebate under subsection (2).

As a result of the amendment to subsection 165(1), which reduces the rate at which tax is calculated from 7 per cent to 6 per cent, paragraphs 254.1(2)(*h*) and (*i*) are amended to reduce the maximum rebate available from $8,750 to $7,560, which corresponds to the maximum rebate available under amended subsection 254(2). Paragraphs 254.1(2)(*c*), (*h*) and (*i*), as well as paragraph 254.1(2.1)(*a*), are also amended to reduce amounts referred to in those paragraphs from $374,500, $481,500 and $107,000 to $371,000, $477,000 and $106,000

respectively to correspond to similar tax-embedded amounts after the amendment to subsection 165(1). Finally, amendments are made to the reference in paragraphs 254.1(2)(*h*) and (*i*) to 2.34 per cent, which corresponds to the rebate, expressed as percentage points, available under subsection 254(2) if that rebate were to be expressed as a rebate applicable on the 7-per-cent GST-included price of a residential complex. These paragraphs are amended to refer to 2.04 per cent instead of 2.34 per cent to reflect the reduction in the rate at which tax is calculated under amended subsection 165(1).

These amendments apply in respect of a residential complex in which a residential unit is situated if the possession of the unit is transferred on or after July 1, 2006, unless the tax under subsection 165(1) in respect of the deemed supply of the complex referred to in paragraph 254.1(2)(*d*) applied at the rate of 7 per cent.

Clause 26

Cooperative housing rebate

ETA
255(2)(*d*), (*g*) and (*h*)
255(2.1)(*c*)

Section 255 provides for a rebate to an individual in respect of the purchase of 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 of the individual, a related individual or a former spouse of the individual. Subsection 255(2) provides for a partial rebate of an amount equivalent to the tax under subsection 165(1) embedded in the cost of the share. Subsection 255(2.1) provides for a partial rebate of the provincial component of the HST embedded in the cost of the share where the unit is situated in Nova Scotia and the share is acquired by a qualifying purchaser who also qualifies for the rebate under subsection (2).

Existing paragraphs 255(2)(*d*), (*g*) and (*h*) have references to amounts that parallel the ones found in section 254, which provides for a rebate where a residential complex, including the land that forms part of the complex, is purchased from a builder. Existing paragraph 255(2.1)(*c*) also refers to the value at which a purchaser ceases to qualify for the rebate under subsection (2).

As a result of the amendment to subsection 165(1), which reduces the rate at which tax is calculated from 7 per cent to 6 per cent, paragraphs 255(2)(*g*) and (*h*) are amended to reduce the maximum rebate available from $8,750 to $7,560, which corresponds to the maximum rebate available under amended subsection 254(2). Paragraphs 255(2)(*d*), (*g*) and (*h*), as well as paragraph 255(2.1)(*c*), are also amended to reduce the amounts referred to in those paragraphs from $374,500, $481,500 and $107,000 to $371,000, $477,000 and $106,000 respectively to correspond to similar tax-embedded amounts after the amendment to subsection 165(1). Finally, amendments are made to the reference in paragraphs 255(2)(*g*) and (*h*) to 2.34 per cent, which corresponds the rebate available, expressed as percentage points, available under subsection 254(2) if that rebate were to be expressed as a rebate applicable on the 7-per-cent GST-included price of a residential complex. These paragraphs are amended to refer to 2.04 per cent instead of 2.34 per cent to reflect the reduction in the rate at which tax is calculated under amended subsection 165(1).

These amendments apply in respect of a rebate application filed on or after July 1, 2006, unless the cooperative housing corporation paid tax under subsection 165(1) in respect of the supply to the corporation of the complex in which the residential unit is situated calculated at the rate of 7 per cent.

Clause 27

Rebate for owner-built homes

ETA
256(2)

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.

Existing paragraphs 256(2)(*e*) and (*f*) include a reference to $8,750, which parallels the current maximum rebate available under subsection 254(2) in the case of a new home purchased from a builder. As a result of the amendment to subsection 165(1), which reduces the rate at which tax is calculated from 7 per cent to 6 per cent, these paragraphs are amended and replaced by a formula. This new formula recognizes the fact that the "total tax paid by the particular individual" (defined in paragraph 256(2)(*c*)) before an application for the rebate is filed with the Minister of National Revenue could represent tax paid before and after the amendment to subsection 165(1) and, as such, contains another formula to calculate the appropriate maximum rebate.

First, it should be noted that the new formula is applicable even in cases where the fair market value of the complex is not more than $350,000. However, in those cases, the result of the phase-out portion of the formula would be equal to 1 since it is the greater of the fair market value and $350,000 that should be used under the description of B in the formula (i.e., $450,000 minus $350,000, then divided by $100,000). Second, where all or substantially all of the total tax paid by the particular individual before an application for the rebate is filed with the Minister was paid at the rate of 6 per cent, the maximum rebate available is reduced to $7,560, which corresponds to the maximum rebate available under amended subsection 254(2). In other cases, depending on the percentage of that tax that was paid at the rate of 7 per cent, the maximum rebate under the formula will vary from $7,560 to $8,570. For example, if the total tax paid before an application for the rebate is filed with the Minister equals $22,000 and $8,800 of that tax represents tax under subsection 165(1) paid at the rate of 7 per cent, the maximum rebate under the formula would be equal to $8,064 (i.e., the result of $8,800 divided by $22,000, expressed as a percentage, equals 40 per cent, then multiplied by $1,260, and finally added to $7,560).

This amendment applies for the purpose of determining a rebate in respect of a residential complex for which an application is filed with the Minister on or after July 1, 2006.

Clause 28

New residential rental property rebate

ETA
256.2(3) to (5)

Section 256.2 provides for a 36-per-cent rebate of the tax imposed under subsection 165(1) in respect of newly-constructed or substantially-renovated residential rental accommodation (including multiple-unit residential complexes). Consistent with the rebate under subsection 254(2), which provides for a partial rebate of the tax paid by an individual purchasing from a builder a single-unit residential complex or a residential condominium unit, the maximum rebate available under subsections 256.2(3) to (5) in respect of a "qualifying residential unit" (as defined in subsection 256.2(1)) is $8,750.

As a result of the amendment to subsection 165(1), which reduces the rate at which tax is calculated from 7 per cent to 6 per cent, subsections 256.2(3) to (5) are amended to reduce the maximum rebate used in the formulas contained in these subsections from $8,750 to $7,560. This maximum corresponds to the maximum rebate available under amended subsection 254(2).

These amendments apply, in the case of purchaser-landlords, to residential complexes in respect of which ownership and possession under the agreement for the supply are transferred on or after July 1, 2006, unless the agreement was entered into on or before May 2, 2006. In the case of builder-landlords, these amendments generally apply to residential complexes in respect of which the tax is deemed to have been paid under section 191 on or after July 1, 2006. However, in the case of an exempt sale of a building or part of a building, forming part of a residential complex, to a person who leases the land on which the building is located, the amendment to subsection 165(1) might not be applicable even if the tax is deemed to have been paid under section 191 on or after July 1, 2006 (see subclauses 3(2)(*d*), (*f*) and (*g*)). If it is the case, the amendment to subsection 256.2(3) will also not apply.

Clause 29

Transitional rebate

ETA
256.3 to 256.6

As a general rule, the amendment to subsection 165(1), which reduces the rate at which tax is calculated from 7 per cent to 6 per cent, is applicable in the case of a supply of real property by way of sale if transfer of ownership and possession under the agreement of purchase and sale occur on or after July 1, 2006. However, certain exceptions are provided in the application rules to that amendment (see subclause 3(2)) so that the tax under subsection 165(1) might continue to apply at the rate of 7 per cent even in cases where ownership and/or possession of residential units are transferred on or after July 1, 2006. It will generally be the case where a transaction involving a residential unit situated in a residential complex is made pursuant to an agreement entered into on or before May 2, 2006.

The reason for this exception to the general application rule is that there are circumstances where a builder and a purchaser have entered into an agreement of purchase and sale for a new residential complex prior to being aware of when the rate under subsection 165(1) would be changed from 7 per cent to 6 per cent and, therefore, the agreement might reflect a 7-per-cent tax rate under subsection 165(1). In some situations, the price agreed upon might also be an all inclusive price determined on the basis of a 7-per-cent tax rate under subsection 165(1) and, where applicable, of a GST New Housing Rebate credited by the builder, despite the fact that the closing date falls on or after July 1, 2006. In addition, there are also cases where, even though the supply is exempt from GST/HST, there is a strong link between the tax payable by the builder and the consideration paid by the purchaser. For example, a sale of a new home built on leased land could be exempt from GST/HST and the builder might be required to pay tax on the fair market value of the residential complex. However, the purchaser might be entitled to a GST New Housing Rebate under subsection 254.1(2) and the price agreed upon might reflect the fact that the rebate was credited by the builder. In those cases, tax under subsection 165(1) will continue to apply at 7 per cent but the purchaser and, depending on the circumstances, the builder will be allowed to claim a transitional rebate for the difference between tax under subsection 165(1) at 7 per cent and 6 per cent (including adjustments, where necessary, for the GST New Housing Rebate or other rebates allowed under the existing provisions).

New sections 256.3 to 256.6 provide for transitional rebates that are introduced to generally place the parties involved in these transactions in the same situation as if the general application rule with respect to the amendment to subsection 165(1) were known at the time the agreement was entered into. In addition, sections 256.5 and 256.6 also address the situation where part of a building, forming part of a residential complex, is sold to a person who leases the land on which the building is located. In those cases, the builder might be required under section 191 to pay tax before July 1, 2006, at the rate of 7 per cent under subsection 165(1), in respect of the entire residential complex even if ownership and possession of that part of the building were not transferred to the purchaser before July 1, 2006.

It should be noted that, even though the transitional rebates under new section 256.2 to 256.6 include references to other rebate programs, the transitional rebates are also available in situations where purchasers do not qualify for the existing GST/HST New Housing Rebate or the existing GST New Residential Rental Property Rebate.

New section 256.3 provides for transitional rebates in the case where, pursuant to an agreement of purchase and sale, evidenced in writing, entered into on or before May 2, 2006, a person acquires from another person a new or substantially renovated residential complex in respect of which ownership and possession under the agreement are transferred to the person on or after July 1, 2006. Since the complex must be acquired from another person, this new section does not apply where the self-supply rules under section 191 are applicable.

The transitional rebate available under new section 256.3 is equivalent to 1 per cent of the consideration paid minus, where applicable, an adjustment to take into account the fact that other benefits, such as the amount of GST/HST New Housing Rebate available, remained unchanged. For example, in the case of a purchaser of a new residential complex, priced at $200,000 (tax not included), that is to be used as the primary place of residence of the purchaser, the GST under subsection 165(1) will remain at 7 per cent even if ownership and possession under the agreement of purchase and sale, entered into before May 2, 2006, are transferred on or after July 1, 2006. However, the purchaser will remain entitled to claim a GST New Housing Rebate equivalent to 36 per cent of the tax calculated at 7 per cent. As a result, 36 per cent of the 1-per-cent reduction under subsection 165(1) is already refunded under the rebate available under subsection 254(2).

New subsection 256.3(1) provides for a transitional rebate to purchasers, other than a cooperative housing corporation, that are not otherwise entitled to recover all or a portion of the tax paid under subsection 165(1). In these cases, the adjustment for rebates otherwise available is not necessary and the rebate is equal to 1 per cent of the consideration paid. New subsection 256.3(2) provides for a transitional rebate to purchasers, other than a cooperative housing corporation, that qualify for the GST New Residential Rental Property Rebate. New subsection 256.3(3) provides for a transitional rebate to purchasers, other than a cooperative housing corporation, that qualify for the Public Service Body Rebate. New subsection 256.3(4) provides for a transitional rebate to purchasers that are cooperative housing corporations and addresses the situation where the corporation does not qualify for another rebate as well as situations where the corporation, or the purchaser of a share of the corporation, is entitled or can reasonably expect to be entitled to another rebate. Finally, subsection 256.3(5) provides for a transitional rebate to individuals that are entitled to claim a GST New Housing Rebate under subsection 254(2). In this particular case, subsection 256.3(6) contains a rule similar to the one found in existing subsection 262(3), which provides rules for applying the New Housing Rebate provisions under sections 254 to 256 when more than one individual is liable for consideration and tax in respect of the same residential complex.

The Act does not provide for the possibility of assigning the transitional rebate under sections 256.3 to 256.5. In addition, section 67 of the *Financial Administration Act* (FAA) provides that, except as provided in the FAA or any other Act of Parliament, a Crown debt is not assignable and that no transaction purporting to be an

assignment of a Crown debt is effective so as to confer on any person any rights or remedies in respect of that debt. It should be noted that, while the *Excise Tax Act* does not provide for the possibility of assigning new housing rebates under section 254 or 254.1, these sections include mechanisms to allow builders to pay or credit the amount of a new housing rebate to a purchaser. To the extent that an amount was paid or credited to a purchaser on account of a rebate to which the purchaser is entitled under sections 254 and 254.1, and provided that the builder transmits the application of the purchaser for the rebate to the Minister of National Revenue in accordance with these sections, section 234 allows the builder to deduct that amount in determining the builder's net tax. Section 256.3 (as well as sections 256.4 and 256.5) does not include such a mechanism. As a result, it would not be possible for a builder to pay or credit a transitional rebate to the purchaser and be allowed to deduct the amount of the rebate in determining the builder's net tax.

Consequently, the rebate applications for the transitional rebate under new section 256.3 must be filed, in any case, by the purchaser directly with the Minister. In cases where a GST/HST New Housing Rebate is also available, the rebate application must be filed by the same person that applied for the GST/HST New Housing Rebate. It should be noted that, in the case of a GST/HST New Housing Rebate submitted to a builder and forwarded by the builder to the Minister, it is still the purchaser that applied for the GST/HST New Housing Rebate. The purchaser must still file the application for the transitional rebate directly with the Minister. The transitional rebate application must be filed with the Minister within two years after the day that the ownership of the complex is transferred to the purchaser.

New sections 256.4 to 256.6 generally provide for a transitional rebate where a person is the recipient, pursuant to an agreement entered into on or before May 2, 2006, of an exempt supply by way of lease of land forming part of a new residential complex, or an exempt supply of such a lease by way of assignment, and an exempt supply by way of sale of the building or part of the building that forms part of the complex.

New section 256.4 provides for a transitional rebate where the building or part of the building forms part of a single unit residential complex (as defined in subsection 123(1)) or of a residential condominium unit. In such a case, new section 256.4 provides for a transitional rebate to the purchaser and, depending on the adjusted consideration payable by the purchaser for the building or part of the building and the fair market value of the complex that the builder was required to remit GST under section 191, a transitional rebate to the builder as well. For example, where the fair market value of the complex at the time the builder is required to pay GST on under section 191 is $300,000 and the consideration for the building forming part of the complex is $275,000, which would include an amount that reflects the GST payable by the builder on the portion of the fair market value that relates to building that the builder cannot otherwise recover, both the purchaser and the builder would be entitled to claim a transitional rebate. Similar to the transitional rebate under new section 256.3, the formulas in new section 256.4 contain an appropriate adjustment to take into account other benefits, such as the rebates available under subsections 254.1(2) and 256.2(4), that remain unchanged.

New sections 256.5 and 256.6 provide for a transitional rebate where the building or part of the building forms part of a residential complex that is not a single unit residential complex (as defined in subsection 123(1)) or a residential condominium unit. In these cases, several purchasers could be involved and the builder is required to pay tax under subsection 165(1) in respect of the residential complex, as a result of the application of the self-supply rules under section 191, at a particular time that might not be the particular time at which a particular purchaser is given possession of a residential unit forming part of the new residential complex. As a result, a particular purchaser might be entitled to a transitional rebate under section 256.5 even if the builder was required to pay tax in respect of the residential complex before July 1, 2006, provided that possession of the residential unit forming part of the complex or of the addition is given to the particular purchaser, under the

agreement for the supply by way of sale of the building or part of the building forming part of the complex and the leasing of the land forming part of the complex, on or after July 1, 2006.

In addition, under the application rules to clause 3, which reduces the rate at which tax is calculated from 7 per cent to 6 per cent, the builder might be required to pay tax under subsection 165(1) at the rate of 7 per cent even if the self-supply rules under section 191 applies on or after July 1, 2006. It would be the case if any agreement that provides for an exempt supply by way of lease of land forming part of the new residential complex, or an exempt supply of such a lease by way of assignment, and an exempt supply by way of sale of the building or part of the building that forms part of the complex was entered into on or before May 2, 2006, and that agreement was not terminated before July 1, 2006. In such a case, in addition to purchasers that may be entitled to claim a rebate under section 256.5, the builder may also be entitled to claim a transitional rebate under section 256.6.

As for other transitional rebates, the transitional rebate under sections 256.5 and 256.6 also includes an adjustment to take into account other benefits, such as the rebates available under subsections 254.1(2) and 256.2(4), that remain unchanged.

A rebate application under sections 256.4 and 256.5 in respect of an exempt supply by way of sale of the building or part of the building that forms part of the complex must be filed directly with the Minister by the purchaser within two years after the day possession of the unit forming part of the complex is transferred to the person.

With respect to builders, a rebate application under sections 256.4 and 256.6 in respect of a residential complex or of an addition to it must be filed by the builder within two years after the end of the month in which tax under section 191 in respect of the complex or addition is deemed to have been paid by the builder.

Clause 30

Non-registrant sale of real property

ETA
257

Existing section 257 of the Act allows a non-registrant that makes a taxable supply of real property by way of sale to claim a rebate in respect of previously unrecoverable tax relating to the property or improvements to it.

Subclause 30(1)

Non-registrant sale of real property

ETA
257(1)

Existing subsection 257(1) of the Act provides for the rebate that can be claimed by a non-registrant in respect of previously unrecoverable tax paid on real property where the non-registrant makes a taxable sale of the property. The rebate is equal to the lesser of the basic tax content of the property at the time of the sale and the amount of tax payable in respect of the sale of the property or that would be payable but for section 167 of the Act.

Subsection 257(1) is amended to make the rebate provided under it subject to new subsection 257(1.1), which applies when the sale of real property in respect of which the rebate is claimed is made by a public sector body to another person with whom the public sector body is not dealing at arm's length.

Amended subsection 257(1) applies to any supply in respect of which tax becomes payable, or would have become payable, in the absence of section 167, on or after July 1, 2006.

Subclause 30(2)

Limitation

ETA
257(1.1)

New subsection 257(1.1) of the Act applies if the sale of real property in respect of which a rebate is claimed under subsection 257(1) of the Act is made by a public sector body to another person with whom the public sector body is not dealing at arm's length.

When new subsection 257(1.1) applies, the rebate under subsection 257(1) shall not exceed the lesser of the basic tax content of the property at the time when the sale is made and the amount determined by the formula in paragraph 257(1.1)(*b*).

Subsection 123(1) of the Act defines the "basic tax content" of a person's property. It is generally the amount of tax under Part IX of the Act that the person was required to pay on the property and improvements to it, after deducting any amounts (other than input tax credits) that the person was entitled to recover by rebate, remission or otherwise, or would have been so entitled to recover if the property had been acquired for use exclusively in activities that are not commercial activities, and after taking into account any depreciation in the value of the property.

The formula in paragraph 257(1.1)(*b*) requires that the amount of tax payable in respect of the sale of real property (or that would be payable but for section 167 of the Act) be multiplied by the ratio that the actual basic tax content of the property at the time of the sale bears to the amount that would be the basic tax content of the property at that time if amounts (other than input tax credits) that the person was entitled to recover by rebate, remission or otherwise, or would have been so entitled to recover if the property had been acquired for use exclusively in activities that are not commercial activities, were not deducted in calculating the basic tax content.

New subsection 257(1.1) applies to any supply in respect of which tax becomes payable, or would have become payable, in the absence of section 167, on or after July 1, 2006.

Clause 31

Rebates

ETA
259

Section 259 provides for rebates to charities, non-profit organizations that are substantially funded by governments and selected public service bodies.

Definitions

ETA
259(1)

“non-creditable tax charged”

The existing definition “non-creditable tax charged” in subsection 259(1) specifies amounts that a rebate applicant is or was required to pay as GST/HST (net of input tax credits and certain other amounts) and that are potentially subject to a rebate under section 259.

Existing subparagraph (*a*)(ii) of the definition includes amounts that an applicant is deemed to have collected when an election of the applicant made under section 211 of the Act in respect of real property is revoked and ceases to have effect on a day and as a result the applicant is deemed under subsection 211(4) to have collected tax calculated on the fair market value of the property on that day.

Subparagraph (*a*)(ii) of the definition is amended as a consequence of amendments to paragraphs 211(4)(*a*) and (*b*) of the Act, which change the amount of tax that a person is deemed to have paid and collected when an election in respect of real property under section 211 is revoked from an amount equal to tax calculated on the fair market value of the property on the day the election is revoked to the basic tax content of the property on that day. Since rebates that an applicant would have been entitled to claim under section 259 in respect of the real property are already taken into account in determining the basic tax content of that property, amended subparagraph (*a*)(ii) does not refer to subsection 211(4).

This amendment applies to tax deemed to have been collected on or after May 2, 2006.

Clause 32

Anti-avoidance rules respecting rate change

ETA
274.1 and 274.2

Sections 274.1 and 274.2 contain rules to prevent persons from improperly taking advantage of a change in the tax rate.

Section 274.1 – Rate change — variation of agreement

New section 274.1 of the Act provides an anti-avoidance rule in the case where an agreement for a taxable supply of property or a service, entered into before July 1, 2006, between a supplier and a recipient not dealing at arm's length is subsequently varied or altered or terminated and re-entered into to benefit from the rate reduction. The provision applies if it may not reasonably be considered for both the supplier and the recipient that the variation, alteration or termination and the entering into of a new agreement has been undertaken or arranged for bona fide purposes other than to benefit in any manner from the reduction of the GST from 7 per cent to 6 per cent. The provision operates to impose tax at 7 per cent on any part of the value of the consideration for a supply, attributable to any part of the property or service, on which tax would, but for this section, be calculated at 6 per cent. Section 274.1 applies whether one or more than one new agreements are entered into between the supplier and the recipient or with other persons if the supplier supplies and the recipient receives all or substantially all the same property or service.

Section 274.1 applies to any agreement varied, altered, terminated, or entered into on or after May 2, 2006.

Section 274.2 – Rate change — avoidance transactions

New section 274.2 introduces a specific anti-avoidance rule to prevent tax avoidance transactions, between persons who do not deal with each other at arm's length, where the transactions could be undertaken or arranged not primarily for *bona fide* purposes but to take advantage of a change in the rate of either the GST or the federal component of the HST.

New section 274.2 applies to any transaction made on or after May 2, 2006.

Subsection 274.2(1) – Definitions

New subsection 274.2(1) defines certain expressions used in this section. The terms defined for this purpose are ”person”, “rate change”, “tax benefit” and “transaction”. Below is a more detailed commentary on these definitions.

“Person” has the same meaning as the definition of “person” (contained in subsection 123(1)) used throughout Part IX except that it excludes a “consumer” as defined in subsection 123(1). As a result, the term “person” in this section does not, in respect of a transaction involving property, include an individual who is the recipient of that property for the individual's personal use or consumption and not for use in a business.

“Rate change” means any change, either an increase or a decrease, in the rate of the Goods and Services Tax or the federal component of the Harmonized Sales Tax.

“Tax benefit” means a reduction, avoidance or deferral of Goods and Services Tax, Harmonized Sales Tax or another amount payable under Part IX of the Act. It also means an increase in a refund or rebate of tax or other amount under Part IX.

“Transaction” means a transaction as defined by subsection 274(1) of the Act, which includes an arrangement or event.

Subsection 274.2(2) – Rate change — transactions

New subsection 274.2(2) sets out an anti-avoidance rule and denies a tax benefit arising from an avoidance transaction, or series of transactions, where that transaction or series is not done primarily for *bona fide* purposes but intended to obtain a tax benefit from a change in tax rates.

A transaction, or series of transactions, will be subject to this subsection's anti-avoidance rule if it satisfies paragraphs (*a*), (*b*) and (*c*) of the subsection. Paragraph (*a*) requires that the transaction, or series of transactions, be property transactions and they be made between two or more persons who do not acquire the property as consumers and who do not, at the time that any of these transactions are made, deal with each other at arm's length. Paragraph (*b*) sets out the condition that the transaction, any transaction in the series of transactions or the total series of transactions would, in the absence of the anti-avoidance provisions contained in section 274.2, result, either directly or indirectly, in a tax benefit (as defined in subsection 274.2(1)) to any of the persons (as defined in subsection 274.2(1)) involved in the transaction or series of transactions. Paragraph (*c*) contains a non-tax purpose test and requires that the transaction, or series of transactions, cannot reasonably be considered to have been undertaken or arranged by the persons primarily for *bona fide* purposes other than to obtain a tax benefit, arising from a change in tax rates, for any of the persons involved in the transaction or series of transactions.

Where a transaction or series of transactions satisfies paragraphs (*a*), (*b*) and (*c*), subsection 274.2(2) provides that the tax consequences of the transaction or series of transactions are to be determined so as to deny the tax benefit resulting from the transaction or the series of transactions to any of the persons involved in that transaction or series. Specifically, subsection 274.2(2) provides that an amount of tax, net tax, input tax credit, rebate or other amount payable by, or refundable to, any of the persons involved in the transaction or series, or any other amount relevant to computing that amount, is to be determined by the Minister of National Revenue so as to deny that tax benefit.

Subsection 274.2(3) – Denying tax benefit on transactions

New subsection 274.2(3) provides that the Minister may only deny a tax benefit under subsection 274.2(2) through an assessment, reassessment or additional assessment. This prevents a person from using the provisions of subsection 274.2(2) in order to modify the person's tax payable, or any other amount, without requesting the adjustment under the procedure set up in subsection 274.2(4).

