Explanatory Notes Relating to the Excise Tax Act, Excise Act and Related Regulations

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Preface

These explanatory notes describe proposed amendments to the *Excise Tax Act*, to the *Excise Act* and to related regulations. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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Excise Tax Act

Clause 1

Definitions

ETA
123(1)

Subsection 123(1) of the *Excise Tax Act* (the Act) defines terms used in Part IX of the Act and in the Schedules to the Act relating to the goods and services tax/harmonized sales tax (GST/HST).

Subclause 1(1)

Definition "Agency"

ETA
123(1)

The term "Agency" refers to the Canada Revenue Agency continued by subsection 4(1) of the *Canada Revenue Agency Act*.

The amendment repeals this definition as it is no longer needed given that other amendments are made to replace the relevant references to the term "Agency" in the Act by references to the term "Canada Revenue Agency".

This amendment comes into force on royal assent.

Subclause 1(2)

Definition "credit union"

ETA
123(1)

The term "credit union" is defined in subsection 123(1) of the Act and has the meaning assigned by subsection 137(6) of the *Income Tax Act* and includes a corporation described in subparagraph 137.1(5)(a)(i) of that Act.

Currently, there are references to "corporation" in various definitions in subsection 137.1(5) of the *Income Tax Act*. Consequently, to provide for a more precise cross-reference, the definition "credit union" in subsection 123(1) is amended to refer to a corporation described in paragraph (a) of the definition "deposit insurance corporation" in subsection 137.1(5) of that Act.

This amendment is deemed to have come into force on March 1, 1994, corresponding to the coming-into-force date of the fifth supplement to the Revised Statutes of Canada, 1985, which comprises the *Income Tax Act.*

Subclause 1(3)

Definition "cooperative corporation"

ETA
123(1)

The definition "cooperative corporation" in subsection 123(1) of the Act is relevant for purposes of section 140 of the Act. Under section 140, shares or other securities of certain cooperatives are excluded from the rule that would result in tax applying where a membership is supplied in connection with the security.

The French version of the definition is amended to ensure better consistency with the terminology used in the *Income Tax Act*, which is referred to in the definition.

This amendment is deemed to have come into force on March 1, 1994, corresponding to the coming-into-force date of the fifth supplement to the Revised Statutes of Canada, 1985, which comprises the *Income Tax Act.*

Subclause 1(4)

Definition "pension entity"

ETA
123(1)

The existing definition "pension entity" of a pension plan includes a trust, or a person that is deemed to be a trust for the purposes of the *Income Tax Act*, where the pension plan governs the trust.

A consequential amendment is made to the definition "pension entity" to remove the reference to a person that is deemed to be a trust for the purposes of the *Income Tax Act*. The amendment is consequential to the enactment of new section 130.1 of the Act, which deems certain arrangements to be trusts for the purposes of Part IX of the Act.

This amendment is deemed to have come into force on July 23, 2016.

Subclause 1(5)

Definition "pension plan"

ETA
123(1)

The existing definition "pension plan" means a registered pension plan (as defined in subsection 248(1) of the *Income Tax Act*) or a pooled registered pension plan (as defined in subsection 147.5(1) of that Act) that is described by either paragraph (a) or paragraph (b) of the definition. Paragraph (a) requires that the registered pension plan or pooled registered pension plan govern a person that is a trust or that is deemed to be a trust for the purposes of that Act.

Paragraph (a) is amended so that it now only requires that the registered pension plan or pooled registered pension plan govern a trust. The amendment to paragraph (a) is consequential to the enactment of new section 130.1 of the Act, which deems certain arrangements to be trusts for the purposes of Part IX of the Act.

This amendment is deemed to have come into force on July 23, 2016.

Subclause 1(6)

Definitions

ETA
123(1)

Subsection 123(1) is amended to add new definitions "investment limited partnership", "master pension entity" and "master pension factor".

Investment limited partnership

The new definition "investment limited partnership" is used in subsections 132(6), 149(5) and 272.1(8) of the Act, in section 4.1 of the *Financial Services and Financial Institutions (GST/HST) Regulations*, in the definition "distributed investment plan" in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*, as well as in section 73 of those Regulations.

A limited partnership whose primary purpose is to invest funds in property consisting primarily of financial instruments is an investment limited partnership if it meets the criteria set out under either paragraph (a) or (b) of the definition.

The condition in paragraph (a) of the definition would be met if the limited partnership is represented or promoted as a hedge fund, investment limited partnership, mutual fund, private equity fund or venture capital fund or other similar collective investment vehicle. The condition

in paragraph (a) would also be met if the limited partnership forms part of an arrangement or structure that is represented or promoted as a hedge fund, investment limited partnership, mutual fund, private equity fund or venture capital fund or similar collective investment vehicle. For example, this could include limited partnerships in tiered investment fund structures such as master-feeder funds or fund-of-funds.

The condition in paragraph (b) of the definition would be met if listed financial institutions (as described in paragraph 149(1)(a) of the Act) hold interests representing at least 50 per cent of the total value of all the interests in the limited partnership. This is intended to include, for example, a limited partnership that is otherwise not included in paragraph (a) of the definition that is an investment vehicle for, or a funding medium for investing on behalf of, listed financial institutions.

The definition "investment limited partnership" is deemed to have come into force on Announcement Date.

Master pension entity

The new definition "master pension entity" is used in sections 157 and 172.1, new section 172.2 and sections 232.01 and 232.02 of the Act. A master pension entity is generally a certain type of trust or corporation that is in whole or part owned by pension entities of pension plans (as those terms are defined in subsection 123(1) of the Act). More specifically, a master pension entity of a pension plan is either (1) a corporation described in paragraph 149(1)(o.2) of the *Income Tax Act*, one or more shares of which are owned by a pension entity of the pension plan; or (2) a trust prescribed to be a master trust for the purposes of paragraph 149(1)(o.4) of the *Income Tax Act* (i.e., a trust described in subsection 4802(1.1) of the *Income Tax Regulations*), one or more units of which are owned by a pension entity of the pension plan. However, a pension entity of a pension plan is excluded from the definition master pension entity.

The definition "master pension entity" is deemed to have come into force on September 23, 2009.

Master pension factor

The new definition "master pension factor" is used in sections 157 and 172.1, new section 172.2 and sections 232.01 and 232.02 of the Act. It generally indicates the percentage to which units or shares of a master pension entity of a pension plan are owned by pension entities of that pension plan.

The master pension factor in respect of a pension plan for a fiscal year of a master pension entity is determined by the formula A divided by B. Element A of the formula is the total value, as of the first day of the fiscal year, of the units or shares of the master pension entity that are held by

pension entities of the pension plan on that day. Element B of the formula is the total value, as of the first day of the fiscal year, of the units or shares of the master pension entity.

The definition "master pension factor" is deemed to have come into force on July 22, 2016.

Clause 2

Arrangements deemed to be trusts

ETA
130.1

New section 130.1 of the Act contains a number of rules that apply to property subject to an arrangement governed by the laws of the Province of Quebec for the purposes of applying Part IX of the Act. It applies in the case where an arrangement is deemed to be a trust for purposes of the *Income Tax Act* pursuant to paragraph 248(3)(b) or (c) of that Act. Paragraph 248(3)(b) of the *Income Tax Act* deems certain arrangements established before the October 31, 2003 introduction of the *Civil Code of Quebec* to be trusts for purposes of that Act. Paragraph 248(3)(c) of the *Income Tax Act* deems a qualifying arrangement (as described by subsection 248(3.2) of that Act) to be a trust for purposes of that Act.

Where an arrangement is deemed to be a trust for purposes of the *Income Tax Act* pursuant to paragraph 248(3)(b) or (c) of that Act, the following rules apply for the purposes of Part IX of the Act:

- The arrangement is deemed to be a trust;
- Property subject to rights and obligations under the arrangement is deemed to be held in trust and not otherwise;
- In the case of an arrangement referred to in paragraph 248(3)(b) of that Act, a person that has a right (whether immediate or future and whether absolute or contingent) to receive all or part of the income or capital in respect of property that is referred to in that paragraph is deemed to be beneficially interested in the trust; and
- In the case of an arrangement referred to in paragraph 248(3)(c) of that Act, any property contributed at any time to the arrangement by an annuitant, a holder or a subscriber of the arrangement, as the case may be, is deemed to have been transferred, at that time, to the trust by the contributor.

New section 130.1 is deemed to have come into force on July 23, 2016.

Clause 3

Residence of investment limited partnerships

ETA
132(6)

New subsection 132(6) of the Act provides that if, at any time, the total value of all interests in an investment limited partnership (as defined in subsection 123(1) of the Act) that are held by non-resident members of the partnership is 95 per cent or more of the value of all interests in the partnership, the investment limited partnership is deemed to not be resident in Canada at that time. Any non-resident member of the partnership that is a member of the partnership prescribed by regulations for the purposes of subsection 132(6) is not to be treated as a non-resident member for the purposes of this determination.

An investment limited partnership that is deemed to not be resident in Canada under subsection 132(6) may nevertheless be deemed to be resident in Canada under existing subsection 132(2) of the Act in respect of activities it carries on through a permanent establishment (as defined in subsection 123(1) of the Act) it has in Canada.

New subsection 132(6) is deemed to have come into force on Announcement Date.

Clause 4

Apportionment rules

ETA
141.01(1.2), (4), (6) and (7)

Section 141.01 of the Act clarifies and reinforces the requirement to apportion the use of inputs, based on the extent to which the inputs are used or consumed, or acquired, imported or brought into a participating province for consumption or use, for the purposes of making taxable or non-taxable supplies. This apportionment is relevant to the determination of input tax credits.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French versions of subsections 141.01(1.2), (4) and (7) are amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*".

The French version of subsection 141.01(6) is also amended to correct a grammatical error.

These amendments come into force on royal assent.

Clause 5

Meaning of "investment plan"

ETA
149(5)

Existing subsection 149(5) of the Act defines the term "investment plan" for the purposes of section 149 and includes persons described by any of paragraphs 149(5)(a) to (g). This term is used in paragraph 149(1)(a) to include a number of entities such as investment corporations, mortgage investment corporations, mutual fund corporations and non-resident owned investment corporations, all as defined for income tax purposes, in the definition of "financial institution". Entities that meet the definition "investment plan" in subsection 149(5) are "listed financial institutions" (as defined in subsection 123(1) of the Act) for the purposes of Part IX of the Act by virtue of being a person referred to in paragraph 149(1)(a).

Existing paragraph 149(5)(a) describes a trust governed by certain plans described by any of subparagraphs 149(5)(a)(i) to (xiii). Paragraph 149(5)(a) is amended to delete subparagraph 149(5)(a)(xi), which refers to a trust governed by a pooled fund trust as defined for the purposes of the *Income Tax Act* or the *Income Tax Regulations*, as the term "pooled fund trust" is no longer a defined term for the purposes of the *Income Tax Act* or the *Income Tax Regulations*.

As well, paragraph 149(5)(a) is amended to add new subparagraphs (iv.1) and (vi.1), with the result that a trust governed by a TFSA (within the meaning assigned by subsection 146.2(5) of the *Income Tax Act*) or by a registered disability savings plan (within the meaning of subsection 146.4(1) of the *Income Tax Act*) will now be an investment plan for the purposes of section 149.

The amendments to paragraph 149(5)(a) apply in respect of any taxation year of a person that begins after July 22, 2016.

The French versions of paragraphs 149(5)(b) to (e) are amended in order to ensure better consistency with the terminology used in the *Income Tax Act* to refer to these types of entities. The amendments to paragraphs 149(5)(b) to (e) are deemed to have come into force on March 1, 1994, corresponding to the coming-into-force date of the fifth supplement to the Revised Statutes of Canada, 1985, which comprises the *Income Tax Act.*

Subsection 149(5) is also amended by adding new paragraph 149(5)(f.1), with the result that an "investment limited partnership" (as defined in subsection 123(1) of the Act) will now be an investment plan for the purposes of section 149.

This amendment to subsection 149(5) applies in respect of any taxation year of a person that begins after 2018.

Existing paragraph 149(5)(g) describes a prescribed person or a person of a prescribed class but only if the prescribed person or person of a prescribed class would be a selected listed financial institution (as described in subsection 225.2(1) of the Act) for a reporting period in a fiscal year that ends in a taxation year of the person if the person were a listed financial institution for the taxation year and preceding taxation year. As a result, if, for the purposes of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*, a prescribed person or a person of a prescribed class has a permanent establishment in a participating province at any time in a taxation year of the person and a permanent establishment in at least one other province at any time in that taxation year, that person will be an investment plan (as well as a listed financial institution and selected listed financial institution) for its reporting periods in its fiscal year that ends in the taxation year. However, a prescribed person or a person of a prescribed class that does not meet this permanent establishment test throughout a taxation year of the person will not be an investment plan for its reporting periods in its fiscal year that ends in the taxation year.

Paragraph 149(5)(g) is amended to remove the requirement that the prescribed person or person of a prescribed class would be a selected listed financial institution for a reporting period in a fiscal year that ends in a taxation year of the person if the person were an investment plan for the taxation year and preceding taxation year. As a result, a prescribed person or person of a prescribed class will be an investment plan irrespective of the provinces in which its permanent establishments are located.

The amendment to paragraph 149(5)(g) applies in respect of any taxation year of a person that begins after July 22, 2016.

Clause 6

Non-arm's length supplies

ETA
155(1)

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

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French version of subsection 155(1) is amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*". Furthermore, the structure of French version of the subsection is also modified to ensure better consistency between the French and English versions of the Act.

These amendments come into force on royal assent.

Clause 7

Pension Plans — election for nil consideration

ETA
157

Existing section 157 of the Act allows a "participating employer" of a "pension plan" to jointly elect with a "pension entity" (all three terms as defined in subsection 123(1) of the Act) of that pension plan to treat actual taxable supplies by the employer to the pension entity as being made for no consideration. The election is provided where the employer accounts for and remits tax on all taxable supplies that the employer is deemed by subsection 172.1(5) or (6) of the Act to have made in respect of the pension plan for the period while the election is in effect.

Section 157 is amended so that it also permits a participating employer of a pension plan to jointly elect with a "master pension entity" (as defined in subsection 123(1)) of that pension plan to treat actual taxable supplies by the employer to the master pension entity as being made for no consideration. The amendments to section 157 amend subsections 157(4) to (10) and add new subsections 157(2.1), (2.2) and (3.1).

The amendments to section 157 apply in respect of supplies made by a participating employer after July 21, 2016, other than

- a supply made by a participating employer of a pension plan to a master pension entity of the pension plan of all or part of property or a service if the participating employer acquired the property or service before the first fiscal year of the participating employer that begins after July 21, 2016; or
- a supply made by a participating employer of a pension plan to a master pension entity of the pension plan of property or a service if the participating employer, before the first fiscal year of the participating employer that begins after July 21, 2016, consumes or uses an employer resource (as defined in subsection 172.1(1) of the Act) for the purpose of making the supply.

Election for nil consideration — master pension entity

ETA
157(2.1)

New subsection 157(2.1) of the Act permits a participating employer of a pension plan and a master pension entity of the pension plan to jointly make an election to have every taxable supply made by the participating employer to the master pension entity be deemed to have been

made for no consideration under subsection 157(2.2). Under paragraph 157(5)(b), a joint election under subsection 157(2.1) is effective from the date specified in the election, which must be the first day of a particular fiscal year of the participating employer. However, the election may only be made if the percentage determined for element A of subsection 157(2.1) in respect of the master pension entity and the participating employer for the particular fiscal year is greater than or equal to 90 per cent. Element A in respect of the master pension entity and the participating employer is the total of all percentages, each of which is a "master pension factor" (as defined in subsection 123(1) of the Act) in respect of a pension plan of the participating employer for the fiscal year of the master pension entity that includes the day on which the election is to become effective.

The requirements for making a valid joint election under subsection 157(2.1) are provided in subsection 157(5). Once the joint election comes into effect, it remains in effect until such time as it ceases to have effect under subsection 157(6).

Effect of subsection (2.1) election

ETA
157(2.2)

New subsection 157(2.2) of the Act provides that, where a participating employer of a pension plan and a master pension entity of the pension plan have jointly made an election under new subsection 157(2.1), every taxable supply, other than a supply excluded by new subsection 157(3.1), made by the participating employer to the master pension entity while the joint election is in effect is deemed to have been made for no consideration for the purposes of Part IX of the Act. The effect of the joint election is that the participating employer would not charge tax on an actual taxable supply made to the master pension entity. However, the employer would remain obligated to account for and remit tax that the employer is deemed to have collected

- under subsection 172.1(5.1), in respect of property or services acquired for the purpose of making the actual taxable supply to the master pension entity; and
- under subsection 172.1(6.1), in respect of an "employer resource" (as defined in subsection 172.1(1) of the Act) of the participating employer used or consumed for the purpose of making the actual taxable supply to the master pension entity.

