
Explanatory Notes – Reporting of International Electronic Funds Transfers

Part 1 – Income Tax Act

Clause 1

Offences and punishment

ITA
238(1)

Subsection 238(1) of the *Income Tax Act* (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 respect of electronic funds transfers in Part XV.1 of the Act, to make it an offence to fail to comply with new section 244.7 of the Act, which sets out the record keeping requirements for Part XV.1.

This amendment comes into force on royal assent.

Clause 2

Where taxpayer information may be disclosed

ITA
241(4)

Section 241 of the Act prohibits the use or communication of taxpayer information by any official or other representative of the government, except as authorized. Subsection 241(4) authorizes the communication of information for limited purposes.

New paragraph 241(4)(r) is added to allow information, that can reasonably be considered to be relevant to a determination of whether a reporting entity (defined in section 244.1) has complied with a duty or obligation under Part XV.1 of the Act, to be provided to an official of the Financial Transactions and Reports Analysis Centre of Canada, solely for the purpose of ensuring compliance with Part 1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. The paragraph will not allow the sharing of information that directly or indirectly reveals the identity of a client, as defined in section 244.1. This amendment is consequential on the introduction of the new reporting regime in respect of electronic funds transfers in Part XV.1.

This amendment comes into force on royal assent.

Clause 3

Reporting of electronic funds transfers

ITA
Part XV.1

New Part XV.1 of the Act is added to require certain financial entities to report to the Minister of National Revenue certain electronic transfers of funds of \$10,000 or more into or out of Canada. Penalties of general application in Part I of the Act, for non-compliance with reporting requirements for information returns and for the failure to comply with a duty or obligation imposed under the Act or the *Income Tax Regulations*, apply in respect of the requirements under Part XV.1.

Part XV.1 comes into force on January 1, 2015.

Definitions

ITA
244.1

New section 244.1 of the Act defines certain terms for the purposes of Part XV.1 of the Act.

“cash”

The definition “cash” provides a list of financial instruments considered to be cash for the purposes of Part XV.1. Financial instruments meeting the definition “cash” are funds, a term defined in this section.

“casino”

A “casino” is, generally, an entity authorized by any of paragraphs 207(1)(a) to (g) of the *Criminal Code* to do business and that conducts its business in a permanent establishment where, generally, there is a slot machine, or roulette or card games are carried on. An entity meeting the definition “casino” is a reporting entity, as defined in this section, and is subject to the requirements in sections 244.2 and 244.3 of the Act to report certain electronic transfers of funds into or out of Canada.

“client”

A “client” of a reporting entity is an entity that requests the reporting entity to send or receive an electronic funds transfer, and includes any entity on whose behalf the entity that makes the request is acting.

“credit union central”

The definition “credit union central” provides a list of entities that are considered a credit union central. An entity meeting the definition “credit union central” is a reporting entity, as defined in this section, and is subject to the requirement in section 244.2 to report certain electronic transfers of funds into or out of Canada.

“electronic funds transfer”

An “electronic funds transfer” is the transmission of instructions for an international transfer of funds through any electronic, magnetic or optical device, telephone instrument or computer. A transfer of funds within Canada is not an electronic funds transfer for the purposes of Part XV.1. Under section 244.2, reporting entities must report certain electronic funds transfers to the Minister of National Revenue.

“entity”

An “entity” means an individual, a body corporate, a partnership, a fund or an unincorporated association or organization.

“funds”

The definition “funds” provides a list of the financial instruments considered to be funds for purposes of Part XV.1 of the Act.

“money services business”

A “money services business” means an entity engaged in one of the business activities listed in the definition. An entity meeting the definition “money services business” is a reporting entity, as defined in this section, and is subject to the requirement in section 244.2 to report certain electronic transfers of funds into or out of Canada.

“reporting entity”

The definition “reporting entity” provides a list of those entities (which are, generally, financial intermediaries) that are subject to the requirement in section 244.2 to report certain electronic transfers of funds into or out of Canada.

Electronic funds transfer

ITA
244.2

New subsection 244.2(1) of the Act requires every reporting entity that sends out of Canada, or receives from outside Canada, an electronic funds transfer of \$10,000 or more to file an information return with the Minister of National Revenue.

New subsection 244.2(2) clarifies that, subject to subsection 244.2(3), a reporting entity is not required to file an information return with the Minister of National Revenue relating to an electronic funds transfer if the reporting entity has sent or received the electronic funds transfer to or from an entity in Canada, even if the final recipient or initial sender, as the case may be, is located outside Canada.

New paragraph 244.2(3)(a) provides that subsection 244.2(1) applies to a reporting entity that, at the request of a client (as defined in section 244.1), orders another reporting entity to send an electronic funds transfer out of Canada, unless the entity provides the other reporting entity with the client’s name and address.

New paragraph 244.2(3)(b) provides that subsection 244.2(1) applies to a reporting entity if the entity receives an electronic funds transfer for a beneficiary in Canada from another reporting entity in circumstances where the initial sender is outside Canada, unless the transfer contains the beneficiary’s name and address.

New subsection 244.2(4) provides that if, in respect of an electronic funds transfer, a reporting entity is acting as an agent of or is otherwise authorized by a second reporting entity, then the requirement in subsection 244.2(1) to report the transfer applies to the second reporting entity.