Subsection 274.2(4) – Request for adjustments

New subsection 274.2(4) provides for consequential adjustments to other persons' tax liabilities relating to an assessment under this section. Where the anti-avoidance rule under subsection 274.2(2) applies with respect to a transaction and a particular person has received a particular notice of assessment, reassessment or additional assessment, as the case may be, regarding the transaction, any other person is entitled to request an assessment, reassessment or additional assessment, applying subsection 274.2(2), in respect of the same transaction. The request under this subsection must be made within 180 days of the date of mailing of the particular notice of assessment, reassessment or additional assessment. The purpose of this provision is to enable adjustments of a relieving nature to persons other than the particular person originally assessed in respect of the same transaction.

Subsection 274.2(5) – Duties of Minister

New subsection 274.2(5) requires that any request under subsection (4) by a person for an assessment, reassessment or additional assessment be considered by the Minister with all due dispatch. The assessment, reassessment or additional assessment so made may not extend beyond that which may reasonably be regarded as relevant to the particular transaction that was the subject of the request referred to in subsection (4). The Minister, in considering a request under subsection (4), is not restricted by the four-year limitation periods in subsections 298(1) and (2).

Air Travellers Security Charge Act

Clause 33

Amount of charge if service acquired in Canada

ATSCA
12(1)(*a*), (*b*) and (*d*)

Existing subsection 12(1) establishes the amount of the Air Travellers Security Charge (ATSC or the charge) that is payable on an air transportation service acquired in Canada. This includes air transportation services deemed under section 13 to have been acquired in Canada.

Paragraph 12(1)(*a*) establishes the amount of the charge at $4.67 per chargeable emplanement to a maximum of $9.35 per ticket for domestic air travel, where tax under subsection 165(1) of the *Excise Tax Act* (i.e., the GST or the federal component of the HST) is required to be paid. With the application of tax under subsection 165(1) of the *Excise Tax Act* at a rate of 7 per cent, the total cost of the ATSC is $5.00 per chargeable emplanement to a maximum of $10.00 per ticket for domestic air travel.

Paragraph 12(1)(*b*) establishes the amount of the charge at $5.00 per chargeable emplanement to a maximum of $10.00 per ticket for domestic air travel, where tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid. This ensures that all domestic air travellers contribute to the cost of air travel security on an equitable basis.

Paragraph 12(1)(*c*) establishes the amount of the charge at $7.94 per chargeable emplanement to a maximum of $15.89 per ticket for transborder air travel, where tax under subsection 165(1) of the *Excise Tax Act* is required to be paid. With the application of tax under subsection 165(1) of the *Excise Tax Act* at a rate of 7 per cent, the total cost of the ATSC is $8.50 per chargeable emplanement to a maximum of $17.00 per ticket for transborder air travel.

Paragraph 12(1)(*d*) establishes the amount of the charge at $8.50 per chargeable emplanement to a maximum of $17.00 per ticket for transborder air travel, where tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid. This ensures that all transborder air travellers contribute to the cost of air travel security on an equitable basis.

The proposed rate reduction for the GST and the federal component of the HST to 6 per cent has the effect of reducing the total cost of the ATSC when applied to the rates currently established by paragraphs 12(1)(*a*) and (*c*). In order to ensure equitable treatment of air travellers in those situations where tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid, ATSC rates established by paragraphs 12(1)(*b*) and (*d*) must be reduced.

Application of the GST or the federal component of the HST at a rate of 6 per cent to the current ATSC rates established in paragraph 12(1)(*a*) of $4.67 and $9.35 has the effect of reducing the total cost of the ATSC to $4.95 per chargeable emplanement to a maximum of $9.91 per ticket for domestic air travel. In order to maintain the maximum cost per ticket at a level equivalent to twice the amount for a single emplanement, the maximum ATSC rate set out in paragraph 12(1)(*a*) rate is reduced by one cent, to $9.34 from $9.35.

New paragraph 12(1)(*a*) establishes the amount of the charge at $4.67 per chargeable emplanement to a maximum of $9.34 per ticket for domestic air travel, where tax under subsection 165(1) of the *Excise Tax Act* is required to be paid. With the application of tax under subsection 165(1) of the *Excise Tax Act* at a rate of 6 per cent, the total cost of the ATSC is $4.95 per chargeable emplanement to a maximum of $9.90 per ticket for domestic air travel.

New paragraph 12(1)(*b*) establishes the amount of the charge at $4.95 per chargeable emplanement to a maximum of $9.90 per ticket for domestic air travel, where tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid. This ensures that all domestic air travellers contribute to the cost of air travel security on an equitable basis.

Application of the GST or the federal component of the HST at a rate of 6 per cent to the current ATSC rates established in paragraph 12(1)(*c*) of $7.94 and $15.89 has the effect of reducing the total cost of the ATSC to $8.42 per chargeable emplanement to a maximum of $16.84 per ticket for transborder air travel. As the maximum charge remains at a level equivalent to twice the amount for a single emplanement, no adjustment is required for ATSC rates in paragraph 12(1)(*c*).

New paragraph 12(1)(*d*) establishes the amount of the charge at $8.42 per chargeable emplanement to a maximum of $16.84 per ticket for transborder air travel, where tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid. This ensures that all transborder air travellers contribute to the cost of air travel security on an equitable basis.

Consistent with the effective date for the proposed GST/HST rate reduction, new paragraphs 12(1)(*a*), (*b*) and (*d*) apply to air travel purchased on or after July 1, 2006.

Amount of charge if service acquired outside Canada

ATSCA
12(2)(*b*)

Existing subsection 12(2) establishes the amount of the charge that is payable on an air transportation service acquired outside Canada.

Paragraph 12(2)(*a*) establishes the amount of the charge at $7.94 per chargeable emplanement to a maximum of $15.89 per ticket for transborder air travel, where tax under subsection 165(1) of the *Excise Tax Act* is required to be paid. With the application of the GST at a rate of 7 per cent, the total cost of the ATSC is $8.50 per chargeable emplanement to a maximum of $17.00 per ticket for transborder air travel.

Paragraph 12(2)(*b*) establishes the amount of the charge at $8.50 per chargeable emplanement to a maximum of $17.00 per ticket for transborder air travel, where tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid. This ensures that all transborder air travellers contribute to the cost of air travel security on an equitable basis.

The proposed rate reduction for the GST and the federal component of the HST to 6 per cent has the effect of reducing the total cost of the ATSC when applied to the rates currently established under paragraph 12(2)(*a*). In order to ensure equitable treatment of air travellers in those situations where tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid, ATSC rates under 12(2)(*b*) must be reduced.

Application of the GST or the federal component of the HST at a rate of 6 per cent to the current ATSC rates established in paragraph 12(2)(*a*) of $7.94 and $15.89 has the effect of reducing the total cost of the ATSC to $8.42 per chargeable emplanement to a maximum of $16.84 per ticket for transborder air travel. As the maximum charge remains at a level equivalent to twice the amount for a single emplanement, there is no adjustment to ATSC rates in paragraph 12(2)(*a*).

New paragraph 12(2)(*b*) establishes the amount of the charge at $8.42 per chargeable emplanement to a maximum of $16.84 per ticket for transborder air travel, where tax under subsection 165(1) of the *Excise Tax Act* is not required to be paid. This ensures that all transborder air travellers contribute to the cost of air travel security on an equitable basis.

Consistent with the effective date for the proposed GST/HST rate reduction, new paragraph 12(2)(*b*) applies to air travel purchased on or after July 1, 2006.

Excise Act, 2001 – Tobacco Products

Clause 34

Tobacco products inventory tax

EA, 2001
58.1 to 58.6

New sections 58.1 to 58.6 impose a tax on inventories of tobacco products held at the beginning of July 1, 2006. This tax ensures that the tobacco excise duty increases in Schedules 1 and 2 are applied in a consistent manner to all tobacco products at different trade levels, as well as to prevent tax avoidance through inventory build-ups.

Section 58.1 – Definitions

This section defines terms used in the new Part 3.1 of the *Excise Act, 2001* implementing the tobacco products inventory tax.

“Loose tobacco” means loose, fine-cut manufactured tobacco for use in making cigarettes.

“Separate retail establishment” is defined for the purpose of the exemption for retailers holding 30,000 or fewer units (equivalent to 150 cartons of cigarettes) of tobacco products in new section 58.3. To qualify, an establishment must have a separate geographic location from other places of business of the person (thereby avoiding duplication of the exemption by dividing one store into several departments), where in the ordinary course of business consumers can buy tobacco products otherwise than through vending machines, and it must have its accounting records kept in such a manner as to be able to distinguish the sales and purchases of the particular outlet from other outlets of the business.

“Taxed tobacco” defines the tobacco products that are subject to the tobacco inventory tax. These include all cigarettes, tobacco sticks, cigars and loose fine-cut tobacco that were held for resale in the domestic market at the end of June 30, 2006, and in respect of which excise duty had been imposed before the July 1 increase in duties. Tobacco products that are held in vending machines or relieved from the duty on tobacco for domestic sale under the Act are excluded from the definition.

“Unit” is defined for the purposes of the retail inventory exemption provided in the new section 58.3. One unit is one cigarette, tobacco stick, cigar or gram of loose tobacco.

Section 58.2 – Imposition of tax

Section 58.2 sets out the rates of tax imposed on taxed tobacco (i.e., cigarettes, tobacco sticks, loose tobacco and cigars) held in inventory at the beginning of July 1, 2006. The rates are equivalent to the excise duty increases set out in Schedule 1 to the Act.

Section 58.3 – Exemption for small retail inventory

Section 58.3 provides that the tax will not apply to separate retail establishments holding 30,000 or fewer units of tobacco products – in any combination of cigarettes, tobacco sticks, grams of fine-cut tobacco, or cigars – in inventory at the beginning of July 1, 2006.

Section 58.4 – Taking of inventory

This section provides that every person liable to pay the inventory tax shall take inventory of all taxed tobacco.

Section 58.5 – Returns

This section requires every person liable to pay the tax to file a return by August 31, 2006. It also provides that persons authorized to file separate returns for the purposes of the Goods and Services Tax for each of their separate branches or divisions will also be permitted to file separate returns for the purposes of this tax in respect of that branch or division.

Section 58.6 – Payment

This section sets out the general rules on the payment of the tax. Subsection (1) requires every person liable for the tax to pay the total amount owing to the Receiver General by August 31, 2006.

Subsection (2) provides for the waiver of interest if at the time of payment of any amount owing the total amount of interest outstanding is less than $25.

Subsection (3) provides that the Minister of National Revenue may extend the time for filing a return. Where an extension has been granted, any duty payable is to be paid within the extended time. However, interest accrues as if the time had not been extended.

Both subsection (2) and (3) are consistent with the rules for other returns required to be filed under the *Excise Act, 2001*.

This amendment comes into force on July 1, 2006.

Clause 35

Punishment – minimum and maximum amount

EA, 2001
216(2)(*a*)(i) to (iv) and (3)(*a*)(i) to (iv)

Section 216 currently makes it an offence for a person to possess, offer to sell or sell, other than in accordance with section 32, tobacco products that are not stamped. A person convicted of possessing, selling or offering to sell contraband tobacco is liable to a fine determined in accordance with the amounts set out in subsections 216(2) and (3), or to imprisonment. The amounts of the fines are a function of the rates of duty on tobacco products. The amounts in subparagraphs 216(2)(*a*)(i) to (iv) and 216(3)(*a*)(i) to (iv) that are used to determine the fines are increased, consequential to the increase in the rates of duty on tobacco products set out in Schedules 1 and 2 to the Act.

This amendment comes into force on the later of July 1, 2006, and the day on which this Act receives Royal Assent.

Clause 36

Contravention of subsection 50(5)

EA, 2001
240

Section 240 imposes a penalty on a tobacco licensee who removes from the licensee's excise warehouse for export in a calendar year unstamped manufactured tobacco in excess of the 1.5-per-cent limit on exports established in subsection 50(5). The penalty is based on the rates of duty on tobacco products.

This penalty is increased to:

- $0.355548 per cigarette ($71.11 per carton);
- $0.205 per tobacco stick ($41.00 per 200 sticks); and
- $203.804 per kilogram for other manufactured tobacco products ($40.76 per 200 grams).

This amendment comes into force on the later of July 1, 2006, and the day on which this Act receives Royal Assent.

Clause 37

Duty on cigarettes

EA, 2001
Schedule 1, paragraph 1(*b*)

Paragraph 1(*b*) of Schedule 1 to the *Excise Act, 2001* sets out the rate of duty imposed under section 42 of the Act on Canadian-produced or imported cigarettes for domestic sale. This duty is increased to $0.41025 per five cigarettes ($16.41 per carton).

This amendment comes into force on July 1, 2006.

Clause 38

Duty on tobacco sticks

EA, 2001
Schedule 1, paragraph 2(*b*)

Paragraph 2(*b*) of Schedule 1 to the *Excise Act, 2001* sets out the rate of duty imposed under section 42 of the Act on Canadian-produced or imported tobacco sticks for domestic sale. This duty is increased to $0.0605 per tobacco stick. ($12.10 per 200 sticks).

This amendment comes into force on July 1, 2006.

Clause 39

Duty on other manufactured tobacco

EA, 2001
Schedule 1, paragraph 3(*b*)

Paragraph 3(*b*) of Schedule 1 to the *Excise Act, 2001* sets out the rate of duty imposed under section 42 of the Act on Canadian-produced or imported manufactured tobacco, other than cigarettes and tobacco sticks, for domestic sale. This duty is increased to $55.90 per kilogram ($11.18 per 200 grams).

This amendment comes into force on July 1, 2006.

Clause 40

Duty on cigars

EA, 2001
Schedule 1, section 4

Section 4 of Schedule 1 to the *Excise Act, 2001* sets out the rate of duty imposed under section 42 of the Act on Canadian-produced or imported cigars for domestic sale. This duty is increased to $16.60 per 1,000 cigars.

This amendment comes into force on July 1, 2006.

Clause 41

Additional duty on cigars

EA, 2001
Schedule 2

Schedule 2 to the *Excise Act, 2001* sets out the rates of additional duty imposed under section 43 of the Act on cigars. This additional duty is the greater of the specific rate set out in paragraph (*a*) of Schedule 2 and the *ad valorem* rate set out in paragraph (*b*) of Schedule 2. The specific rate is increased to $0.066 per cigar. The *ad valorem* rate is increased to 66 per cent of the sale price in the case of Canadian-manufactured cigars, and 66 per cent of the duty paid value in the case of imported cigars.

This amendment comes into force on July 1, 2006.

Clause 42

Application of interest

EA, 2001
Schedule 1, paragraphs 1(*b*), 2(*b*) and 3(*b*), and section 4; and Schedule 2

This clause provides that, for the purposes of applying the provisions of the *Customs Act* that provide for the payment of, or liability to pay interest in respect of any amount, that amount is to be determined, and interest is to be computed on it, as if the provisions of the budget implementation Act, which implement the tobacco duty increases, were assented to on July 1, 2006.

Excise Act – Alcohol Products

Clause 43

Duty on beer

EA
Schedule, Part II

Part II of the Schedule to the *Excise Act* specifies the rates of duty imposed on beer under section 170 of the Act. The rates of duty on regular and light alcohol beer under sections 1 and 2 are increased to:

- $31.22 per hectolitre on beer or malt liquor containing more than 2.5 per cent absolute ethyl alcohol by volume; and
- $15.61 per hectolitre on beer or malt liquor containing more than 1.2 per cent absolute ethyl alcohol by volume but not more than 2.5 per cent absolute ethyl alcohol by volume.

This amendment comes into force on July 1, 2006.

Excise Act, 2001 – Alcohol Products

Clause 44

Punishment for certain alcohol offences

EA, 2001
217(2)(*a*)(i) and (ii) and (3)(*a*)(i) to (ii)

Section 217 makes certain unauthorized activities involving alcohol or specially denatured alcohol an offence under the Act. A person convicted of an offence under this section is liable to a fine determined in accordance with the amounts set out in subsections 217(2) and (3), or to imprisonment. The amounts of the fines are a function of the rates of duty on alcohol products. The amounts in subparagraphs 217(2)(*a*)(i) and (ii) and 217(3)(*a*)(i) and (ii) that are used to determine the fines are increased, consequential to the increase in the rates of duty on wine and spirits set out in Schedules 4 and 6 to the Act.

This amendment comes into force on the later of July 1, 2006, and the day on which this Act receives Royal Assent.

Clause 45

Punishment for more serious alcohol offences

EA, 2001
218(2)(*a*)(i) and (ii) and (3)(*a*)(i) to (ii)

Section 218 deals with more serious alcohol-related offences. A person convicted of an offence under this section is liable to a fine determined in accordance with the amounts set out in paragraphs 218(2)(*a*) and (3)(*a*), or to imprisonment. The amounts of the fines are a function of the rates of duty on alcohol products. The amounts in subparagraphs 218(2)(*a*)(i) and (ii) and (3)(*a*)(i) to (ii) that are used to determine the fines are increased consequential to the increase in the rates of duty on wine and spirits set out in Schedules 4 and 6 to the Act.

This amendment comes into force on the later of July 1, 2006, and the day on which this Act receives Royal Assent.

Clause 46

Contravention of section 72

EA, 2001
242

Section 242 imposes a penalty, equal to 200 per cent of the duty on wine, on any person who provides bulk wine to a person other than a wine licensee. Consequential to the increase in the rate of duty on wine set out in Schedule 6 to the Act, section 242 is amended to maintain the penalty at a level that is 200 per cent of the duty on wine.

This amendment comes into force on the later of July 1, 2006, and the day on which this Act receives Royal Assent.

Clause 47

Contravention of section 73, etc.

EA, 2001
243(*b*)

Section 243 currently provides that a person who contravenes any of sections 73, 76 or 89 to 91 is liable to a penalty. If the contravention involves wine, the penalty is $0.5122 per litre of wine, equivalent to the current duty. Contraventions of these provisions relate to unauthorized activities involving persons who are either licensed or registered under the Act. Paragraph 243(*b*) is amended to increase the amount of the penalty for a contravention relating to wine to $0.62 per litre, consequential to the increase in the rate of duty on wine set out in Schedule 6 to the Act.

This amendment comes into force on the later of July 1, 2006, and the day on which this Act receives Royal Assent.

Clause 48

Duty on spirits

EA, 2001
Schedule 4

Schedule 4 to the *Excise Act, 2001* specifies the rates of duty imposed on spirits under sections 122 and 123 of the Act. There are two rates: a general rate and a reduced rate for packaged spirits not exceeding 7 per cent absolute ethyl alcohol by volume. The rates of duty are increased as follows:

- the general rate is increased to $11.696 per litre of absolute ethyl alcohol contained in the spirits; and
- the rate for spirits not exceeding 7 per cent of absolute ethyl alcohol by volume is increased to $0.295 per litre of spirits.

This amendment comes into force on July 1, 2006.

Clause 49

Duty on wine

EA, 2001
Schedule 6

Schedule 6 specifies the rates of duty imposed on wine under sections 134 and 135 of the Act. The rates of duty are increased as follows:

- $0.620 per litre in the case of wine that contains more than 7 per cent of absolute ethyl alcohol by volume; and
- $0.295 per litre in the case of wine that contains more than 1.2 per cent but not more than 7 per cent of absolute ethyl alcohol by volume.

This amendment comes into force on July 1, 2006.

Clause 50

Application of interest

EA
Schedule, Part II

EA, 2001
Schedules 4 and 6

This clause provides that, for the purposes of applying the provisions of the *Customs Act* and *Excise Act* that provide for the payment of or liability to pay interest in respect of any amount, that amount is to be determined, and interest is to be computed on it, as if the provisions of the budget implementation Act, which implement the alcohol duty increases, were assented to on July 1, 2006.

Part 2

Amendments to the Income Tax Act

Clause 51

Gifts of Publicly Traded Securities and Environmentally Sensitive Land

ITA
38(*a.1*) and (*a.2*)

Section 38 of the Act provides for the calculation of the portion of a taxpayer's capital gain that is required to be included in computing income. Paragraph 38(*a.1*) of the Act provides that, if a capital gain results from the making of a gift of certain publicly traded securities to a qualified donee, only ¼ of the gain is a taxable capital gain. Paragraph 38(*a*.2) of the Act provides for the same inclusion rate if a capital gain results from the making of an ecological gift (as defined in paragraph 110(1)(*d*) or subsection 118.1(1) of the Act) to a qualified donee.

Paragraphs 38(*a.1*) and (*a.2*) are amended to provide that no portion of the capital gain in respect of such gifts, made after May 1, 2006, will be included in computing a taxpayer's taxable capital gains.

Clause 52

Adjustments to cost base – interest in a partnership

ITA
53(1)(*e*)(i)(A)

Paragraph 53(1)(*e*) of the Act provides for additions to the adjusted cost base of a taxpayer's partnership interest. Clause 53(1)(*e*)(i)(A) of the Act provides that a partner's adjusted cost base is to be computed as if the Act were read without reference to, among other things, the fractions in paragraphs 38(*a.1*) and (*a.2*) of the Act. Clause 53(1)(*e*)(i)(A) is amended consequential to the amendment of those paragraphs, to provide that the adjusted cost base of a partner's interest is to be computed without reference to those paragraphs. For additional details, see the commentary for paragraphs 38(*a.1*) and (*a.2*).

This amendment applies after May 1, 2006.

Clause 53

Disability Supports Deduction

ITA
64

Section 64 of the Act permits the deduction of disability supports expenses incurred to enable the taxpayer to work, to attend secondary school or to attend a designated educational institution, unless they have been reimbursed by a non-taxable payment. The effect of this deduction is that no income tax is payable on income (including government assistance) used to pay for these expenses, and that this income is not used in determining the value of income-tested benefits.

Clauses 64(1)(*a*)A(ii)(F) to (H) of the Act are amended to change the references in those clauses to "mental or physical impairment" to "impairment in physical or mental functions". This change in terminology is consequential to a similar change to subsection 118.3(1) of the Act (disability tax credit) suggested by the Technical Advisory Committee on Tax Measures for Persons with Disabilities.

Section 64 is further amended to expand the list of expenses eligible for the disability supports deduction by adding amounts paid for:

- Job coaching services used by individuals who have a severe and prolonged impairment (and paid to persons engaged in the business of providing such services). These services do not include job placement or career counselling services. The need for these services must be certified by a medical practitioner.
- Reading services used by individuals who are blind or who have a severe learning disability (and paid to persons engaged in the business of providing such services). The need for these services must be certified by a medical practitioner.
- Deaf–blind intervening services used by individuals who are both blind and profoundly deaf (and paid to persons engaged in the business of providing such services).

In addition, where a medical practitioner certifies the need for the following devices or software, the following expenses will also be eligible for this deduction:

- Bliss symbol boards, or similar devices, used by individuals who have a speech impairment to help them communicate by selecting symbols or by spelling out words.
- Braille note-takers used by individuals who are blind to allow them to take notes (that can be read back to them or printed or displayed in Braille) with the help of a keyboard.
- Page-turners used by individuals with a severe and prolonged impairment that markedly restricts their ability to use their arms or hands to turn the pages of a book or other bound document.
- Devices and software designed to be used by individuals who are blind or who have a severe learning disability to enable them to read print.

These amendments apply to the 2005 and subsequent taxation years.

Clause 54

Expenses for food, etc

ITA
67.1(1)

Subsection 67.1(1) of the Act provides a general limitation on the amount that may be deducted in respect of the human consumption of food or beverages. This limitation does not apply to food and beverage expenses incurred as moving expenses, childcare expenses or medical expenses.

This section is amended to add a reference to new section 118.01 of the Act, the adoption expense tax credit, in describing expenses that are not subject to the limitation.

This amendment applies to the 2005 and subsequent taxation years.

Clause 55

Tax Deferred Cooperative Shares

ITA
87(2)(*s*)

New paragraph 87(2)(*s*) of the Act is added as a consequence of the addition of the new rules in section 135.1 of the Act relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations. Paragraph 87(2)(*s*) provides that, for the purpose of section 135.1, if the new corporation formed on an amalgamation is, at the beginning of its first taxation year, an agricultural cooperative corporation,

(i) the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation that was an agricultural cooperative corporation, and

(ii) if, on the amalgamation, the new corporation issues a new share that is described in all of paragraphs (*b*) to (*d*) of the definition "tax deferred cooperative share" in subsection 135.1(1) of the Act in exchange for a tax deferred cooperative share ("old share") of a predecessor corporation and the amount of paid-up capital and the amount that the taxpayer is entitled to receive on a redemption, acquisition or cancellation, of the new share are equal to those amounts in respect of the old share, the new share is deemed to have been issued at the time the old share was issued. As well, in applying subsection 135.1(2) of the Act, the taxpayer is deemed to have disposed of the old share for nil proceeds.

This amendment applies after 2005. It should be noted that as a result of existing paragraph 88(1)(*e*.2) of the Act, the equivalent of new paragraph 87(2)(*s*) will in effect apply to windings-up under subsection 88(2) of the Act.

Clause 56

Charitable Donation Deduction

ITA
110(1)(*d.01*)

Paragraph 110(1)(*d.01*) of the Act provides a special deduction where an employee makes a qualifying charitable donation of a security acquired under an employee option agreement. The deduction is also available – by virtue of subsection 110(2.1) of the Act – where an employee immediately disposes of such a security and makes a qualifying donation of all or Part of the proceeds of disposition.

The special deduction is generally equal to ¼ of the employment benefit that the employee is deemed by subsection 7(1) of the Act to have received in connection with the acquisition of the security. The deduction is adjusted if the value of the security at the time of donation is less than at the time of acquisition, or if the employee donates less than the full proceeds of disposition. To qualify for the special deduction, the employee must also be eligible for the regular employee option deduction under paragraph 110(1)(*d*) of the Act, which is equal to ½ of the employment benefit. The combined effect of the two deductions is to tax the employment benefit at a rate that is comparable to the reduced capital gains inclusion rate provided under paragraph 38(*a.1*) of the Act on donated securities.