Where a joint election under this subsection is in effect between a participating employer and a master pension entity of a pension plan in a fiscal year of the participating employer, the participating employer is excluded from being a "selected qualifying employer", within the meaning assigned by subsection 172.1(9) of the Act, of the pension plan for the fiscal year (see note on subsection 172.1(9)).

Non-application of subsection (2.2)

ETA
157(3.1)

New subsection 157(3.1) of the Act provides that subsection 157(2.2) does not apply to a supply that is described below. Subsection 157(2.2) deems, for the purposes of Part IX of the Act, certain supplies made by a participating employer of a pension plan to a master pension entity of the pension plan to have been made for no consideration. Specifically, subsection 157(3.1) provides that subsection 157(2.2) does not apply to:

- a supply deemed to have been made by the participating employer under section 172.1 of the Act;
- a supply of property or of a service that is not acquired by the master pension entity for consumption, use or supply by the master pension entity in the course of a "pension activity" (as defined in subsection 172.1(1)) in respect of the pension plan;
- a supply made by the participating employer to the master pension entity of all or part of property, or of a service, if, at the time the participating employer acquires the property or service, the participating employer is a "selected qualifying employer" (within the meaning assigned by subsection 172.1(9)) of the pension plan;
- a supply made by the participating employer to the master pension entity of property or a service if, at the time the participating employer consumes or uses any "employer resource" (as defined in subsection 172.1(1)) of the participating employer for the purpose of making the supply, the participating employer is a selected qualifying employer of the pension plan; or
- a supply made in prescribed circumstances or by a prescribed person (currently, no circumstances or persons are proposed to be prescribed by regulation).

Joint revocation

ETA
157(4)

Existing subsection 157(4) of the Act allows a participating employer of a pension plan and a pension entity of the pension plan that have jointly made an election under subsection 157(2) to jointly revoke that election.

Subsection 157(4) is amended so that it also allows a participating employer of a pension plan and a master pension entity of the pension plan that have jointly made an election under subsection 157(2.1) to jointly revoke that election.

Form of election and revocation

ETA
157(5)

Existing subsection 157(5) of the Act provides the requirements that a participating employer of a pension plan and a pension entity of the pension plan must meet to make a valid joint election under subsection 157(2) or a valid joint revocation under subsection 157(4).

Subsection 157(5) is amended so that it also provides that the requirements specified in the subsection must be met by a participating employer of a pension plan and a master pension entity of the pension plan in order to make a valid joint election under new subsection 157(2.1) or a valid joint revocation of such an election under subsection 157(4).

Cessation

ETA
157(6)

Existing subsection 157(6) of the Act provides the circumstances under which a joint election made under subsection 157(2) between a participating employer of a pension plan and a pension entity of the pension plan ceases to have effect.

Subsection 157(6) is amended so that it now also provides the circumstances under which a joint election made under subsection 157(2.1) between a participating employer of a pension plan and a master pension entity of the pension plan ceases to have effect. Specifically, subsection 157(6) provides that an election under subsection 157(2.1) between a participating employer of a pension plan and a master pension entity of the pension plan ceases to have effect on the earliest of:

- the day on which the participating employer ceases to be a participating employer of the pension plan;
- the day on which the master pension entity ceases to be a master pension entity of the pension plan;
- the day on which a joint revocation of the joint election made by the participating employer and the master pension entity under subsection 157(4) becomes effective;
- where the Minister of National Revenue has revoked the joint election under subsection 157(9), the day specified in the notice of revocation of the joint election sent under that subsection by the Minister to the participating employer and the master pension entity; and

- the first day of a fiscal year of the master pension entity for which element A in respect of the master pension entity and the participating employer for the fiscal year is less than 90 per cent, where element A is the total of all percentages, each of which is a master pension factor in respect of any pension plan of which the participating employer is a participating employer for that fiscal year of the master pension entity.

Notice of intent

ETA
157(7)

Existing subsection 157(7) of the Act applies where a joint election made under subsection 157(2) by a participating employer of a pension plan and a pension entity of the pension plan is in effect at any time in a particular fiscal year of the participating employer and the participating employer fails to account for, as and when required under Part IX, any tax deemed to have been collected by the participating employer under subsection 172.1(5) or (6) in respect of the pension plan on the last day of the particular fiscal year.

Subsection 157(7) is amended so that it also applies where a joint election made under subsection 157(2.1) by a participating employer of a pension plan and a master pension entity of the pension plan is in effect at any time in a particular fiscal year of the participating employer and the participating employer fails to account for, as and when required under Part IX of the Act, any tax deemed to have been collected by the participating employer under any of subsections 172.1(5) to (6.1) in respect of the pension plan on the last day of the particular fiscal year. In this case, subsection 157(7) allows the Minister of National Revenue to send a written notice of intent to the participating employer and the master pension entity of the Minister's intention to revoke the joint election as of the first day of the particular fiscal year. The issuance of the notice of intent by the Minister to the participating employer is required before the Minister may exercise the discretion granted to the Minister under subsection 157(9) to revoke the joint election.

Representations to Minister

ETA
157(8)

Existing subsection 157(8) of the Act applies where the Minister of National Revenue has issued a notice of intent under subsection 157(7) to exercise the discretion granted to the Minister under subsection 157(9) to revoke a joint election made under subsection 157(2) by a participating employer of a pension plan and a pension entity of the pension plan.

Subsection 157(8) is amended so that it also applies where the Minister has issued a notice of intent under subsection 157(7) to exercise the discretion granted to the Minister under subsection

157(9) to revoke a joint election made under subsection 157(2.1) by a participating employer of a pension plan and a master pension entity of the pension plan. In this case, upon receipt of a notice of intent, the participating employer is required by subsection 157(8) to establish to the satisfaction of the Minister that the participating employer did not fail to account for, as and when required under Part IX of the Act, tax deemed to have been collected by the participating employer under any of subsections 172.1(5) to (6.1) in respect of the pension plan. If the participating employer fails to satisfy the Minister of this, the Minister may revoke the joint election under subsection 157(9).

Notice of revocation

ETA
157(9)

Existing subsection 157(9) of the Act permits the Minister of National Revenue to send a written notice of revocation to a participating employer of a pension plan and to a pension entity of the pension plan that their joint election under subsection 157(2) is revoked as of the day specified in the notice of revocation.

Subsection 157(9) is amended so that is also permits the Minister to send a written notice of revocation to a participating employer of a pension plan and to a master pension entity of the pension plan that their joint election under subsection 157(2.1) is revoked as of the day specified in the notice of revocation. This written notice may only be sent if, after 60 days after the day on which a notice of intent under subsection 157(7) was sent by the Minister to the participating employer, the Minister is not satisfied that the participating employer did not fail to account for, as and when required under Part IX of the Act, tax deemed to have been collected by the participating employer under any of subsections 172.1(5) to (6.1) in respect of the pension plan.

Revocation — effect

ETA
157(10)

Existing subsection 157(10) of the Act provides that, for the purposes of Part IX of the Act, a joint election made under subsection 157(2) that has been revoked by the Minister of National Revenue under subsection 157(9) is deemed never to have been in effect on any day on or after the day specified in the notice of revocation issued by the Minister under subsection 157(9).

Subsection 157(10) is amended so that it also provides that, for the purposes of Part IX of the Act, a joint election made under subsection 157(2.1) that has been revoked by the Minister under subsection 157(9) is deemed never to have been in effect on any day on or after the day specified in the notice of revocation issued by the Minister under subsection 157(9).

Clause 8

Effect of election

ETA
167(1.1)

Existing subsection 167(1.1) of the Act sets out the rules that apply when, under an agreement to supply a business or part of a business, the supplier and recipient jointly elect under subsection 167(1) of the Act to treat certain supplies made under the agreement as non-taxable.

The French version of subsection 167(1.1) is amended to ensure better consistency with paragraph 167(1)(b) and with the English version of the Act.

This amendment comes into force on royal assent.

Clause 9

Deposits

ETA
168(9)

Existing subsection 168(9) of the Act provides that, if a deposit, whether refundable or not, is given with respect to a taxable supply, GST/HST is not payable on the deposit until the time the supplier applies the deposit against the consideration for the supply.

While the English version of subsection (9) refers to the term "deposit", the French version of subsection (9) refers to the term "*arrhes*". In Canada, the term "*arrhes*" is now an archaic notion that is rarely used. Even when still used, it is usually intended to mean a non-refundable deposit rather than its strict technical meaning, which was either a right of withdrawal that could be exercised by both the vendor and the purchaser or prepaid liquidated damages. Consequently, the French version of subsection 168(9) is amended to replace the term "*arrhes*" with the general term "*dépôt*".

This amendment comes into force on royal assent.

Clause 10

Pension Plans

ETA
172.1

Existing section 172.1 of the Act sets out the rules for determining when a person that is a registrant and a participating employer of a pension plan (both terms as defined in subsection

123(1) of the Act) will be deemed to have made a taxable supply of property or a service relating to a pension activity (as defined in subsection 172.1(1)) in respect of the pension plan. Section 172.1 also deems tax in respect of that deemed taxable supply to have become payable on the day the supply is deemed to have been made and the employer is deemed to have collected that tax on that day. The employer must add that tax in determining its net tax and, where that net tax is a positive amount, remit that net tax.

Section 172.1 is amended in relation to its application to activities in respect of master pension entities (as defined in subsection 123(1)). These amendments to section 172.1 amend the definitions "pension activity" and "specified supply" in subsection 172.1(1) as well as subsections 172.1(2), (4), (5), (7) to (10) and (12). The amendments also add new definitions "master pension group" and "specified resource" in subsection 172.1(1) and new subsections 172.1(5.1), (6.1), (7.1) and (8.1).

Further, section 172.1 is amended to change the definition "excluded activity" in subsection 172.1(1), to add the new definitions "defined benefit pension plan" and "defined contribution pension plan" in subsection 172.1(1) and to amend subsections 172.1(5), (6) and (7).

Subclauses 10(1) to (5)

Definitions

ETA
172.1(1)

Subsection 172.1(1) of the Act defines terms used in section 172.1.

In this subsection, the definition "excluded activity" is amended and the new definitions "defined benefits pension plan" and "defined contributions pension plan" are added. These amendments to subsection 172.1(1) apply in respect of fiscal years of an employer beginning after July 22, 2016.

Further, subsection 172.1(1) is amended to provide that the terms defined in it also apply in new section 172.2 of the Act. In addition, the definitions "pension activity" and "specified supply" are amended and the new definitions "master pension group" and "specified resource" are added. These amendments to subsection 172.1(1) are deemed to have come into force on July 22, 2016.

Excluded activity

The existing definition "excluded activity" generally describes an activity in respect of a pension plan that is undertaken by a participating employer of the pension plan but that is an activity of a type that is normally carried on by an employer for purposes other than administering a pension plan, such as for securities regulation or financial reporting purposes. Excluded activities are carved out from the definition "pension activity" in subsection 172.1(1) and, as a result, the acquisition of property or a service, or the consumption or use of "employer resources" (as

defined in subsection 172.1(1)), exclusively in the course of excluded activities is not subject to the deemed supply rules contained in subsections 172.1(5), (6) and (7) and in new subsections 172.1(5.1), (6.1) and (7.1).

The definition "excluded activity" in subsection 172.1(1) is amended to add new paragraph (f). Paragraph (f) provides that an excluded activity includes an activity undertaken exclusively in relation to a part of a pension plan where

- that part of the pension plan is either a defined contribution pension plan or a defined benefits pension plan (both terms as defined in this subsection); and
- no pension entity (as defined in subsection 123(1)) of the pension plan administers or holds assets in respect of that part of the pension plan.

For example, if an employer is a participating employer of a pension plan, if the pension plan has both a defined contribution pension plan part and a defined benefits pension plan part and if there is no pension entity administering the defined contribution pension plan part of the pension plan or holding assets in respect of that part, then as a result of this amendment an activity of the employer undertaken exclusively in relation to the defined contribution pension plan part of the pension plan will be an excluded activity.

Defined benefits pension plan

The new definition "defined benefits pension plan" means the part of a pension plan that is in respect of benefits under the plan that are determined in accordance with a formula set forth in the plan and under which the contributions made by a participating employer of the pension plan are not determined in accordance with a formula set forth in the plan.

The definition "defined benefits pension plan" is used in the definition "excluded activity" in this subsection and is identical to the existing definition "defined benefits pension plan" in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*.

Defined contribution pension plan

The new definition "defined contribution pension plan" means the part of a pension plan that is not a defined benefits pension plan (as defined in this subsection).

The definition "defined contribution pension plan" is used in the definition "excluded activity" in this subsection and is identical to the existing definition of "defined contribution pension plan" in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*.

Master pension group

The new definition “master pension group” applies in respect of an employer and of a master pension entity. A master pension group in respect of an employer and of a master pension entity is the group of one or more pension plans that consists of every pension plan that meets two conditions. The first condition is that the employer is a participating employer of the pension plan and the second condition is that the master pension entity is a master pension entity of the pension plan (as those terms are defined in subsection 123(1) of the Act). The definition “master pension group” is used in new subsections 172(5.1), (6.1) and (7.1) of the Act.

Pension activity

The existing definition “pension activity” in respect of a pension plan means any activity that is not an excluded activity (as defined in subsection 172.1(1)) and that relates to the establishment, management or administration of the pension plan or a pension entity of the pension plan. Pension activity also includes the management or administration of assets in respect of the pension plan, which includes the investment of assets held in a trust governed by the pension plan or owned by a corporation that administers the pension plan or any trust or corporation controlled or owned by that trust or corporation.

The definition “pension activity” in subsection 172.1(1) is amended to also include the establishment, management or administration of a master pension entity (as defined in subsection 123(1)) of the pension plan and the management or administration of assets held by a master pension entity of the pension plan.

Specified resource

The new definition “specified resource” means property or a service that a participating employer of a pension plan acquired for the purpose of making a supply of all or part of that property or service to a pension entity or master pension entity of the pension plan. The definition “specified resource” is used in subsections 172.1(5) and (5.1), as well as in section 232.01 of the Act and in the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*.

Specified supply

The existing definition “specified supply” is used in subsections 172.1(9), (10), (12) and (13) of the Act to determine if a participating employer of a pension plan is a selected qualifying employer, or a qualifying employer, of the pension plan for a fiscal year of the participating employer. The definition “specified supply” is used to create a link between a taxable supply deemed to have been made by a participating employer of a pension plan under subsection 172.1(5), (6) or (7) and the pension plan.

The definition is amended so that a specified supply of a participating employer of a pension plan to the pension plan also includes

- a taxable supply deemed to have been made under new subsection 172.1(5.1) of all or part of property or a service that the participating employer acquired for the purpose of making a supply of all or part of the property or service to a master pension entity of the pension plan;
- a taxable supply deemed to have been made under subsection 172.1(6.1) of an employer resource (as defined in subsection 172.1(1)) of the participating employer that the participating employer consumed or used for the purpose of making a supply of property or a service to a master pension entity of the pension plan; and
- a taxable supply deemed to have been made under subsection 172.1(7.1) of an employer resource of the participating employer that the participating employer consumed or used in the course of pension activities in respect of the pension plan.

Subclause 10(6)

Excluded resource

ETA
172.1(2)

Existing subsection 172.1(2) of the Act sets out rules for determining whether property or a service supplied to a person that is a participating employer of a pension plan is an excluded resource for the purposes of section 172.1 of the Act. This determination is relevant for subsections 172.1(5), (6) and (7). Subsection 172.1(2) provides that property or a service, supplied to a person that is a participating employer of a pension plan by another person, is an excluded resource of the participating employer in respect of a pension plan if the conditions in paragraphs 172.1(2)(a) and (b) apply.

Existing paragraph 172.1(2)(a) applies where the supply to the participating employer is made either in or outside Canada by another person and where no tax would be payable under Part IX of the Act if the supply of the same property or service were made by the other person to each pension entity of the pension plan, rather than to the employer, and if the pension entity and the other person were dealing at arm’s length.

Paragraph 172.1(2)(a) is amended so that it now applies where the supply to the employer by another person is made either in or outside Canada and where, for each pension entity or master pension entity of the pension plan, no tax would be payable under Part IX of the Act in respect of the supply if

- the supply of the same property or service were instead made by the other person to the pension entity or master pension entity, as the case may be, rather than to the employer, and
- the pension entity or the master pension entity, as the case may be, and the other person were dealing at arm's length.