Casino

ITA
244.3

New section 244.3 of the Act provides that a casino is subject to the requirement in section 244.2 to file an information return if an international electronic funds transfer of \$10,000 or more is made in the establishment of the casino during the course of a business temporarily conducted by a registered charity for a period of two consecutive days or less under the supervision of the casino.

Single transaction

ITA
244.4

New subsection 244.4(1) of the Act provides a 24-hour rule to determine whether multiple funds transfers are to be considered a single transaction for the purposes of Part XV.1. Accordingly, a single transaction includes the sending or receiving within a 24-hour period of two or more international electronic funds transfers of less than \$10,000 that together total \$10,000 or more, if the transfers are conducted by, or on behalf of, the same entity.

New subsection 244.4(2) provides an exception to subsection 244.4(1). The 24-hour rule does not apply in respect of an electronic funds transfer sent to two or more beneficiaries if the transfer is sent at the request of certain entities listed in paragraphs 244.4(2)(a) to (e).

Foreign currency

ITA
244.5

Every reporting entity that carries out an electronic funds transfer in a foreign currency must convert the amount of the transfer into Canadian dollars in order to determine whether the transfer is reportable to the Minister of National Revenue. Under new section 244.5 of the Act, reporting entities are required to convert the amount of a transfer using the official conversion rate of the Bank of Canada in effect at the time of the transfer. If the Bank of Canada rate is not available, the entity may convert the amount using the exchange rate the entity would use in the normal course of business at the time of the transfer.

Filing a return

ITA
244.6

New section 244.6 of the Act provides that every reporting entity that is required to file an information return under Part XV.1 shall file the return no later than five working days after the date of the electronic funds transfer. The return is to be filed electronically if the reporting entity has the technical capabilities to do so.

Record keeping

ITA
244.7

New subsection 244.7(1) of the Act requires every reporting entity to maintain adequate records. Such records must be kept as will enable the Minister of National Revenue to determine whether the reporting entity has complied with its duties and obligations under Part XV.1. New subsection 244.7(2) allows records to be retained in machine-readable, or electronic, format if a paper copy can be readily produced from it. New subsection 244.7(3) requires that records in respect of an electronic funds transfer be retained for five years from the date of the transfer.

Clause 4

Definitions

ITA
248(1)

Subsection 248(1) of the Act provides a number of definitions that apply for the purposes of the Act.

“credit union”

The definition “credit union”, which has the meaning assigned by subsection 137(6), is amended consequential on the introduction of the new reporting regime in respect of electronic funds transfers in Part XV.1 of the Act, to provide that this definition does not apply for the purposes of Part XV.1.

This amendment comes into force on January 1, 2015.

Part 2 – Excise Tax Act

Clause 5

Electronic funds transfer

ETA
98.2

New section 98.2 of the *Excise Tax Act* (ETA) provides, for greater certainty, that information obtained under Part XV.1 of the *Income Tax Act* (ITA) by the Minister of National Revenue may be used for the purposes of the non-Goods and Services Tax portion of the ETA. New Part XV.1 of the ITA requires certain financial entities to report an electronic funds transfer of \$10,000 or more to the Minister of National Revenue.

New section 98.2 comes into force on January 1, 2015, the same day that new Part XV.1 of the ITA comes into force.

Clause 6

Electronic funds transfer

ETA
Heading for Subdivision b.3 of Division VII

This heading is changed to remove the reference to "financial institutions" as a consequence of the addition of a new section 273.3 of the ETA, which relates to information returns filed under new Part XV.1 of the ITA by certain financial entities that are not necessarily financial institutions for the purposes of Part IX of the ETA.

This amendment comes into force on January 1, 2015.

Clause 7

Electronic funds transfer

ETA
273.3

New section 273.3 of the ETA provides, for greater certainty, that information obtained under Part XV.1 of the ITA by the Minister of National Revenue may be used for the purposes of Part IX of the ETA. New Part XV.1 of the ITA requires certain financial entities to report an electronic funds transfer of \$10,000 or more to the Minister of National Revenue.

New section 273.3 comes into force on January 1, 2015, the same day that new Part XV.1 of the ITA comes into force.

Part 3 – Excise Act, 2001

Clause 8

Electronic funds transfer

EA, 2001
207.1

New section 207.1 of the *Excise Act, 2001* (EA, 2001) provides, for greater certainty, that information obtained under Part XV.1 of the *Income Tax Act* (ITA) by the Minister of National Revenue may be used for the purposes of the EA, 2001. New Part XV.1 of the ITA requires certain financial entities to report an electronic funds transfer of \$10,000 or more to the Minister of National Revenue.

New section 207.1 comes into force on January 1, 2015, the same day that new Part XV.1 of the ITA comes into force.

Part 4 – Air Travellers Security Charge Act

Clause 9

Electronic funds transfer

ATSCA

37.1

New section 37.1 of the *Air Travellers Security Charge Act* (ATSCA) provides, for greater certainty, that information obtained under Part XV.1 of the *Income Tax Act* (ITA) by the Minister of National Revenue may be used for the purposes of the ATSCA. New Part XV.1 of the ITA requires certain financial entities to report an electronic funds transfer of \$10,000 or more to the Minister of National Revenue.

New section 37.1 comes into force on January 1, 2015, the same day that new Part XV.1 of the ITA comes into force.