Paragraph 110(1)(*d.01*) is amended, in conjunction with the amendment to paragraph 38(*a.1*), to increase the special deduction from ¼ to ½. The net effect will generally be to eliminate any taxation of the employment benefit associated with the acquisition of the option security. This amendment applies to donations made on or after May 2, 2006.

Clause 57

Carry-Forward Period for Business, Restricted Farm, and Farm Losses

ITA
111(1)(*a*), (*c*) and (*d*)

Under existing paragraphs 111(1)(*a*), (*c*) and (*d*) of the Act, taxpayers may carry forward non-capital losses, restricted farm losses and farm losses ten taxation years. These paragraphs are amended to allow losses that arise in the 2006 and subsequent taxation years to be carried forward 20 taxation years.

Non-capital Loss Definition and Allowable Business Investment Losses

ITA
111(8)

Under the "non-capital loss" definition in subsection 111(8) of the Act, which applies for the purposes of the Act pursuant to subsection 248(1) of the Act, a taxpayer's "non-capital loss" for a taxation year includes the taxpayer's allowable business investment loss (ABIL) for the year. ABILs that have not been used within ten taxation years following the year in which they arise (i.e., the existing carry forward period for non-capital losses under paragraph 111(1)(*a*) of the Act) become net capital losses under the definition "net capital loss" in subsection 111(8). The extension of the carry forward period of non-capital losses from 10 to 20 taxation years (see note in respect of paragraphs 111(1)(*a*), (*c*) and (*d*)) will not, however, apply to ABILs; rather, ABILs that have not been used within ten taxation years after the year in which they arise will continue to be included in taxpayers' net capital losses, to which end the description of E in the formula in the "non-capital loss" definition is amended. As a result, the preamble to the definition is also amended to apply in determining a taxpayer's non-capital loss for a taxation year "at any time", reflecting that the amount of a taxpayer's non-capital loss for a taxation year may now vary depending on whether ten or more taxation years have transpired since the year in which the loss arose.

These amendments apply in respect of losses that arise in the 2006 and subsequent taxation years.

Clause 58

Tax Rates Applicable to Individuals

ITA
117(2)

Subsection 117(2) of the Act provides the marginal rates of federal personal income tax.

Subsection 117(2) is amended to adjust the lowest rate of personal income tax for the 2005 taxation year from 16% to 15%.

Subsection 117(2) is further amended to adjust the lowest rate of personal income tax for the 2006 taxation year to 15.25%, and for the 2007 and subsequent taxation years to 15.5%.

The "appropriate percentage" used in computing the individual's non-refundable personal tax credits and alternative minimum tax will also reflect these rates, as adjusted for 2005, 2006 and the 2007 and subsequent taxation years.

Clause 59

Annual Adjustment (indexing)

ITA
117.1(1)

Subsection 117.1(1) of the Act provides for the indexing of various amounts, including the amounts on which the personal tax credits are based. The indexing is based on annual increases in the Consumer Price Index.

Subsection 117.1(1) is amended to add a reference to new section 118.01 of the Act, the adoption expense tax credit.

This amendment applies to the 2006 and subsequent taxation years.

Clause 60

Personal Credits

ITA
118(3.1) to (3.3)

Section 118 of the Act provides for the calculation of various personal tax credits. These include the basic personal credit, the credit in respect of a spouse or common-law partner and the credit that a single individual can claim for a wholly dependent relative. These credits are calculated by reference to the lowest personal tax rate (15% for the 2005 taxation year, 15.25% for the 2006 taxation year, and 15.5% for the 2007 and subsequent taxation years) of the amount used in section 118 to compute the particular credit.

Subsection 118(3.1) of the Act provides, in addition to the annual increases provided under the indexing provisions, for annual increases to the amount used to compute an individual's basic personal credit, for 2006 to 2009, inclusive. Subsection 118(3.1) is amended to provide that the basic personal credit for 2005 will be $8,648. In addition, this subsection is amended to provide that the basic personal credit for 2006 will be $8,839, except that, for the purpose of calculating the basic personal credit for 2007, the basic personal amount for 2006 will be considered to have been $8,639.

Further amendments provide that, in addition to the annual increases provided under the indexing provisions, the amount used to compute an individual's basic personal credit will be increased

- for 2007, by $100
- for 2008, by $200, and
- for 2009, by the greater of $600 and the amount required to bring the basic personal credit to $10,000.

Subsection 118(3.2) of the Act provides, in addition to the annual increases provided under the indexing provisions, for annual increases to the amount used to compute the credit in respect of a spouse or common-law partner and the credit that a single individual can claim for a wholly dependent relative, for 2006 to 2009, inclusive. Subsection 118(3.2) is amended to provide that the credit in respect of a spouse or common-law partner and the credit that a single individual can claim for a wholly dependent relative for 2005 will be $7,344. In addition, this subsection is amended to provide that this credit will be $7,505 for 2006, except that, for the purpose of calculating this credit for 2007, the credit in respect of a spouse or common-law partner and the credit that a single individual can claim for a wholly dependent relative for 2006 will be considered to have been $7,335.

Further amendments provide that, in addition to the annual increases provided under the indexing provisions, the amount used to compute the credit in respect of a spouse or common-law partner and the credit that a single individual can claim for a wholly dependent relative will be increased

- for 2007, by $85
- for 2008, by $170, and
- for 2009, by the greater of $510 and the amount required to bring these credits to $8,500.

Subsection 118(3.3) of the Act provides, in addition to the annual increases provided under the indexing provisions, for annual increases to the amount used to compute the net income threshold for the credit in respect of a spouse or common-law partner and the credit that a single individual can claim for a wholly dependent relative, for 2006 to 2009, inclusive. Subsection 118(3.3) is amended to provide that the net income threshold for the credit in respect of a spouse or common-law partner and the credit that a single individual can claim for a wholly dependent relative for 2005 will be $734. In addition, this subsection is amended to provide that this threshold will be $751 for 2006, except that, for the purpose of calculating this threshold for 2007, the net income threshold for the credit in respect of a spouse or common-law partner and the credit that a single individual can claim for a wholly dependent relative for 2006 will be considered to have been $734.

Further amendments provide that, in addition to the annual increases provided under the indexing provisions, the amount used to compute the credit in respect of a spouse or common-law partner and the credit that a single individual can claim for a wholly dependent relative will be increased

- for 2007, by $8.50
- for 2008, by $17.00, and
- for 2009, by the greater of $51.00 and the amount required to bring this threshold to $850.

ITA
118(9)

New subsection 118(9) of the Act provides for the rounding of amounts to be used in computing the increases described in subsections 118(3.1) to (3.3) of that Act.

These amendments apply to the 2005 and subsequent taxation years.

Clause 61

Adoption Expense Tax Credit

ITA
118.01

New section 118.01 of the Act provides a tax credit in respect of eligible adoption expenses incurred in respect of the completed adoption of an eligible child, up to a maximum of $10,000 (to the extent that the adoptive parent has not been reimbursed in respect of eligible expenses and is not entitled to be so reimbursed). Individuals may include eligible adoption expenses incurred during the adoption period, generally defined as the period that begins at the earlier of the time the child's adoption file is opened with the provincial or territorial ministry responsible for adoption or a licensed adoption agency, and the time, if any, that an application related to an adoption is made to a Canadian court and that ends at the later of the time the adoption is finalized and the time the adopted child begins to live with the adoptive parent. To be eligible for the credit, a parent must submit proof of an adoption in the form of a Canadian or foreign adoption order, or otherwise demonstrate that all of the legal requirements of the jurisdiction in which the parent resides have been met in completing the adoption. Individuals must claim the credit in the taxation year in which the adoption period ends. New section 118.01 applies to the 2005 and subsequent taxation years.

Definitions

ITA
118.01(1)

New subsection 118.01(1) of the Act sets out certain definitions and rules that apply for the purpose of the adoption expense tax credit.

"adoption period"

"Adoption period" in respect of an eligible child is defined as the period that begins at the earlier of the time that the adoption file is opened with a provincial or territorial ministry responsible for adoption (or with a licensed adoption agency) and the time, if any, that an application related to the adoption is made to a Canadian court and that ends at the later of the time that an adoption order is issued by, or recognized by a government in Canada and the time that the child first begins to permanently reside with the adoptive parent.

"eligible adoption expenses"

"Eligible adoption expenses" in respect of an eligible child are defined to include

- fees paid to an adoption agency licensed by a provincial or territorial government,
- court, legal and administrative expenses related to an adoption order in respect of the child,
- reasonable and necessary travel and living expenses for the child and the adoptive parents,
- document translation fees,
- mandatory fees paid to a foreign institution,

- mandatory expenses paid in respect of the immigration of the child, and
- any other reasonable expenses required by a provincial or territorial government or an adoption agency licensed by a provincial or territorial government.

“eligible child”

“Eligible child” means a child who has not attained the age of 18 years at the time the adoption order is issued by, or recognized by a government in Canada.

Calculation of Adoption Expense Tax Credit

ITA
118.01(2)

New subsection 118.01(2) of the Act provides for the calculation of the adoption expense tax credit in respect of the adoption of an eligible child. The credit is determined by applying the appropriate percentage (15% for the 2005 taxation year, 15.25% for the 2006 taxation year and 15.5% for the 2007 and subsequent taxation years) to the lesser of $10,000 and the amount obtained when reimbursements and other forms of assistance (other than an amount that is included in computing the individual’s income and that is not deductible in computing the individual’s taxable income) that any individual is or was entitled to receive in respect of an eligible adoption expense is subtracted from the amount of eligible adoption expenses incurred in respect of an eligible child.

Maximum Amount of Credit

ITA
118.01(3)

New subsection 118.01(3) of the Act provides that, where more than one individual is entitled to the adoption expense tax credit in respect of the same eligible child, the total amounts claimed by those individuals cannot exceed the maximum amount that would be allowed if only one individual were claiming the adoption expense tax credit in respect of that child.

Clause 62

Medical Expense Credit

ITA
118.2(1)

Section 118.2 of the Act provides rules for determining the amount that may be claimed as a tax credit in respect of an individual’s medical expenses.

Subsection 118.2(1) of the Act provides the calculation of an individual’s medical expense tax credit (METC). The description of D in that subsection includes the individual’s medical expenses amounts paid by the individual in respect of a dependant (other than an individual’s spouse, the individual’s common-law partner or child of the individual who has not attained the age of 18 years) to the lesser of $5,000 and the amount by which

the expenses paid by the individual on behalf of the dependant exceed the dependant's medical expense threshold for the year or 3% of net income.

The description of D is amended to increase the $5,000 limit to $10,000, effective for the 2005 and subsequent taxation years.

Medical Expenses

ITA
118.2(2)

Subsection 118.2(2) of the Act contains a list of expenditures that qualify as eligible medical expenses.

Paragraph 118.2(2)(*i*) of the Act is amended to add the cost to purchase, operate, and maintain phototherapy equipment prescribed for the treatment of psoriasis or other skin disorders to the list of items that qualify as medical expenses. Further, while the cost of purchasing an oxygen concentrator is currently an eligible expense under paragraph 118.2(2)(*k*) of the Act, a reference to oxygen concentrator is added to paragraph 118.2(2)(*i*) of the Act to extend eligibility under the METC to expenses incurred to operate an oxygen concentrator, including the cost of electricity. This amendment applies to the 2005 and subsequent taxation years.

Paragraph 118.2(2)(*l.2*) of the Act allows reasonable expenses relating to modifications to a dwelling of an individual who lacks normal physical development or is confined to a wheelchair to qualify as medical expenses.

Paragraph 118.2(2)(*l.2*) of the Act is amended in two respects. First, in order to qualify as a medical expense, the renovation or alteration to the home must not typically be expected to increase the value of the home. Secondly, the expenses must be of a type that would not typically be incurred by persons without such an impairment. Only expenses that meet both of these criteria will be eligible to be claimed under the medical expense tax credit.

This amendment applies to expenses incurred after February 22, 2005.

Most medical and disability-related home renovation expenses will remain eligible under the medical expense tax credit, including, for example, the cost of installing entrance and exit ramps, widening doorways, lowering shelves, modifying kitchen cabinets and moving electrical outlets.

Similar to paragraph 118.2(2)(*l.2*) described above, paragraph 118.2(2)(*l.21*) of the Act allows reasonable expenses relating to the construction of the principal place of residence of an individual who lacks normal physical development or is confined to a wheelchair to qualify as medical expenses, that can reasonably be considered to be incremental costs incurred to enable the individual to gain access to, or to be mobile and functional within, the individual's principal place of residence.

Paragraph 118.2(2)(*l.21*) is amended in two respects. First, in order to qualify as a medical expense, the incremental costs incurred during the construction of the residence must not typically be expected to increase the value of the home. Secondly, the incremental costs must be of a type that would not typically be incurred by persons without such an impairment. Only expenses that meet both of these criteria are eligible to be claimed under the medical expense tax credit. These amendments apply to expenses incurred after February 22, 2005.

New paragraph 118.2(2)(*1.43*) of the Act adds to the list of eligible medical expenses amounts paid for reading services on behalf of individuals who are blind or have a severe learning disability. In order to qualify as medical expenses, the amount must be paid to persons engaged in the business of providing such services and a medical practitioner must certify the need for those services. This amendment applies to the 2005 and subsequent taxation years.

New paragraph 118.2(2)(*1.44*) of the Act adds to the list of eligible medical expenses amounts paid for deaf-blind intervening services on behalf of individuals who are blind and profoundly deaf. In order to qualify as medical expenses, the amount must be paid to persons engaged in the business of providing such services. This amendment applies to the 2005 and subsequent taxation years.

New paragraphs 118.2(2)(*s*) and (*t*) of the Act add to the list of eligible medical expenses amounts paid for drugs or devices purchased under Health Canada's Special Access Programme on behalf of the patient. This programme allows access to drugs or medical devices that have not yet been approved for sale in Canada. Special access can be requested in emergency cases or when conventional therapies have failed, are unsuitable or are unavailable. This amendment applies to the 2005 and subsequent taxation years.

New paragraph 118.2(2)(*u*) of the Act adds to the list of eligible medical expenses amounts paid for medical marihuana. To be an eligible expense under the METC, medical marihuana must be purchased from either Health Canada or a designated grower, by a patient authorized to use the drug for medical purposes under Health Canada's *Medical Marihuana Access Regulations* or who possesses an exemption under section 56 of the *Controlled Drug and Substances Act*. The designated grower must possess, on behalf of the particular patient, a *Designation-Person Production License* to produce marihuana under the *Marihuana Medical Access Regulations* or an exemption for cultivation or production under section 56 of the *Controlled Drugs and Substances Act*. With the exception of the cost of seeds purchased from Health Canada, expenses incurred by authorized users to grow their own marihuana will not be eligible under the METC. This amendment applies to the 2005 and subsequent taxation years.

Clause 63

Credit for Impairment in Physical or Mental Functions

ITA
118.3(1)

Section 118.3 of the Act provides a tax credit, generally referred to as the Disability Tax Credit (DTC), for individuals who have a severe and prolonged mental or physical impairment.

In April 2003, the Technical Advisory Committee on Tax Measures for Persons with Disabilities was established with a mandate to provide advice to the Ministers of Finance and National Revenue on how to address issues related to tax measures for persons with disabilities. In its final report, *Disability Tax Fairness*, issued in December 2004, the Committee made several recommendations regarding the eligibility criteria for the disability tax credit. Based on this advice, a number of amendments are being made to the DTC to respond to the Committee's suggestions. These amendments are intended to:

- Clarify the legislation with respect to how impairments are conceptualized.
- Align the legislative criteria for impairments in mental functions with wording used in the administration of these provisions.

- Extend eligibility to include individuals with multiple restrictions where the cumulative effect of those restrictions is equivalent to a marked restriction in a single basic activity of daily living.
- Better define the activities that constitute life-sustaining therapy.
- Add to the list of health practitioners who can certify eligibility for the DTC.

Subsection 118.3(1) of the Act provides the formula for calculating the tax credit and the conditions for entitlement to the credit for those with a mental or physical impairment.

ITA
118.3(1)(*a*)

Currently, the DTC eligibility criteria require that a person have a "severe and prolonged mental or physical impairment." In its report, the Technical Advisory Committee expressed concerns with this wording. Based on the Committee's advice, this paragraph is amended to replace the present wording of "severe and prolonged mental or physical impairment" with the wording "severe and prolonged impairment in physical or mental functions." As indicated by the Committee, the intent of this measure is to clarify the existing legislation and not to expand eligibility for the DTC.

This amendment applies to the 2005 and subsequent taxation years.

ITA
118.3(1)(*a.1*) to (*a.3*)

Paragraphs 118.3(1)(*a.1*) and (*a.2*) of the Act provide various conditions that must be met to be eligible for the DTC.

Paragraph 118.3(1)(*a.1*), which currently applies only in respect of individuals with severe and prolonged impairments in mental or physical functions who have impairments the effects of which are to markedly restrict an individual's ability to perform a basic activity of daily living (or would be to so markedly restrict the individual's ability to perform a basic activity of daily living but for certain life sustaining therapy) is amended to also apply in respect of individuals with severe and prolonged impairments in mental or physical functions who have significant (but not marked) restrictions in more than one basic activity of daily living, if the cumulative effect of the restrictions is equivalent to having a single marked restriction in one basic activity of daily living.

Paragraph 118.3(1)(*a.2*) sets out the types of medical practitioners that are eligible to certify the effects of various impairments. Paragraph 118.3(1)(*a.2*) is amended to apply only in respect of individuals with severe and prolonged impairments in mental or physical functions who have impairments the effects of which are to markedly restrict an individual's ability to perform a basic activity of daily living (or would be to markedly restrict the individual's ability to perform a basic activity of daily living but for certain life supporting therapy) and to allow physiotherapists to certify a marked restriction in walking for the purposes of determining eligibility for the DTC.

The medical practitioners that can certify severe and prolonged impairments in mental or physical functions the effects of which are significant (but not marked) restrictions in more than one basic activity of daily living, if the cumulative effect of the restrictions is equivalent to having a single marked restriction in one basic activity of daily living, are set out in new paragraph 118.3(1)(*a.3*) of the Act.

New paragraph 118.3(1)(*a.3*) is added with respect to the certification of eligibility for the DTC as a result of the cumulative effects of multiple restrictions (i.e., severe and prolonged impairments in mental or physical functions the effects of which are significant (but not marked) restrictions in more than one basic activity of daily living, if the cumulative effect of the restrictions is equivalent to having a single marked restriction in one basic activity of daily living). A medical doctor must make such certifications, unless the multiple restrictions pertain only to walking, feeding, or dressing, in which case certification may also be made by an occupational therapist.

These amendments apply to the 2005 and subsequent taxation years except that, in the case of certifications made by a physiotherapist, the amendment applies only to certifications made after February 22, 2005.

Time spent on therapy

ITA
118.3(1.1)

Paragraph 118.3(1)(*a.1*) of the Act extends eligibility for the DTC to individuals who would be markedly restricted in their ability to perform a basic activity of daily living but for therapy administered to them, at least three times each week for a total duration averaging not less than 14 hours per week, in order to sustain one of their vital functions. The purpose of these provisions, which are generally referred to as the life-sustaining therapy provisions, is to allow individuals to be eligible for the DTC if, but for life-sustaining therapy that requires them to dedicate a significant amount of time away from their normal, everyday activities to receive the therapy, they would have impairments the effects of which would markedly restrict their ability to perform a basic activity of daily living. In its report, the Technical Advisory Committee raised concerns as to what activities constitute therapy under the DTC provisions.

In response to the committee's concerns, new subsection 118.3(1.1) is added to the Act to define the activities that will be included in determining time spent receiving therapy for the purpose of paragraph 118.3(1)(*a.1*). Specifically, new subsection 118.3(1.1) specifies that the time spent on administering therapy

- includes only time dedicated to the therapy—that is, the individual has to take time away from normal, everyday activities in order to receive the therapy,
- includes, in the case of therapy that requires a regular dosage of medication that needs to be adjusted on a daily basis, the activities directly involved in determining the appropriate dosage, but does not include time spent on activities related to a dietary or exercise restrictions or regime (even if these restrictions or regimes are a factor in determining the daily dosage of medication),
- does not include travel time, medical appointments, shopping for medication or recuperation after therapy, and
- includes, in the case of a child who is unable to perform the activities related to the therapy as a result of the child's age, the time spent by the child's primary caregivers (usually the parents) in performing or supervising these activities for the child.

With these proposed changes, it is expected that children with very severe cases of Type 1 diabetes – who require many insulin injections (which requires knowledge of current blood sugar levels at the time of each injection), as well as several additional blood sugar tests to monitor their condition – will become eligible for the DTC.

The life-sustaining therapy provisions, in and of themselves, do not extend eligibility for the DTC to individuals who receive therapy in a manner that does not significantly affect their everyday activities (for example, by means of a portable or implanted device).

New subsection 118.3(1.1) applies to the 2005 and subsequent taxation years.

Clause 64

Nature of Impairment

ITA
118.4(1)(*b.1*)

Section 118.4 of the Act sets out circumstances in which an individual is considered to have a severe and prolonged impairment for the purposes of the DTC.

Based on the advice of the Technical Advisory Committee, eligibility for the DTC is extended to individuals with severe and prolonged impairments in mental or physical functions who have significant restrictions in more than one basic activity of daily living if the cumulative effect of their restrictions is equivalent to having a single marked restriction in one basic activity of daily living.

New paragraph 118.4(1)(*b.1*) of the Act describes the circumstances where an individual with significant restrictions in more than one basic activity of daily living will be considered to have the equivalent of a single marked restriction. Such an individual will be considered to have the equivalent of a marked restriction in a basic activity of daily living only where, even with therapy and the use of appropriate devices and medication, the individual's ability to perform more than one basic activity of daily living is significantly restricted. These multiple restrictions, taken together, must be present all or substantially all of the time. In other words, while each of these restrictions on its own would not markedly restrict a specific basic activity of daily living, when taken together, the restrictions must have an effect equivalent to that of a marked restriction in a single activity. While not a basic activity of daily living, a visual impairment that cannot be mitigated by means of eyeglasses or other visual aids will be considered in conjunction with restrictions in the other basic activities of daily living in determining the cumulative effects of one or more impairments.

An example of an individual who could become eligible for the DTC under this change is someone with multiple sclerosis who continuously experiences fatigue, depressed mood and balance problems.

New paragraph 118.4(1)(*b.1*) applies to the 2005 and subsequent taxation years.

ITA
118.4(1)(*c*) and (*c.1*)

Individuals with severe impairments in mental functions are eligible for the disability tax credit (DTC) if they have a marked restriction in "perceiving, thinking and remembering," which is one of the basic activities of daily living. The Technical Advisory Committee noted that the language currently used by the Canada Revenue Agency on Form T2201, Disability Tax Credit Certificate, to explain the meaning of "perceiving, thinking and remembering" provides a clearer description of the effects of impairments in mental functions. Accordingly, paragraph 118.4(1)(*c*) of the Act is amended to replace the expression "perceiving, thinking and remembering" with the expression "mental functions necessary for everyday life".

New paragraph 118.4(1)(*c.1*) is added to the Act, for greater certainty, to define mental functions necessary for everyday life. These mental functions include

- memory – which refers to the ability to remember the following: simple instructions; basic personal information such as name and address; or material of importance or interest,
- problem-solving, goal-setting and judgement (taken together) – which refers to the ability to solve problems, set and keep goals, and make appropriate decisions and judgements, and
- adaptive functioning - which refers to refers to abilities related to self-care, health and safety, social skills and common, simple transactions.

These amendments apply to the 2005 and subsequent taxation years.

Reference to medical practitioners, etc.

ITA
118.4(2)

Subsection 118.4(2) of the Act provides a definition of the group of health professionals to whom various references in section 63 (relating to childcare expenses), section 118.2 (referring to medical expenses) section 118.3 (relating to the DTC) and section 118.6 (relating to the education tax credit) of the Act apply.

This provision is amended as a consequence of the introduction of section 64 – the disability supports deduction, applicable to the 2004 and subsequent taxation years.

This provision is further amended, applicable after February 22, 2005, consequential to the amendment to paragraph 118.3(1)(*a.2*) of the Act which makes a physiotherapist eligible to certify, after that date, a severe and prolonged impairment in walking.

Clause 65

Unused Tuition and Education Tax Credits

ITA
118.61

Subsection 118.61(1) provides for the calculation of a student's unused tuition and education tax credits at the end of a taxation year that may be carried forward to future taxation years for use by the student. The amount of the carry-forward that is deductible for the current year is set out in subsection 118.61(2).

Subsections 118.61(1) and (2) are amended in two respects.

First, paragraph 118.61(2)(*b*) and the description of C in subsection 118.61(1) are amended to ensure that the calculation of the student's unused tax credits are compatible with the ordering in section 118.92 of the Act for the claiming of non-refundable credits. These amendments also ensure that the wording contained in this section is compatible with the wording used in section 118.8 of the Act (in particular, subparagraph (*b*)(ii) in the description of C and the description of B in paragraph 118.81(1)(*a*) of the Act).

This amendment applies to the 2002 and subsequent taxation years.

Secondly, paragraph 118.61(2)(*b*) and the description of C in subsection 118.61(1) are amended to add a reference to new section 118.01 of the Act, the adoption expense tax credit.

This amendment applies to the 2005 and subsequent taxation years.

Change of appropriate percentage

ITA
118.61(4)

New subsection 118.61(4) of the Act adjusts the unused tuition and education tax credit at the end of the immediately preceding taxation year in circumstances where the "appropriate percentage" applicable in the current taxation year is different from the "appropriate percentage" applicable in the immediately preceding taxation year. This amendment is consequential to the reduction, from 16% to 15% of the lowest income tax rate applicable to individuals for the 2005 taxation year, and the subsequent adjustment in the lowest rate to 15.25% for the 2006 taxation year and 15.5% for the 2007 and subsequent taxation years. This amendment ensures that the carried-forward credit can offset tax on the same amount of income at each of the 15%, 15.25% and 15.5% rates.