Property or service that is supplied by another person cannot be an excluded resource if there is any pension entity of the pension plan or master pension entity of the pension plan that would be required to pay tax if it acquired the property or service from the other person in an arm's length transaction.

It should be noted that, in addition to being relevant for subsections 172.1(5), (6) and (7), the determination of whether property or a service is an excluded resource under amended subsection 172.1(2) is also now relevant for new subsections 172.1(5.1), (6.1) and (7.1), as the acquisition of property or a service that is an excluded resource will not trigger the deemed supply rules contained in paragraphs 172.1(5.1)(a) to (d) nor will the consumption or use of an employer resource that is an excluded resource trigger the deemed supply rules contained in paragraphs 172.1(6.1)(a) to (d) or paragraphs 172.1(7.1)(a) to (d).

The amendments to paragraph 172.1(2)(a) apply in respect of fiscal years of a participating employer beginning after July 21, 2016.

Subclause 10(7)

Specified pension entity

ETA
172.1(4)

Existing subsection 172.1(4) of the Act sets out rules for determining the specified pension entity of a pension plan in respect of a participating employer of the pension plan. The determination of a specified pension entity is relevant to subsection 172.1(7) since only a specified pension entity of a pension plan may be deemed to have paid tax to the participating employer of the pension plan under that subsection and be eligible to claim a rebate in respect of that tax under amended section 261.01 of the Act.

Subsection 172.1(4) is amended to provide that it applies for the purposes of section 172.1. The amendment is made as the term specified pension entity of a pension plan is now used in new subsections 172.1(5.1), (6.1) and (7.1), in addition to subsection 172.1(7).

The amendment to subsection 172.1(4) applies in respect of fiscal years of a participating employer beginning after July 21, 2016.

Subclauses 10(8) and (9)

Acquisition for supply to pension entity

ETA
172.1(5)

Existing subsection 172.1(5) of the Act deems a participating employer of a pension plan that is a registrant to have made a taxable supply of the whole or part of property or a service, other than an excluded resource described in subsection 172.1(2), and to have collected tax in respect of that supply, where the participating employer acquired the property or service (referred to as a "specified resource") with the intention of re-supplying all or part of it to a pension entity of the pension plan for consumption, use or supply by the pension entity in the course of pension activities in respect of the pension plan.

Subsection 172.1(5) is amended in two ways. Firstly, a consequential amendment is made to subsection 172.1(5) to reflect that the term "specified resource" is now defined in subsection 172.1(1). This amendment to subsection 172.1(5) applies in respect of fiscal years of a participating employer beginning after July 21, 2016.

Secondly, an amendment is made to subparagraph 172.1(5)(d)(ii). Paragraph 172.1(5)(d) provides that, for the purposes of determining an input tax credit, a rebate or adjustment to net tax under section 261.01 of the Act and certain tax adjustments provided under section 232.01 of the Act, the pension entity is deemed to have received a supply of the specified resource or part and is deemed to have paid tax in respect of that supply. Where the pension entity is not a selected listed financial institution, the amount of tax that the pension entity is deemed to have paid is equal to the amount of tax determined under paragraph 172.1(5)(c) in respect of the supply that the participating employer is deemed to have made. Where the pension entity is a selected listed financial institution, the amount of tax that the pension entity is deemed to have paid is equal to the amount determined for element A in the formula in paragraph 172.1(5)(c) in determining the amount of tax in respect of that deemed supply.

Subparagraph 172.1(5)(d)(ii) is amended to reduce the amount of tax that the pension entity is deemed to have paid in respect of a supply where the participating employer has not remitted the full amount of tax that it is deemed to have collected in respected of the supply that the participating employer is deemed to have made or where the participating employer has recovered, or is entitled to recover, all or part of that amount. Subparagraph 172.1(5)(d)(ii) now provides that the amount of tax that the pension entity is deemed to have paid is determined by the formula A minus B. Element A is equal to:

- where the pension entity is not a selected listed financial institution on the particular day that the supply is deemed to have been made, the amount of tax determined under paragraph 172.1(5)(c) in respect of the supply; and

- where the pension entity is a selected listed financial institution on the particular day, the amount determined for element A in the formula in paragraph 172.1(5)(c) in determining the tax in respect of the supply.

Element B is the total of all amounts, each of which is any part of the amount determined for element A

- that is not included by the participating employer in determining its net tax for the reporting period that includes the particular day; or
- that the participating employer has recovered, or is entitled to recover, by way of rebate, refund or remission, or otherwise, under the Act or any other Act of Parliament.

The amendment to subparagraph 172.1(5)(d)(ii) is deemed to have come into force on September 23, 2009, except that it does not apply

- for the purposes of determining an input tax credit of a pension entity if the input tax credit is claimed in a return under Division V of Part IX of the Act for a reporting period of the pension entity that is filed on or before July 22, 2016;
- in respect of a tax adjustment note issued under subsection 232.01(3) on or before July 22, 2016;
- for the purposes of determining a rebate under subsection 261.01(2) for a claim period (as defined in subsection 259(1) of the Act) of a pension entity if an application for the rebate is filed on or before July 22, 2016; and
- for the purposes of determining an adjustment to net tax of a qualifying employer for a reporting period of a qualifying employer of a pension plan, as a result of an election made by the qualifying employer under any of subsections 261.01(5), (6) and (9), if the election is filed on or before July 22, 2016.

Subclause 10(10)

Acquisition for supply to master pension entity

ETA
172.1(5.1)

New subsection 172.1(5.1) of the Act deems an employer to have made a taxable supply of the whole or part of property or a service, where the employer acquired that property or service with the intention of re-supplying all or part of it to a master pension entity of a pension plan of which the employer is a participating employer. Subsection 172.1(5.1) deems the employer to have collected an amount of tax in respect of that supply that is determined based on the fair market value of the whole or part of the property or service. In determining its net tax, the employer will

be required to include this amount of tax in respect of the deemed supply. A pension entity of each pension plan included in the master pension group (as defined in subsection 172.1(1)) in respect of the employer and the master pension entity may then be entitled to claim a rebate under amended section 261.01, or in some cases claim an input tax credit, in respect of a portion of this tax.

More specifically, subsection 172.1(5.1) applies where an employer that is a registrant acquires a specified resource (as defined in subsection 172.1(1)) for the purpose of making a supply of all or part of the specified resource to a master pension entity of a pension plan of which the employer is a participating employer and where the master pension entity is acquiring the specified resource for consumption, use or supply by the master pension entity in the course of pension activities in respect of one or more pension plans that are included in the master pension group in respect of the employer and the master pension entity at the time the specified resource was acquired by the employer. However, subsection 172.1(5.1) does not apply if the specified resource acquired by the employer is an excluded resource. Nor does it apply if at the time the specified resource was acquired by the employer, the employer was a selected qualifying employer of any pension plan in the master pension group.

Where the above conditions are met in respect of a specified resource, the following rules set out in paragraphs 172.1(5.1)(a) to (d) apply.

Paragraph 172.1(5.1)(a) deems, for the purposes of Part IX of the Act, the employer to have made a taxable supply of the specified resource or part on the last day of the fiscal year of the employer in which it acquired the specified resource. This deemed supply is a separate supply from any actual supply of the specified resource or part made to the master pension entity. Since the employer is deemed to have made a taxable supply of the specified resource or part, the employer is considered to have acquired the specified resource or part for supply in the course of its commercial activities and may be eligible to claim an input tax credit in respect of this acquisition.

For the purposes of Part IX of the Act, paragraph 172.1(5.1)(b) deems tax, in the amount determined under paragraph 172.1(5.1)(c), to have become payable in respect of that deemed taxable supply and deems the employer to have collected that amount of tax. The tax is deemed to have become payable and to have been collected on the last day of the fiscal year of the employer in which it acquired the specified resource.

For the purposes of Part IX of the Act, paragraph 172.1(5.1)(c) deems the amount of tax under paragraph 172.1(5.1)(b) to be the total of all amounts, each of which is an amount determined for a pension plan in the master pension group. The amount determined for one of those pension plans is the sum of a federal component of tax (element A) and a provincial component of tax (element B).

The federal component of tax is the amount determined by multiplying element C by element D by element E. Element C is the fair market value of the specified resource or part, determined at the time the employer acquired the specified resource. Element D is the tax rate set out in subsection 165(1). Element E is the master pension factor (as defined in subsection 123(1) of the Act) in respect of the pension plan for the fiscal year of the master pension entity that includes the last day of the fiscal year of the employer in which it acquired the specified resource. The master pension factor generally indicates the percentage to which units or shares of the master pension entity are owned by pension entities of the pension plan.

The provincial component of tax is the total of all amounts, each of which is determined for a participating province by multiplying element F by element G by element H. Element F is the fair market value of the specified resource or part, determined at the time the employer acquired the specified resource. Element G is the provincial factor (as defined in subsection 172.1(1)) in respect of both the pension plan and the participating province for the fiscal year in which the employer acquired the specified resource. Element H is the master pension factor in respect of the pension plan for the fiscal year of the master pension entity that includes the last day of the fiscal year of the employer in which it acquired the specified resource.

Paragraph 172.1(5.1)(d) generally provides deeming rules solely for the purpose of determining an input tax credit of a specified pension entity and for the purposes of sections 232.01, 232.02 and 261.01 of the Act. Paragraph 172.1(5.1)(d) applies in respect of each pension plan in the master pension group. Where a pension plan in the group has a specified pension entity (as described in subsection 172.1(4)) for the fiscal year of the employer in which the employer resource was acquired, paragraph 172.1(5.1)(d) provides that, for the specific purposes described above, the specified pension entity is deemed to have received a supply of the specified resource or part on the particular day that is the last day of the fiscal year of the employer and to have paid tax on that day equal to the amount determined by the formula A minus B.

Element A is

- if the pension entity is a selected listed financial institution (as described in subsection 225.2(1) of the Act) on the particular day, the federal component of the amount of tax determined for the pension plan under paragraph 172.1(5.1)(c) (i.e., the amount determined for the pension plan for element A in the formula in paragraph 172.1(5.1)(c) in respect of the supply); and
- if the pension entity is not a selected listed financial institution on the particular day, the amount of tax determined for the pension plan for paragraph 172.1(5.1)(c) in respect of the supply.

Element B is the total of all amounts, each of which is a part of the amount determined for element A

- that is not included by the participating employer in determining its net tax for the reporting period that includes the particular day; or
- that the participating employer has recovered, or is entitled to recover, by way of rebate, refund or remission, or otherwise, under the Act or any other Act of Parliament.

Furthermore, for input tax credit purposes, the specified pension entity is deemed to have acquired the specified resource or part for consumption, use or supply in the course of its commercial activities to the same extent that the specified resource or part was acquired by the employer for the purpose of making a supply of the specified resource or part to the master pension entity for consumption, use or supply by the master pension entity in the course of pension activities in respect of the pension plan that are commercial activities of the master pension entity.

However, where under subsection 172.1(4) a pension plan in the group does not have a specified pension entity for the fiscal year of the employer in which the employer resource was acquired, paragraph 172.1(5.1)(d) will have no application for the pension plan and, for the specific purposes described above, no pension entity of the pension plan will be deemed to have received a supply of the specified resource or part or to have paid tax in respect of that supply.

New subsection 172.1(5.1) applies in respect of fiscal years of a participating employer beginning after July 21, 2016.

Subclause 10(11)

Consumption or use of employer resource for supply

ETA
172.1(6)

Existing subsection 172.1(6) of the Act deems a participating employer of a pension plan that is a registrant to have made a taxable supply of an employer resource, other than an excluded resource, and to have collected tax in respect of that supply, where the employer resource is consumed or used by the employer for the purpose of making a supply of property or a service to a pension entity of the pension plan for consumption, use or supply by the pension entity in the course of pension activities. Paragraph 172.1(6)(d) provides that, for the purposes of determining an input tax credit, a rebate or adjustment to net tax under section 261.01 of the Act and certain tax adjustments provided under section 232.02 of the Act, the pension entity is deemed to have received a supply of the employer resource and is deemed to have paid tax in respect of that supply. Where the pension entity is not a selected listed financial institution, the amount of tax that the pension entity is deemed to have paid is equal to the amount of tax determined under paragraph 172.1(6)(c) in respect of the supply that the participating employer is deemed to have made. Where the pension entity is a selected listed financial institution, the amount of tax that the

pension entity is deemed to have paid is equal to the amount determined for element A in the formula in paragraph 172.1(6)(c) in determining the amount of tax in respect of that deemed supply.

Subparagraph 172.1(6)(d)(ii) is amended to reduce the amount of tax that the pension entity is deemed to have paid in respect of a supply where the participating employer has not remitted the full amount of tax that it is deemed to have collected in respect of the supply that the participating employer is deemed to have made or where the participating employer has recovered, or is entitled to recover, all or part of that amount. Subparagraph 172.1(6)(d)(ii) now provides that the amount of tax that the pension entity is deemed to have paid is equal to the amount determined by the formula A minus B. Element A is equal to

- where the pension entity is not a selected listed financial institution on the particular day that the supply is deemed to have been made, the amount of tax determined under paragraph 172.1(6)(c) in respect of the supply; and
- where the pension entity is a selected listed financial institution on the particular day, the amount determined for element A in the formula in paragraph 172.1(6)(c) in determining the tax in respect of the supply.

Element B is the total of all amounts, each of which is any part of the amount determined for element A

- that is not included by the participating employer in determining its net tax for the reporting period that includes the particular day; or
- that the participating employer has recovered, or is entitled to recover by way of rebate, refund or remission, or otherwise, under the Act or any other Act of Parliament.

The amendment to subparagraph 172.1(6)(d)(ii) is deemed to have come into force on September 23, 2009, except that it does not apply

- for the purposes of determining an input tax credit of a pension entity if the input tax credit is claimed in a return under Division V of Part IX of the Act for a reporting period of the pension entity that is filed on or before July 22, 2016;
- in respect of a tax adjustment note issued under subsection 232.02(2) on or before July 22, 2016;
- for the purposes of determining a rebate under subsection 261.01(2) for a claim period of a pension entity if an application for the rebate is filed on or before July 22, 2016; and
- for the purposes of determining an adjustment to net tax of a qualifying employer for a reporting period of a qualifying employer of a pension plan, as a result of an election

made by the qualifying employer under any of subsection 261.01(5), (6) and (9), if the election is filed on or before July 22, 2016.

Subclause 10(12)

Employer resource for supply to master pension entity

ETA
172.1(6.1)

New subsection 172.1(6.1) of the Act deems an employer to have made a taxable supply of an employer resource (as defined in subsection 172.1(1)) where the employer consumes or uses the employer resource for the purpose of making a supply of property or a service to a master pension entity of a pension plan of which the employer is a participating employer. Subsection 172.1(6.1) also deems the employer to have collected an amount of tax that is determined based on the fair market value of the employer resource. In determining its net tax, the employer will be required to include this amount of tax in respect of the deemed supply. A pension entity of each pension plan included in the master pension group (as defined in subsection 172.1(1)) in respect of the employer and the master pension entity may then be entitled to claim a rebate under amended section 261.01, or in some cases claim an input tax credit, in respect of a portion of this tax.

More specifically, subsection 172.1(6.1) applies where an employer that is a registrant consumes or uses an employer resource for the purpose of making a supply of property or a service (referred to in subsection 172.1(6.1) as a "pension supply") to a master pension entity of the pension plan and where the master pension entity is acquiring the property or service for consumption, use or supply by the master pension entity in the course of pension activities in respect of one or more pension plans that are included in the master pension group in respect of the employer and the master pension entity at the time the consumption or use of the employer resource occurs. However, subsection 172.1(6.1) does not apply if the employer resource consumed or used by the employer is an excluded resource. Nor does it apply if at the time the employer resource was consumed or used, the employer was a selected qualifying employer of any pension plan in the master pension group.

Where the above conditions are met in respect of an employer resource, the following rules set out in paragraphs 172.1(6.1)(a) to (d) apply.

Paragraph 172.1(6.1)(a) deems, for the purposes of Part IX of the Act, the employer to have made a taxable supply of the employer resource (referred to in subsection 172.1(6.1) as the "employer resource supply") on the last day of the fiscal year of the employer in which the consumption or use of the employer resource occurs. This deemed supply is a separate supply from any actual supply of the employer resource made to the master pension entity. Since the employer is deemed to have made a taxable supply of the employer resource, the employer is

considered to have consumed or used the employer resource in the course of its commercial activities and may be eligible to claim an input tax credit in respect of the employer resource.

