Explanatory Notes – Canada–United States Enhanced Tax Information Exchange Agreement

Clause 1

Canada–United States Enhanced Tax Information Exchange Agreement Implementation Act

Canada has signed the *Agreement between the Government of Canada and the Government of the United States of America to Improve International Tax Compliance through Enhanced Exchange of Information under the Convention between Canada and the United States of America with Respect to Taxes on Income and on Capital* (the "agreement"). Under the agreement, Canada agrees to adopt domestic legislation to require certain Canadian financial institutions to report certain information with respect to accounts held by certain U.S. persons to the Canada Revenue Agency. Canada also agrees to automatically exchange this information with the United States pursuant to Article XXVII of the *Convention between Canada and the United States of America with Respect to Taxes on Income and on Capital*.

The *Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act* implements the agreement. The agreement, which is set out in the Schedule of this Act, has the force of law in Canada during the period that, by its terms, the agreement is in force.

This Act comes into force on Royal Assent.

Amendments to the Income Tax Act

Clause 2

Failure to provide identification number

ITA
162(6)

Subsection 162(6) of the *Income Tax Act* (the Act) provides a penalty for failure by any person or partnership to provide on request their Social Insurance Number (SIN) or business number to any person who is required to make an information return in respect of the individual. The penalty does not apply where an application is made for a number within 15 days of the request and the number is subsequently provided within 15 days of its receipt.

This subsection is amended to extend the penalty for failure by any person or partnership to provide their U.S. federal taxpayer identifying number when requested to do so. However, the penalty will not apply where an application is made for a U.S. federal taxpayer identifying number within 90 days of the request and the number is subsequently provided within 15 days of its receipt.

This amendment comes into force on the day on which the agreement, which is set out in the Schedule to the *Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act* enters into force.

Clause 3

Offences and punishment

ITA
238(1)

Subsection 238(1) of the Act makes it an offence for a person to fail to comply with a number of provisions in the Act and the *Income Tax Regulations*. This subsection is amended, consequential on the introduction of the new reporting regime in Part XVIII of the Act, which adopts by reference definitions and procedures described in the *Agreement between the Government of Canada and the Government of the United States of America to Improve International Tax Compliance through Enhanced Exchange of Information under the Convention between Canada and the United States of America with Respect to Taxes on Income and on Capital*. It will be an offence to fail to comply with new section 267 of the Act, which sets out the record keeping requirements for Part XVIII.

This amendment comes into force on Royal Assent.

Clause 4

Enhanced International Information Reporting

ITA
Part XVIII

New Part XVIII of the Act is added to require certain Canadian financial institutions to report certain information with respect to accounts held by certain U.S. persons to the Canada Revenue Agency. These rules adopt by reference definitions and procedures described in the *Agreement between the Government of Canada and the Government of the United States of America to Improve International Tax Compliance through Enhanced Exchange of Information under the Convention between Canada and the United States of America with Respect to Taxes on Income and on Capital* (in the notes for this Part referred to as the "agreement"). Penalties of general application in Part I of the Act, for non-compliance with reporting requirements for information returns, apply as well in respect of the reporting requirements under Part XVIII.

Part XVIII comes into force on the day on which the agreement, set out in the Schedule to the *Canada-United States Enhanced Tax Information Exchange Agreement Implementation Act*, enters into force.

The Canada Revenue Agency will provide guidance regarding the agreement and the obligations imposed by Part XVIII.

Definitions

ITA
263

Section 263 of the Act defines certain terms for the purposes of Part XVIII of the Act.

New subsection 263(1) defines the terms “agreement”, “electronic filing”, “non-reporting Canadian financial institution” and “U.S. reportable account”.

New subsection 263(2) provides that the terms “Canadian financial institution”, “reporting Canadian financial institution”, “non-reporting Canadian financial institution” and “financial institution” have the meaning assigned by the agreement (or in the case of “non-reporting Canadian financial institution” the meaning assigned by subsection (1)), subject to a modification of the definition in the agreement of “Financial Institution” to specify the types of institutions to be subject to Part XVIII.