This amendment applies to the 2005 and subsequent taxation years.

Clause 66

Tuition and Education tax credits transferred

ITA
118.81

Section 118.81 of the Act provides for the calculation of the tuition and education tax credits that may be transferred under section 118.8 of the Act to the student's spouse or common-law partner, or under section 118.9 of the Act to a parent or grandparent. The maximum annual amount that may be transferred is $800; this means that, given the current lowest rate of 16%, a student may transfer up to the equivalent of $5,000 of unused tuition and education amounts.

This section is amended in two respects.

The first amendment, which adjusts the maximum annual amount transferable for the 2005 and subsequent taxation years, is consequential to the reduction, from 16% to 15% of the lowest income tax rate applicable to individuals for 2005, and the subsequent adjustment in the lowest rate to 15.25% for 2006 and 15.5% for the 2007 and subsequent taxation years. This amendment maintains the effect of the credit transfer in offsetting tax on up to $5,000 at each of the 15%, 15.25% and 15.5% rates.

The second amendment adds a reference to new section 118.01 of the Act, the adoption expense tax credit.

These amendments apply to the 2005 and subsequent taxation years.

Clause 67

Part-Year Residents

ITA
118.91

Section 118.91 of the Act provides rules with respect to non-refundable tax credits allowed to individuals residing in Canada for only Part of a taxation year.

This section is amended to add a reference to new section 118.01 of the Act, the adoption expense tax credit.

This amendment applies to the 2005 and subsequent taxation years.

Clause 68

Ordering of Credits

ITA
118.92

Section 118.92 of the Act provides that the tax credits allowed in computing an individual's tax payable are to be applied in a specific order.

This section is amended to add a reference to new section 118.01 of the Act, the adoption expense tax credit.

This amendment applies to the 2005 and subsequent taxation years.

Credits in Separate Returns

ITA
118.93

Section 118.93 of the Act provides that, where a separate return of income for an individual is filed under subsection 70(2), 104(23) or 150(4) of the Act for a period and another return under Part I is filed for a period ending in the calendar year in which the period covered in the separate return ends, the combined amounts deducted in respect of the pension, charitable donation, medical expenses, impairment in mental or physical functions, tuition fees and education credits and the transfer of unused credits to a supporting person (but not to a spouse) cannot exceed the amount that would be deducted under those provisions if no separate return were filed.

This section is amended to add a reference to new section 118.01 of the Act, the adoption expense tax credit.

This amendment applies to the 2005 and subsequent taxation years.

Tax Payable by Non-resident

ITA
118.94

Section 118.94 of the Act provides rules with respect to non-refundable tax credits allowed to individuals who did not reside in Canada at any time in a taxation year. Subject to the special rule in section 217 of the Act, such individuals are allowed to claim certain non-refundable credits only where all or substantially all (90%) of their income for the year is included in computing their taxable income earned in Canada.

This section is amended to add a reference to new section 118.01 of the Act, the adoption expense tax credit.

This amendment applies to the 2005 and subsequent taxation years.

Clause 69

Credits in Year of Bankruptcy

ITA
118.95

When an individual becomes bankrupt, subsection 128(2) of the Act divides the calendar year in which the bankruptcy occurs into two taxation years: one that runs from January 1 to the day before the bankruptcy; and a second that begins on the day of the bankruptcy and runs to December 31. Section 118.95 of the Act ensures that non-refundable tax credits that are based on expenditures or the receipt of certain types of income are determined by reference to the amounts that relate to the relevant taxation year. In all cases, the total of the amounts claimed in respect of each of the credits for the two taxation years cannot be greater than the amount that could be claimed in respect of the calendar year as a whole.

The amendment to paragraph 118.95(*a*) of the Act adds a reference to new section 118.01 of the Act, the adoption expense tax credit and ensures that, in the year of bankruptcy, this credit will be claimed on the tax return for the taxation year in which the adoption period (as defined in section 118.01) ends.

This amendment applies to the 2005 and subsequent taxation years.

Clause 70

Refundable medical expense supplement

ITA
122.51

Section 122.51 of the Act provides a refundable medical expense supplement equal to the lesser of $750 (for 2006 indexed to $767) and 25% of the total of allowable expenses claimed under the disability supports deduction and the medical expense tax credit by an eligible individual for the year. The supplement is reduced by 5% of “adjusted income” in excess of an indexed threshold ($21,663 for 2005). This threshold is the total of the basic, spouse or common-law partner and disability amounts.

Section 122.51 is amended in two respects. First, section 122.51 is amended to increase the maximum amount of the supplement from $750 to $1000 (indexed after 2006).

This amendment applies to the 2006 and subsequent taxation years.

Secondly, section 122.51 is amended to provide that the supplement will be reduced by 5% of the individual's "adjusted income" in excess of $21,663 (indexed after 2005).

This amendment applies to the 2005 and subsequent taxation years.

Clause 71

Canada Child Tax Benefit and the Child Disability Benefit

ITA
122.61(1)

Section 122.61 of the Act provides for the calculation of the Canada Child Tax Benefit (CCTB). The CCTB provides federal assistance to families through three components: the CCTB base benefit for low- and middle-income families; the National Child Benefit (NCB) supplement which provides additional assistance for low-income families; and the Child Disability Benefit (CDB) which provides assistance to families for each eligible child who meets the eligibility criteria for the disability tax credit (DTC).

Subsection 122.61(1) is amended in two respects:

First, subsection 122.61(1) is amended to increase the annual amount on which the CDB is calculated to $2,300 (indexed for payments after June 2007) for each eligible child. Without this increase, the maximum annual CDB for payments after June 2006 would be $2,000 in respect of each eligible child.

Secondly, the phase-out rate for the CDB is amended to mirror the reduction rate for the CCTB base benefit; that is, 2% for families with one child eligible for the DTC and 4% for families with more than one child eligible for the DTC.

These amendments apply to overpayments that are deemed to arise after June 2006.

Clause 72

Corporate Surtax

ITA
123.2

Section 123.2 of the Act is amended to eliminate the corporate surtax on January 1, 2008, and to prorate the surtax for taxation years that include that date.

Clause 73

Corporate Tax Reductions

ITA
123.4

Section 123.4 of the Act contains rules that allow a corporation to reduce its tax otherwise payable under Part I of the Act by a percentage of the corporation's "full rate taxable income" – a term that is separately defined in the section for Canadian-controlled private corporations (CCPCs) and for other corporations. This "general rate reduction percentage" is amended, as described below, to provide for a 2-percentage-point reduction in the general corporate income tax rate to 19 per cent from 21 per cent, by 2010. The general corporate income tax rate will be reduced to 20.5 per cent effective January 1, 2008, to 20 per cent effective January 1, 2009, and to 19 per cent effective January 1, 2010. Investment corporations, mortgage investment corporations, mutual fund corporations and most deposit insurance corporations are not eligible for this rate reduction.

The corporate income tax rate reduction applies to the 2008 and subsequent taxation years and is prorated to reflect the number of days in a corporation's taxation year that fall in a given calendar year.

Definitions

ITA
123.4(1)

Subsection 123.4(1) of the Act sets out definitions for the purposes of section 123.4 of the Act.

"full rate taxable income"

The "full rate taxable income" of a corporation for a taxation year is, in general terms, that part of the corporation's taxable income for the year that is not exempt from tax and has not benefited from any of the various special effective tax rates provided under the Act. This amount is determined differently depending on the nature of the corporation. Paragraph (*a*) of the definition applies to corporations other than CCPCs and various "specialty corporations" such as investment corporations and mutual fund corporations. Paragraph (*a*) is amended to clarify that a non-resident corporation's taxable income earned in Canada in the year is included in the "full rate taxable income" calculation. Subparagraph (*a*)(i) of that definition is amended to reflect the changes in the manufacturing and processing profits deduction (see commentary on subsection 125.1(1)).

"general rate reduction percentage"

A corporation's "general rate reduction percentage" for a taxation year is a percentage that is computed by reference to the calendar year or years in which the taxation year falls. The percentage is amended to provide for the corporate income tax rate reduction and is the total of 7% for any portion of the taxation year that falls before 2008, 7.5% for any portion in 2008, 8% for any portion in 2009, and 9% for 2010 and later calendar years.

Clause 74

Manufacturing and Processing Profits Deduction

ITA
125.1(1) and (2)

Subsection 125.1(1) of the Act provides a reduced rate of corporate tax on Canadian manufacturing and processing profits. Generally, the rate reduction takes the form of a deduction, from Part I tax otherwise payable, of an amount equal to a specified percentage – currently 7% – of a corporation's "Canadian manufacturing and processing profits" (other than profits eligible for the small business deduction under section 125 of the Act). Subsection 125.1(2) of the Act extends the 7% corporate tax rate reduction to a corporation that generates electrical energy for sale, or produces steam for use in the generation of electrical energy for sale.

The 7% specified percentage in subsections 125.1(1) and (2) is amended to reflect the changes to the "general rate reduction percentage" in subsection 123.4(1) of the Act (see commentary on that subsection), so that the manufacturing and processing profits deduction remains in-line with general corporate income tax rates.

Clause 75

Flow-Through Mining Expenditure

ITA
127(9)

The definition "flow-through mining expenditure" in subsection 127(9) of the Act defines expenditures that qualify for the 15% investment tax credit in respect of specified surface "grass-roots" mineral exploration expenses ("eligible expenses"). This credit, which is available to individuals investing in flow-through shares, was introduced in 2000. Under the existing definition, the credit is only available in respect of eligible expenses renounced under a flow-through share agreement made after October 17, 2000 and before 2006.

The definition, "flow-through mining expenditure" is amended to reintroduce the credit for eligible expenses incurred by a corporation after May 1, 2006 and before 2008 where the eligible expenses are incurred under a flow-through share agreement made after May 1, 2006 and before April 1, 2007.

Investment Tax Credit – Carryforward Period

ITA
127(9)

The definition "investment tax credit" in subsection 127(9) of the Act provides for a carryover period in respect of ITCs that encompasses the three taxation years before the taxation year in which an ITC is earned and ends ten taxation years after the taxation year in which the investment tax credit is earned.

Paragraph (*d*) of the definition "investment tax credit" is repealed, as it no longer has any practical effect; the provisions to which it refers having been repealed.

ITA
127(9.01) and (9.02)

New subsections 127(9.01) and (9.02) of the Act provide for a substitution of the number of taxation years referenced in various paragraphs in the definition “investment tax credit” in subsection 127(9) in order to provide for a 20-year carry-forward period for investment tax credits earned in the 2006 and subsequent taxation years.

ITA
127(36)

New subsection 127(36) of the Act provides for a substitution of the number of taxation years and fiscal periods referenced in subsections 127(27), (28) (29), (34) and (35) of the Act, dealing with the recapture of investment tax credits in certain circumstances, consequential on the introduction of a 20-year carry-forward period for investment tax credits earned in the 2006 and subsequent taxation years.

These amendments to section 127 apply to the 2006 and subsequent taxation years.

Clause 75.1

Alternative Minimum Tax

ITA
127.52(1)(*h*)

Section 127.52 of the Act defines the “adjusted taxable income” of an individual for a taxation year for the purpose of determining the individual’s minimum tax liability under Part I of the Act.

Paragraph 127.52(1)(*h*) provides that, in computing an individual's adjusted taxable income, only certain deductions under sections 110 to 110.7 may be taken into account. This includes, with some adjustments, deductions claimed under paragraphs 110(1)(*d*) and (*d.01*) relating to employment benefits that the individual is deemed, by subsection 7(1), to have received in connection with the exercise or disposition of rights under an employee option agreement.

Generally speaking, the effect of the deductions under paragraphs 110(1)(*d*) and (*d.01*) is to tax the employment benefit at a rate equivalent to the capital gains inclusion rate. Similarly, the extent to which these deductions are taken into account in determining adjusted taxable income results in recognition of these deductions in a manner equivalent to capital gains for minimum tax purposes.

Clause 127.52(1)(*h*)(ii)(A) is amended, for gifts made after May 1, 2006, to replace the reference to “twice the amount deducted under paragraph 110(1)(*d.01*)” with a reference to “the amount deducted under paragraph 110(1)(*d.01*)” in consequence of the amendments doubling the amount deductible under that paragraph. For further information, see the commentary on the amendments to paragraph 110(1)(*d.01*).

Clause 76

Basic Minimum Tax Credit Determined

ITA
127.531

Section 127.531 of the Act permits an individual to claim a deduction in computing minimum tax for most non-refundable personal tax credits.

Section 127.531 is amended in two respects.

First, section 127.531 is amended to add a reference to new section 118.01 of the Act, the adoption expense tax credit.

This amendment applies to the 2005 and subsequent taxation years.

Secondly, section 127.531 is amended to incorporate a previously-proposed change clarifying that the amount deductible for minimum tax purposes in respect of a particular tax credit referred to in that section is equal to the amount that would be deductible for regular income tax purposes if minimum tax were not applicable. For example, if the total of an individual's eligible charitable gifts for a year is $10,000 and the individual chooses to claim only $8,000 for Part I tax purposes, in computing the individual's basic credit for minimum tax purposes, only $8,000 may be taken into account.

This amendment applies to the 2002 and subsequent taxation years.

Clause 77

Minimum Tax Credit – Foreign Tax Credit

ITA
127.54(2)(*b*)(ii)

Section 127.54 provides for a special foreign tax credit in computing an individual's minimum tax. This special credit is equal to the lesser of 16% of the individual's foreign income and the foreign tax paid in respect of that income.

Subparagraph 127.54(2)(*b*)(ii) is amended to replace the reference to "16%" with a reference to the "appropriate percentage" and is consequential to the reduction, from 16% to 15% of the lowest income tax rate applicable to individuals for 2005, and the subsequent adjustment in the lowest rate to 15.25% for 2006 and 15.5% for the 2007 and subsequent taxation years.

This amendment applies to the 2005 and subsequent taxation years.

Clause 78

Where Individual Bankrupt

ITA
128(2)(*e*)

Subsection 128(2) of the Act contains a number of special rules that apply in cases of personal bankruptcy.

Paragraph 128(2)(*d*) divides the calendar year in which an individual becomes bankrupt into two taxation years. The first taxation year runs from January 1 to the day before bankruptcy and the second taxation year begins on the day of bankruptcy and runs to December 31.

Paragraph 128(2)(*e*) requires a trustee in bankruptcy to file, for each taxation year in the calendar year in which an individual becomes bankrupt, an income tax return with respect to certain income of the estate and businesses of the individual. For this purpose, the individual's income is to be determined as if no deductions other than those specifically listed were available to the individual.

Paragraph 128(2)(*e*) is amended to add a reference to new section 118.01 of the Act, the adoption expense tax credit. This means that the adoption expense tax credit will be claimed on the tax return for the taxation year in which the adoption period (as defined in section 118.01) ends.

This amendment applies to the 2005 and subsequent taxation years.

Clause 79

Deduction in Computing Income

ITA
135(1)

Subsection 135(1) of the Act allows a taxpayer to deduct from income payments made to customers pursuant to allocations in proportion to patronage. Subsection 135(1) is amended as a consequence of the addition of the new rules in section 135.1 of the Act relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations. In particular, subsection 135(1) is amended to provide that subsection (1) is subject to the deductibility limit in new subsection 135.1(3) of the Act.

This amendment applies after 2005.

Amount to be Deducted or Withheld From Payment to Customer

ITA
135(3)

Subsection 135(3) of the Act provides that most payments made pursuant to allocations in proportion to patronage are subject to a withholding of 15% on account of the recipient's income tax liability. Subsection 135(3) is amended as a consequence of the addition of the new rules in section 135.1 of the Act relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations. In particular, subsection 135(3) is amended to provide that subsection 135(3) is subject to the exclusion from the withholding obligation set out in new subsection 135.1(6) of the Act.

This amendment applies after 2005.

Definitions

ITA
135(4)

Subsection 135(4) of the Act is amended to provide that the definitions set out in that subsection also apply for the purposes of new section 135.1 of the Act relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations.

This amendment applies after 2005.

Payment to Customer to be Included in Income

ITA
135(7)

Subsection 135(7) of the Act provides that a taxpayer must include in income a payment pursuant to an allocation in proportion to patronage (other than an allocation in respect of consumer goods or services) in the taxation year in which the payment was received. Subsection 135(7) is amended as a consequence of the addition of the new rules in section 135.1 of the Act relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations. In particular, subsection 135(7) is amended to provide that subsection 135(7) is subject to the income inclusion rule in new subsection 135.1(2) of the Act.

This amendment applies after 2005.

Clause 80

Agricultural Cooperatives – Tax-Deferred Patronage Dividends

ITA
135.1

New section 135.1 of the Act provides that an eligible member of an agricultural cooperative corporation may defer the inclusion in income of all or a portion of a payment made by an agricultural cooperative corporation, in the form of a tax deferred cooperative share, pursuant to an allocation in proportion to patronage. This deferral lasts until the disposition (or deemed disposition) of the share. Unless otherwise indicated, the provisions of new section 135.1 apply after 2005.

Definitions

ITA
135.1(1)

New subsection 135.1(1) of the Act defines a number of terms for the purposes of new section 135.1 and section 135 of the Act.

"Agricultural business"

"Agricultural business" is defined to mean a business, carried on in Canada, that consists of (i) farming (including, if the person carrying on the business is a cooperative corporation, the production, processing, storing and wholesale marketing of the products of its members' farming activities), or (ii) the provision of goods or services (other than financial services) that are required for farming.

An example of the provision of goods required for farming is the sale of livestock feed and supplements. An example of the provision of a service required for farming is grain marketing services.

"Agricultural cooperative corporation"

"Agricultural cooperative corporation" is defined to mean at any time a cooperative corporation that meets either (or both) of two tests. The first test is met if the cooperative corporation's principal business is an agricultural business. The second test is met if at least 75% of the cooperative corporation's members are themselves agricultural cooperative corporations or have as their principal business a farming business.

"Allowable disposition"

"Allowable disposition" is defined to mean certain dispositions by a taxpayer of a tax deferred cooperative share that take place less than five years after the day on which the share was issued. A disposition within that time is an allowable disposition if, before the disposition, the agricultural cooperative corporation is notified in writing that the taxpayer has become disabled and permanently unfit for work, or terminally ill. It will also be an allowable disposition if the taxpayer has ceased to be a member. Lastly, a disposition is an allowable disposition if the agricultural cooperative corporation is notified in writing that the share is held by a person on whom the share has devolved as a consequence of the death of the taxpayer.

The term “allowable disposition” is relevant for the definition of a tax deferred cooperative share. One of the conditions to qualify as a tax deferred cooperative share is that a term of the share must provide that the agricultural cooperative corporation cannot, otherwise than pursuant to an allowable disposition, redeem, acquire or cancel the share within 5 years its issuance.

“Eligible member”

“Eligible member”, of an agricultural cooperative corporation, is defined to mean a member who carries on an agricultural business and who is an individual resident in Canada, an agricultural cooperative corporation, a corporation resident in Canada that carries on the business of farming in Canada, or a partnership that carries on the business of farming in Canada, all of the members of which are eligible members.

“Tax deferred cooperative share”

“Tax deferred cooperative share” is defined, at any time, to mean a share that meets certain conditions.

First, the share must be issued, after 2005 and before 2016, by an agricultural cooperative corporation to an eligible member, and pursuant to an allocation in proportion to patronage.

Second, the holder of the share cannot be entitled to receive on the redemption, cancellation or acquisition of the share by the agricultural cooperative corporation (or by any person with whom the agricultural cooperative corporation does not deal at arm’s length) an amount that is greater than the amount that would, if the Act were read without reference to new section 135.1 of the Act, be included under subsection 135(7) of the Act in computing the eligible member’s income for their taxation year in which the share was issued.

Third, new subsection 135.1(4) of the Act must not have applied before that time to treat the share as having been disposed of. The share will be deemed to have been disposed of by that subsection at the earliest time at which either (i) the paid-up capital of the share is reduced otherwise than by way of a redemption of the share, or (ii) the taxpayer pledges, assigns or in any way alienates the share as security for indebtedness of any kind.

Fourth, the share must be of a class the terms of which provide that the agricultural cooperative corporation shall not, otherwise than pursuant to an allowable disposition, redeem, acquire or cancel a share of the class within 5 years after it was issued.

Fifth, the agricultural cooperative corporation must, in prescribed form and manner, identify the class of shares as being tax deferred cooperative shares. It is expected that Section 218 of the Income Tax Regulations will be amended to provide in more detail for the reporting obligation that this imposes on the agricultural cooperative corporation.

“Tax paid balance”

The “tax paid balance” of a taxpayer at the end of a particular taxation year is essentially the total amount, in respect of tax deferred cooperative shares, that the taxpayer has included in income for that year and previous years. Specifically, the balance is defined to mean the amount, if any, by which the total of the taxpayer’s tax paid balance at the end of the immediately preceding taxation year and the amount that the taxpayer has elected to include in income under subparagraph 135.1(2)(*a*)(ii) of the Act exceeds the total of the taxpayer’s proceeds of disposition on tax deferred cooperative shares disposed of in the taxation year.

Income Inclusion

ITA
135.1(2)

New subsection 135.1(2) of the Act limits the amount, in respect of tax deferred cooperative shares, that is included in a taxpayer's income for a taxation year. The subsection provides that in computing the income of a taxpayer under Part I of the Act for a particular taxation year, the amount that shall be included under subsection 135(7) of the Act, in respect of the taxpayer's receipt, as an eligible member, of a tax deferred cooperative share of an agricultural cooperative corporation in the particular taxation year is only the total of:

(a) the lesser of (i) the amount that would, if the Act were read without reference to section 135.1 of the Act, have been included in income under subsection 135(7) of the Act and (ii) the amount, if any, specified by the taxpayer in an election, and

(b) the amount, if any, by which (i) the taxpayer's proceeds of disposition on tax deferred cooperative shares disposed of in the particular taxation year exceeds (ii) the total of the taxpayer's tax paid balance at the end of the immediately preceding taxation year, and the amount that the taxpayer has elected to include in income under subparagraph 135.1(2)(*a*)(ii).

The effect of subsection 135.1(2) is that if no election is made to include in income some portion of the amount that would otherwise be included in respect of having been issued a tax deferred cooperative share, the inclusion in income will be deferred until the disposition (or deemed disposition) of the share. The election provided in paragraph 135.1(2)(*a*) of the Act is thus not to defer the inclusion of the amount in income but rather to include some or all the amount in income for the particular taxation year.

Deductibility Limit

ITA
135.1(3)

Subsection 135(1) of the Act allows a taxpayer to deduct from income payments made to customers pursuant to allocations in proportion to patronage. New subsection 135.1(3) of the Act restricts the amount that may be deducted under subsection 135(1) by an agricultural cooperative corporation for a particular taxation year in respect of payments, in the form of tax deferred cooperative shares. The restriction is that the deducted amount may not exceed 85% of the agricultural cooperative corporation's income of the taxation year attributable to business done with members. The term "income of the taxpayer attributable to business done with members" as defined in subsection 135(4) of the Act is intended to apply to this calculation.

Deemed Disposition

ITA
135.1(4)

New subsection 135.1(4) of the Act provides that a taxpayer who holds a tax deferred cooperative share is treated as having disposed of the share at the earliest time at which (i) the paid-up capital of the share is reduced (otherwise than by way of a redemption of the share), or (ii) the taxpayer pledges, assigns or in any way alienates the share as security for indebtedness of any kind. If the subsection applies, the tax deferred cooperative share is considered to have been disposed of for proceeds of disposition equal to the amount that would otherwise have been included under subsection 135(7) of the Act, in respect of the share, in computing the taxpayer's income for the taxation year in which the share was issued.

As a result of the deemed disposition, any deferral of the inclusion in income of the patronage dividend received as a tax deferred cooperative share will end.

This amendment applies after 2005 except that new paragraph 135.1(4)(*b*) of the Act does not apply to indebtedness entered into before 2006.

Reacquisition

ITA
135.1(5)

New subsection 135.1(5) of the Act provides that a taxpayer who is treated by new subsection 135.1(4) of the Act to have disposed at any time of a tax deferred cooperative share is considered to have reacquired the share, immediately after that time, at a cost equal to the taxpayer's proceeds of disposition from that disposition.

Exclusion from Withholding Obligation

ITA
135.1(6)

Existing subsection 135(3) of the Act requires that amounts be withheld from most patronage dividends (payments made pursuant to allocations in proportion to patronage), on account of the recipient's tax liability. New subsection 135.1(6) of the Act provides that subsection 135(3) does not apply to a patronage dividend that is paid by an agricultural cooperative corporation through the issuance of a tax deferred cooperative share.

Withholding on Redemption

ITA
135.1(7)

New subsection 135.1(7) of the Act applies a withholding requirement in respect of any share that was at the time it was issued, a tax deferred cooperative share of an agricultural cooperative corporation. The new subsection provides that if the share is redeemed, acquired or cancelled by the agricultural cooperative corporation, or by a person or partnership with whom it does not deal at arm's length, that cooperative or person or partnership must withhold and forthwith remit to the Receiver General, on account of the shareholder's tax

liability, 15% from the amount otherwise payable on the redemption, acquisition or cancellation. It is expected that section 218 of the Income Tax Regulations will be amended to provide in more detail for the reporting obligation that this imposes on the agricultural cooperative corporation.

Application of Subsections 84(2) and (3)

ITA
135.1(8)

New subsection 135.1(8) of the Act provides that the deemed dividend provisions in subsections 84(2) and (3) of the Act do not apply to a tax deferred cooperative share. In general, those subsections provide that paid-up capital can be returned to a shareholder free of tax, on the winding-up of a corporation or its redemption, acquisition or cancellation of its shares, but that any excess is treated as a dividend.

This amendment applies after 2005.