For the purposes of Part IX of the Act, paragraph 172.1(6.1)(b) deems tax, in the amount determined under paragraph 172.1(6.1)(c), to have become payable in respect of that deemed taxable supply and deems the employer to have collected that amount of tax. The tax is deemed to have become payable and to have been collected on the last day of the fiscal year of the employer in which it consumed or used the employer resource.

For the purposes of Part IX of the Act, paragraph 172.1(6.1)(c) deems the amount of tax under paragraph 172.1(6.1)(b) to be the total of all amounts, each of which is an amount determined for a pension plan in the master pension group. The amount determined for one of those pension plans is the sum of a federal component of tax (element A) and a provincial component of tax (element B).

The federal component of the tax is the amount determined by multiplying element C by element D by element E. Element C is the fair market value of the employer resource. Element D is the tax rate set out in subsection 165(1). Element E is the master pension factor (as defined in subsection 123(1) of the Act) in respect of the pension plan for the fiscal year of the master pension entity that includes the last day of the fiscal year of the employer in which it consumed or used the employer resource. The master pension factor generally indicates the percentage to which units or shares of the master pension entity are owned by pension entities of the pension plan.

The provincial component of the tax is the total of all amounts, each of which is determined for a participating province by multiplying element F by element G by element H. Element F is the fair market value of the employer resource. Element G is the provincial factor in respect of both the pension plan and the participating province for the fiscal year in which the employer consumed or used the employer resource. Element H is the master pension factor in respect of the pension plan for the fiscal year of the master pension entity that includes the last day of the fiscal year of the employer in which it consumed or used the employer resource.

For the purpose of determining the fair market value of the employer resource for elements C and F, if the employer resource was consumed during the fiscal year for the purpose of making the pension supply, the fair market value of the employer resource is determined at the time the employer began consuming the employer resource in the fiscal year. If the employer resource was used, but not consumed, for the purpose of making the pension supply, the fair market value of the employer resource is the fair market value of the use of the employer resource during the fiscal year as determined on the last day of the fiscal year.

Paragraph 172.1(6.1)(d) generally provides deeming rules solely for the purpose of determining an input tax credit of a specified pension entity and for the purposes of sections 232.01, 232.02

and 261.01 of the Act. Paragraph 172.1(6.1)(d) applies in respect of each pension plan in the master pension group. Where a pension plan in the group has a specified pension entity (as described in subsection 172.1(4)) for the fiscal year of the employer in which the employer resource was consumed or used, paragraph 172.1(6.1)(d) provides that, for the specific purposes described above, the specified pension entity is deemed to have received a supply of the employer resource on the particular day that is the last day of the fiscal year of the employer and to have paid tax on that day equal to the amount determined by the formula element A minus element B.

Element A is

- if the specified pension entity is a selected listed financial institution on the particular day, the federal component of the amount of tax determined for the pension plan under paragraph 172.1(6.1)(c) (i.e., the amount determined for the pension plan for element A in the formula in paragraph 172.1(6.1)(c) in respect of the supply); and
- if the specified pension entity is not a selected listed financial institution on the particular day, the amount of tax determined for the pension plan for paragraph 172.1(6.1)(c) in respect of the supply.

Element B is the total of all amounts, each of which is any part of the amount determined for element A

- that is not included by the participating employer in determining its net tax for the reporting period that includes the particular day; or
- that the participating employer has recovered, or is entitled to recover, by way of rebate, refund or remission, or otherwise, under the Act or any other Act of Parliament.

Furthermore, for input tax credit purposes, the specified pension entity is deemed to have acquired the employer resource for consumption, use or supply in the course of its commercial activities to the same extent that the property or service supplied in the pension supply was acquired by the master pension entity for consumption, use or supply by the master pension entity in the course of pension activities in respect of the pension plan that are commercial activities of the master pension entity.

However, where under subsection 172.1(4) a pension plan in the group does not have a specified pension entity for the fiscal year of the employer in which the employer resource was consumed or used, paragraph 172.1(6.1)(d) will have no application for the pension plan and, for the specific purposes described above, no pension entity of the pension plan will be deemed to have received a supply of the employer resource or to have paid tax in respect of that supply.

New subsection 172.1(6.1) applies in respect of fiscal years of a participating employer beginning after July 21, 2016.

Subclauses 10(13) to (15)

Employer resource other than for supply — pension entity

ETA
172.1(7)

Existing subsection 172.1(7) of the Act deems a participating employer of a pension plan that is a registrant to have made a taxable supply of an employer resource, other than an excluded resource, and to have collected tax in respect of that supply, where the employer consumes or uses the employer resource in the course of pension activities in respect of the pension plan, otherwise than for the purpose of making a supply of property or a service to a pension entity of the pension plan of which the employer is a participating employer. Three amendments are made to subsection 172.1(7).

The first amendment to subsection 172.1(7) excludes from the application of subsection 172.1(7) the consumption or use by an employer of employer resources in the course of pension activities of the pension plan where those pension activities are the establishment, management or administration of a master pension entity of the pension plan or the management or administration of assets in respect of the pension plan that are held by a master pension entity of the pension plan.

The first amendment to subsection 172.1(7) applies in respect of fiscal years of a participating employer beginning after September 22, 2009 but before July 22, 2016.

A transitional rule applies in respect of this first amendment where two conditions are met. The first condition is that, in assessing under section 296 of the Act the net tax for a particular reporting period of a participating employer of a pension plan, a particular amount was included in determining the net tax for the reporting period as an amount of tax in respect of an employer resource that was deemed to have been collected on a particular day in the reporting period by the participating employer under paragraph 172.1(7)(b). The second condition is that, as a result of the application of the first amendment to subsection 172.1(7), the particular amount is not deemed to have been collected by the participating employer under that paragraph.

Where these two conditions are met, the participating employer may request that the Minister of National Revenue make an assessment, reassessment or additional assessment for the purpose of taking into account that the particular amount is not deemed to have been collected by the participating employer under paragraph 172.1(7)(b). On receipt of the request, the Minister must with all due dispatch consider the request and under section 296 of the Act assess, reassess or make an additional assessment of the net tax for the particular reporting period, and of any

interest, penalty or other obligation of the pension entity, solely for the purpose of taking into account that the particular amount is not deemed to have been collected by the participating employer under paragraph 172.1(7)(b). In addition, the following two consequences may also follow:

- The first consequence applies if three conditions are met. First, a pension entity of the pension plan makes an election under subsection 261.01(5), (6) or (9) of the Act with a qualifying employer (as defined in subsection 261.01(1)) of the pension plan for the claim period (as defined in subsection 259(1) of the Act) of the pension entity that includes the particular day. Second, the qualifying employer deducts, in determining its net tax for a reporting period, an amount as all or part of a particular amount in respect of the employer resource that was deemed to have been paid by the pension entity under paragraph 172.1(7)(d) of the Act. Third, as a result of the application of the first amendment, the particular amount is not deemed to have been paid by the pension entity under that paragraph. If these three conditions are met, the Minister must under section 296 assess, reassess or make an additional assessment of the net tax for the reporting period, and of any interest, penalty or other obligation of the qualifying employer, solely for the purpose of taking into account that the particular amount is not deemed to have been paid by the pension entity under paragraph 172.1(7)(d).
- The second consequence applies if two conditions are met. First, in assessing under section 297 of the Act the amount of a rebate under subsection 261.01(2) of the Act for a claim period of a pension entity, an amount was included in determining the pension rebate amount (as defined in subsection 261.01(1) of the Act) for the claim period as an amount in respect of the employer resource that was deemed to have been paid by the pension entity under paragraph 172.1(7)(d). Second, as a result of the application of the first amendment, the amount is not deemed to have been paid by the pension entity under that paragraph. If these two conditions are met, the Minister must under sections 296 and 297 of the Act assess, reassess or make an additional assessment of the rebate, and of any interest, penalty or other obligation of the pension entity, solely for the purpose of taking into account that the amount was not deemed to have been paid by the pension entity under paragraph 172.1(7)(d).

This request by the participating employer to the Minister must be made in writing and be made on or before the day that is one year after the day on which the Act enacting the first amendment to subsection 172.1(7) receives royal assent.

Currently, subsection 172.1(7) provides that this subsection does not apply in respect of the consumption or use of employer resources by a participating employer of a pension plan if subsection 172.1(6) applies in respect of that consumption or use. Subsection 172.1(6) would apply where the consumption or use is for the purpose of making a supply of property or service to a pension entity of the pension plan. The second amendment to subsection 172.1(7) provides

that this subsection also does not apply in respect of the consumption or use of employer resources if either of new subsections 172.1(6.1) or (7.1) applies to that consumption or use. New subsection 172.1(6.1) would apply where the consumption or use is for the purpose of making a supply of property or service to a master pension entity of the pension plan. New subsection 172.1(7.1) would apply where neither of subsections 172.1(6) and (6.1) applies to the consumption or use and where the consumption or use is in the course of pension activities that relate exclusively to the establishment, management or administration of a master pension entity of the pension plan or the management or administration of assets held by a master pension entity of the pension plan.

The second amendment to subsection 172.1(7) applies in respect of fiscal years of a participating employer beginning after July 21, 2016.

The third amendment concerns paragraph 172.1(7)(d), which provides that, for the purposes of determining a rebate or an adjustment to net tax under section 261.01 of the Act, the pension entity is deemed to have received a supply of the employer resource and is deemed to have paid tax in respect of that supply. Where the pension entity is not a selected listed financial institution, the amount of tax that the pension entity is deemed to have paid is equal to the amount of tax determined under paragraph 172.1(7)(c) in respect of the supply that the participating employer is deemed to have made. Where the pension entity is a selected listed financial institution, the amount of tax that the pension entity is deemed to have paid is equal to the amount determined for element A in the formula in paragraph 172.1(7)(c) in determining the tax in respect of that deemed supply.

Paragraph 172.1(7)(d) is amended to reduce the amount of tax that the pension entity is deemed to have paid in respect of a supply where the participating employer has not remitted the full amount of tax that it is deemed to have collected in respect of the supply that the participating employer is deemed to have made or where the participating employer has recovered, or is entitled to recover, all or part of that amount. Paragraph 172.1(7)(d) now provides that the amount of tax that the pension entity is deemed to have paid is equal to the determined by the formula A minus B. Element A is equal to

- where the pension entity is not a selected listed financial institution on the particular day that the supply is deemed to have been made, the amount of tax determined under paragraph 172.1(7)(c) in respect of the supply; and
- where the pension entity is a selected listed financial institution on the particular day, the amount determined for element A in the formula in paragraph 172.1(7)(c) in determining the tax in respect of the supply.

Element B is the total of all amounts, each of which is any part of the amount determined for element A

- that is not included by the participating employer in determining its net tax for the reporting period that includes the particular day; or
- that the participating employer has recovered, or is entitled to recover by way of rebate, refund or remission, or otherwise, under the Act or any other Act of Parliament.

The amendment to paragraph 172.1(7)(d) is deemed to have come into force on September 23, 2009, except that it does not apply

- for the purposes of determining a rebate under subsection 261.01(2) for a claim period of a pension entity if an application for the rebate is filed on or before July 22, 2016; and
- for the purposes of determining an adjustment to net tax of a qualifying employer for a reporting period of a qualifying employer of a pension plan, as a result of an election made by the qualifying employer under any of subsection 261.01(5), (6) and (9), if the election is filed on or before July 22, 2016.

Subclause 10(16)

Employer resource other than for supply — master pension entity

ETA
172.1(7.1)

New subsection 172.1(7.1) of the Act deems an employer to have made a taxable supply of an employer resource where the employer consumes or uses the employer resource in the course of pension activities, otherwise than for the purpose of making a supply of property or a service to a pension entity or master pension entity of a pension plan of which the employer is a participating employer. However, unlike subsection 172.1(7), subsection 172.1(7.1) applies where the consumption or use is in the course of pension activities of one or more pension plans in the master pension group in respect of the employer and a master pension entity and where those pension activities relate exclusively to the establishment, management or administration of a master pension entity of the pension plan or the management or administration of assets held by a master pension entity of the pension plan.

Subsection 172.1(7.1) deems the employer to have collected an amount of tax that is determined based on the fair market value of the employer resource. In determining its net tax, the employer will be required to include this amount of tax in respect of the deemed supply. A pension entity of each pension plan included in the master pension group (as defined in subsection 172.1(1)) in respect of the employer and the master pension entity may then be entitled to claim a rebate in respect of this tax under amended section 261.01.

More specifically, subsection 172.1(7.1) applies where four conditions are met. First, an employer that is a registrant consumes or uses an employer resource in the course of pension

activities in respect of one or more pension plans that are included in a master pension group of both the employer and the master pension entity. Second, it is the case that neither subsection 172.1(6) nor subsection 172.1(6.1) applies to the consumption or use (i.e., the consumption or use is not for the purpose of making a supply of property or a service to a pension entity or a master pension entity of a pension plan of which the employer is at that time a participating employer). Third, the pension activities relate exclusively to the establishment, management or administration of a master pension entity of the pension plan or the management or administration of assets held by a master pension entity of the pension plan. Finally, subsection 172.1(7.1) only applies if the employer resource consumed or used by the employer is not an excluded resource and if, at the time the employer resource was consumed or used, the employer was not a qualifying employer of any pension plan in the master pension group.

Where the above conditions are met in respect of an employer resource, the following rules set out in paragraphs 172.1(7.1)(a) to (d) apply.

Paragraph 172.1(7.1)(a) deems, for the purposes of Part IX of the Act, the employer to have made a taxable supply of the employer resource (referred to in this provision as the "employer resource supply") on the last day of the fiscal year of the employer in which the consumption or use of the employer resource occurs. Since the employer is deemed to have made a taxable supply of the employer resource, the employer is considered to have consumed or used the employer resource in the course of its commercial activities and may be eligible to claim an input tax credit in respect of the employer resource.

For the purposes of Part IX of the Act, paragraph 172.1(7.1)(b) deems tax, in the amount determined under paragraph 172.1(7.1)(c), to have become payable in respect of that deemed taxable supply and the employer to have collected that amount of tax. The tax is deemed to have become payable and to have been collected on the last day of the fiscal year of the employer in which it consumed or used the employer resource.

For the purposes of Part IX of the Act, paragraph 172.1(7.1)(c) deems the amount of tax under paragraph 172.1(7.1)(b) to be the total of all amounts, each of which is an amount determined for a pension plan in the master pension group. The amount determined for one of those pension plans is the sum of a federal component of tax (element A) and a provincial component of tax (element B).

The federal component of the tax is the amount determined by multiplying element C by element D by element E. Element C is the fair market value of the employer resource. Element D is the tax rate set out in subsection 165(1). Element E is the master pension factor (as defined in subsection 123(1) of the Act) in respect of the pension plan for the fiscal year of the master pension entity that includes the last day of the fiscal year of the employer in which it consumed or used the employer resource. The master pension factor generally indicates the percentage to

which units or shares of the master pension entity are owned by pension entities of the pension plan.

The provincial component of the tax is the total of all amounts, each of which is determined for a participating province by multiplying element F by element G by element H. Element F is the fair market value of the employer resource. Element G is the provincial factor in respect of both the pension plan and the particular participating province for the fiscal year in which the employer consumed or used the employer resource. Element H is the master pension factor in respect of the pension plan for the fiscal year of the master pension entity that includes the last day of the fiscal year of the employer in which it consumed or used the employer resource.

For the purpose of determining the fair market value of the employer resource for elements C and F, if the employer resource was consumed during the fiscal year in the course of the pension activities that relate exclusively to the establishment, management or administration of a master pension entity of the pension plan or the management or administration of assets held by a master pension entity of the pension plan, the fair market value of the employer resource is determined at the time the employer began consuming the employer resource in the fiscal year. If the employer resource was used, but not consumed, in the course of such pension activities, the fair market value of the employer resource is the fair market value of the use of the employer resource during the fiscal year as determined on the last day of the fiscal year.

Paragraph 172.1(7.1)(d) generally provides deeming rules for the purpose of determining under section 261.01 of the Act an eligible amount of a specified pension entity. Paragraph 172.1(7.1)(d) applies in respect of each pension plan in the master pension group. Where a pension plan in the group has a specified pension entity (as described in subsection 172.1(4)) for the fiscal year of the employer in which the employer resource was consumed or used, paragraph 172.1(7.1)(d) provides that, for the specific purpose described above, the specified pension entity is deemed to have paid tax, on the particular day that is the last day of the fiscal year of the employer, equal to the amount determined by the formula A minus B.