New subsection 263(3) provides that, for purposes of Part XVIII, the term “financial account” is subject to a modification of the definition in the agreement to specify that a client name account maintained by a person or entity that is authorized under provincial legislation to engage in the business of dealing in securities or any other financial instrument, or to provide portfolio management or investment advising services, is a financial account.

New subsection 263(4) clarifies that a reference in the agreement to “Canadian TIN” or “taxpayer identification number” refers as well to a Social Insurance Number.

New subsection 263(5) provides that any term not defined in Part XVIII has the meaning that is defined in, or assigned by, the agreement.

New subsection 263(6) provides that no person will be liable for contravening the Act because of an amendment to the agreement unless, as at the date of the action of the person that would otherwise be a contravention, the amendment has been published in the *Canada Gazette* or the Government has taken reasonable steps to notify persons likely to be affected by the amendment.

Designation of account

ITA
264

Pursuant to Part XVIII of the Act, every financial account maintained by a reporting Canadian financial institution and held by one or more specified U.S. persons, or by a passive NFFE with one or more controlling persons that are specified U.S. persons, is a U.S. reportable account. New subsection 264(1) of the Act provides that a reporting Canadian financial institution may designate an account that would otherwise be U.S. reportable account for a calendar not to be a U.S. reportable account for the year if the account is:

- a preexisting individual account described in paragraph A of section II of Annex I to the agreement;
- a new individual account described in paragraph A of section III of Annex I to the agreement;
- a preexisting entity account described in paragraph A of section IV of Annex I to the agreement; or
- a new entity account described in paragraph A of section V of Annex I to the agreement.

New subsection 264(2) provides that a reporting Canadian financial institution may not designate a financial account for a calendar year under subsection 264(1) unless the account is part of a clearly identifiable group of accounts all of which are designated for the year.

New subsection 264(3) provides that the rules in paragraph C of section VI of Annex I to the agreement apply in determining whether a financial account is described in paragraphs 264(1)(*a*) to (*d*).

Identification obligation

ITA
265

New section 265 of the Act sets out the required due diligence procedures for reporting Canadian financial institutions.

New subsection 265(1) provides that every reporting Canadian financial institution is required to establish, maintain and document the due diligence procedures set out in subsections 265(2) and (3).

New subsection 265(2) provides that every reporting Canadian financial institution is required to implement the following due diligence procedures:

- for preexisting individual accounts that are lower value accounts, the procedures described in paragraphs B and C of section II of Annex I to the agreement, subject to paragraph F of that section;
- for preexisting individual accounts that are high value accounts, the procedures described in paragraphs D and E of section II of Annex I to the agreement, subject to paragraph F of that section;
- for new individual accounts, other than accounts described in paragraph A of section III of Annex I to the agreement,
    - the procedures described in paragraph B of section III of Annex I to the agreement; or
    - in respect of a clearly identifiable group of accounts, the procedures that would be applicable if the accounts were preexisting individual accounts that were lower value accounts, with such modifications as the circumstances require, including procedures to review any documentary evidence obtained by the institution in connection with the opening of the accounts for the U.S. indicia described in subparagraph B(1) of section II of Annex I to the agreement;
- for preexisting entity accounts, other than accounts described in paragraph A of section IV of Annex I to the agreement, the procedures described in paragraphs D and E of that section; and
- for new entity accounts, other than accounts described in paragraph A of section V of Annex I to the agreement, the procedures described in paragraphs B to E of that section.