Clause 81

Definition of "Cooperative Corporation"

ITA
136(2)

Subsection 136(2) of the Act defines "cooperative corporation" for the purpose of section 136 of the Act. Subsection 136(2) is amended to clarify the drafting and to provide that a corporation that is continued, in addition to one that is incorporated, as a cooperative corporation will be included in the definition.

This amendment applies after June 2005.

Clause 82

Federal Capital Tax

ITA
181.1(1.1)

The federal capital tax, which was introduced in 1989 as Part I.3 of the Act and is generally known as the "large corporations tax," is levied annually on a corporation's taxable capital employed in Canada in excess of a maximum $50 million capital deduction. The rate of the tax has been scheduled under existing law to decrease over several years, with the tax being eliminated entirely after December 31, 2007.

Amendments to subsection 181.1(1.1) of the Act accelerate the phase out of the federal capital tax by two years, eliminating the tax effective as of January 1, 2006.

Under subsection 181.1(4) of the Act, a corporation's federal capital tax for a taxation year can be reduced by its federal income surtax for the year and by its "unused surtax credits" for the corporation's three following and seven preceding taxation years. "Unused surtax credits" for the purposes of Part I.3 are defined in subsection 181.1(6) of the Act as, generally, the excess of a corporation's federal income surtax for a taxation year over its federal capital tax for the year, but for the deductions provided under subsection 181.1(4) of

the Act. Currently, these excess credits are computed by reference to a notional Part I.3 tax liability, based on the 0.225% federal capital tax rate and the $10 million capital deduction applicable immediately prior to the phasing out of the tax. Although the ability to carry forward these excess credits will be irrelevant once the federal capital tax is eliminated on January 1, 2006, corporations will continue to be able to apply these credits, including any arising in the 2006 and subsequent taxation years, against the federal capital tax liability, if any, for the three previous taxation years.

Clause 83

Carry-Forward Period for Business Losses and Farm Losses Under Part IV

ITA
186(1)(*d*)(i) and (ii)

Under existing subparagraphs 186(1)(*d*)(i) and (ii) of the Act, private corporations and subject corporations may carry forward non-capital losses and farm losses ten taxation years to reduce their tax under Part IV of the Act. These subparagraphs are amended to allow losses that arise in the 2006 and subsequent taxation years to be carried forward 20 taxation years.

Clause 84

Carry-Forward Period for Canadian Life Investment Losses

ITA
211.1(2)

Under existing subsection 211.1(2) of the Act, life insurers may carry forward “Canadian life investment losses” ten taxation years to reduce their tax under Part XII.3 of the Act. This subsection is amended to allow losses that arise in the 2006 and subsequent taxation years to be carried forward 20 taxation years.

Clause 85

Federal Capital Tax – Consequential Amendment to subsection 225.1(8)

The federal capital tax is eliminated, effective January 1, 2006 (see note in respect of subsection 181.1(1.1)), and as a result consequential amendments are made to subsection 225.1(8) of the Act.

ITA
225.1(8)

Subsection 225.1(8) of the Act defines, by reference to tax payable under Part I.3, “large corporation” for the purposes of the rules governing the collection and repayment of amounts in controversy. Subsection 225.1(8) is amended to ensure that this definition continues to apply as if the federal capital tax had not been eliminated and as if the capital deduction were still $10 million.

This amendment applies in respect of the 2006 and subsequent taxation years.

Clause 86

Payments by Trustees, etc

ITA
227(5)

Subsection 227(5) of the Act provides that a person who has influence over the property or affairs of another person and who authorizes or causes certain payments to be made by the other person that are subject to deductions at source, is deemed to have made the payment and is jointly and severally, or solidarily, liable with the other person for any amount payable under the Act in respect of these payments and for any amount payable in respect of the failure to deduct and remit the amount payable under the Act. The subsection is amended as a consequence of the addition of the new rules in section 135.1 of the Act relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations. In particular, subsection 227(5) is amended to refer to the withholding obligation on the redemption, acquisition or cancellation of a tax deferred cooperative share in subsection 135.1(7) of the Act.

This amendment applies after 2005.

Interest on Amounts Not Deducted or Withheld

ITA
227(8.3)

Subsection 227(8.3) of the Act provides that a person who fails to deduct or withhold an amount, as required by a number of specified provisions, is liable for interest with respect to the amount that person fails to deduct or withhold. The subsection is amended as a consequence of the addition of the new rules in section 135.1 of the Act relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations. In particular, subsection 227(8.3) of the Act is amended to refer to the withholding obligation on the redemption, acquisition or cancellation of a tax deferred cooperative share in subsection 135.1(7) of the Act.

This amendment applies after 2005.

Liability to Pay Amount Not Deducted or Withheld

ITA
227(8.4)

Subsection 227(8.4) of the Act provides that where a payor is required under subsection 135(3) of the Act to deduct or withhold any amount in respect of a payment made to another person, or is required under subsection 153(1) of the Act to deduct or withhold an amount from a payment to a non-resident person has failed to do so, the payor is liable to pay tax under the Act the whole of the amount that should have been deducted or withheld and the payor may recover from the person any such amount paid on their behalf. The subsection is amended as a consequence of the addition of the new rules in section 135.1 of the Act relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations. In particular, subsection 227(8.4) is amended to refer to the withholding obligation on the redemption, acquisition or cancellation of a tax deferred cooperative share in subsection 135.1(7) of the Act.

This amendment applies after 2005.

Clause 87

Liability of Directors for Failure to Deduct

ITA
227.1(1)

Subsection 227.1(1) of the Act provides that directors of a corporation are jointly and severally, or solidarily, liable in specific circumstances for the withholding tax obligations imposed on the corporation under section 135, 153 or 215 of the Act. The subsection is amended as a consequence of the addition of the new rules in section 135.1 of the Act relating to the payment of tax-deferred patronage dividends by agricultural cooperative corporations. In particular, subsection 227.1(1) is amended to refer to the withholding obligation on the redemption, acquisition or cancellation of a tax deferred cooperative share in subsection 135.1(7) of the Act.

This amendment applies after 2005.

Clause 88

Federal Capital Tax – Consequential Amendment to Section 235

The federal capital tax is eliminated, effective January 1, 2006 (see note in respect of subsection 181.1(1.1)), and as a result consequential amendments are made to section 235 of the Act.

ITA
235

Section 235 of the Act provides a penalty for large corporations that fail to file, as and when required, a tax return under Part I (income tax), Part I.3 (federal capital tax) or Part VI (minimum tax on financial institutions). The penalty is ¼ of 1% per month after the filing deadline on the combined amount payable under Part I.3 and Part VI.

Although amended section 235 will no longer apply in respect of a failure to file a tax return under Part I.3 the penalty will nonetheless continue to be calculated by reference to the base – taxable capital employed in Canada – upon which tax is levied under Part I.3, as well as to tax payable under Part VI. The formula, by which the amount of the penalty is calculated, in section 235 is amended by dividing the description of A into two paragraphs: paragraph (*a*) includes an amount under the description equal to 0.0005% of the corporation's taxable capital employed in Canada for the taxation year; and paragraph (*b*), which contains the substance of the existing description as it relates to Part VI, includes an amount equal to 0.25% of the tax that would be payable under Part VI for the year if the Act were read without subsection 190.1(3).

This amendment applies in respect of the 2006 and subsequent taxation years.

Part 3

Amendments in Respect of Excise Tax on Jewellery, Etc.

Excise Tax Act

Clause 89

Excise tax on jewellery

ETA
Schedule I, Sections 5, 5.1 and 5.2

Existing sections 5, 5.1 and 5.2 of Schedule I to the *Excise Tax Act* set out the rates of excise tax that are applicable to, respectively, clocks, articles made of semi-precious stones and articles commonly known as jewellery (whether real or imitation), that are manufactured and sold in, or imported into, Canada. The excise tax is payable by manufacturers on the sale price of domestically-produced goods at the time of delivery to the purchaser, and by importers on the duty-paid value of goods in accordance with the provisions of the *Customs Act*.

The proposed amendment repeals sections 5, 5.1 and 5.2 of Schedule I to the *Excise Tax Act* effective May 2, 2006.

Budget Implementation Act, 2005

Clause 90

Excise tax on jewellery

BIA, 2005
Section 26

Existing section 26 of the *Budget Implementation Act, 2005* repeals section 5, 5.1 and 5.2 of Schedule I to the *Excise Tax Act* on March 1, 2009. This provision forms part of the phase-out of the excise tax through a series of rate reductions that was announced in the federal budget tabled in the House of Commons on February 23, 2005. The proposed repeal of the excise tax effective May 2, 2006, renders section 26 of the *Budget Implementation Act, 2005* redundant.

Accordingly, for purposes of legislative clarity and certainty, the proposed amendment repeals section 26 of the *Budget Implementation Act, 2005*.

Part 4

Amendments Relating to Aboriginal Tax Powers and Aboriginal Tax Treatment

First Nations Goods and Services Tax Act

Clause 91

Title

FNGSTA
Title of Part 2

The proposed amendments to Part 2 of the *First Nations Goods and Services Tax Act* (the Act) would extend its application beyond the Province of Quebec and Indian Bands in Quebec to include specified provinces or territories and Indian Bands in those specified provinces or territories. The title "First Nations Sales Tax – Quebec" in Part 2 of the Act is replaced with "First Nations Sales Tax – Specified Provinces".

Clause 92

Interpretation

FNGSTA
17

Amending Part 2 of the Act so it also applies to other specified provinces and Indian bands outside Quebec necessitates changes to the definitions in Part 2. The definitions "parallel Quebec law" and "reserves in Quebec" in section 17 are repealed.

The definition "parallel provincial law" is added to section 17. "Parallel provincial law" means the enactment of a specified province to which a band law is similar or those provisions of an enactment of a specified province to which a band law is similar.

The definition "specified province" is added to section 17. A specified province is a province that is listed in Schedule 2 to the Act. A band law applies within the reserves of a band that are situated in a specified province.

Clause 93

Application of other Acts

FNGSTA
21 and 22

The text of sections 21 and 22 of the Act, which was specific to the Province of Quebec and Indian bands in Quebec, is replaced with new text that applies more broadly to specified provinces and Indian bands in those specified provinces.

Section 21 – Application of other Acts of Parliament

The proposed amendment to section 21 provides that, where a law of a specified province indicates that one or more laws of that specified province apply as if the tax imposed under a band law were imposed under a particular law of that specified province, then all other Acts of Parliament would apply as if the tax imposed under the band law were imposed under that particular law of the specified province.

The purpose of this section is to ensure that, where there is a reference in a federal Act to the legislation of a specified province and where that provincial legislation provides that a tax imposed under the band law is to apply as if it were imposed under a law of the specified province, the federal Act that refers to that provincial legislation and all other federal Acts are to be applied as if the tax imposed under the law of that specified province includes the tax imposed under that band law.

For example, subsection 4(1) of the federal *Tax Rebate Discounting Act* makes reference to tax that is required to be paid under *An Act respecting the Quebec sales tax*. If a law of Quebec provides that a tax imposed under a particular band law applies as if it were imposed under the *An Act respecting the Quebec sales tax,* then the federal *Tax Rebate Discounting Act* would be applied as if the tax imposed under that particular band law were imposed under *An Act respecting the Quebec sales tax*.

Section 22 – Authority to enter into an agreement

Section 22 enables the council of the band that is named in Schedule 2 to the Act to enter, on behalf of the band, with the government of the specified province that is named in Schedule 2 opposite the name of that band, into an agreement in respect of the band law enacted by the council of that band.

Clause 94

Delegation – authority to enact a law

FNGSTA
23

The text of existing subsections 23(1) and 23(2) of the Act, which is specific to the Province of Quebec and Indian bands in Quebec, is replaced with new text that applies more broadly to specified provinces and Indian bands in those specified provinces.

Subsection 23(1) – Authority to impose a direct sales tax

New subsection 23(1) is the delegating provision whereby a council of the band is provided with the authority to enact a law that imposes a direct sales tax within the reserves of the band that are located in the specified province and named or described in Schedule 2.

Subsection 23(2) – Parallel provincial law

New subsection 23(2) requires, for each band law enacted by a council of the band, that there shall be only one parallel provincial law and that the band law shall identify the parallel provincial law.

If, for example, a council of the band wanted to impose within its reserves in Manitoba a direct fuel sales tax that is similar to the tax levied by the Government of Manitoba under *The Motive Fuel Tax Act* and a direct tobacco sales tax that is similar to the tax levied by Manitoba under *The Tobacco Tax Act*, then the council of the band would be required to enact separate band laws for its fuel tax and tobacco tax.

The band fuel tax law would have to identify *The Motive Fuel Tax Act* as the parallel provincial law and the band tobacco tax law would have to identify *The Tobacco Tax Act* as the parallel provincial law.

Subsection 23(3) – Force of law

Subsection 23(3) of the Act specifies conditions that must be met in order for a band law to have the force of law. The text of existing paragraphs 23(3)(*a*) to (*d*), which is specific to the Province of Quebec and Indian bands in Quebec, is replaced with new text that applies more broadly to specified provinces and Indian bands in those specified provinces.

New paragraph 23(3)(*a*) requires that, for a band law to have the force of law, the council of the band that enacted the law must enter into an administration agreement in respect of the band law.

New paragraph 23(3)(*b*) requires that, for a band law to have the force of law, the administration agreement referred to in paragraph 23(3)(*a*) must be between the council of the band that enacted the law and the government of the specified province that is listed in Schedule 2 to the Act opposite the name of that council.

New paragraph 23(3)(*c*) requires that, for a band law to have the force of law, the band law must be administered and enforced and that the direct sales tax imposed under the band law must be collected in accordance with the administration agreement between the council of the band that enacted the law and the government of the specified province that is listed in Schedule 2 opposite the name of that council.

New paragraph 23(3)(*d*) requires that, for a band law to have the force of law, Schedule 2 must specify the name of the band, the name of the council of the band that is authorized to enact the band law, the name or description of the reserves where the band law applies and the name of the specified province in which the reserves are situated.

New paragraph 23(3)(*e*) requires that, for a band law to have the force of law, the parallel provincial law of the specified province must be in force.

Clause 95

Delegation – force of law

FNGSTA
24

The text of section 24 of the *First Nations Goods and Services Tax Act*, which was specific to the Province of Quebec and Indian bands in Quebec, is replaced with new text that applies more broadly to specified provinces and Indian bands in those specified provinces.

The proposed new section 24 provides that, subject to the conditions set out in subsection 23(3), a band law comes into force on the date specified in the administration agreement, entered into by the council of the band and the government of the specified province, in respect of that law.

Clause 96

Amendment of Schedule 2

FNGSTA
29

The text of section 29 of the Act, which is specific to the Province of Quebec and Indian bands in Quebec, is replaced with new text that applies more broadly to specified provinces and Indian bands in those specified provinces.

New section 29 allows the Governor in Council to amend Schedule 2 by adding, deleting or varying the name of a band, the name of a council of the band, the name or description of the reserves within which a band law applies and the name of a specified province in which the reserves are situated.

Clause 97

Amendment of Schedule 2

FNGSTA
Schedule 2

Amending Part 2 of the Act so it applies to other specified provinces and Indian bands outside Quebec requires that certain changes be made to Schedule 2 to the Act. The existing Schedule 2 is replaced with the new Schedule 2, which includes a fourth column that identifies the specified provinces.

Yukon First Nations Self-Government Act

Clause 98

Transitional tax exemption

YFNSGA
22.1

This measure provides a legislative basis for an aspect of the tax treatment resulting from land claim and self-government agreements with Yukon First Nations. The effect of this measure is to maintain the status quo with respect to income tax for a short transition period following such agreements. It provides a tax exemption in the same manner and under the same conditions as section 87 of the *Indian Act*, with respect to income situated on reserves and lands that were reserves before the effective date of the agreements. The measure applies only from the effective date of a particular final agreement until the end of that calendar year.

All of the Final Land Claim and Self-Government Agreements with the individual Yukon First Nations follow a consistent approach. Among other things, they provide for the ending of the *Indian Act* tax exemption as of the effective date of the Final Land Claim Agreement for status Indians who are enrolled under a particular Agreement and who are resident in the Yukon. The *Indian Act* tax exemption similarly ceases to be applicable to any income or property that is situated on the reserves or former reserves, if any, of that Yukon First Nation.

To date, all of the Yukon First Nations that have concluded such final land claim and self-government agreements have also entered into personal income tax administration and sharing agreements with Canada and the Yukon Territory. The latter tax agreements come into effect on January 1st of the year following the effective date of the land claim and self-government agreements. The transitional measure set out here allows for a simpler and smoother transition from the former *Indian Act* exemption to such self-taxation arrangements, by permitting the end of the exemption to coincide with the commencement of the Yukon First Nation's income tax powers, thereby avoiding part-year allocation issues and related complexity. In effect, the current measure merely confirms and provides a legislative foundation for the existing policy and practice, consistent with the intentions of the parties to the negotiations.

Subsection (1) imports a number of definitions from the *Indian Act.* It also defines the "transition period" during which this measure can apply as the period beginning on the effective date of a Yukon First Nation's Final Agreement and ending on December 31st of that same year.

Subsection (2) provides an exemption during the transition period of a particular Yukon First Nation for the income of any band and of any status Indian (other than an Indian enrolled under an earlier Yukon First Nation Final Agreement). This exemption is applicable where that income is situated on land of that particular Yukon First Nation that was a reserve throughout the period of the calendar year before the transition period.

Subsection (3) provides an exemption to status Indians who are enrolled under a particular Yukon First Nation's Final Agreement and who are resident in the Yukon during the transition period of that Yukon First Nation. This exemption is applicable to income of these individuals that is situated on any reserve.

The above exemptions are deemed to have come into force on January 1, 1999, which coincides with the start of the first income tax arrangements with Yukon First Nations. This period of retroactivity ensures consistent treatment for all of the Yukon First Nations that conclude Final Agreements after that time.

Part 5

Other Tax Related Amendments

Air Travellers Security Charge Act

Clause 99

Small amounts payable

ATSCA
21(2)

New subsection 21(2) provides that if the total of all amounts payable by the Minister of National Revenue to a designated air carrier under the Act does not exceed $2, the Minister may set-off those amounts against any other amount owing at that time by the carrier to the Crown. If the carrier does not owe any amount to the Crown, the amounts payable to the carrier are deemed to be nil.

New subsection 21(2) comes into force on April 1, 2007.

Clause 100

Effect of extension

ATSCA
25(1) and (2)

Currently, section 25 provides that the Minister of National Revenue may extend the time within which a person shall file a return or provide information. Section 54 provides that if the person files the return and pays any amount required to be paid with the return within the time so extended, the 6-per-cent penalty imposed on the unpaid amount does not apply (interest, however, continues to accrue as of the day the amount is required to be paid, whether or not these conditions have been met).

Section 25 is amended by renumbering section 25 to subsection 25(1) and by adding subsection 25(2), which provides that if the Minister extends the time within which a person shall file a return or provide information:

- the person shall file the return or provide the information within the time so extended;
- the person shall pay any amount payable that the person is required to report in the return within the time so extended;
- any interest payable under section 27 on any amount payable that the person is required to report in the return shall be calculated as though the amount were required to be paid on the day on which the time so extended expires; and
- any late-filing penalty (see clause 105) in respect of the return shall be calculated as though the return were required to be filed on the day on which the time so extended expires.

Section 54 is repealed accordingly.

These amendments apply in respect of any extension of time, where the extension expires on or after April 1, 2007.

Clause 101

Interest and penalties

ATSCA
27

Section 27 imposes interest at the prescribed rate on amounts a person has failed to pay under the Act.

Subclauses 101(1), (3) and (4)

Interest and penalties

ATSCA
27(1)

Currently, subsection 27(1) provides that a person who fails to pay an amount (other than the 6-per-cent penalty imposed under section 53) to the Receiver General as and when required shall pay interest at the prescribed rate on the amount. The prescribed rate of interest is determined by reference to the rate charged on 90-day Treasury Bills, adjusted quarterly, and rounded to the nearest one-tenth of a percentage point. In addition, subsection 53(1) imposes a penalty of 6 per cent per year, compounded daily, on the unpaid amount.

The prescribed rate of interest will be changed. Where a person fails to pay an amount as and when required, the new prescribed rate will be determined by reference to the rate charged on 90-day Treasury Bills, adjusted quarterly, rounded up to the nearest whole percentage point, plus 4 per cent. This change will harmonize the prescribed rate of interest under the Act with the prescribed rate of interest under the *Excise Tax Act*, the *Income Tax Act* and the *Excise Act, 2001*.

Section 27 is therefore amended by removing the reference to the 6-per-cent penalty as a result of the additional 4 per cent being included in the new prescribed rate and the introduction of a failure to file penalty under new section 53 (see clause 105), which will apply where a person fails to file a return as and when required under the Act.

New subsection 27(1) comes into force on April 1, 2007.

Note: For the purposes of applying that new subsection, as enacted by *An Act to implement certain provisions of the budget tabled in Parliament on May 2, 2006*, any penalty accrued before April 1, 2007, that remains unpaid on April 1, 2007, is deemed to be an amount required to be paid to the Receiver General on March 31, 2007.

Subclauses 101(2) and (5)

Payment before specified date

ATSCA
27(3)

Currently, subsection 53(3) provides that if a person pays all amounts demanded on or before a date specified in a demand served by the Minister of National Revenue, the Minister shall waive any penalty or interest that would otherwise apply in respect of the amount demanded for the period beginning on the first day following the date of the demand and ending on the day of payment.

New subsection 27(3) replaces subsection 53(3) and amends it by removing the reference to the 6-per-cent penalty – that penalty is being replaced by a higher prescribed rate of interest as of April 1, 2007.

These amendments come into force on April 1, 2007.

Note: If a demand is served to a person before April 1, 2007, requiring the person to pay all amounts demanded on or before a day that is after March 31, 2007, for which the 6-per-cent penalty under subsection 53(1) is payable, and the person pays all amounts demanded on or before the specified date, the Minister shall waive any penalty and interest that would otherwise apply in respect of the amounts demanded for the period beginning on the first day following the date of the demand and ending on the day of payment.

Clause 102

Waiving or reducing interest

ATSCA
30(1)

Current section 30 provides that if a person is prevented from complying with the requirements of the Act because of extraordinary circumstances beyond the person's control, the Minister of National Revenue may waive or reduce any interest payable by the person.

Section 30 is renumbered subsection 30(1) and amended by introducing a limitation period for the Minister to waive or reduce interest payable by the person. New subsection 30(1) provides that the Minister is authorized, on or before the day that is ten calendar years after the end of a reporting period of a person, to waive or reduce any interest payable by the person in respect of that reporting period.

New subsection 30(2) provides that if a person has paid an amount of interest and the Minster has waived or reduced any portion of the amount, the Minister shall pay interest at the prescribed rate on an amount equal to the portion of the amount that was waived or reduced beginning on the day that is 30 days after the day on which the Minister received a request to waive or reduce interest and ending on the day on which the portion is refunded to the person by Her Majesty.

These amendments come into force on April 1, 2007.

Clause 103

Dishonoured instruments

ATSCA
30.1

New section 30.1 of the Act effectively incorporates the fee structure currently imposed under the *Financial Administration Act* (FAA) when a financial instrument (e.g., a cheque) becomes dishonoured.

The section deems a charge that becomes payable under the FAA in respect of an instrument used to pay or settle an amount payable under the Act, to also be an amount payable under the Act. Further, the interest and collection provisions under the FAA will not apply to the charge and the debt established by the FAA in respect of the charge is deemed to be extinguished once the charge and applicable interest is paid under the Act. By deeming a charge for a dishonoured instrument to be an amount payable under the Act, the charge becomes subject to the interest and collection provisions under the Act.

New section 30.1 applies in respect of any instrument that becomes dishonoured on or after April 1, 2007.

Clause 104

Restriction

ATSCA
40(4)

Subsection 40(4) provides that a refund may not be paid until the person has filed all returns or other records that the person is required to file under the Act.

Subsection 40(4) is amended to provide that a refund will not be paid to a person until the person has filed with the Minister of National Revenue all returns and other records of which the Minister has knowledge that the person is required to file under the Act, the *Excise Act, 2001*, the *Excise Tax Act* and the *Income Tax Act*.

This amendment comes into force on April 1, 2007.

Clause 105

Failure to file a return when required

ATSCA
53

Currently, section 53 imposes a penalty of 6 per cent where a person fails to pay an amount as and when required under the Act.

New section 53 replaces that penalty by a new penalty that applies when a person fails to file a return for a reporting period as and when required under the Act. The amount of the penalty payable by the person is based on the total of all amounts required to be paid for a reporting period that were not paid on the day on which the return was required to be filed and the number of complete months that the return remains outstanding.

Specifically, the amount of penalty that becomes payable will first be calculated by taking 1 per cent of the total of all amounts, each of which was required to be paid for the period and which were not paid on the day on which the return was required to be filed. To that amount an additional amount will be added, equal to ¼ per cent of the total of all amounts determined above multiplied by the number of complete months, not exceeding 12, that the return remains outstanding.

A person shall pay a failure to file penalty if the person misses a due date for filing a return required under the Act. The Minister of National Revenue is not required to first serve the person with a demand for a return.

New section 53 is modelled after the failure to file penalty under the *Income Tax Act*, although the rates applied under the penalty for purposes of the Act are lower.

New section 53 comes into force on April 1, 2007. If a person is required to file a return before April 1, 2007, and the person does not file the return before that date, for the purpose of calculating a penalty under new section 53, the return will be deemed to be required to be filed on March 31, 2007.

Clause 106

Effect of extension for returns

ATSCA
54

Current section 54 provides that if the Minister of National Revenue extends the time within which a return of a person shall be filed, the return is filed at or before the expiry of the time so extended, and any amount that the person is required to pay with the return is paid at or before that time, the 6-per-cent penalty is not payable in respect of the return or the amount.

Section 54 is repealed. The amendment applies in respect of any extension of time, where the extension expires on or after April 1, 2007. See clause 100.