Element A is

- if the pension entity is a selected listed financial institution on the particular day, the federal component of the amount of tax determined for the pension plan under paragraph 172.1(7.1)(c) (i.e., the amount determined for the pension plan for element A in the formula in paragraph 172.1(7.1)(c) in respect of the supply); and
- if the pension entity is not a selected listed financial institution on the particular day, the amount of tax determined for the pension plan for paragraph 172.1(7.1)(c) in respect of the supply.

Element B is the total of all amounts, each of which is any part of the amount determined for element A

- that is not included by the participating employer in determining its net tax for the reporting period that includes the particular day; or
- that the participating employer has recovered, or is entitled to recover, by way of rebate, refund or remission, or otherwise, under the Act or any other Act of Parliament.

However, where under subsection 172.1(4) a pension plan in the group does not have a specified pension entity for the fiscal year of the employer in which the employer resource was consumed or used, paragraph 172.1(7.1)(d) will have no application for the pension plan and, for the specific purposes described above, no pension entity of the pension plan will be deemed to have received a supply of the employer resource or to have paid tax in respect of that supply.

New subsection 172.1(7.1) applies in respect of fiscal years of a participating employer beginning after July 21, 2016.

Subclause 10(17)

Provision of information

ETA
172.1(8) and (8.1)

Existing subsection 172.1(8) of the Act places an information requirement on a participating employer of a pension plan where that participating employer is deemed by any of subsections 172.1(5), (6) and (7) to have made a supply of property or a service. Subsection 172.1(8) requires the participating employer to provide prescribed information, in prescribed form and in a manner satisfactory to the Minister of National Revenue, to the pension entity of the pension plan that is deemed to have paid tax in respect of that supply.

Subsection 172.1(8) is amended so that it also places an information requirement on a participating employer of a pension plan where that participating employer is deemed to have made a supply of property or a service by any of new subsections 172.1(5.1), (6.1) and (7.1).

The amendment to subsection 172.1(8) applies in respect of fiscal years of a participating employer beginning after July 21, 2016.

New subsection 172.1(8.1) of the Act places an information requirement on a master pension entity of a pension plan. It requires that the master pension entity provide, in a manner satisfactory to the Minister, the master pension factor in respect of the pension plan for a fiscal year of the master pension entity to each participating employer of the pension plan on or before the day that is 30 days after the first day of the fiscal year. It also requires that the master pension

entity provide, in the same manner and within the same time limit, to each participating employer of the pension plan any other information that the Minister may specify.

New subsection 172.1(8.1) applies in respect of fiscal years of a master pension entity beginning after July 21, 2016.

Subclauses 10(18) to (21)

Selected qualifying employer

ETA
172.1(9)

Existing subsection 172.1(9) of the Act sets out rules for determining whether a participating employer of a pension plan is a selected qualifying employer of the pension plan for a fiscal year of the employer. Where a participating employer is a selected qualifying employer of the pension plan for a fiscal year of the employer, subsections 172.1(5), (6) and (7), as well as new subsections 172.1(5.1), (6.1) and (7.1), do not apply to the employer in respect of the pension plan for the fiscal year. Where a participating employer is a selected qualifying employer of the pension plan for a fiscal year of the employer, it will also be a qualifying employer of the pension plan for the same fiscal year, as determined by subsection 172.1(10) of the Act, for the purposes of subsections 172.1(7) and (7.1).

In order for a particular participating employer of a pension plan to be a selected qualifying employer of the pension plan for a fiscal year of the employer, the employer must meet a number of conditions. One condition is that the employer has not made a joint election under subsection 157(2) with a pension entity of the pension plan that is in effect in the fiscal year. An amendment to subsection 172.1(9) adds the additional condition that the employer has not made a joint election under new subsection 157(2.1) with a master pension entity of the pension plan that is in effect in the fiscal year.

Two further conditions for the particular participating employer to be a selected qualifying employer are the following. The first condition is that the amount determined for element A in subsection 172.1(9) for the particular participating employer in respect of the pension plan for the fiscal year must be less than $5,000. A second condition is that the amount, expressed as a percentage, determined by the formula A/(B – C) for the particular participating employer in respect of the pension plan for the fiscal year must be less than 10 per cent.

Elements A, B and C of the formula in subsection 172.1(9) are amended to reflect the enactment of new subsections 172.1(5.1), (6.1) and (7.1).

Element A is currently generally the amount of the GST (or the federal component of the HST) that the particular participating employer, or another participating employer of the pension plan

that is related to the particular participating employer, was (or would have been, but for subsections 172.1(9) to (11)) required to account for under the deemed taxable supply rules in subsections 172.1(5), (6) and (7) in the preceding fiscal year of the particular participating employer. Element A is amended to also include the amount of the GST (or the federal component of the HST) that the particular participating employer, or another participating employer of the pension plan that is related to the particular participating employer, was (or would have been, but for subsections 172.1(9) to (11)) required to account for under the deemed taxable supply rules in new subsections 172.1(5.1), (6.1) and (7.1) in the preceding fiscal year of the particular participating employer.

Element B is the total of the amounts included in paragraph (a), (b) or (c) of that element. Paragraph (b) of element B currently includes an amount of GST (or of the federal component of the HST) that any participating employer of the pension plan, including the particular participating employer, was required to account for under subsection 172.1(5), (6) or (7) in the preceding fiscal year of the particular participating employer. Paragraph (b) is amended to also include an amount of GST (or of the federal component of the HST) that any participating employer of the pension plan, including the particular participating employer, was required to account for under the deemed taxable supply rules in new subsections 172.1(5.1), (6.1) and (7.1) in the preceding fiscal year of the particular participating employer.

Element C is the total of the amounts included in paragraph (a) or (b) of that element. Paragraph (b) of element C includes an amount in respect of a recoverable amount (as defined in subsection 261.01(1) of the Act) of a pension entity of the pension plan in respect of a claim period ending in a fiscal year of the pension entity that ends in that preceding fiscal year of the particular participating employer. An amount is currently included in paragraph (b) only to the extent that the recoverable amount is GST (or the federal component of the HST) deemed to have been paid by the pension entity under paragraph 172.1(5)(d), (6)(d) or (7)(d) for the purposes of section 261.01. Paragraph (b) of element C is amended so that an amount is to be included in respect of a recoverable amount of the pension entity in respect of the claim period only to the extent that the recoverable amount is GST (or the federal component of the HST) deemed to have been paid by the pension entity under paragraph 172.1(5)(d), (5.1)(d), (6)(d), (6.1)(d), (7)(d) or (7.1)(d), whichever is applicable, for the purposes of section 261.01.

The amendments to subsection 172.1(9) apply in respect of fiscal years of a participating employer beginning after July 21, 2016.

Subclauses 10(22) to (24)

Qualifying employer

ETA
172.1(10)

Existing subsection 172.1(10) of the Act sets out rules for determining whether a participating employer of a pension plan is a qualifying employer of the pension plan for a fiscal year of the participating employer. Where a participating employer is a qualifying employer of the pension plan for a fiscal year of the participating employer, subsection 172.1(7), as well as new subsection 172.1(7.1), do not apply to the participating employer in respect of the pension plan for the fiscal year.

In order for a particular participating employer of a pension plan to be a qualifying employer of the pension plan for a fiscal year of the particular participating employer, the particular participating employer must meet certain conditions. One condition is that the amount determined for element A for the particular participating employer in respect of the pension plan for the fiscal year must be less than $5,000. Another condition is that the amount, expressed as a percentage, determined by the formula A/(B – C) for the particular participating employer in respect of the pension plan for the fiscal year must be less than 10 per cent.

Elements A, B and C of the formula in subsection 172.1(10) are amended to reflect the enactment of new subsections 172.1(5.1), (6.1) and (7.1).

Element A is currently generally the amount of the GST (or the federal component of the HST) that the particular participating employer, or another participating employer of the pension plan that is related to the particular participating employer, was (or would have been, but for subsection 172.1(10) or (11)) required to account for under the deemed taxable supply rules in subsection 172.1(7) in the preceding fiscal year of the particular participating employer. Element A is amended to also include the amount of GST (or of the federal component of the HST) that the particular participating employer, or another participating employer of the pension plan that is related to the particular participating employer, was (or would have been, but for subsection 172.1(10) or (11)) required to account for under the deemed taxable supply rules in new subsection 172.1(7.1) in the preceding fiscal year of the particular participating employer.

Elements B and C in the formula in subsection 172.1(10) have the same meaning as elements B and C in the formula in subsection 172.1(9). Elements B and C in the formula in subsection 172.1(10) are amended in the same manner as elements B and C in the formula in subsection 172.1(9) and the description above of the amendments to elements B and C in the formula in subsection 172.1(9) apply equally to the amendments to elements B and C in the formula in subsection 172.1(10) (see note on subsection 172.1(9)).

The amendments to subsection 172.1(10) apply in respect of fiscal years of a participating employer beginning after July 21, 2016.

Subclause 10(25)

Mergers and amalgamations

ETA
172.1(12)

Existing subsection 172.1(12) of the Act applies where two or more corporations (each of which is referred to in subsection 172.1(12) as a "predecessor"), any one of which is a participating employer of a pension plan, are merged or amalgamated to form a corporation (referred to in subsection 172.1(12) as the "new corporation"), which is a participating employer of the pension plan. Subsection 172.1(12) assists in the determination of whether the new corporation is, subsequent to the merger or amalgamation, a selected qualifying employer or a qualifying employer of the pension plan for a fiscal year of the new corporation under any of subsections 172.1(9), (10) and (11).

Existing paragraph 172.1(12)(b) provides that any amount of tax that was deemed to have been collected under any of subsections 172.1(5), (6) and (7) by a predecessor (or that would have been so deemed to have been collected by a predecessor, but for the fact that the predecessor was a selected qualifying employer or a qualifying employer of the pension plan for a fiscal year of the predecessor) at any time during the period of 365 days preceding the first fiscal year of the new corporation is deemed to have been collected under the same applicable subsection by the new corporation on the last day of the prior fiscal year of the new corporation. Each of these amounts is also, for the purposes of determining if the new corporation is a selected qualifying employer or a qualifying employer of the pension plan for the first fiscal year of the new corporation, deemed not to have been collected by a predecessor.

Paragraph 172.1(12)(b) is amended so that it also provides that any amount of tax that was deemed to have been collected under any of new subsections 172.1(5.1), (6.1) and (7.1) by a predecessor (or that would have been so deemed to have been collected by a predecessor, but for the fact the predecessor was a selected qualifying employer or a qualifying employer of the pension plan for a fiscal year of the predecessor) at any time during the period of 365 days preceding the first fiscal year of the new corporation is deemed to have been collected under the same applicable subsection by the new corporation on the last day of the prior fiscal year of the new corporation. Each of these amounts is also, for purposes of determining if the new corporation is a selected qualifying employer or a qualifying employer of the pension plan for the first fiscal year of the new corporation, deemed not to have been collected by a predecessor.

Existing paragraph 172.1(12)(c) provides that any specified supply of a predecessor to the pension plan that was deemed to have been made under any of subsections 172.1(5), (6) or (7)

(or that would have been deemed to have been so made by a predecessor, but for the fact the predecessor was a selected qualifying employer or a qualifying employer of the pension plan for a fiscal year of the predecessor) at any time during the period of 365 days preceding the first fiscal year of the new corporation is deemed to be a specified supply of the new corporation to the pension plan.

Paragraph 172.1(12)(c) is amended so that it also provides that any specified supply of a predecessor to the pension plan that was deemed to have been made under any of new subsections 172.1(5.1), (6.1) and (7.1) (or that would have been deemed to have been so made by a predecessor but for the fact the predecessor was a selected qualifying employer or a qualifying employer of the pension plan for a fiscal year of the predecessor) at any time during the period of 365 days preceding the first fiscal year of the new corporation is deemed to be a specified supply of the new corporation to the pension plan.

The amendments to subsection 172.1(12) apply in respect of fiscal years of a participating employer beginning after July 21, 2016.

Clause 11

Tax deemed paid by designated pension entity

ETA
172.2

New section 172.2 of the Act contains deeming rules that generally provide that, for the purposes of section 261.01 of the Act, where an amount of tax becomes payable, or is paid without having become payable, by a master pension entity of a pension plan (as those terms are defined in subsection 123(1) of the Act), an amount of tax representing all or part of that amount is deemed to have been paid by a designated pension entity (within the meaning of subsection 172.2(2)) of the pension plan. The amount of tax deemed to be paid by a designated pension entity of a pension plan is determined in accordance with subsection 172.2(3). The designated pension entity may then be able to claim a rebate or make an election under section 261.01 in respect of the amount of tax it is deemed to have paid.

New section 172.2 applies in respect of amounts of tax that become payable, or that are paid without having become payable, by a master pension entity after July 21, 2016.

Excluded amount

ETA
172.2(1)

New subsection 172.2(1) sets out rules for determining whether an amount of tax is an excluded amount of a master pension entity. This determination is relevant for subsection 172.2(3) as no

part of an excluded amount of a master pension entity of a pension plan is deemed under that subsection to have been paid by a pension entity of the pension plan for the purposes of section 261.01.

An excluded amount of a master pension entity is an amount of tax that

- is deemed to have been paid by the master pension entity under Part IX of the Act (other than tax deemed under section 191 of the Act to have been paid in respect of a residential complex), such as tax resulting from a change-in-use of capital property or in respect of employee allowances and reimbursements;
- became payable by the master pension entity when it is entitled to claim a public service body rebate under section 259 of the Act; or
- is payable under subsection 165(1) of the Act — or is deemed to have been paid under section 191 — by the master pension entity in respect of a taxable supply to it of a residential complex, addition to a residential complex or land, if, in respect of that supply, the master pension entity is entitled to claim a new residential rental property rebate under section 256.2 of the Act, or would be so entitled after paying the tax payable in respect of the taxable supply.

Designated pension entity

ETA
172.2(2)

New subsection 172.2(2) sets out rules for determining the designated pension entity of a pension plan in respect of a master pension entity of the pension plan. The determination of a designated pension entity is relevant for subsection 172.2(3) since only a designated pension entity of a pension plan may be deemed by those subsections to have paid an amount of tax, for the purposes of section 261.01, in respect of tax actually paid by the master pension entity.

Where, at a particular time, the pension plan has only one pension entity, that pension entity is the designated pension entity of the pension plan in respect of each master pension entity of the pension plan. Where, at a particular time, the pension plan has more than one pension entity and the master pension entity has made a joint election under new subsection 172.2(4) with a pension entity of the pension plan that is in effect at the particular time, that pension entity is the designated pension entity of the pension plan in respect of the master pension entity at the particular time. If, however, at the particular time, the pension plan has more than one pension entity and the master pension entity has made no election under new subsection 172.2(4) with a pension entity of the pension plan that is in effect at that time, then there is no designated pension entity of the pension plan. In this last case, no pension entity of the pension plan will be

deemed to have paid an amount of tax, for the purposes of section 261.01, in respect of tax paid by the master pension entity.

A master pension entity of one or more pension plans may, at one time, have only one designated pension entity for each pension plan but each master pension entity of a pension plan may have a different pension entity of the pension plan as its designated pension entity of the pension plan.

The rules under subsection 172.2(2) for determining the designated pension entity of a pension plan in respect of a master pension entity of the pension plan are similar to the rules under subsection 172.1(4) for determining the specified pension entity of a pension plan in respect of a participating employer for the purposes of subsections 172.1(5.1), (6.1), (7) and (7.1) of the Act. It should be noted that, where a pension plan has two or more pension entities, it is possible that the pension entity that is the designated pension entity of the pension plan in respect of a master pension entity of the pension plan and the pension entity that is the specified pension entity of the pension plan in respect of a participating employer of pension plan are two different pension entities.

Tax deemed paid by designated pension entity — section 261.01

ETA
172.2(3)

New subsection 172.2(3) applies for the purposes of sections 261.01 of the Act. Subsection 172.2(3) generally deems a designated pension entity (within the meaning of subsection 172.2(2)) of a pension plan to have paid, for the purposes of that section, an amount of tax that is determined in respect of an amount of tax paid by a master pension entity of the pension plan, subject to certain exceptions. The amount of tax that subsection 172.2(3) deems a designated pension entity to have paid is included in determining the pension entity's pension rebate amount (as defined in subsection 261.01(1)) for a claim period of the pension entity. The pension rebate amount in turn would be used to determine

- the maximum amount of a rebate for the claim period that the pension entity, if it is a "qualifying pension entity" (as defined in subsection 261.01(1)), may be entitled to claim under subsection 261.01(2); and
- the maximum amount of a deduction from net tax that a "qualifying employer" (as defined in subsection 261.01(1)) of the pension plan may be entitled to deduct under any of subsections 261.01(5), (6) or (9).