New subsection 265(3) provides that if a reporting Canadian financial institution does not designate a financial account under subsection 264(1) of the Act in respect of a calendar year, the

institution is required to implement the following due diligence procedures in respect of the account:

- for a preexisting individual account described in paragraph A of section II of Annex I to the agreement, the procedures described in paragraphs B and C of that section, subject to paragraph F of that section;
- for a new individual account described in paragraph A of section III of Annex I to the agreement,
    - the procedures described in paragraph B of section III of Annex I to the agreement; or
    - in respect of a clearly identifiable group of accounts, the procedures that would be applicable if the account were a preexisting individual account that was a lower value account, with such modifications as the circumstances require, including procedures to review any documentary evidence obtained by the institution in connection with the opening of the account for the U.S. indicia described in subparagraph B(1) of section II of Annex I to the agreement;
- for a preexisting entity account described in paragraph A of section IV of Annex I to the agreement, the procedures described in paragraphs D and E of that section; and
- for a new entity account described in paragraph A of section V of Annex I to the agreement, the procedures described in paragraphs B to E of that section.

New subsection 265(4) provides that for the purpose of applying the due diligence procedures set out in subsection 265(2) and (3), subparagraphs B(1) to (3) of section I, and section VI, of Annex I to the agreement apply except that, in applying paragraph C of section VI of Annex I to the agreement, an account balance that has a negative value is deemed to be nil.

New subsection 265(5) provides that subsection 265(6) applies to a reporting Canadian financial institution in respect of a client name account maintained by the institution if the property recorded in the account is also recorded in a related account maintained by a dealer and the dealer has advised the institution whether the related account is a U.S. reportable account, unless the institution can reasonably conclude that the dealer has failed to comply with its due diligence obligations under section 265. If subsection 265(6) applies, the institution is not required to comply with the due diligence obligations under subsections 265(1) to (4) in respect of the account and shall rely on the determination of the dealer in determining whether the account is a U.S. reportable account.

Reporting

ITA
266

New section 266 of the Act sets out the requirements relating to the reporting of certain financial accounts by reporting Canadian financial institutions.

New subsection 266(1) requires every reporting Canadian financial institution that maintains a U.S. reportable account at any time during a calendar year and after June 29, 2014 to file an information return with the Minister of National Revenue before May 2 of the next year.

New subsection 266(2) requires every reporting Canadian financial institution to file an information return before May 2 of 2016 or 2017, as the case may be, if the institution makes a payment during the immediately preceding calendar year (i.e., 2015 or 2016, respectively) to a non-participating financial institution that is the holder of a financial account maintained by the reporting Canadian financial institution.

New subsection 266(3) requires every reporting Canadian financial institution that is required to file an information return under subsections 266(1) or (2) to file the return electronically.

Record keeping

ITA
267

New subsection 267(1) of the Act requires every reporting Canadian financial institution to maintain adequate records, including self-certifications and records of documentary evidence, to enable the Minister of National Revenue to determine whether the institution has complied with its obligations under Part XVIII of the Act.

New subsection 267(2) requires every reporting Canadian financial institution that keeps records in an electronic format to retain the records in an electronically readable format for the retention period referred to in subsection 267(3).

New subsection 267(3) requires every reporting Canadian financial institution that keeps, obtains or creates records for the purpose of complying with Part XVIII of the Act to retain those records for, in the case of a self-certification, six years following the day on which the related financial account is closed, or in the case of any other record, six years from the end of the last calendar year in respect of which the record is relevant.

Anti-avoidance

ITA
268

New section 268 of the Act provides an anti-avoidance rule. This rule provides that where a person enters into an arrangement or engages in a practice, the primary purpose of which is to avoid an obligation under Part XVIII of this Act, the person is subject to the obligation as if the person had not entered into the arrangement or engaged in the practice.

Deemed-compliant FFI

ITA
269

New section 269 of the Act provides that the obligations under Part XVIII of this Act apply, with such modifications as the circumstances require, to any Canadian financial institution that makes a reasonable determination that it is to be treated as a deemed-compliant FFI under Annex II to

the agreement, to the extent that the agreement would impose due diligence and reporting obligations on the institution.