Clause 107

Waiving or cancelling penalties

ATSCA
55

Current section 55 provides that if a person is prevented from complying with the requirements of the Act because of extraordinary circumstances beyond the person’s control, the Minister of National Revenue may waive or cancel penalties payable by the person pursuant to section 53.

Section 55 is renumbered subsection 55(1) and is amended by introducing a limitation period for the Minister to waive or cancel penalties. The Minister is authorized, on or before the day that is ten calendar years after the end of a reporting period of a person, to waive or cancel penalties in respect of that reporting period.

New subsection 55(2) provides that if a person has paid an amount of penalty and the Minster has waived or cancelled the amount, the Minister shall pay interest at the prescribed rate on the amount beginning on the day that is 30 days after the day on which the Minister received a request to waive or cancel the amount and ending on the day on which the amount is refunded to the person by Her Majesty.

These amendments come into force on April 1, 2007.

Clause 108

Waiving or cancelling penalties

ATSCA
56

Section 56 imposes a penalty when a person fails to file a return within the time specified in a demand for a return served by the Minister of National Revenue under section 26. Currently, the penalty imposed is equal to the greater of $250 and 5 per cent of the unpaid amount by the person for the period specified in the demand.

The amendment to section 56 removes from the penalty the 5-per-cent calculation of the outstanding amount. As a result, the penalty for failing to answer a demand for a return is $250. This amendment is consequential to the introduction of the penalty under new section 53 for a failure to file a return.

The amendment to section 56 applies in respect of any demand for a return served by the Minister on or after April 1, 2007.

Clause 109

Saving

ATSCA
61(2)

Subsection 61(2) provides that if a person is convicted of an offence under subsection 61(1), the person will not be liable to pay a penalty under section 56 or 57 for the same contravention of the Act that led to the conviction. This general rule will not apply, however, if a notice of assessment in respect of the penalty was issued before the information or complaint giving rise to the conviction was laid or made.

The amendment to subsection 61(2) adds a reference to the penalty under new section 53 for a failure to file a return. As a result, if a notice of assessment in respect of section 53 is issued before an information or complaint is laid or made, a person may be convicted of an offence under subsection 61(1) and also liable to the penalty for a failure to file a return. This amendment is consequential to the introduction of the failure to file penalty under new section 53.

This amendment applies in respect of any penalty imposed on or after April 1, 2007.

Clause 110

Penalty on conviction

ATSCA
62(3)

Subsection 62(3) provides that if a person is convicted of an offence under subsection 62(1), the person will not be liable to pay a penalty under any of sections 56 to 58 for the same contravention of the Act that led to the conviction. This general rule will not apply, however, if a notice of assessment in respect of the penalty was issued before the information or complaint giving rise to the conviction was laid or made.

The amendment to subsection 62(3) adds a reference to the penalty under new section 53 for a failure to file a return. As a result, if a notice of assessment in respect of section 53 is issued before an information or complaint is laid or made, a person may be convicted of an offence under subsection 62(1) and also liable to the penalty for a failure to file a return. This amendment is consequential to the introduction of the failure to file penalty under new section 53.

This amendment applies in respect of any penalty imposed on or after April 1, 2007.

Clause 111

Assessment before collection

ATSCA
72(3)

Subsection 72(3) prevents collection action under sections 74 to 79 in respect of any amount payable by a person under the Act, other than interest or penalty calculated at 6 per cent per year, from being taken by the Minister of National Revenue until the amount has been assessed. As a result, collection action may be taken without assessment in respect of interest payable under section 27 of the Act and penalty currently imposed under section 53 of the Act.

The amendment to subsection 72(3) removes the reference to the 6-per-cent penalty.

This amendment is consequential to the introduction of new interest rules under section 27 and comes into force on April 1, 2007.

Clause 112

Details in certificates and memorials

ATSCA
74(12)

Subsection 74(12) provides that when the Minister of National Revenue issues a certificate for collection of amounts certified by the Minister as being payable by a person, the total amount payable may be specified without requiring the separate amounts making up the total to be set out. Paragraph 74(12)(*b*) further provides that it is sufficient to simply refer to interest at the prescribed rate on amounts payable to the Receiver General.

Paragraph 74(12)(*c*) is added to allow for any certificate issued for collecting certified amounts to refer to the penalty under section 53 to be charged on separate amounts payable simply as a penalty under section 53.

This amendment is consequential to the introduction of the failure to file penalty. It applies in respect of any certificate issued in respect of amounts that became payable to the Receiver General on or after April 1, 2007.

Excise Act, 2001

Clause 113

Amounts payable of $2 or less in total

EA, 2001
165(2)

Section 165 currently provides that if the total amount owing by a person to the Crown does not exceed $2, the total is deemed to be nil. Similarly, if the total of all amounts payable by the Minister of National Revenue to a person does not exceed $2, the Minister shall set-off that amount against any other amount owing at that time by the person to the Crown. If no other amount exists, the amounts payable to the person will then be deemed to be nil.

Subsection 165(2) is amended to make set-off by the Minister elective, by providing that where the total amounts payable by the Minister to a person do not exceed $2, the Minister may apply those amounts against any amount owing. This provision will harmonize the treatment of minimal amounts owing under the Act with similar rules under the *Excise Tax Act*, the *Income Tax Act*, and the *Air Travellers Security Charge Act*.

Amended subsection 165(2) comes into force on April 1, 2007.

Clause 114

Effect of extension

EA, 2001
168(2)(*c*) and (*d*)

Subsection 168(2) outlines the treatment of interest when the Minister of National Revenue extends the time in which a person shall file a return or provide information. Under paragraph 168(2)(*c*), interest on any amount payable by the person continues to accrue, despite the extension.

The amendment to paragraph 168(2)(*c*) suspends the accrual of interest during an extension period, by providing that any interest in respect of any duty payable shall be calculated as if the duty were required to be paid on the day the extended period expires. New paragraph 168(2)(*d*) provides that the failure to file penalty under new section 251.1 will be calculated as if the return were required to be filed on the day the extension expires. The result of these amendments is that interest and the failure to file penalty will only apply in respect of those periods that begin after the extension period expires.

These amendments apply in respect of any extension to file a return, where the extension expires after March 2007.

Clause 115

Minimum interest and penalty

EA, 2001
170(4)

Subsection 170(4) currently provides that if a person pays all amounts for a fiscal month under the Act and the total of all interest imposed under section 170 for the period is less than $25, the Minister of National Revenue may write off the interest.

Subsection 170(4) is amended to include a reference to the failure to file penalty introduced under section 251.1. This amendment will apply in respect of any fiscal month of a person that ends after March 2007.

Clause 116

Waiving or reducing interest

EA, 2001
173

Section 173 provides that the Minister of National Revenue may waive or reduce any interest payable by a person under the Act.

The amendment to section 173 introduces a limitation period for the Minister to waive or reduce interest. This amendment provides that the Minister is authorized, on or before the day that is ten calendar years after the day an amount was required to be paid, to waive or reduce interest on the amount payable.

These amendments come into force on April 1, 2007.

Clause 117

Assessments

EA, 2001
188

Section 188 of the Act authorizes the Minister of National Revenue to assess or reassess persons for their liabilities under the Act.

Subclauses 117(1) to (4)

Allowance of unclaimed amounts; application of overpayment; application of payment

EA, 2001
188(3) to (5)

Subsection 188(3) authorizes the Minister of National Revenue to take into account an unclaimed amount when the Minister assesses the amount payable by a person, unless the person requests otherwise. Subsections 188(4) and (5) set out application rules for the Minister with respect to overpayments and payments, unless the person requests otherwise.

The amendments to subsections 188(3) to (5) remove the person's ability to request that the Minister not take into account an unclaimed amount, overpayment or payment when the Minister determines the person's amount payable for a fiscal month. These changes allow the Minister to automatically set-off amounts owing to a person against any liabilities of the person under the Act before a refund is paid.

These amendments come into force on April 1, 2007.

Subclauses 117(5) and (6)

Limitation on refunding overpayments; limitation

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

Subsection 188(6) and subparagraph 188(7)(*b*)(ii) currently provide that no overpayment, refund or part of refund shall be applied or refunded to a person until the person files all returns or other records that the person was required to file under this Act, the *Customs Act*, the *Excise Act*, the *Excise Tax Act*, and the *Income Tax Act*.

These provisions are amended to provide that no amount shall be applied or refunded until a person has filed all returns or other records of which the Minister has knowledge, and to add the *Air Travellers Security Charge Act* to the list of statutes for which the person must have filed all returns or other records.

This amendment is consistent with amendments made to other provisions in this Act and the other statutes referred to above.

Amended subsections 188(6) and subparagraph 188(7)(*b*)(ii) come into force on April 1, 2007.

Subclause 117(7)

Refund of interest or penalty

EA, 2001
188(9.1)

New subsection 188(9.1) provides that if a person pays an amount of interest or penalty and the Minister of National Revenue waives or reduces the interest or penalty under section 173 or 255.1, the Minister will refund the amount of the waiver or reduction to the person. The subsection further provides that the refundable amount will accrue interest at the prescribed rate from 30 days after the day the Minister receives a satisfactory request for relief until the day the refund is paid.

This provision harmonizes the date at which interest on amounts owing to a person begins to accrue with the *Excise Tax Act*, the *Income Tax Act* and the *Air Travellers Security Charge Act*.

New subsection 188(9.1) comes into force on April 1, 2007.

Clause 118

Restriction on refunds

EA, 2001
189(4)

Subsection 189(4) currently provides that a refund shall not be paid to a person until the person files all returns and other records that the person is required to file under this Act, the *Customs Act*, the *Excise Act*, the *Excise Tax Act*, and the *Income Tax Act*.

Subsection 189(4) is amended to provide that a refund shall not be paid to a person until the person files all returns and other records of which the Minister has knowledge, and to add the *Air Travellers Security Charge Act* to the list of statutes for which the person must have filed all returns and other records.

This amendment comes into force on April 1, 2007.

Clause 119

Failure to answer demand

EA, 2001
251 to 251.2

Section 251 imposes a penalty when a person fails to file a return within the time specified in a demand for a return served by the Minister of National Revenue under section 169. Currently, the penalty imposed is the greater of $250 and 5 per cent of the outstanding duty payable by the person for the period specified in the demand.

The amendment to section 251 removes from the penalty the 5-per-cent calculation of the outstanding duty. As a result, the penalty for failing to answer a demand for a return is $250. This amendment is consequential to the introduction of the penalty under new section 251.1 for a failure to file a return.

This amendment applies in respect of a demand for a return served by the Minister after March 2007.

Section 251.1 – Failure to file a return

New section 251.1 introduces a penalty where a person fails to file a return for a fiscal month as and when required under the Act. The amount of the penalty payable by a person is based on the total of all amounts required to be paid for a fiscal month that were not paid before the end of the day on which the return was required to be filed and the number of complete months that the return remains outstanding.

Specifically, the amount of penalty that becomes payable will first be calculated by taking 1 per cent of the total of all amounts, each of which was required to be paid for the period and which were not paid before the end of the day on which the return was required to be filed. To that amount an additional amount will be added, equal to ¼ per cent of the total of all amounts determined above multiplied by the number of complete months, not exceeding 12, that the return remains outstanding.

A person is liable to pay a failure to file penalty if the person misses a due date for filing a return required under this Act. The Minister is not required to first serve the person with a demand for a return. Consequential amendments are made to section 255.1 to allow the Minister to waive or reduce the penalty if there are extraordinary circumstances justifying the waiver or reduction.

New section 251.1 is modelled after the failure to file penalty in the *Income Tax Act*, although the rates applied under the penalty for purposes of this Act are lower.

New section 251.1 applies in respect of a return required to be filed after March 2007. If a person is required to file a return before April 1, 2007, and the person does not file the return before that date, for the purpose of calculating a penalty under the section the return will be deemed to be required to be filed on or before March 31, 2007.

Section 251.2 – Dishonoured instruments

New section 251.2 of the Act effectively incorporates the fee structure currently imposed under the *Financial Administration Act* (FAA) when a financial instrument (e.g., a cheque) becomes dishonoured.

The section deems a charge that becomes payable under the FAA in respect of an instrument used to pay or settle an amount payable under the Act, to also be an amount payable under the Act. Further, the interest and collection provisions under the FAA will not apply to the charge and the debt established by the FAA in respect of the charge is deemed to be extinguished once the charge and applicable interest is paid. By deeming a charge for a dishonoured instrument to be an amount payable under the Act, the charge becomes subject to the interest and collection provisions under the Act.

New section 251.2 applies in respect of any instrument that becomes dishonoured after March 2007.

Clause 120

Notice of imposed penalty

EA, 2001
254(1)

The Minister of National Revenue has the authority to impose a penalty on a person described in any of sections 233 to 253 by serving on the person a written notice of the penalty or by sending the notice by certified or registered mail. A penalty may be imposed in addition to the seizure or forfeiture of an item or the suspension or cancellation of a licence or registration arising from the same event as the contravention.

Subsection 254(1) is amended to exclude the new penalty introduced under section 251.1 from the requirement to serve or send a written notice of penalty.

This amendment comes into force on April 1, 2007.

Clause 121

Waiving or reducing failure to file penalty

EA, 2001
255.1

New section 255.1 provides that the Minister is authorized, on or before the day that is ten calendar years after the end of a fiscal month of a person, to waive or reduce any penalty payable by the person under new section 251.1 in respect of a return for the fiscal month.

This amendment is consequential to the introduction of the new failure to file penalty under section 251.1. It comes into force on April 1, 2007.

Clause 122

Collection restrictions – deduction or set-off

EA, 2001
286(1)(*e*)

Paragraph 286(1)(*e*) currently restricts the Minister of National Revenue from collecting amounts payable by way of deduction or set-off under section 290 of the Act until 90 days after the issuance of a notice of assessment or notice of penalty.

Paragraph 286(1)(*e*) is repealed to allow the Minister to commence the collection of amounts payable by way of deduction or set-off without delay.

This amendment comes into force on April 1, 2007.

Clause 123

Details in certificates and memorials – penalty under section 251.1

EA, 2001
288(12)

Subsection 288(12) provides that when the Minister of National Revenue issues a certificate for collection of amounts certified by the Minister as being payable by a person, the total amount payable may be specified without listing individually the separate amounts making up the total. Paragraph 288(12)(*b*) further provides that it is sufficient to refer to interest at the prescribed rate on amounts payable to the Receiver General without indicating the specific rates of interest.

Subparagraph 288(12)(*c*) is added to allow for any certificate issued for collecting certified amounts to refer to the penalty under section 251.1 to be charged on separate amounts payable simply as a penalty under section 251.1. This amendment is consequential to the introduction of the failure to file penalty.

This amendment applies in respect of any certificate issued in respect of amounts that became payable to the Receiver General after March 2007.

Excise Tax Act

Clause 124

Failure to file a return when required

ETA
7(1) and (1.1)

Currently, subsection 7(1) provides that every person who refuses or neglects to make a return as required under subsection 5(1) is liable to a penalty of 5 per cent of the amount of tax unpaid at the expiration of the time for filing the return.

New subsection 7(1) defines “month” as a period beginning on a particular day in a calendar month and ending on the day immediately before the day in the next calendar month that has the same calendar number as the particular day. In the case where the next calendar month does not have a day that has the same calendar number as the particular day, the period ends on the last day of that next calendar month.

New subsection 7(1.1) replaces the current late-filing penalty with a new late-filing penalty, which will be based on the amount of tax unpaid at the expiration of the time for filing a return and on the number of complete months that the return remains outstanding.

Specifically, the amount of penalty that becomes payable will first be calculated by taking 1 per cent of the amount of tax unpaid at the expiration of the time for filing a return. To that amount an additional amount will be added, equal to ¼ of the amount determined above multiplied by the number of complete months, not exceeding 12, that the return remains outstanding.

A person shall pay a failure to file penalty if the person misses a due date for filing a return required under subsection 5(1). The Minister of National Revenue is not required to first serve the person with a demand for a return.

New subsection 7(1.1) is modelled after the failure to file penalty under the *Income Tax Act*. The rates are consistent with other sales tax statutes, all of which are introducing a failure to file penalty with the same structure.

New subsection 7(1.1) comes into force on April 1, 2007. If a person is required to file a return before April 1, 2007, and the person does not file the return before that date, for the purpose of calculating a penalty under new subsection 7(1.1), the return will be deemed to be required to be filed on March 31, 2007.

Clause 125

Failure to file a return when required

ETA
68.5(9.1)

New subsection 68.5(9.1) introduces a new penalty that applies when a person has failed to file a reconciliation report for a reporting period as and when required under section 68.5. The amount of the penalty payable by a person is based on the total of all amounts required to be paid for a reporting period that were not paid on April 1, 2007, and the number of complete months that the return remains outstanding.

Specifically, the amount of penalty that becomes payable will first be calculated by taking 1 per cent of the total of all amounts, each of which was required to be paid for the period and which were not paid on April 1, 2007. To that amount, an additional amount will be added, equal to ¼ per cent of the total of all amounts determined above multiplied by the number of complete months, not exceeding 12, from April 1, 2007, until the day on which the reconciliation report is filed.

The Minister of National Revenue is not required to first serve the person with a demand for a return.

New subsection 68.5(9.1) is modelled after the failure to file penalty under the *Income Tax Act*, although the rates applied under the penalty for purposes of this section are lower. This amendment comes into force on April 1, 2007.

Clause 126

Restriction on refunds and credits

ETA
77

New section 77 provides that a refund will not be paid, and a credit will not be allowed to a person under the non-GST/HST portion of the Act until the person has filed with the Minister of National Revenue all returns and other records of which the Minister has knowledge that the person is required to file under the Act, the *Excise Act, 2001*, the *Air Travellers Security Charge Act* and the *Income Tax Act*.

This amendment comes into force on April 1, 2007.

Clause 127

Failure to answer a demand

ETA
79(4) and (5)

Currently, the non-GST/HST portion of the Act does not enable the Minister of National Revenue to serve a demand to a person, which requires the person to file a return within any reasonable time that may be stipulated in the demand for any period that may be designated in the demand. Nor does it impose a penalty for those who do not comply with the demand. Since the GST/HST portion of the Act, the *Income Tax Act*, the *Air Travellers Security Charge Act* and the *Excise Act, 2001* all impose a penalty for failure to answer a demand, the non-GST/HST portion of the Act will be amended to include such a penalty. This amendment will address situations where a person fails to file a return, but where there is no amount payable.

New subsection 79(4) provides that the Minister may, by a demand served personally, require that a person file a return under the non-GST/HST portion of the Act within any reasonable time that may be stipulated in the demand.

New subsection 79(5) provides that every person who fails to file a return when required under a demand is liable to penalty of $250.

These amendments come into force on April 1, 2007.

Clause 128

Transitional rule

ETA
79.01

Currently, section 79.01 defines transitional rules in respect of any reporting period based on fiscal months where the period includes July 1, 2003. That section includes a cross-reference to section 79.1. Since section 79.1 is repealed (see clause 131), that cross-reference should be deleted; however, because section 79.01 was only used for transitional purposes, section 79.01 is simply repealed.

This amendment comes into force on April 1, 2007.

Clause 129

Amounts payable of $2 or less in total

ETA
79.02(2)

Currently, subsection 79.02(2) provides that if, at any time, the total of all amounts payable by the Minister of National Revenue to a person under the non-GST/HST portion of the Act does not exceed two dollars, the Minister shall apply those amounts against any amount owing, at that time, by the person to Her Majesty under

the non-GST/HST portion of the Act. The subsection also provides that if the person does not owe any amount to Her Majesty at that time, those amounts payable are deemed to be nil.

The second reference to "under the non-GST/HST portion of the Act" has been deleted in subsection 79.02(2) in order to enable the Minister to apply amounts against any liability the person may have with Her Majesty, and hence mirror similar provisions under the GST/HST portion of the Act, the *Income Tax Act*, the *Excise Act, 2001* and the *Air Travellers Security Charge Act*.

This amendment comes into force on April 1, 2007.

Clause 130

Interest and penalty amounts of $25 or less

ETA
79.03(4)

Currently, subsection 79.03(4) provides that if a person pays an amount not less than the total of all amounts, other than interest, payable under the non-GST/HST portion of the Act at that time for a fiscal month of the person and the total amount of interest payable by the person under that portion of the Act for that month is not more than $25, the Minister of National Revenue may cancel the interest.

New subsection 79.03 is amended by adding a reference to the late-filing penalties under subsections 7(1.1) and 68.5(9.1) and section 95.1, and applies in respect of any reporting period of a person that ends on or after April 1, 2007.

Clause 131

Instalment for large taxpayers

ETA
79.1

Currently, section 79.1 provides that most taxpayers are required to pay instalments under the non-GST/HST portion of the Act in respect of a fiscal month within 21 days after the end of the month. Large taxpayers must pay a first instalment in respect of a fiscal month by the end of the month and a second instalment within 15 days after the end of the month. For both types of taxpayers, the outstanding balance in respect of a fiscal month must be paid by the end of the following fiscal month.

In order to harmonize the moment at which a taxpayer must remit amounts required to be paid with the other parts of the Act, as well as the *Air Travellers Security Charge Act* and the *Excise Act, 2001*, section 79.1 of the Act is repealed.

This amendment applies to fiscal months that begin on or after April 1, 2007.

Clause 132

Dishonoured instruments

ETA
81.4

New section 81.4 effectively incorporates the fee structure currently imposed under the *Financial Administration Act* (FAA) when a financial instrument (e.g., a cheque) becomes dishonoured.

The section deems a charge that becomes payable under the FAA in respect of an instrument used to pay or settle an amount payable under the non-GST/HST portion of the Act ("the Act"), to also be an amount payable under the Act. Further, the interest and collection provisions under the FAA will not apply to the charge and the debt established by the FAA in respect of the charge is deemed to be extinguished once the charge and applicable interest is paid under the Act. By deeming a charge for a dishonoured instrument to be an amount payable under the Act, the charge becomes subject to the interest and collection provisions under the Act.

New section 81.4 applies in respect of any instrument that becomes dishonoured on or after April 1, 2007.

Clause 133

Collection restrictions

ETA
86(4)

Currently, under paragraph 86(4)(*d*), the Minister of National Revenue is required to wait 90 days from the date of a notice of assessment before commencing collection by way of deduction or set-off against amounts owing to a person.

Paragraph 86(4)(*d*) is repealed.

This amendment comes into force on April 1, 2007.

Collection restrictions – delays

ETA
86(5), (6), (7) and (8)

Current subsections 86(5), (6), (7) and (8) describe circumstances where the Minister of National Revenue may not take any of the collection actions described in paragraphs 86(4)(*a*) to (*d*) before the end of a particular delay.

Consequential to the repeal of paragraph 86(4)(*d*), subsections 86(5), (6), (7) and (8) are amended to replace the references to (*d*) with (*c*).

These amendments come into force on April 1, 2007.

Clause 133.1

Collection in jeopardy

ETA
87(1)

Currently, subsection 87(1) provides that if it may be considered that the collection of any sum for which a person has been assessed would be jeopardized by a delay and the Minister of National Revenue has so advised that person and directed him to pay that sum or any part thereof, the Minister may forthwith take any of the actions described in paragraphs 86(4)(*a*) to (*d*) with respect to that sum or part.

Consequential to the repeal of paragraph 86(4)(*d*), subsection 87(1) is amended to replace the reference to (*d*) with (*c*).

This amendment comes into force on April 1, 2007.

Clause 134

Waiver or cancellation of interest or penalty

ETA
88(1)

Current subsection 88(1) provides that if a person is prevented from complying with the requirements of the non-GST/HST portion of the Act because of extraordinary circumstances beyond the person's control, the Minister of National Revenue may waive or cancel any amount otherwise payable by the person to the Receiver General under the non-GST/HST portion of the Act that is interest or a penalty.

New subsection 88(1) introduces a limitation period for the Minister to waive or cancel interest or penalties. The Minister is authorized, on or before the day that is ten calendar years after the end of a reporting period of a person, to waive or cancel any interest or penalty in respect of that reporting period.

This amendment comes into force on April 1, 2007.

Clause 135

Failure to file a return when required

ETA
95.1

New section 95.1 introduces a penalty where a person fails to file a return for a reporting period as and when required under subsection 79(1). The amount of the penalty payable by a person is based on the total of all amounts required to be paid for a reporting period that were not paid on the day on which the return was required to be filed and the number of complete months that the return remains outstanding.

Specifically, the amount of penalty that becomes payable will first be calculated by taking 1 per cent of the total of all amounts, each of which was required to be paid for the period and which were not paid on the day on which the return was required to be filed. To that amount an additional amount will be added, equal to ¼ per cent of the total of all amounts determined above multiplied by the number of complete months, not exceeding 12, that the return remains outstanding.

A person shall pay a failure to file penalty if the person misses a due date for filing a return required under subsection 79(1). The Minister of National Revenue is not required to first serve the person with a demand for a return.

New section 95.1 is modelled after the failure to file penalty under the *Income Tax Act*, although the rates applied under the penalty for purposes of the non-GST/HST portion of the Act are lower.

New section 95.1 comes into force on April 1, 2007. If a person is required to file a return before April 1, 2007, and the person does not file the return before that date, for the purpose of calculating a penalty under new section 95.1, the return will be deemed to be required to be filed on March 31, 2007.

Clause 136

Definition “financial service”

ETA
123(1)

Services that meet the definition “financial service” in subsection 123(1) are generally exempt under the GST/HST. A service will meet the definition “financial service” if it first falls within any of paragraph (*a*) to (*m*) of the definition and is not then excluded by any of paragraphs (*n*) to (*t*) of the definition.

New paragraph (*r.2*) is added to the definition to clarify that debt collection services are not included in the definition “financial service” and that, even if a debt collection service falls within paragraphs (*a*) to (*m*) of this legislative definition, it is specifically excluded from that definition by new paragraph (*r.2*).