Subsection 172.2(3) applies if a particular amount of tax becomes payable, or is paid without having become payable, by a master pension entity of one or more pension plans at any time in a fiscal year of the master pension entity and if the particular amount of tax is not an excluded amount (within the meaning of subsection 172.2(1)) of the master pension entity. In this case,

subsection 172.2(3) provides that, for each of those pension plans, the designated pension entity of the pension plan at that time in respect of the master pension entity is deemed to have paid at that time an amount of tax equal to an amount determined by the formula A multiplied by B.

Where the designated pension entity is a selected listed financial institution (within the meaning of subsection 225.2(1) of the Act) and the particular amount of tax is payable under any of subsection 165(2), sections 212.1 and 218.1 of the Act and Division IV.1 of Part IX of the Act, then element A in respect of the particular amount of tax is equal to zero.

In any other case, element A would be equal to the particular amount of tax less the total of all amounts, each of which is included in the particular amount of tax and is

- an input tax credit that the master pension entity is entitled to claim in respect of the particular amount of tax;
- an amount for which it can reasonably be regarded that the master pension entity has obtained or is entitled to claim a rebate, refund or remission; or
- an amount that can reasonably be regarded as having been included in an amount adjusted, refunded or credited in favour of the master pension entity in accordance with subsection 232(3) of the Act.

Element B is the master pension factor (as defined in subsection 123(1) of the Act) in respect of the pension plan for the fiscal year of the master pension entity that includes that time. The master pension factor generally indicates the percentage to which units or shares of the master pension entity are owned by pension entities of the pension plan.

Designated pension entity election

ETA
172.2(4)

New subsection 172.2(4) provides an election that may be made if a pension plan has two or more pension entities and if there is a master pension entity of the pension plan. Subsection 172.2(4) permits the master pension entity to jointly elect with one of the pension entities of the pension plan for that pension entity to be, while the election is in effect, the designated pension entity of the pension plan in respect of the master pension entity. An election under subsection 172.2(4) must be made in prescribed form containing prescribed information and is in effect beginning from the day set out in the election until the day it ceases to have effect as provided for under subsection 172.2(5).

Effective period of election

ETA
172.2(5)

New subsection 172.2(5) sets out the effective period of a joint election made under subsection 172.2(4) between a master pension entity of a pension plan and a pension entity of the pension plan. Subsection 172.2(5) provides that the joint election becomes effective on the day set out in the election form. It also provides that the joint election ceases to have effect on the earliest of:

- the day on which the master pension entity ceases to be a master pension entity of the pension plan;
- the day on which the pension entity ceases to be a pension entity of the pension plan;
- the day on which another joint election made under subsection 172.2(4) between the master pension entity and a different pension entity of the pension plan becomes effective; and
- the day specified in a joint revocation of the joint election made by the master pension entity and the pension entity under subsection 172.2(6).

Revocation

ETA
172.2(6)

New subsection 172.2(6) allows a master pension entity of a pension plan and a pension entity of the pension plan that have jointly made an election under subsection 172.2(4) to jointly revoke that election, effective on a day specified in the revocation. The joint revocation must be made in prescribed form containing prescribed information.

Clause 12

Restriction on input tax credits

ETA
178(18)(c)

Existing subsection 178(18) of the Act sets out certain rules under which GST/HST is not payable on a supply of property or a service made by a network seller to a sales representative of the network seller or a relative of the sales representative and that also restricts input tax credits that may be claimed by the network seller in respect of the property or service. This subsection contains rules that apply when property (other than a select product of the network seller) or a service is acquired or imported or brought into a participating province by the network seller for the purpose of supplying it to a sales representative of the network seller or a relative of the sales

representative for no consideration or consideration that is less than the fair market value of the property or service.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French version of paragraph 178(18)(c) is amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*".

This amendment comes into force on royal assent.

Clause 13

Adjustments to direct seller's net tax

ETA
178.3(4)(b)(ii) and (iii)

Existing subsection 178.3(4) of the Act provides that a direct seller may claim a deduction in determining the direct seller's net tax if an independent sales contractor has made a supply of an exclusive product of the direct seller in circumstances that result in the supply not being subject to tax. A deduction may also be taken if the supply is for consideration less than the suggested retail price of the product or for no consideration.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. Furthermore, in the French version of the Act, the references to the expression "nominal consideration" are references to the expression "*contrepartie négligeable*" in some cases and to the expression "*contrepartie symbolique*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French versions of subparagraphs 178.3(4)(b)(ii) and (iii) are amended to replace the expressions "*à titre gratuit*" with the expression "*sans contrepartie*" and to replace the expression "*contrepartie négligeable*" with the expression "*contrepartie symbolique*".

These amendments come into force on royal assent.

Clause 14

Adjustment to distributor's net tax

ETA
178.4(4)(b)(ii) and (iii)

Existing subsection 178.4(4) of the Act provides that a distributor of a direct seller may claim a deduction in determining the distributor's net tax if an independent sales contractor has made a

supply of an exclusive product of the direct seller in circumstances that result in the supply not being subject to tax. A deduction may also be taken if the supply is for consideration less than the suggested retail price of the product or for no consideration.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. Furthermore, in the French version of the Act, the references to the expression "nominal consideration" are references to the expression "*contrepartie négligeable*" in some cases and to the expression "*contrepartie symbolique*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French versions of subparagraphs 178.4(4)(b)(ii) and (iii) are amended to replace the expressions "*à titre gratuit*" with the expression "*sans contrepartie*" and to replace the expression "*contrepartie négligeable*" with the expression "*contrepartie symbolique*".

These amendments come into force on royal assent.

Clause 15

Restriction on input tax credits

ETA
178.5(8)(a)

Existing subsection 178.5(8) of the Act denies input tax credits to a direct seller (for whom an approval granted under subsection 178.2(3) of the Act is in effect) or a distributor of the direct seller in respect of property or a service (other than an exclusive product of the direct seller) that is imported or acquired or brought into a participating province by the direct seller or distributor for the purpose of supplying it to an independent sales contractor of the direct seller or a relative of the contractor for no consideration or for consideration that is less than the fair market value of the property or service. Subsection 178.5(8) also provides that no tax is payable on the supply to the contractor or the relative of the contractor. These rules apply if the contractor or the relative of the contractor is acquiring the property or service for use otherwise than exclusively in the course of commercial activities.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French version of paragraph 178.5(8)(a) is amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*".

This amendment comes into force on royal assent.

Clause 16

Buying group method

ETA
178.6(5)(d)

It is common in certain industries for businesses to enter into group purchasing arrangements in order to enable members of the group to obtain the benefit of volume rebates offered by suppliers. Section 178.6 of the Act allows qualifying buying groups to ignore, for GST/HST purposes, pass-through supplies (as defined in subsection 178.6(1)). Under this optional method, the supply of property or service by the buying group is deemed to be a supply from the original supplier to the ultimate recipient.

Existing subsection 178.6(5) sets out the rules that apply if a buyer designation is in effect. Under those rules, the supply by the original supplier to the buyer is deemed to be a supply from the original supplier to the ultimate recipient and the tax paid or payable in respect of the deemed supply is deemed to be paid or payable by the ultimate recipient. However, the buyer and the ultimate recipient are jointly and severally liable for the payment of that tax.

In the English version of paragraph 178.6(5)(d), only the expression "jointly and severally" is used. This expression is maintained for common law purposes. The expression "jointly and severally" is no longer adequate in civil law in English and has been replaced with the term "solidarily". Therefore, it is appropriate to add the term "solidarily" in the English version in order to reflect the civil law. No amendment is required to the French version of that paragraph as it uses the term "*solidairement*". This term is appropriate for both civil law and common law.

This amendment comes into force on royal assent.

Clause 17

Drop shipments

ETA
179

The purpose of the drop shipment rules, as set out in section 179 of the Act and Division IV of Part IX of the Act, is twofold. The rules generally allow a person that is a non-resident and not registered for purposes of the Goods and Services Tax/Harmonized Sales Tax ("GST/HST") to acquire in Canada goods, or commercial services in respect of goods, on a tax-free basis, provided the goods are ultimately exported, or are retained in Canada by a registrant that agrees to accept a potential liability for tax in respect of a subsequent transfer or non-commercial use of the goods. In addition, the drop shipment rules generally help to ensure that GST/HST applies to goods located in Canada that are supplied by an unregistered non-resident person for final

consumption in Canada in the same way as tax would apply to the goods if they were acquired from an unregistered non-resident person outside of Canada and imported for final consumption in Canada.

Subclauses 17(1) and (2)

Delivery to consignee of a non-resident

ETA
179(1)

Subsection 179(1) of the Act sets out a general rule that applies where a registrant supplies goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service and the registrant also causes physical possession of the goods to be transferred to another person in Canada. In these circumstances, the registrant is deemed to have made a taxable supply of the goods in Canada to the non-resident person and the consideration for this deemed supply is generally deemed to be equal to the fair market value of the goods. The registrant is therefore required to account for tax on this deemed supply, but is not required to account for tax on the actual supply of the goods or service made by the registrant to the non-resident person. This general rule is subject to certain exceptions that are set out in subsections 179(1) to (3) of the Act.

Subparagraph 179(1)(a)(i) sets out a condition for the application of the general rule in subsection 179(1). Specifically, this condition is satisfied if a registrant, under an agreement between the registrant and an unregistered non-resident person,

- makes a taxable supply in Canada of goods by way of sale to the non-resident person;
- makes a taxable supply in Canada of a service of manufacturing or producing goods to the non-resident person; or
- acquires physical possession of goods (other than goods of a person that is resident in Canada or is registered for GST/HST purposes) for the purpose of making a taxable supply of a commercial service in respect of the goods to the non-resident person.

Subparagraph 179(1)(a)(i) is amended in respect of the condition related to the acquisition of the physical possession of goods for the purposes of making a taxable supply of a commercial service in order to:

- remove the restriction that the goods not be goods of a person that is registered for GST/HST purposes, and
- clarify that the supply of the commercial service must be made in Canada.

Due to these amendments, the rules in subsection 179(1) may now apply to a commercial service, supplied in Canada, that is in respect of the goods of a non-resident person that is registered for GST/HST purposes. In these circumstances, new subsection 179(2.1) of the Act may apply to relieve tax in respect of a subsequent transfer of physical possession of those goods in Canada by the registrant service provider.

Paragraph 179(1)(c) deems the registrant to have made a taxable supply of goods to an unregistered non-resident person where the registrant supplies the goods, or a service in respect of goods, to the non-resident person and also transfers physical possession of the goods to another person in Canada. This paragraph is amended to clarify that this deemed supply is deemed to have been made in Canada.

These amendments apply in respect of supplies made after July 22, 2016.

Subclauses 17(3) and (4)

Exception where delivery to registrant consignee of a non-resident

ETA
179(2)

Subsection 179(2) of the Act provides an exception to the application of the general rule in subsection 179(1) of the Act. This exception generally applies in the following circumstances:

- under an agreement, a registrant supplies goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service;
- under the agreement, the registrant causes the transfer of physical possession of those goods at a place in Canada to a consignee that is registered for the purposes of the GST/HST; and
- the consignee issues a certificate (referred to as a "drop shipment certificate") to the registrant.

The issuance of a valid drop shipment certificate in the circumstances described in subsection 179(2) has the effect of nullifying the supply of the goods that is deemed to have been made under subsection 179(1), thereby relieving the registrant from having to remit GST/HST on that deemed supply. It also has the effect of deeming the supply of the goods, or the supply of a service in respect of the goods (other than a service of shipping the goods), to have been made outside of Canada. Therefore, the GST/HST is relieved on that supply by the registrant to the non-resident person.

Subparagraph 179(2)(a)(i) sets out one of the conditions for the issuance of a valid drop shipment certificate. This condition is that a registrant either makes a taxable supply in Canada of goods to an unregistered non-resident person or makes a taxable supply of a commercial service in respect of goods to an unregistered non-resident person. Subparagraph 179(2)(a)(i) is amended in the case of a taxable supply of a commercial service in respect of goods in order to clarify that the supply of the service must be made in Canada in order for a drop shipment certificate to be issued.

In addition to the amendments to subparagraph 179(2)(a)(i), other amendments are being made to subsection 179(2) to clarify the existing conditions for the issuance of a drop shipment certificate. More specifically, new paragraph 179(2)(b.1) states that in order for a registered consignee to issue a valid drop shipment certificate, it must be acquiring physical possession of the goods

- as the recipient of a taxable supply of the goods by an unregistered non-resident person;
- for the purpose of making a taxable supply in Canada of a service of manufacturing or producing other goods to an unregistered non-resident person that is not a consumer of the service, provided that the goods are incorporated or transformed into, attached to or combined or assembled with, the other goods, or are directly consumed or expended, in the manufacture or production of those other goods;
- if the goods are not the goods of a person that is resident in Canada, for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to an unregistered non-resident person that is not a consumer of the service; or
- for the purpose of making a taxable supply in Canada of a commercial service in respect of other goods (other than goods of a person that is resident in Canada) to an unregistered non-resident person that is not a consumer of the service, provided that the goods are incorporated into, attached to or combined or assembled with, the other goods, or are directly consumed or expended, in the provision of the commercial service.

These conditions clarify that the consignee, on acquiring physical possession of the goods, must have a potential GST/HST liability under the drop shipment rules in respect of the goods in order to issue a valid drop shipment certificate. As a consequence of new paragraph 179(2)(b.1), paragraph 179(2)(c) is amended so that the registered consignee is required to acknowledge in the drop shipment certificate that it is acquiring the goods either as the recipient of a taxable supply of the goods made by an unregistered non-resident person, or for one of the other purposes described above.

These amendments apply in respect of supplies made after July 22, 2016. In addition, new paragraph 179(2)(b.1) and the amendment to paragraph 179(2)(c) also apply in respect of

supplies made before July 23, 2016 in respect of which, before that day, an amount was charged, collected or remitted as or on account of tax under Part IX of the Act.

Subclauses 17(5) and (6)

Exception — certificate of registered owner

ETA
179(2.1)

New subsection 179(2.1) of the Act provides another exception to the application of the general rule in subsection 179(1) of the Act in respect of a supply of goods, or a supply of a service in respect of goods, that is made in Canada by a registrant to an unregistered non-resident person that is not a consumer of the goods or service. Similar to the exception provided in subsection 179(2), this new subsection provides that, in certain circumstances, a certificate (referred to as an "owner's certificate") may be issued that has the effect of nullifying the supply of the goods that is deemed to have been made under subsection 179(1), thereby relieving the registrant from having to remit GST/HST on that deemed supply. It also has the effect of deeming the supply of the goods, or the supply of a service in respect of the goods (other than a service of shipping the goods), to have been made outside of Canada. Therefore, the GST/HST is relieved on that supply by the registrant to the non-resident person.

New subsection 179(2.1) generally provides that an owner's certificate may be issued if the following four conditions are satisfied:

- under an agreement, a registrant supplies goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service;
- under the agreement, the registrant causes, at a particular time, the transfer of physical possession of those goods at a place in Canada to a consignee;
- either of the following two circumstances exists:
    - immediately after the particular time, the goods are goods of a third person that is registered for GST/HST purposes, or
    - the consignee is taking physical possession of the goods at the particular time as the recipient of a taxable supply by way of sale of the goods that was made before the particular time by a registered third person; and
- the consignee is not entitled to issue a drop shipment certificate under subsection 179(2) in respect of the goods.

In the case where the registrant originally supplied the goods by way of sale to the unregistered non-resident person, a fifth condition must also be met in order to issue an owner's certificate. Specifically, in that case, the goods must become the goods of the third person mentioned above after they have become the goods of the non-resident person.

Once the above conditions are satisfied, new subsection 179(2.1) sets out the rules concerning who may issue the owner's certificate and its contents. These rules vary depending on which of two alternatives cases is applicable. Specifically:

- In the case where the goods are goods of a registered third person immediately after the registrant causes the transfer of physical possession of the goods to the consignee, the owner's certificate can be given to the registrant by this third person. In this case, the certificate must state the third person's name and registration number. Further, the certificate must acknowledge that the goods, immediately after that time, are the goods of the third person and that the third person is assuming any potential tax liability that it may have under Division IV of Part IX of the Act in respect of the goods.
- In the case where the consignee is acquiring physical possession of the goods from the registrant as the recipient of a taxable supply by way of sale of the goods that was previously made by a registered third person, the owner's certificate can be given to the registrant by the third person, or by the consignee where the consignee is registered for GST/HST purposes. In this case, the certificate must state the third person's name and registration number (and the name and registration number of the consignee in the case where the consignee gives the certificate). Further, it must acknowledge that the third person made a taxable supply by way of sale of the goods to the consignee before the transfer of physical possession and that the consignee is taking physical possession of the goods as the recipient of that supply.

New subsection 179(2.1) of the Act generally applies in respect of supplies made after July 22, 2016.

In addition, a transitional version of new subsection 179(2.1) of the Act may apply in respect of supplies made before July 23, 2016. This will be the case only where the following five conditions are met:

- under an agreement, a registrant supplies, before July 23, 2016, goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service;
- no amount in respect of that supply is charged, collected or remitted as or on account of tax under Part IX of the Act;

- under the agreement the registrant causes, at a particular time, the transfer of physical possession of those goods at a place in Canada to a consignee;
- the consignee is acquiring physical possession of the goods at the particular time as the recipient of a taxable supply by way of sale of the goods that was made before the particular time by a registered third person; and
- the registrant retains a certificate that is given by the registered third person, or by the consignee where the consignee is registered for GST/HST purposes, that states the registered third person's name and registration number and, if the certificate is given by the consignee, states the consignee's name and registration number.

If these conditions are satisfied, new subsection 179(2.1) provides that subsection 179(1) does not apply to the supply of the goods, or the supply of a service in respect of the goods, thereby relieving the registrant from having to remit GST/HST on a supply of the goods that would otherwise be deemed to have been made under that subsection. It also provides that the supply of the goods, or the supply of a service in respect of the goods (other than a service of shipping the goods), is deemed to have been made outside of Canada. Therefore, the GST/HST is relieved on that supply by the registrant to the non-resident person.

Subclause 17(7)

Exception where export

ETA
179(3)

Subsection 179(3) of the Act provides for another exception to the application of the general rule in subsection 179(1) of the Act. This exception generally applies where both of the following two conditions are met:

- a registrant supplies goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service; and
- the goods are exported by the registrant or are transferred by the registrant to another person in Canada for export.

The exportation of the goods in the conditions described in subsection 179(3) has the effect of nullifying the supply of the goods that is deemed to have been made under subsection 179(1), thereby relieving the registrant from having to remit GST/HST on that deemed supply. It also has the effect of deeming the supply of the goods, or the supply of a service in respect of the goods (other than a service of shipping the goods), to have been made outside of Canada. Therefore, the GST/HST is relieved on that supply by the registrant to the non-resident person.

Subparagraph 179(3)(a)(iii) is amended in respect of the situation where a registrant acquires physical possession of goods (other than goods of a person that is resident in Canada) for the purpose of making a taxable supply of a commercial service in respect of the goods to an unregistered non-resident person in order to clarify that the supply of the service must be made in Canada for the exception to apply.

This amendment applies in respect of supplies made after July 22, 2016.

Subclauses 17(8) to (11)

Retention of possession

ETA
179(4)

Subsection 179(4) of the Act generally applies where goods are sold by a particular registrant to an unregistered non-resident person and physical possession of the goods is retained, after ownership of the goods is transferred to the non-resident person, by the particular registrant or by another registrant that gives a drop shipment certificate to the particular registrant. The rules in subsection 179(4) generally have the effect of ensuring that the drop shipment rules continue to apply in respect of the goods of the non-resident person in these circumstances. Specifically, these rules have the effect of ensuring that the sale of the goods to the non-resident person is deemed under subsection 179(2) to have been made outside of Canada, thereby relieving the GST/HST on that supply. At the same time, these rules ensure that the registrant that is retaining physical possession of the goods has a potential tax liability under Division IV of Part IX of the Act if it retains the goods otherwise than for consumption, use or supply exclusively in its commercial activities or under subsection 179(1) if it transfers physical possession of the goods in Canada to another person.

The rules set out in subsection 179(4) apply for the purposes of sections 179 and 180 of the Act, and for the purposes of paragraph (b) of the definition “imported taxable supply” in section 217 of the Act. Due to the addition of new paragraph (b.01) to that definition in section 217, subsection 179(4) is amended so that its rules apply for the purpose of the entirety of the definition “imported taxable supply” in section 217.

One of the conditions for the application of the rules in subsection 179(4) is that the goods are retained by a registrant for certain purposes that are set out in paragraph 179(4)(b). One of these purposes is to make a supply of a commercial service in respect of the goods to the non-resident person that purchased the goods or to a person that subsequently acquires ownership of the goods. Subparagraph 179(4)(b)(ii) is amended to clarify that this condition is only met where the supply of the commercial service is a taxable supply that is made in Canada.

If the conditions for the application of the rules in subsection 179(4) that are set out in paragraphs 179(4)(a) and (b) are met in respect of a sale of goods by a particular registrant to an unregistered non-resident person, then paragraphs 179(4)(c) and (d) apply to deem certain things to occur. These deeming rules have the effect of determining how the other drop shipment rules set out in section 179 and in Division IV of Part IX of the Act may apply in respect of the goods.

Paragraph 179(4)(c) applies where the particular registrant also retains physical possession of the goods after ownership of the goods is transferred to the non-resident person. This paragraph deems the particular registrant to have transferred physical possession of the goods to another registrant and to have obtained a certificate described in paragraph 179(2)(c) (i.e. a "drop shipment certificate") from that other registrant. This has the effect of causing the supply of the goods to the non-resident person to meet the conditions for the application of subsection 179(2). Subsection 179(2) therefore applies to deem the supply to have been made outside of Canada and therefore the supply is relieved of tax.

The rule that deems that the goods are transferred to another registrant is set out in new subparagraph 179(4)(c)(i). This rule is amended to clarify that the deemed transfer is deemed to have been made in Canada and under the agreement for the sale of the goods. These amendments ensure that the deemed transfer of physical possession meets all of the conditions for the issuance of a drop shipment certificate.

The rule that deems the particular registrant to have obtained a drop shipment certificate from that other registrant is now set out in new subparagraph 179(4)(c)(ii). This rule is amended to clarify that the certificate is specifically in respect of the transfer of physical possession of the goods that is deemed to have occurred under subparagraph 179(4)(c)(i).

Paragraph 179(4)(c) also deems the particular registrant to have acquired physical possession of the goods for the purpose referred to in paragraph 179(4)(b). This rule places a potential tax liability on the particular registrant if the particular registrant retains the goods otherwise than for consumption, use or supply exclusively in commercial activities or if the particular registrant later transfers physical possession of the goods in Canada to another person. This deeming rule, which is now set out in new subparagraph 179(4)(c)(iii) and (iv), is amended as follows to clarify its applications in the following three cases.

- The first case is where the particular registrant retains physical possession of the goods for the purpose of
    - transferring physical possession of the goods to the non-resident person, a subsequent purchaser or a person designated by the non-resident person or a subsequent purchaser; or
    - making a taxable supply in Canada of a commercial service in respect of the goods to a subsequent purchaser that is not an unregistered non-resident person.

In this case, the rule is clarified so that the particular registrant is deemed under new clause 179(4)(c)(iii)(A) to have acquired physical possession of the goods, under the agreement for the supply of the goods to the non-resident person, for the purpose of making a taxable supply in Canada to the non-resident person of a commercial service in respect of the goods that is not a storage service.

- The second case is where the particular registrant retains physical possession of the goods for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to the non-resident person or to a subsequent purchaser that is also an unregistered non-resident person. In this case, the particular registrant is deemed under new clause 179(4)(c)(iii)(B) to have acquired physical possession of the goods, under the agreement for the supply of the commercial service, for that purpose.
- The third case is where the particular registrant retains physical possession of the goods for the purpose of receiving a particular supply of the goods by way of sale or lease that is made by the non-resident person, a subsequent purchaser or a lessee or sub-lessee of the non-resident person or a subsequent purchaser. In this case, the particular registrant is deemed, under new subparagraph 179(4)(c)(iv), to have acquired physical possession of the goods, as the recipient of the particular supply and under the agreement for the particular supply, from another registrant that sold the goods to a non-resident person. Further, the particular registrant is deemed to have given a drop shipment certificate to that other registrant in respect of that acquisition. Finally, that acquisition is deemed to have occurred at the time when, and at the place where, the goods are delivered or made available to the particular registrant under the agreement for that supply.

Paragraph 179(4)(d) applies where another registrant, other than the particular registrant that sold the goods to the non-resident person, retains physical possession of the goods after ownership of the goods is transferred to the non-resident person and gives a drop shipment certificate to the particular registrant. This paragraph deems physical possession of the goods to have been transferred from the particular registrant to the other registrant. Since a drop-shipment certificate is obtained by the particular registrant that sold the goods to the non-resident person, the sale of the goods to the non-resident person is deemed to be a supply made outside of Canada pursuant to subsection 179(2) and, hence, relieved of tax. This paragraph is amended to clarify the application of this relief in the following two cases.

- The first case is where the other registrant retains physical possession of the goods for the purpose of
  - transferring physical possession of them to the non-resident person, a subsequent purchaser or a person designated by the non-resident person or a subsequent purchaser; or

- making a taxable supply in Canada of a commercial service in respect of the goods to the non-resident person or a subsequent purchaser.

In this case, the rule in new clause 179(4)(d)(i)(A) is amended to clarify that the deemed transfer of physical possession of the goods is deemed to have been made at a place in Canada and under the agreement for the sale of the goods. These amendments ensure that the transfer meets all of the conditions for the issuance of a drop shipment certificate.

- The second case is where the other registrant retains physical possession of the goods for the purpose of receiving a particular supply of the goods by way of sale or lease that is made by the non-resident person, a subsequent purchaser or a lessee or sub-lessee of the non-resident person or the subsequent purchaser. In this case, the deemed transfer under new subparagraph 179(4)(d)(ii) is deemed to have been made under the agreement for the sale of the goods and at the time when, and at the place where, the goods are delivered or made available to the other registrant under the agreement for the particular supply.

Paragraph 179(4)(d) also deems the other registrant to have acquired physical possession of the goods for the purpose referred to in paragraph 179(4)(b). These rules place a potential tax liability on the other registrant if the other registrant retains the goods otherwise than for consumption, use or supply exclusively in commercial activities or if the other registrant transfers physical possession of the goods in Canada to another person. This deeming rule is amended as follows to clarify the application of this potential liability in the following three cases.

- The first case is where the other registrant retains physical possession of the goods for the purpose of

  - transferring physical possession of the goods to the non-resident person, a subsequent purchaser or a person designated by the non-resident person or a subsequent purchaser; or

  - making a taxable supply in Canada of a commercial service in respect of the goods to a subsequent purchaser that is not an unregistered non-resident person.

  In this case, the other registrant is now deemed, under new subclause 179(4)(d)(i)(B)(I), to have acquired physical possession of the goods, under an agreement between the other registrant and the non-resident person, for the purpose of making a taxable supply in Canada to the non-resident person of a commercial service in respect of the goods that is not a storage service.

- The second case is where the other registrant retains physical possession of the goods for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to the non-resident person or a subsequent purchaser that is also an unregistered non-resident person. In this case, the other registrant is now deemed, under

new subclause 179(4)(d)(i)(B)(II), to have acquired physical possession of the goods, under the agreement for the supply of the commercial service, for that purpose.

- The third case is where the other registrant retains physical possession of the goods for the purpose of receiving a supply of the goods by way of sale or lease that is made by the non-resident person, a subsequent purchaser or a lessee or sub-lessee of the non-resident person or the subsequent purchaser. In this case, the other registrant is deemed, under new subparagraph 179(4)(d)(ii), to have acquired physical possession of the goods, as the recipient of that supply and under the agreement for that supply, from the particular registrant. As well, that acquisition is deemed to have occurred at the time when, and at the place where, the goods are delivered or made available to the other registrant under the agreement for that supply.

The amendment to subsection 179(4) that clarifies that this subsection applies for the purpose of the entire definition "imported taxable supply" in section 217 of the Act applies in respect of supplies made after July 22, 2016. The remaining amendments to subsection 179(4) apply in respect of supplies made after July 22, 2016, and in respect of supplies made on or before July 22, 2016 in respect of which, on or before that day, an amount was charged, collected or remitted as or on account of tax under Part IX of the Act.

Subclause 17(12)

Transfer of possession to bailee

ETA
179(5)

Subsection 179(5) of the Act sets out the treatment under the drop shipment rules of bailees that provide storage or shipping services in respect of goods. The rules set out in this subsection apply for the purposes of sections 179 and 180 of the Act, and for the purposes of paragraph (b) of the definition "imported taxable supply" in section 217 of the Act. Due to the addition of new paragraph (b.01) to that definition in section 217, subsection 179(5) is amended so that its rules apply for the purpose of the entirety of the definition "imported taxable supply" in section 217.

This amendment applies in respect of supplies made after July 22, 2016.

Subclause 17(13)

Goods transferred to bailee by non-resident

ETA
179(6)

Subsection 179(6) of the Act sets out a rule that applies to bailees that acquire goods from an unregistered non-resident person for the sole purpose of storing or shipping them. The rules set

out in this subsection apply for the purposes of sections 179 and 180 of the Act, and for the purposes of paragraph (b) of the definition "imported taxable supply" in section 217 of the Act. Due to the addition of new paragraph (b.01) to that definition in section 217, subsection 179(6) is amended so that its rules apply for the purpose of the entirety of the definition "imported taxable supply" in section 217.

This amendment applies in respect of supplies made after July 22, 2016.

Subclause 17(14)

Drop shipments

ETA
179

Section 179 of the Act generally allows a person that is a non-resident and not registered for purposes of the GST/HST to acquire in Canada goods, or commercial services in respect of goods, on a tax-free basis, provided the goods are ultimately exported, or are retained in Canada by a registrant that agrees to accept a potential liability for tax in respect of a subsequent transfer or non-commercial use of the goods. In addition, this provision generally helps to ensure that GST/HST applies to goods located in Canada that are supplied by an unregistered non-resident person for final consumption in Canada in the same way as tax would apply to the goods if they were acquired from an unregistered non-resident person outside of Canada and imported for final consumption in Canada.

These amendments to section 179 apply in respect of supplies made after the day on which the Act implementing this section receives royal assent.

Drop shipments — deemed supply

ETA
179(1)

Subsection 179(1) of the Act sets out a rule that generally applies where a registrant supplies goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service and the registrant also causes physical possession of the goods to be transferred to another person in Canada. In these circumstances, the registrant is deemed to have made a taxable supply of the goods in Canada to the non-resident person and the consideration for this deemed supply is generally deemed to be equal to the fair market value of the goods. The registrant is therefore required to account for tax on this deemed supply, but is not required to account for tax on the actual supply of the goods made by the registrant to the non-resident person. This general rule is subject to the provisions of subsections 179(1) to (4) of the Act.

A condition for the application of subsection 179(1) is set out in paragraph 179(1)(a). This condition is satisfied if a registrant, under an agreement between the registrant and an unregistered non-resident person,

- does one of the following three actions:
  - makes a taxable supply in Canada of goods by way of sale to the non-resident person,
  - makes a taxable supply in Canada of a service of manufacturing or producing goods to the non-resident person, or
  - acquires physical possession of goods (other than goods of a person that is resident in Canada) for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to the non-resident person; and
- causes physical possession of those goods to be transferred, at a place in Canada, either to a consignee or to the non-resident person.

Paragraph 179(1)(a) is amended to remove the condition that the taxable supply and the transfer of physical possession be performed under a single agreement between the registrant and the non-resident person. The supply and the transfer of the goods may not be under the same agreement, and therefore the reference to an agreement is not necessary in this subsection. The condition that the registrant cause physical possession of the goods to be transferred is moved to new paragraph 179(1)(b), and the remaining paragraphs of subsection 179(1) are renumbered accordingly.

Paragraph 179(1)(a) is also amended to add a fourth scenario to the three possible actions that the registrant may perform in order for subsection 179(1) to apply. This new scenario, as described in new subparagraph 179(1)(a)(iv), is where the registrant acquires physical possession of goods for the purpose of leasing the goods from an unregistered non-resident person. Under this new scenario, however, subsection 179(1) may apply only if the registrant either gives a drop shipment certificate in respect of the acquisition or claims an input tax credit in respect of tax that the registrant is deemed to have paid in respect of the goods under either subsection 178.8(2) or section 180 of the Act. This new scenario is added to ensure that the drop shipment rules continue to apply to GST/HST-relieved goods of an unregistered non-resident person if the goods remain in Canada under a leasehold arrangement.