New paragraph (*r.2*) applies to debt collection services that are rendered pursuant to an agreement between the person agreeing to provide the service (who may or may not be the person actually rendering the service) and another person other than the debtor. It provides that a debt collection service includes the actual collection of a debt as well as all other activities related to debt collection, such as attempting to collect the debt (even if unsuccessful), arranging for the collection or attempted collection of a debt, negotiating the payment or forgiveness of all or part of a debt, and realizing on, or attempting to realize on, security provided in respect of a debt. Debt collection services include any action to collect an amount due, even if the debtor is not in default at the time action is taken.

Excluded from new paragraph (*r.2*), and, therefore, not affected by this amendment, are services, such as “NSF” (Not Sufficient Funds) cheque fees, which are provided under an agreement between the debtor and another person, such as a creditor. Also excluded is a service that solely consists of accepting payment from a person (usually the debtor) of all or part of an account. An example of such a service would be a deposit-taking institution that accepts utility bill payments from a utility’s customers and then passes on these payments, along with payment information, to the utility company. In order to be excluded from paragraph (*r.2*), the person accepting the payment of accounts must not have, as its principal business, the collection of debt. As well, the

person must not have any authority, under its agreement with the creditor or other client, to take any other debt collection action, such as attempting to collect any part of the account or realizing or attempting to realize on security given for the account.

New paragraph (*r.2*) applies to a debt collection service rendered under an agreement for a supply if any consideration for the supply becomes due, or is paid without becoming due, after November 17, 2005. It also applies to a supply in respect of which all of the consideration became due, or was paid, on or before November 17, 2005, unless on or before that day the supplier did not charge, collect or remit any amount as of or on account of tax in respect of any supply of a debt collection service where that supply is made under the agreement for the supply between the supplier and its client.

As a result, new paragraph (*r.2*) may apply in the situation where, under an agreement, there are many supplies that include a debt collection service (e.g., in the situation where section 136.1 of the Act applies) and the consideration became due or was paid on or before November 17, 2005, for some of these supplies but not for others. In that situation, if tax was charged, collected or remitted on any of these supplies for which all of the consideration became due, or was paid, before November 17, 2005, new paragraph (*r.2*) applies to every supply made under that agreement. If, however, on or before that day, tax had not been charged, collected or remitted in respect of any of these supplies, then new paragraph (*r.2*) only applies to those supplies in respect of which consideration becomes due, or is paid, after that day.

Clause 137

Restriction

ETA
225(3)(*b*)(ii)

Subsection 225(3) ensures there is no double counting of an amount that would reduce a person's net tax for a reporting period; as a general rule, once an amount has been "claimed" in a return, it cannot be claimed again.

However, paragraphs 225(3)(*a*) and (*b*) allow a person to claim an input tax credit a second time in cases where the person was not entitled to make a previous claim for a preceding reporting period or the person made an error in making the previous claim. Under subparagraph 225(3)(*b*)(ii), if the error is not reported to the Minister of National Revenue at least three months before the time limited by subsection 298(1) for assessing the net tax for the preceding reporting period to which the previous claim relates, the person must repay the previously claimed input tax credit and any applicable penalty and interest to the Receiver General.

The amendment to subparagraph 225(3)(*b*)(ii) removes the reference in that subparagraph to "penalty". This amendment is consequential to the introduction of new interest rules under section 280 that apply for purposes of Part IX of the Act.

This amendment applies in respect of calculations of net tax for a reporting period where the preceding reporting period ends after March 2007.

Clause 138

Restriction

ETA
225.1(4)(*b*)(ii)

Subsection 225.1(4) ensures there is no double counting of an amount that would reduce a charity's net tax for a reporting period; as a general rule, once an amount has been "claimed" in a return, it cannot be claimed again.

However, paragraphs 225.1(4)(*a*) and (*b*) allow a charity to claim an input tax credit a second time in cases where the charity was not entitled to make a previous claim for a preceding reporting period or the charity made an error in making the previous claim. Under subparagraph 225.1(4)(*b*)(ii), if the error is not reported to the Minister of National Revenue at least three months before the time limited by subsection 298(1) for assessing the net tax for the preceding reporting period to which the previous claim relates, the charity must repay the previously claimed input tax credit and any applicable penalty and interest to the Receiver General.

The amendment to subparagraph 225.1(4)(*b*)(ii) removes the reference in that subparagraph to "penalty". This amendment is consequential to the introduction of new interest rules under section 280 that apply for purposes of Part IX of the Act.

This amendment applies in respect of calculations of net tax for a reporting period where the preceding reporting period ends after March 2007.

Clause 139

Payment of net tax refund

ETA
229

Section 229 deals with the payment by the Minister of National Revenue of a net tax refund pursuant to subsection 228(3).

Subclause 139(1)

Restriction

ETA
229(2)

Subsection 229(2) provides that a net tax refund for a particular reporting period may not be paid to a person under subsection 229(1) until the person files all returns that the person is required to file under Division V for the period and all preceding reporting periods.

Subsection 229(2) is amended to provide that a net tax refund will not be paid to a person at any time until the person files all returns, of which the Minister of National Revenue has knowledge, that the person is required to file up to that time under this Act (both GST/HST and non-GST/HST portions), the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and the *Income Tax Act*.

This amendment comes into force on April 1, 2007.

Subclause 139(2)

Interest on refund

ETA
229(3)

Subsection 229(3) provides that interest paid on an outstanding net tax refund claim is calculated from the day that is 21 days after the later of the day the claim is filed with the Minister of National Revenue and the day all requirements respecting filing of returns under Division V are fulfilled, and ending on the day the refund is paid.

The amendment to subsection 229(3) provides that interest is calculated from the day that is 30 days after the later of the day the claim is filed with the Minister and the day following the last day of the reporting period to which the claim relates, and ending on the day the refund is paid.

This amendment applies to net tax refunds for a reporting period of a person ending after March 2007.

Subclause 139(3)

Minimum interest

ETA
229(4)

Subsection 229(4) currently provides that interest of less than $1 shall not be paid to a person. This provision is repealed as a result of the introduction of new section 297.1, which outlines the treatment of small amounts owing by a person or the Minister of National Revenue.

This amendment comes into force on April 1, 2007.

Clause 140

Overpayment of refund

ETA
230

Section 230 provides that when a person pays an amount on account of the person’s net tax for a reporting period, and the amount exceeds the actual net tax remittable for the period, the Minister of National Revenue shall pay a refund of the amount in excess.

Subclause 140(1)

Restriction

ETA
230(2)

Subsection 230(2) provides that an amount paid on account of a person's net tax for a particular reporting period may not be refunded to the person until the person files all returns that the person is required to file under Division V for the period and all preceding reporting periods.

Subsection 230(2) is amended to provide that a net tax refund will not be paid to a person at any time until the person files all returns, of which the Minister of National Revenue has knowledge, that the person is required to file up to that time under this Act (both GST/HST and non-GST/HST portions), the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and the *Income Tax Act*.

This amendment comes into force on April 1, 2007.

Subclause 140(2)

Interest on refund

ETA
230(3)

Subsection 230(3) provides that interest paid on a refund is calculated from the day that is 21 days after the later of the day a claim for the refund is filed with the Minister of National Revenue and the day all requirements respecting filing of returns under Division V are fulfilled, and ending on the day the refund is paid.

The amendment to subsection 230(3) provides that interest is calculated from the day that is 30 days after the later of the day the claim is filed with the Minister and the day following the last day of the reporting period to which the claim relates, and ending on the day the refund is paid.

This amendment applies to refunds in respect of a reporting period of a person ending after March 2007.

Subclause 140(3)

Minimum interest

ETA
230(4)

Subsection 230(4) currently provides that interest of less than $1 shall not be paid to a person. This provision is repealed as a result of the introduction of new section 297.1, which outlines the treatment of small amounts owing by a person or the Minister of National Revenue.

This amendment comes into force on April 1, 2007.

Clause 141

Adjustment if property not exported or supplied

ETA
236.1

Section 236.1 requires a registrant, who received a zero-rated supply of a continuous transmission commodity (as defined under subsection 123(1)) that is not subsequently exported or supplied as required for zero-rating to occur under section 15.2 of Part V of Schedule VI, to add an amount to the registrant's net tax for the reporting period containing the earliest day in which tax would have been payable for the supply. The addition to net tax reflects the cash-flow benefit that the registrant received by acquiring the commodity on a zero-rated basis.

Under section 236.1, the registrant is required to add an amount currently equal to interest at the prescribed rate for the purposes of paragraph 280(1)(*b*) plus 4 per cent per year compounded daily, calculated on the total amount of tax that would have been payable in respect of the supply. Further, the amount is computed for the period beginning on the earliest day on which tax would have become payable in respect of the supply and ending on the day on or before which the return for that reporting period is required to be filed.

The amendment to section 236.1 is consequential to the introduction of new rules that prescribe interest rates for the purposes of Part IX of the Act. Specifically, the additional amount to be calculated under section 236.1 is changed by removing the extra amount of 4 per cent per year, so that a registrant will be required to pay an amount equal only to the prescribed rate of interest. This amendment reflects the new higher prescribed rate charged in respect of amounts that a person has failed to pay or remit.

The amendment applies in respect of a supply made to a registrant where tax would have first become payable, in the absence of section 15.2 of Part V of Schedule VI, on a particular day in a reporting period for which a return for the period is required to be filed after March 2007. If the particular day is before April 2007 and the return for the reporting period that includes the particular day is required to be filed after March 2007, the existing prescribed rate of interest plus 4 per cent per year compounded daily will apply to the period before April 2007, and the new prescribed rate will apply to the period after March 2007.

Clause 142

Adjustment in respect of export certificate

ETA
236.2

Section 236.2 addresses situations where a registrant uses an export certificate (within the meaning of section 221.1) to receive a supply of property on a zero-rated basis when the conditions permitting zero-rating have not been fulfilled. In these cases, an amount is added to the registrant's net tax for a reporting period to reflect the cash-flow benefit that the registrant originally received by acquiring the property on a zero-rated basis.

Subsection 236.2(1) applies to a zero-rated supply of property received by a registrant as a result of the registrant providing an export certificate to the supplier in respect of the supply, but where the authorization to use the certificate was not in effect at the time of the supply or the property was not exported as required under paragraphs 1(*b*) to (*d*) of Part V of Schedule VI. In this case, subsection 236.2(1) requires the registrant to add

an amount to the registrant's net tax for the reporting period containing the earliest day in which tax would have been payable for the supply. Currently, the additional amount is equal to interest at the prescribed rate for the purposes of paragraph 280(1)(*b*) plus 4 per cent per year compounded daily, calculated on the total amount of tax that was payable or would have been payable in respect of the supply. Further, the amount is computed for the period beginning on the earliest day in which the tax was payable or would have been payable and ending on the day on or before which the return for that reporting period is required to be filed.

Subsection 236.2(2) applies to situations where a registrant's authorization to use an export certificate is deemed to have been revoked under subsection 221.1(6). In this case, subsection 236.2(2) requires the registrant to add an amount to the registrant's net tax for the first reporting period after the fiscal year in which the percentage of inventory purchases for which the registrant used the certificate exceeds the percentage of the registrant's inventory sales made outside Canada. Currently, the amount to be added is equal to the total GST/HST that would have been payable on purchases of inventory in Canada for which the certificate was used in the year multiplied by interest, for one month, based on the annualized rate prescribed for the purposes of paragraph 280(1)(*b*) in effect at the end of the reporting period plus 4 per cent per year.

The amendments to both subsections are consequential to the introduction of new rules that prescribe interest rates for the purposes of Part IX of the Act. Thus, subsections 236.2(1) and (2) are amended by removing the additional amount of 4 per cent per year to be added to a registrant's net tax, so that when the conditions permitting the zero-rating of supplies under an export certificate have not been fulfilled, a registrant will be required to add an amount equal only to the prescribed rate of interest.

The amendment to subsection 236.2(1) applies in respect of a supply made to a registrant where tax first became payable or would have first become payable on a particular day that occurs after March 2007. If the particular day is before April 2007, and the return for the reporting period that includes the particular day is required to be filed after March 2007, the existing prescribed rate of interest plus 4 per cent per year will apply to the period before April 2007, and the new prescribed rate will apply to the period after March 2007.

The amendment to subsection 236.2(2) applies in respect of a fiscal period of a registrant that ends after March 2007. If the fiscal year includes a period before April 2007, the existing treatment of adding an amount equal to the total of 4 per cent per year and the rate of interest (expressed as a percentage per year) will apply where the consideration for a supply was paid or became payable before April 2007. Where the consideration was paid or became payable after March 2007, the new prescribed rate of interest will apply.

Clause 143

Adjustment in respect of export distribution centre certificate

ETA
236.3

Section 236.3 addresses situations where a registrant uses an export distribution centre certificate (within the meaning of section 273.1) to receive a supply of property on a zero-rated basis when the conditions permitting zero-rating have not been fulfilled. In these cases, an amount is added to the registrant's net tax for a reporting period to reflect the cash-flow benefit that the registrant originally received by acquiring the property on a zero-rated basis.

Subsection 236.3(1) applies to a zero-rated supply of property received by a registrant because the registrant provided an export distribution centre certificate to the supplier in respect of the supply, but where the authorization to use the certificate was not in effect at the time of the supply or the property was not acquired by the registrant for use or supply as domestic inventory or added property in the course of the registrant's commercial activities. In this case, subsection 236.3(1) requires the registrant to add an amount to the registrant's net tax for the reporting period containing the earliest day in which tax would have been payable for the supply. Currently, the additional amount is equal to interest at the prescribed rate for the purposes of paragraph 280(1)(*b*) plus 4 per cent per year compounded daily, calculated on the total amount of tax that was payable or would have been payable in respect of the supply. Further, the amount is computed for the period beginning on the earliest day in which the tax was payable or would have been payable and ending on the day on or before which the return for that reporting period is required to be filed.

Subsection 236.3(2) applies to situations where a registrant's export revenue percentage for a fiscal year falls below 90 per cent or where the export distribution centre certificate is revoked under subsection 273.1(11) because the registrant failed to satisfy the value added tests for the year. In this case, subsection 236.3(2) requires the registrant to add an amount to the registrant's net tax for the first reporting period after the fiscal year. Currently, the amount to be added is equal to the total tax that would have been payable in respect of purchases and importations for which the certificate was used in the year, multiplied by interest, for one month, based on the annualized rate prescribed for the purposes of paragraph 280(1)(*b*) in effect at the end of the reporting period plus 4 per cent per year.

The amendments to both subsections are consequential to the introduction of new rules that prescribe interest rates for the purposes of Part IX of the Act. Thus, subsections 236.3(1) and (2) are amended by removing the additional amount of 4 per cent per year to be added to a registrant's net tax, so that when the conditions permitting the zero-rating of supplies under an export distribution centre certificate have not been fulfilled, a registrant will be required to add an amount equal only to the new prescribed rate of interest.

The amendment to subsection 236.3(1) applies in respect of a supply of property made to a registrant where tax first became payable or would have first become payable on a particular day that occurs after March 2007. If the particular day is before April 2007, and the return for the reporting period that includes the particular day is required to be filed after March 2007, the existing prescribed rate of interest plus 4 per cent per year will apply to the period before April 2007, and the new prescribed rate will apply to the period after March 2007.

The amendment to subsection 236.3(2) applies in respect of a fiscal period of a registrant that ends after March 2007. If the fiscal year includes a period before April 2007, the existing treatment of adding an amount equal to the total of 4 per cent per year and the rate of interest (expressed as a percentage per year) will apply where the consideration for a supply was paid or became payable, or where the importation occurred, before April 2007. Where the consideration was paid or became payable, or where the importation occurred, after March 2007, the new prescribed rate of interest will apply.

Clause 144

Repayment of rebate

ETA
256.2(10)

Subsection 256.2(10) requires a person who was eligible for the New Residential Rental Property Rebate to repay the amount of the rebate plus interest calculated on the amount for the period from the day the rebate was paid or applied to a liability of a person and ending on the day the person repays the amount. Recapture will occur if the person sells, within one year after the unit was first occupied, the qualifying residential unit to a purchaser who is not acquiring the unit for use as the primary place of residence by the purchaser or a relation of the purchaser. The rate of interest charged to the person in this case is the prescribed rate, which corresponds to the interest payable by the Minister of National Revenue in respect of an amount (e.g., an outstanding refund claim) owing to a person.

The amendment to subsection 256.2(10) is consequential to the introduction of new rules that prescribe interest rates for the purposes of Part IX of the Act. Specifically, the interest rate charged under the subsection is changed to the prescribed rate minus 2 per cent to ensure that the interest charged on the recaptured amount corresponds to the new prescribed rate of interest payable by the Minister in respect of an amount owing to a person.

This amendment applies in respect of amounts repaid by a person to the Receiver General after March 2007. If the period for which interest must be calculated begins on a date before April 2007 and ends after March 2007, the current rate of interest will apply to the amount for the period before April 2007, and the prescribed rate minus 2 per cent will apply to the amount for the period after March 2007.

Clause 145

Restriction on rebate

ETA
263.02

New section 263.02 provides that a rebate under Part IX will not be paid to a person at any time until the person files all returns, of which the Minister of National Revenue has knowledge, that the person is required to file up to that time under this Act (both GST/HST and non-GST/HST portions), the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and the *Income Tax Act*.

Withholding the payment of a rebate to a person until the person has filed all required returns, of which the Minister has knowledge, allows the Minister to determine whether the person has an outstanding liability under any of the statutes listed above. If any liability exists, the Minister may then set-off the amount of the rebate against that liability, pursuant to the assessment and collection provisions under Part IX of this Act, before any remaining amount is paid to the person. To make this determination, however, the Minister must have the returns that the person is required to file.

This provision is consistent with amendments made to other provisions that restrict the payment of net tax refunds and overpayments of amounts on account of tax, and to similar amendments made to the other statutes listed above.

New section 263.02 comes into force on April 1, 2007.

Clause 146

Interest

ETA
280

Section 280 imposes penalty and interest charges where a person has failed to pay or remit GST/HST or instalments on account of GST/HST, and also establishes general rules relating to the treatment of penalties and interest under particular circumstances.

Currently, the prescribed rate of interest under the *Interest Rate (Excise Tax Act) Regulations* for unpaid or unremitted tax or instalments of tax is determined by reference to the rate charged on 90-day Treasury Bills, adjusted quarterly, and rounded to the nearest one-tenth of a percentage point. In addition, section 280 imposes a penalty of 6 per cent per year, compounded daily, on the unpaid or unremitted amount.

The prescribed rate of interest will be changed. Where a person fails to remit or pay an amount as required, the new prescribed rate will be determined by reference to the rate charged on 90-day Treasury Bills, adjusted quarterly, rounded up to the nearest whole percentage point, and adding 4 per cent. This change will harmonize the prescribed rate under Part IX of the *Excise Tax Act* with the prescribed rate of interest under the non-GST/HST portion of the Act, the *Income Tax Act*, the *Excise Act, 2001* and the *Air Travellers Security Charge Act*.

Section 280 is therefore amended by removing references to the 6-per-cent penalty as a result of the additional 4 per cent being included in the new prescribed rate and the introduction of a failure to file penalty under new section 280.1, which will apply where a person fails to file a return as and when required under this Part.

Subsection 280(1) sets out the general rule regarding the imposition of penalty and interest. The amendment removing the reference to the 6-per-cent penalty comes into force on April 1, 2007.

Subsection 280(1.1) applies to the non-payment of an amount of interim net tax by a selected listed financial institution (as defined in subsection 225(1)). The amendment to the subsection applies in respect of any reporting period that ends after March 2007. If a selected listed financial institution is required to pay an amount before April 1, 2007, but fails to pay by that day, the existing prescribed rate of interest and 6-per-cent penalty will apply to the period before April 2007, and the new prescribed rate will apply to the period after March 2007.

Subsection 280(2) addresses the failure of a person to pay all of an instalment payable under subsection 237(1) within the time specified under that subsection. The amendment applies in respect of any instalment payable by the person after March 2007. If a person is required to pay an amount before April 1, 2007, but fails to pay by that day, the current interest rules and 6-per-cent penalty will apply to the period before April 2007, and the new prescribed rate will apply to the period after March 2007.

The set-off mechanism described under subsection 280(3), which limits the total interest and penalties payable in respect of instalments under subsection 280(2), is amended by removing the reference to the figure of 6 per cent per year. This amendment applies in respect of any reporting period of a person beginning after March 2007. Where an instalment is required to be paid before April 2007, is not paid before the time specified under section 237, and the tax, on account of which the instalment was payable, is required to be remitted after March 2007, the existing interest rate and additional 6 per cent per year shall apply to the period before April 2007 and the new rate will apply to the period after March 2007. Further, the new prescribed rate will apply to any instalment paid after March 2007.

Subsections 280(4), (4.01) and (4.1), which clarify that interest and the 6-per-cent penalty remaining unpaid on a particular day shall be added to the amount on which penalty and interest is calculated the following day, are amended by removing the reference to penalty. The amendments to subsections 280(4) and 280(4.01) apply, namely, in respect of any instalment that a person first fails to pay, and any amount that a selected listed financial institution first fails to pay as required under paragraph 228(2.1)(*a*), after March 2007. The amendment to subsection (4.1) comes into force on April 1, 2007.

Subsection 280(5) provides that where the Minister of National Revenue holds security posted under section 314, the 6-per-cent penalty imposed under section 280 will only apply on a particular day to the total of all amounts unpaid or unremitted on or before that day where the total exceeds the value of the security. As a result of the 6-per-cent penalty being removed, the subsection is repealed. This amendment applies in respect of any amount that a person fails to remit or pay after March 2007.

Subsection 280(6) currently provides that if a person remits or pays all amounts payable under this Part for a reporting period of the person, and the total of all penalties and interest for the period immediately before that time is less than $25, the Minister may write off and cancel the penalties and interest. As a result of the 6-per-cent penalty being removed and the new failure to file penalty being introduced, subsection 280(6) is repealed. This amendment applies in respect of any reporting period of a person that ends after March 2007.

Subsection 280(7) provides that if a person is served with a demand for payment and the person pays or remits all amounts owing before the date specified in the demand, the Minister may waive penalty and interest accruing for the period from the date of the demand and ending on the day of payment. The amendment removes the reference to the penalty accruing during the period, and applies in respect of any demand served by the Minister after March 2007.

Clause 147

Penalties

ETA
280.1 to 280.3

Section 280.1 – Failure to file a return

New section 280.1 introduces a penalty where a person fails to file a return for a reporting period as and when required under Part IX. The amount of the penalty payable by a person is based on the total of all amounts required to be remitted or paid for a reporting period that were not remitted or paid on or before the day on or before which the return was required to be filed and the number of complete months that the return remains outstanding.

Specifically, the amount of penalty that becomes payable will first be calculated by taking 1 per cent of the total of all amounts, each of which was required to be remitted or paid for the period and which were not remitted or paid on or before the day on or before which the return was required to be filed. To that amount an additional amount will be added, equal to ¼ per cent of the total of all amounts determined above multiplied by the number of complete months, not exceeding 12, that the return remains outstanding.

A person is liable to pay a failure to file penalty if the person misses a due date for filing a return required under this Part. The Minister of National Revenue is not required to first serve the person with a demand for a return. Consequential amendments are made to section 281.1 to allow the Minister to waive or cancel the penalty if there are extraordinary circumstances justifying the waiver or cancellation.

New section 280.1 is modelled after the failure to file penalty under the *Income Tax Act*, although the rates applied under the penalty for purposes of the GST/HST are lower.

New section 280.1 applies in respect of a return required to be filed after March 2007. If a person is required to file a return before April 1, 2007, and the person does not file the return before that date, for the purpose of calculating a penalty under the section the return will be deemed to be required to be filed on or before March 31, 2007.

Section 280.2 – Minimum interest and penalty

Existing subsection 280(6) is renumbered as new section 280.2 and amended. Currently, subsection 280(6) provides that if a person remits or pays all amounts for a reporting period under Part IX and the total of all penalties and interest imposed under section 280 for the period is less than $25, the Minister may write off the penalties and interest.

New section 280.2 replaces the reference to penalties imposed under section 280 with a reference to the failure to file penalty introduced under section 280.1, and will apply in respect of any reporting period of a person that ends after March 2007.

Section 280.3 – Dishonoured instruments

New section 280.3 of the Act effectively incorporates the fee structure currently imposed under the *Financial Administration Act* (FAA) when a financial instrument (e.g., a cheque) becomes dishonoured.

The section deems a charge that becomes payable under the FAA in respect of an instrument used to pay or settle an amount payable or remittable under Part IX of the Act, to also be an amount payable under Part IX. Further, the interest and collection provisions under the FAA will not apply to the charge and the debt established by the FAA in respect of the charge is deemed to be extinguished once the charge and applicable interest is paid under Part IX. By deeming a charge for a dishonoured instrument to be an amount payable under Part IX, the charge becomes subject to the interest and collection provisions under that Part.

New section 280.3 applies in respect of any instrument that becomes dishonoured after March 2007.

Clause 148

Extension for returns

ETA
281(2)(*c*) and (*d*)

Subsection 281(2) outlines the treatment of interest and the 6-per-cent penalty imposed under section 280 when the Minister of National Revenue extends the time in which a person shall file a return. Under paragraph 281(2)(*c*), interest on any amount payable by the person continues to accrue, despite the extension. However, the 6-per-cent penalty is suspended during the extension period.

The amendment to paragraph 281(2)(*c*) suspends the accrual of interest during an extension period, by providing that any interest in respect of any tax or net tax payable shall be calculated as if the tax or net tax were required to be paid on or before the day the extended period expires. The amendment to paragraph 281(2)(*d*) replaces references to the 6-per-cent penalty with references to the failure to file penalty under new section 280.1, so that the penalty will be calculated as if the return were required to be filed on or before the day the extension expires. The result of these amendments is that interest and the late filing penalty will only apply in respect of those periods that begin after the extension period expires.

These amendments apply in respect of any extension to file a return, where the extension expires after March 2007.

Clause 149

Waiving or cancelling interest

ETA
281.1

Section 281.1 provides that the Minister of National Revenue may waive or cancel interest or penalties payable by a person pursuant to section 280, if the person is prevented from complying with the requirements of Part IX of the *Excise Tax Act* because of extraordinary circumstances beyond the person’s control.

The amendment to section 281.1 introduces a limitation period for the Minister to waive or cancel interest or penalties payable by a person. The Minister is authorized, on or before the day that is ten calendar years after the end of a reporting period of a person, to waive or cancel interest or penalties in respect of that reporting period. Subsection 281.1(2) is further amended by authorizing the Minister to waive or cancel the failure to file penalty introduced under new section 280.1, in addition to the 6-per-cent penalty currently imposed under section 280.

These amendments come into force on April 1, 2007.

Clause 150

Failure to answer demand

ETA
283

Section 283 imposes a penalty when a person fails to file a return within the time specified in a demand for a return served by the Minister of National Revenue under section 282. Currently, the penalty imposed is equal to the greater of $250 and 5 per cent of the outstanding tax payable or net tax remittable by the person for the period or transaction specified in the demand.

The amendment to section 283 removes from the penalty the 5-per-cent calculation of the outstanding tax. As a result, the penalty for failing to answer a demand for a return is $250. This amendment is consequential to the introduction of the penalty under new section 280.1 for a failure to file a return.

The amendment to section 283 applies in respect of any demand for a return served by the Minister after March 2007.

Clause 151

Assessments

ETA
296

Section 296 outlines the rules with respect to the assessment and reassessment of taxes and any other amounts owing under Part IX of the Act.

Subclauses 151(1) to (4)

Allowance of unclaimed amounts

ETA
296(2) and (2.1)

Subsection 296(2) authorizes the Minister of National Revenue to take into account an allowable credit (i.e., an input tax credit or deduction that was not previously claimed by the person) when the Minister assesses the net tax of a person for a particular reporting period, unless the person requests otherwise. Subsection 296(2.1) similarly allows the Minister to take into account an allowable rebate (i.e., an unclaimed rebate), unless the person requests otherwise.

The amendments to subsections 296(2) and (2.1) remove the person's ability to request that the Minister not take into account any allowable credit or rebate of the person when the Minister determines the person's net tax for a reporting period. These changes are consistent with other amendments made to section 296, which allow the Minister to automatically set-off amounts owing to a person against any liabilities of the person under Part IX of the Act before a refund is paid.

These amendments come into force on April 1, 2007.

Subclauses 151(5) to (7)

Application or payment of credit

ETA
296(3)

Subsection 296(3) authorizes the Minister of National Revenue to apply an overpayment of net tax of a person for a particular reporting period against any outstanding liabilities of the person that arose before or after the particular period, unless the person requests otherwise. When only part of an overpayment is applied to a liability that arose on or before the particular reporting period, interest on the remaining overpayment shall begin to accrue 21 days after the later of the due date of the return for the particular period and the day the return is actually filed.

The amendment to subsection 296(3) removes the person's ability to request that the Minister not apply any overpayment of net tax against other liabilities of the person, in order to allow the Minister to set-off amounts automatically before having to pay a refund to the person. This amendment comes into force on April 1, 2007.

In addition, paragraphs 296(3)(*b*) and (*c*) are amended by providing that interest on the remaining overpayment of net tax shall begin to accrue on the day that is 30 days after the later of the due date of the return for the particular reporting period and the day the return for the particular period is actually filed. These changes are introduced in order to harmonize the calculation of interest in respect of amounts owing to a person with other amended provisions of Part IX of the Act, as well as with the non-GST/HST portion of the Act, the *Income Tax Act*, the *Excise Act, 2001* and the *Air Travellers Security Charge Act*.

The amendments to paragraphs 296(3)(*b*) and (*c*) apply to any reporting period of a person ending after March 2007.

Subclauses 151(8) to (10)

Application or payment of rebate

ETA
296(3.1)

Subsection 296(3.1) authorizes the Minister of National Revenue to apply an allowable rebate (within the meaning of subsection 296(2.1)) against any outstanding liabilities of a person that arose before or after either the particular period or the day in which an overdue amount became payable by the person, unless the person requests otherwise. When only part of an allowable rebate is applied to a liability that arose on or before the particular period or day, interest on the remaining amount shall begin to accrue 21 days after the later of the due date of the return for the particular period or day the overdue amount became payable and, if the assessment is in respect of net tax for the particular period, the day the return for that period is actually filed.

The amendment to subsection 296(3.1) removes the person's ability to request that the Minister not apply any overpayment of net tax against other liabilities of the person, in order to allow the Minister to set-off amounts automatically before having to pay a refund to the person. This amendment comes into force on April 1, 2007.

In addition, paragraphs 296(3.1)(*b*) and (*c*) are amended by replacing the reference to 21 days before interest begins to accrue with a reference to 30 days. These changes are introduced in order to harmonize the calculation of interest in respect of amounts owing to a person with other amended provisions of Part IX of the Act, as well as with the non-GST/HST portion of the Act, the *Income Tax Act*, the *Excise Act, 2001* and the *Air Travellers Security Charge Act*.

The amendments to paragraphs 296(3.1)(*b*) and (*c*) apply to any reporting period of a person ending after March 2007.

Subclauses 151(11) and (12)

Limitation on refunding amounts

ETA
296(4)(*b*) and (4.1)(*b*)

Subsection 296(4) states the conditions that must be fulfilled before an overpayment of net tax may be applied against an outstanding liability of a person or refunded to the person under subsection 296(3); subsection 296(4.1) outlines similar restrictions before an allowable rebate may be applied against an outstanding liability or refunded under subsection 296(3.1).

Currently, paragraph 296(4)(*b*) provides that an overpayment of net tax for a particular reporting period shall not be paid until the person is up to date in filing their returns under Division V. Paragraph 296(4.1)(*b*) contains a similar requirement in respect of refunds of allowable rebates under subsection 296(3.1).

Paragraphs 296(4)(*b*) and (4.1)(*b*) are amended by removing the requirement that the person must first file all returns that the person is required to file under Division V before a refund shall be paid to the person. These amendments are consequential to the introduction of new subsection 296(7).

These amendments come into force on April 1, 2007.

Subclause 151(13)

Interest and refunds on assessment

ETA
296(6.1) and (7)

Subsection 296(6.1) – Interest on cancelled amounts

New subsection 296(6.1) provides that if a person pays an amount of interest or penalty and the Minister of National Revenue cancels the interest or penalty under section 281.1, the Minister will refund the amount to the person. Interest at the prescribed rate will begin to accrue on the amount for the period beginning 30 days after the day the Minister receives a satisfactory request for relief under section 281.1 and ending on the day the refund is paid.

This provision harmonizes the date at which interest on amounts owing to a person begins to accrue with other amended provisions of Part IX of the Act, as well as with the non-GST/HST portion of the Act, the *Income Tax Act*, the *Excise Act, 2001* and the *Air Travellers Security Charge Act*.

New subsection 296(6.1) comes into force on April 1, 2007.

Subsection 296(7) – Restriction on refunds

Subsection 296(7) currently provides that interest of less than $1 shall not be paid to a person. As a result of the introduction of new section 297.1, which outlines the treatment of small amounts owing by a person or the Minister, subsection 296(7) is replaced.

New subsection 296(7) provides that no amount under section 296 shall be refunded to a person at any time until the person files all returns, of which the Minister has knowledge, that the person is required to file up to that time under this Act (both GST/HST and non-GST/HST portions), the *Air Travellers Security Charge Act*, the *Excise Act, 2001* and the *Income Tax Act*.

Withholding the refund of an amount to a person until the person has filed all required returns, of which the Minister has knowledge, allows the Minister to determine whether the person has an outstanding liability under any of the statutes listed above. If any liability exists, the Minister may then set-off the amount of the rebate against that liability, pursuant to the assessment and collection provisions of this Act, before any remaining amount is paid to the person. To make this determination, however, the Minister must have all the returns that the person is required to file.

This amendment is consistent with amendments made to other provisions restricting the payment of net tax refunds and overpayments of amounts on account of tax, and to similar amendments made to the other statutes referred to above.

New subsection 296(7) comes into force on April 1, 2007.

Clause 152

Assessment of rebate

ETA
297

Section 297 outlines the rules with respect to the assessment and reassessment of a rebate application made under section 215.1 or Division VI of Part IX of the Act.

Subclause 152(1)

Interest on rebate

ETA
297(4)

Subsection 297(4) provides that when the Minister of National Revenue pays a rebate under section 215.1 or Division VI, other than an employee or partner rebate under section 253, the Minister shall also pay interest at the prescribed rate. Interest on the rebate is calculated for the period beginning 21 days after the day an application for a rebate under section 257, 258 or 259 is filed with the Minister, and in any other case, 60 days after the day an application for a rebate is filed with the Minister, and ending on the day the rebate is paid.

The amendment to subsection 297(4) provides that interest on a rebate is calculated beginning on the day that is 30 days after the day the rebate application is filed with the Minister and ending on the day the rebate is paid. Employee and partner rebates under section 253 will continue to be excluded from the interest rules under Part IX.

This amendment applies to a claim period, for a rebate under section 259, 259.1 or 261.01, which ends after March 2007, and in the case of any other rebate, to an application filed after March 2007.

Subclause 152(2)

Minimum interest

ETA
297(5)

Subsection 297(5) provides that interest of less than $1 under subsection 297(4) shall not be paid to a person. This provision is repealed because of the introduction of new section 297.1, which outlines the treatment of small amounts owing by a person or the Minister of National Revenue.

This amendment applies in respect of interest payable by the Minister after March 2007.

Clause 153

Minimum amounts owing

ETA
297.1

New section 297.1 provides that if the total of all amounts payable by a person to the Crown under Part IX of the Act does not exceed $2, the total is deemed to be nil. Similarly, if the total of all amounts payable by the Minister of National Revenue to a person under Part IX does not exceed $2, the Minister may set-off that amount against any other amount owing at that time by the person to the Crown. If no other amount exists, the amounts payable to the person will then be deemed to be nil.

This provision will harmonize the treatment of minimal amounts owing under Part IX with similar rules under the non-GST/HST portion of the *Excise Tax Act*, the *Income Tax Act*, and the *Excise Act, 2001*.

New section 297.1 comes into force on April 1, 2007.

Clause 154

Period for assessment

ETA
298(1)(*e*)

Subsection 298(1) sets out the limitation periods for assessments and reassessments of amounts under Part IX of the Act. Paragraph 298(1)(*e*) establishes that if a person is liable to pay a penalty, other than a penalty under section 280, 285 or 285.1, the person may not be assessed in respect of the penalty more than four years from when the person became liable.

The amendment to paragraph 298(1)(*e*) replaces the reference to the penalty imposed under section 280 with a reference to the penalty introduced under new section 280.1 for failing to file a return. This amendment is consequential to the introduction of new interest rules under section 280 and the failure to file penalty.

This amendment applies in respect of any penalty that becomes payable after March 2007.

Clause 155

Interest on judgments

ETA
313(3)

Subsection 313(3) provides that if a judgment is obtained for any amount payable under Part IX of the Act, interest and the 6-per-cent penalty imposed for failure to pay or remit an amount also apply to a failure to pay the judgment debt. Further, the interest and penalty is subject to the same collection mechanisms as the judgment debt.

The amendment to subsection 313(3) removes the reference in that subsection to “penalty”. The amendment is consequential to the introduction of new interest rules under section 280 that apply for purposes of Part IX of the Act.

The amendment applies in respect of any judgment for amounts that became payable or remittable to the Receiver General after March 2007.

Clause 156

Assessment before collection

ETA
315(1)

Subsection 315(1) prevents collection action under sections 316 to 321 in respect of any amount payable or remittable by a person under Part IX of the Act, other than interest or penalty calculated at 6 per cent per year, from being taken by the Minister of National Revenue until the amount has been assessed. As a result, collection action may be taken without assessment in respect of interest and penalty currently imposed under section 280.

The amendment to subsection 315(1) removes the reference to the 6-per-cent penalty. This amendment is consequential to the introduction of new interest rules under section 280 and comes into force on April 1, 2007.

Clause 157

Details in certificates and memorials

ETA
316(11)(*b*)(i) and (ii)

Subsection 316(11) provides that when the Minister of National Revenue issues a certificate for collection of amounts certified by the Minister as being payable by a person, the total amount payable may be specified without requiring the separate amounts making up the total to be set out. Paragraph 316(11)(*b*) further provides that it is sufficient to simply refer to interest at the prescribed rate and to penalty at the rate of 6 per cent per year on amounts payable to the Receiver General.

The amendment to subparagraph 316(11)(*b*)(i) removes the reference in that subparagraph to “penalty”, while the amendment to subparagraph 316(11)(*b*)(ii) replaces the reference to the 6-per-cent penalty with a reference to the penalty introduced under new section 280.1 for failing to file a return. These amendments are consequential to the introduction of new interest rules under section 280 and the failure to file penalty.

The amendments apply in respect of any certificate issued in respect of amounts that became payable or remittable to the Receiver General after March 2007.

Clause 158

Effect of authorization

ETA
322.1(3)(*f*)

Section 322.1 outlines the procedure by which the Minister of National Revenue may obtain judicial authorization, by *ex parte* application, to assess and take collection action to recover an amount determined to be remittable by a person. Authorization will be given if there are reasonable grounds to believe that net tax for a reporting period is owing and that collection of any part of the net tax would be jeopardized if there were a delay in its collection.

Subsection 322.1(3) provides deeming rules with respect to reporting periods, when returns are to be filed, the amount of net tax owing, when the net tax is due and the treatment of amounts that would have been recoverable by a person. Further, paragraph 322.1(3)(*f*) suspends the application of the interest and penalty provisions under sections 280 and 284 as if the net tax were not required to be remitted, and the return not required to be filed, until the limitation period for a judicial review of the application expires.

The amendment to paragraph 322.1(3)(*f*) adds a reference to the penalty under new section 280.1 for a failure to file a return. As a result, the application of section 280.1 is also suspended until the expiration of the limitation period for a judicial review of the authorization. This amendment is consequential to the introduction of the failure to file penalty under new section 280.1.

This amendment comes into force on April 1, 2007.

Clause 159

Saving

ETA
326(3)

Subsection 326(3) provides that if a person is convicted of an offence under subsection 326(1), the person will not be liable to pay a penalty under section 283 or 284 for the same contravention of Part IX of the Act that led to the conviction. This general rule will not apply, however, if a notice of assessment in respect of the penalty was issued before the information or complaint giving rise to the conviction was laid or made.

The amendment to subsection 326(3) adds a reference to the penalty under new section 280.1 for a failure to file a return. As a result, if a notice of assessment in respect of section 280.1 is issued before an information or complaint is laid or made, a person may be convicted of an offence under subsection 326(1) and also liable to the penalty for a failure to file a return. This amendment is consequential to the introduction of the failure to file penalty under new section 280.1.

This amendment comes into force on April 1, 2007.

Clause 160

Penalty on conviction

ETA
327(3)

Subsection 327(3) provides that if a person is convicted of an offence under subsection 327(1), the person will not be liable to pay a penalty under any of sections 283 to 285.1 for the same contravention of Part IX of the Act that led to the conviction. This general rule will not apply, however, if a notice of assessment in respect of the penalty was issued before the information or complaint giving rise to the conviction was laid or made.

The amendment to subsection 327(3) adds a reference to the penalty under new section 280.1 for a failure to file a return. As a result, if a notice of assessment in respect of section 280.1 is issued before an information or complaint is laid or made, a person may be convicted of an offence under subsection 327(1) and also liable to the penalty for a failure to file a return. This amendment is consequential to the introduction of the failure to file penalty under new section 280.1.

This amendment comes into force on April 1, 2007.

Income Tax Act

Clause 161

Payments under different acts

ITA
18(1)(*t*)

Paragraph 18(1)(*t*) of the Act provides that no amount paid or payable under the Act is deductible in computing a taxpayer's income but does not apply to tax paid or payable under Part XII.2 or Part XII.6.

Paragraph 18(1)(*t*) is amended so that interest paid or payable under the GST part of the Excise Tax Act or interest paid or payable under the Air Travellers Security Charge Act is not deductible in computing a taxpayer's income.

This amendment applies to taxation years that begin on or after April 1, 2007.

Clause 162

Small amounts

ITA
161.4

Subsection 161.4(2) of the Act provides that if the total of all amounts payable by the Minister of National Revenue to a person under this Act at any time does not exceed $2, the Minister shall apply those amounts against any amount owing, at that time, by the person to Her Majesty in Right of Canada. However, if at that time the person does not owe any amount to Her Majesty in Right of Canada, those amounts payable by the Minister are deemed to be nil.

This subsection is amended to replace the reference to the word “shall” with a reference to the word “may”. As a result, the Minister will have the option of first setting-off amounts against a person’s liabilities instead of being obliged to do so.

This amendment is consequential to amendments made to the *Excise Act, 2001*, the *Excise Tax Act* and the *Air Travellers Security Charge Act* and applies to amounts owing on or after April 1, 2007.

Clause 163

Refunds

ITA
164

Section 164 of the Act contains rules relating to refunds of taxes, including provisions dealing with repayments, application to other debts, and interest.

Withholding of refunds

ITA
164(2.01)

New subsection 164(2.01) of the Act provides that the Minister of National Revenue may not, in respect of a taxpayer, refund, repay, apply to other debts or set-off amounts if the Minister is aware that not all required returns of the taxpayer were filed under the Act, the *Excise Tax Act*, the *Air Travellers Security Charge Act* or the *Excise Act, 2001*.

As a result, the Minister may not refund, repay, apply to other debts or set-off amounts if the taxpayer has not filed all returns that are due.

This amendment is consequential to amendments made to the *Excise Act, 2001*, the *Excise Tax Act* and the *Air Travellers Security Charge Act* and comes into force on April 1, 2007.

Clause 164

Administration and enforcement

ITA
220

Section 220 of the Act sets out a number of rules relating to the administration and enforcement of the Act.

Subclause 164(1)

Extensions for returns

ITA
220(3)

Subsection 220(3) of the Act provides that while the penalty for making a late return will not be charged if the person files the return within the extended period the Minister of National Revenue has granted, the penalty for filing late return will be charged from the regular filing-due date if the return is not filed within the period so extended.

This subsection is amended to provide that a penalty for making a late return will be charged only after the extension period has expired.

This amendment is consequential to amendments made to the *Excise Act, 2001*, the *Excise Tax Act* and the *Air Travellers Security Charge Act* and applies in respect of extensions granted on or after April 1, 2007.

Subclause 164(2)

Dishonoured instruments

ITA
220(3.8)

New subsection 220(3.8) of the Act provides that for the purposes of the Act and the *Financial Administration Act* (FAA), any charge that is payable by a person under Part II of the *Interest and Administrative Charges Regulations* in respect of an instrument tendered in payment or settlement of an amount payable under the FAA, is deemed to be an amount to which the person is liable to pay under the Act.

It also provides that sections 152, 158 and 159, subsections 161(1), (2) and (11), sections 162 to 167 and Division J of Part I of the Act are applicable to the amount deemed to become payable or remittable by new subsection 220(3.8) with any modifications that the circumstances require. Consequently, Part II of the *Interest and Administrative Charges Regulations* does not apply to the charge and any debt under subsection 155.1(3) of the FAA is deemed to be extinguished at the time the total of the amount and any applicable interest under the Act is paid.

This amendment will have the effect of incorporating the *Interest and Administrative Charges Regulations* fee structure into the Act in order to have the interest rate under the Act apply to the fee.

This amendment is consequential to amendments made to the *Excise Act, 2001,* the *Excise Tax Act* and the *Air Travellers Security Charge Act* and applies in respect of instruments dishonoured on or after April 1, 2007.

Clause 165

Re-appropriation of amounts

ITA
221.2

Section 221.2 of the Act provides explicit authority for the Minister of National Revenue to accept transfers of payments from one tax account to another, and from one year to another. Those tax accounts are in respect of amounts payable under the Act, the *Employment Insurance Act,* the *Unemployment Insurance Act*, the *Canada Pension Plan* and in respect of amounts payable under an Act of a province with which the Minister of Finance has entered into an agreement for the collection of taxes payable to the province under that Act.

Idem

ITA
221.2(2)

Section 221.2 of the Act is, firstly, renumbered as subsection 221.2(1) and, secondly, is amended by adding new subsection 221.2(2) to provide explicit authority for the Minister of National Revenue to accept transfers of payments from one tax account to another, and from one year to another. Those tax accounts are in respect of amounts payable under the Act, the *Excise Tax Act*, the *Air Travellers Security Charge Act* or the *Excise Act, 2001*.

This amendment relates to the standardized accounting measures and applies in respect of re-appropriation applications made on or after April 1, 2007.

Clause 166

Collection restrictions

ITA
225.1

Section 225.1 of the Act restricts the collection of unpaid amounts for which a taxpayer has been assessed under the Act where the taxpayer objects to or appeals from the assessment. In most cases, the Minister of National Revenue is precluded from taking any of various collection actions, listed in paragraphs 225.1(*a*) to (*g*), until either 90 days have passed since the assessment or any objection or appeal by the taxpayer has been disposed of.

Section 225.1 is amended by repealing paragraph (*e*), which will have the effect of allowing the Minister to commence collection by way of deduction or set-off under section 224.1 on the day on which the notice of assessment is mailed.

This amendment is consequential to amendments made to the *Excise Act, 2001*, and the *Excise Tax Act* and comes into force on April 1, 2007.

Part 6

Consequential and Related Amendments

Income Tax Act

Clause 173

Income inclusion

ITA
56

Section 56 of the Act lists certain types of income that are required to be included in computing the income of a taxpayer from sources other than property, business and employment.

Section 56 is amended consequential to the introduction of the Universal Child Care Benefit.

ITA
56(6)

New subsection 56(6) provides that allowances paid under section 4 of the *Universal Child Care Benefit Act* will be included in computing the income of the taxpayer who received the allowance, if the taxpayer does not have a spouse or common-law partner at the end of a year. In any other case, the allowance will be included in the income of the lower-income spouse or common-law partner. If the income of both the taxpayer and the taxpayer's spouse or common-law partner is equal, the taxpayer who received the allowance will be required to include the amount in computing income.

This amendment is consequential to the introduction of the *Universal Child Care Benefit Act* and applies to amounts received after June 30, 2006.

Clause 174

Other Deductions

ITA
60

Section 60 of the Act provides for various deductions in computing income, many of which relate to certain income inclusions required under section 56 of the Act.

ITA
60(*y*)

New paragraph 60(*y*) of the Act provides a deduction in computing a taxpayer's income for a taxation year, in respect of repayments made in the taxation year under the *Universal Child Care Benefit Act* for amounts that were included in computing the taxpayer's income for the taxation year or a preceding taxation year because of new subsection 56(6) of the Act.

This amendment is consequential to the enactment of the *Universal Child Care Benefit Act* and applies to repayments made after June 30, 2006.

Clause 175

Definitions

ITA
122.5(1)

Subsection 122.5(1) of the Act defines a number of terms for the purpose of the goods and services tax credit (GSTC).

The definition of “adjusted income” is amended to exclude allowances paid under section 4 of the *Universal Child Care Benefit Act* from the income base upon which the GST credit is calculated.

This amendment is consequential to the introduction of the *Universal Child Care Benefit Act* and applies for the 2006 and subsequent taxation years.

Clause 176

Definitions

ITA
122.6

Section 122.6 of the Act defines a number of terms for the purpose of the Canada Child Tax Benefit (CCTB).

The definition of “adjusted income” is amended to exclude allowances paid under section 4 of the *Universal Child Care Benefit Act* from the income base upon which the CCTB is calculated.

This amendment is consequential to the introduction of the *Universal Child Care Benefit Act* and applies for the 2006 and subsequent taxation years.

Clause 177

Canada Child Tax Benefit

ITA
122.61(1)

Subsection 122.61(1) of the Act contains the calculation of the Canada Child Tax Benefit (CCTB). The first Part of the CCTB calculates the base amount. This base amount includes a supplement for children under 7 and is reduced by 25% of child care expenses claimed for all eligible dependants by the eligible individual. With the introduction of the Universal Child Care Benefit, this supplement is eliminated in respect of overpayments that are deemed to arise after June 30, 2006. As a transitional measure, this supplement will continue to be paid in respect of children that are 6 years of age at the beginning of each month that is after June 2006 and before July 2007.

This amendment is consequential to the introduction of the *Universal Child Care Benefit Act* and applies for the 2006 and subsequent taxation years.

Clause 178

Definitions

ITA
180.2(1)

Subsection 180.2(1) of the Act defines a number of terms for the purpose of the tax on old age security benefits.

The definition of "adjusted income" is amended to exclude allowances paid under section 4 of the *Universal Child Care Benefit Act* from the income base upon which the tax on old age security benefits is calculated.

This amendment is consequential to the introduction of the *Universal Child Care Benefit Act* and applies for the 2006 and subsequent taxation years.

Clause 179

Communication of Information

ITA
241(4)

Subsection 241(4) of the Act authorizes the communication of information to government officials, outside the Canada Revenue Agency, for limited purposes.

ITA
241(4)(*d*)

Paragraph 241(4)(*d*) of the Act is amended by adding new subparagraphs 241(4)(*d*)(vii.3) and (vii.4) to allow taxpayer information to be provided to an official for the purposes of the administration, enforcement, evaluation or formation of policy for the *Children's Special Allowances Act* (CSAA) and the *Universal Child Care Benefit Act* (UCCBA).

Those amendments are consequential to the enactment of the UCCBA. New subparagraph 241(4)(*d*)(vii.3) applies after June 2003 (to facilitate the administration of the child disability benefit in respect of allowances paid under the CSAA as well as after June 2006 to facilitate the payment of benefits paid under the UCCBA in respect of allowances paid under the CSAA). New subparagraph 241(4)(*d*)(vii.4) applies after June 2006.