Subsection 179(1) is also amended to generally update the wording in accordance with current legislative drafting standards.

Exception — certificate of registered consignee

ETA
179(2)

Subsection 179(2) of the Act provides for an exception to the application of the general rule in subsection 179(1) of the Act. This exception generally applies in the following circumstances:

- a registrant supplies goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service;
- the registrant causes the transfer of physical possession of those goods at a place in Canada to a consignee that is registered for the purposes of the GST/HST; and
- the consignee issues a certificate (referred to as a "drop shipment certificate") to the registrant.

The issuance of a valid drop shipment certificate in the circumstances described in subsection 179(2) has the effect of nullifying the supply of the goods that is deemed to have been made under subsection 179(1), thereby relieving the registrant from having to remit GST/HST on that deemed supply. It also has the effect of deeming the supply of the goods, or the supply of a service in respect of the goods (other than a service of shipping the goods), to have been made outside of Canada. Therefore, the GST/HST is relieved on that supply by the registrant to the non-resident person.

The amendments to subsection 179(2) are consequential to the amendments to subsection 179(1) that are described above. In particular, the references in this subsection to an agreement between the registrant and the non-resident person are removed. Also, a reference to the scenario where the registrant originally acquired physical possession of the goods for the purpose of leasing the goods from an unregistered non-resident person has been added.

Subsection 179(2) is also amended to generally update the wording in accordance with current legislative drafting standards.

Exception — certificate of registered owner

ETA
179(3)

Subsection 179(3) of the Act (formerly subsection 179(2.1) of the Act) provides for another exception to the application of the general rule in subsection 179(1) of the Act. This exception generally applies if the following conditions are satisfied:

- a registrant supplies goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service;
- the registrant causes, at a particular time, the transfer of physical possession of those goods at a place in Canada to a consignee;
- either of the following two circumstances exists:
  - immediately after the particular time, the goods are goods of a third person that is registered for GST/HST purposes, or
  - the consignee is acquiring physical possession of the goods as the recipient of a taxable supply by way of sale of the goods that was made before the particular time by a registered third person; and
- the consignee is not entitled to issue a drop shipment certificate under subsection 179(2) in respect of the goods.

If the above conditions are satisfied, a certificate (referred to as an "owner's certificate") may be issued that has the effect of nullifying the supply of the goods that is deemed to have been made under subsection 179(1), thereby relieving the registrant from having to remit GST/HST on that deemed supply. It also has the effect of deeming the supply of the goods, or the supply of a service in respect of the goods (other than a service of shipping the goods), to have been made outside of Canada. Therefore, the GST/HST is relieved on that supply by the registrant to the non-resident person.

The amendments to subsection 179(3) are consequential to the amendments to subsection 179(1) that are described above. In particular, the references in this subsection to an agreement between the registrant and the non-resident person are removed. Also, a reference to the scenario where the registrant originally acquired physical possession of the goods for the purpose of leasing the goods from an unregistered non-resident person has been added.

Exception — export

ETA
179(4)

Subsection 179(4) of the Act (formerly subsection 179(3) of the Act) provides for another exception to the application of the general rule in subsection 179(1) of the Act. This exception generally applies where the following two conditions are met:

- a registrant supplies goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in

Canada), to an unregistered non-resident person that is not a consumer of the goods or service; and

- the goods are exported by the registrant or are transferred by the registrant to another person in Canada for export.

The exportation of the goods in the conditions described in subsection 179(4) has the effect of nullifying the supply of the goods that is deemed to have been made under subsection 179(1), thereby relieving the registrant from having to remit GST/HST on that deemed supply. It also has the effect of deeming the supply of the goods, or the supply of a service in respect of the goods (other than a service of shipping the goods), to have been made outside of Canada. Therefore, the GST/HST is relieved on that supply by the registrant to the non-resident person.

The amendments to subsection 179(4) are consequential to the amendments to subsection 179(1) that are described above. In particular, the references in this subsection to an agreement between the particular registrant and the non-resident person are removed. Also, a reference to the scenario where the registrant originally acquired physical possession of the goods for the purpose of leasing the goods from an unregistered non-resident person has been added.

In addition, the wording in subparagraph 179(4)(b)(i), which describes the scenario where the goods are directly exported by the registrant, has been updated to reflect the wording of other provisions of the Act that describe an export of goods, particularly section 12 of Part V of Schedule VI to the Act.

Subsection 179(4) is also amended to generally update the wording in accordance with current legislative drafting standards.

Retention of possession

ETA
179(5)

Subsection 179(5) of the Act (formerly subsection 179(4) of the Act) generally applies where goods are sold by a particular registrant to an unregistered non-resident person and physical possession of the goods is retained, after ownership of the goods is transferred to the non-resident person, by the particular registrant or by another registrant that gives a drop shipment certificate to the particular registrant. The rules in subsection 179(5) generally have the effect of ensuring that the drop shipment rules continue to apply in respect of the goods of the non-resident person in these circumstances.

Paragraphs 179(5)(a) and (b) set out the conditions under which the rules in paragraphs 179(5)(c) and (d) apply. One condition, in paragraph 179(5)(a), is that ownership of the goods is transferred to the non-resident person. This paragraph is amended to clarify that the goods are

required to be supplied in Canada by way of sale to the non-resident person and that the non-resident person must not be a consumer of the goods.

Another condition for the application of subsection 179(5) that is set out in paragraph 179(5)(b) is that the goods are retained, after the time when ownership of the goods is transferred to the non-resident person, by the particular registrant or by another registrant that gives a drop shipment certificate to the particular registrant. This condition is amended in two ways. First, where the goods are retained by a registrant other than the particular registrant, the condition that this other registrant must give a drop shipment certificate to the particular registrant is removed as a consequence of amendments to paragraph 179(5)(d) that are described below. Second, the timing of the application of this test is changed so that the particular registrant or the other registrant, as the case may be, must have physical possession of the goods at the time when the goods are delivered or made available to the non-resident purchaser under the agreement for the supply of the goods and must retain physical possession of the goods after that time.

The final condition for the application of the rules in 179(5), as set out in paragraph 179(5)(b), is that the goods are retained for one of the purposes listed in that paragraph. Two of those purposes are amended as follows:

- Where the goods are retained for the purpose of transferring physical possession of the goods to the non-resident purchaser, a subsequent purchaser or a person designated by the non-resident purchaser or a subsequent purchaser, subparagraph 179(5)(b)(i) is amended to clarify that this must be the sole reason for which they are retained.
- Previously, the goods could be retained for the purpose of consumption, use or supply by the registrant retaining physical possession of the goods pursuant to an agreement for a supply of the goods made by way of sale or lease to that registrant by the non-resident purchaser, by a subsequent purchaser or by a lessee or sub-lessee of the non-resident purchaser or of the subsequent purchaser. This condition is amended to remove the reference to an agreement and the references to the words “consumption, use or supply” and “by way of sale or lease”, as those references are not necessary. This condition is therefore now met if the registrant retains physical possession of the goods as the recipient of a supply of the property made by the non-resident purchaser, by a subsequent purchaser or by a lessee or sub-lessee of a subsequent purchaser. This condition is further amended to exclude the case where new subsection 179(9) of the Act applies in respect of the sale of the goods to the non-resident purchaser. New subsection 179(9) applies in the special case where goods are sold by a registrant to an unregistered non-resident person and, at the time when the goods are delivered or made available to the non-resident person pursuant to that sale, that registrant or another registrant leases the goods from the non-resident person or from another unregistered non-resident person. Finally, this condition has been moved to new subparagraph 179(5)(b)(v) of the Act.

Consequential to amendments that are made to subsection 179(2), subsection 179(5) is amended to expand its application to include circumstances where goods are retained for the following two new purposes that are listed in paragraph 179(5)(b).

- Amended subparagraph 179(5)(b)(iii) generally applies when goods are retained for the purpose of being used as an input to manufacture or produce other goods for an unregistered non-resident person.
- New subparagraph 179(5)(b)(iv) generally applies when goods are retained for the purpose of being used as an input to a supply of a commercial service in respect of other goods supplied to an unregistered non-resident person.

If the conditions for the application of subsection 179(5) that are set out in paragraphs 179(5)(a) and (b) are met in respect of a sale of goods by a particular registrant to an unregistered non-resident person, then paragraphs 179(5)(c) and (d) apply to deem certain things to occur. These deeming rules have the effect of determining how the other drop shipment rules set out in section 179 and in Division IV of Part IX of the Act continue to apply in respect of the goods.

Paragraph 179(5)(c) generally applies where the particular registrant has physical possession of the goods at the time the goods are delivered or made available to the non-resident person. Previously, this paragraph deemed the particular registrant to have transferred physical possession of the goods to another registrant and to have obtained a drop shipment certificate from that other registrant. This deeming rule ensured that subsection 179(2) applied in respect of the supply by way of sale of the goods by the particular registrant to the unregistered non-resident person in order to deem that supply to have been made outside of Canada, thereby relieving the GST/HST on that supply. Instead, this supply is now deemed under subparagraph 179(5)(c)(i) to have been made outside of Canada for the purposes of Part IX of the Act, thereby providing the same relief in a more direct manner.

Paragraph 179(5)(c) also deems the particular registrant to have acquired physical possession of the goods for a deemed purpose that is determined by the actual purpose for which the goods are retained by the particular registrant. These deeming rules have the effect of placing a potential tax liability on the particular registrant if the particular registrant retains physical possession of the goods otherwise than for consumption, use or supply exclusively in its commercial activities or if the particular registrant transfers physical possession of the goods in Canada to another person. These deeming rules that are set out in new clauses 179(5)(c)(ii)(A) and (B) are amended to remove the reference to the agreement for the supply of the goods as that reference is no longer required due to the amendments to subsection 179(1).

Paragraph 179(5)(d) generally applies where another registrant, other than the particular registrant that sold the goods to the non-resident person, has physical possession of the goods at the time the goods are delivered or made available to the non-resident person. The rules set out in

this paragraph apply for the purposes of section 179 and the definition "imported taxable supply" in section 217 and are generally intended to deem to be true the conditions that would have been true if the goods were sold by the particular registrant to the non-resident person and then transferred by the particular registrant to the other registrant, in order to ensure that the drop shipment rules set out in section 179 and in Division IV of Part IX of the Act may be applied accordingly in respect of the goods. The particular rules that apply in this paragraph depend on the purpose, as described in paragraph 179(5)(b), for which the goods are retained by the other registrant.

The first case where the rules in paragraph 179(5)(d) apply is where the other registrant retains physical possession of the goods for the sole purpose of transferring physical possession of them to another person, as described in subparagraph 179(5)(b)(i). In this case, the rules, as set out in amended subparagraph 179(5)(d)(i), apply only if the other registrant gives a certificate to the particular registrant that contains the information that is required to be included in a drop-shipment certificate. If such a certificate is given, then the particular registrant is deemed to have caused physical possession of the goods to be transferred at a place in Canada to the other registrant. The other registrant is also deemed to have acquired physical possession of the goods for the purpose of making a taxable supply in Canada to the non-resident person of a commercial service in respect of the goods that is not a storage service. This deemed transfer and acquisition are now, due to the amendments to paragraph 179(5)(b), deemed to occur when the goods are delivered or made available to the non-resident purchaser of the goods. Finally, the certificate given by the other registrant to the particular registrant is deemed to be a valid drop-shipment certificate. This last deeming rule is a clarification of the condition in existing paragraph 179(4)(b) that a drop shipment certificate be given where the other registrant retains physical possession after the sale to the non-resident purchaser. Absent this new rule, the other registrant may not have been able to issue a valid drop shipment certificate since physical possession of the goods was not transferred, and the other registrant did not acquire physical possession of them, after the sale to the non-resident purchaser.

The various deeming rules that apply in this first case generally have the effect of ensuring that subsection 179(2) applies in respect of the sale of the goods to the non-resident person so that it is deemed to be a supply made outside of Canada and, hence, relieved of tax. These deeming rules also place a potential tax liability on the other registrant if the other registrant retains the goods otherwise than for consumption, use or supply exclusively in commercial activities or if the other registrant transfers physical possession of the goods in Canada to another person.

The second case where the rules in paragraph 179(5)(d) apply is where the other registrant retains physical possession of the goods for one of the following purposes:

- to make a taxable supply in Canada of a commercial service in respect of the goods to the non-resident purchaser or to a person that acquires ownership of the goods after the non-

resident purchaser (i.e., a "subsequent purchaser"), as described in subparagraph 179(5)(b)(ii);

- to use the goods as an input to the manufacture or production of other goods for the non-resident purchaser or another unregistered non-resident person, as described in subparagraph 179(5)(b)(iii); or
- to use the goods as an input to a commercial service in respect of other goods that is made to the non-resident purchaser or another unregistered non-resident person, as described in subparagraph 179(5)(b)(iv).

In this second case, amended subparagraph 179(5)(d)(ii) applies to deem the particular registrant to have caused physical possession of the goods to be transferred at a place in Canada to the other registrant. Further, the other registrant is deemed to have acquired physical possession of the goods for the purpose for which they are retained (i.e., for whichever of the three purposes mentioned above is applicable). In all of the above scenarios except one, this deemed transfer and acquisition are now, due to the amendments to paragraph 179(5)(b), deemed to occur when the goods are delivered or made available to the non-resident purchaser of the goods. Where the other registrant retains physical possession of the goods for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to a subsequent purchaser that is registered, however, the deemed transfer and acquisition are now deemed to have occurred at the time when the goods are delivered or made available to that subsequent purchaser.

The various deeming rules that apply in this second case set up the conditions to ensure that subsection 179(1) applies in respect of the sale of the goods by the particular registrant to the non-resident purchaser. Therefore, the particular registrant will have a potential GST/HST liability in respect of the goods unless one of the exceptions in subsections 179(2) to (4) applies. These deeming rules also set up the conditions to allow this potential GST/HST liability of the particular registrant to be relieved under subsection 179(2) or (3).

The third case where the rules in paragraph 179(5)(d) apply is where the other registrant retains physical possession of the goods as the recipient of another supply of the goods and subsection 179(9) does not apply in respect of the sale of the goods to the non-resident person, as described in subparagraph 179(5)(b)(v). In this case, new subparagraph 179(5)(d)(iii) deems the particular registrant to have caused physical possession of the goods to be transferred to the other registrant at the place where, and at the time when, the goods are delivered or made available to the other registrant under the agreement for that other supply. It also deems the other registrant to have acquired, at the same time and place, physical possession of the goods from the particular registrant as the recipient of that other supply. These deeming rules have the same effects as in the second case described above, except that due to the application of subparagraph 179(1)(a)(iv) the other registrant will only have a potential tax liability under the drop shipment rules if it issues a drop shipment certificate in respect of the goods to the particular registrant or if it claims

an input tax credit in respect of tax that the registrant is deemed to have paid in respect of the goods under either subsection 178.8(2) or section 180 of the Act.

Subsection 179(5) is also amended to generally update the wording in accordance with current legislative drafting standards.

Transfer of possession to bailee

ETA
179(6)

Subsection 179(6) of the Act (formerly subsection 179(5) of the Act) sets out rules that apply in the case where a registrant transfers physical possession of goods to a bailee, the bailee is acquiring the goods for the sole purpose of storing or shipping them and the bailee does not give a drop shipment certificate under subsection 179(2) of the Act to the registrant in respect of the goods at or before the time that the goods are transferred to the bailee.

Previously, this subsection stated that it also applied where the bailee is acquiring the goods for the sole purpose of shipping them, whether or not a drop shipment certificate is given by the bailee. This condition is removed, as it is not necessary. The amendments to subsection 179(2) clarify that a bailee that is acquiring goods for the sole purpose of shipping them is not entitled to issue a drop shipment certificate. Therefore, in the case of a transfer to a bailee solely for the purpose of shipping, it will always be the case that the bailee does not give a drop shipment certificate under subsection 179(2).

Under this subsection, the storage and shipping services supplied by the bailee are generally excluded from the drop-shipment rules. If the goods are returned to the registrant by the bailee, the registrant is deemed, for the purpose of the drop shipment rules, to retain physical possession of the goods throughout the period that they are held by the bailee. If physical possession of the goods is to be transferred by the bailee to a consignee, however, then physical possession of the goods is deemed, for the purposes of the drop shipment rules, to be directly transferred by the registrant to the consignee. In both of these cases the bailee is deemed for the purposes of the drop shipment rules not to have acquired physical possession of the goods.

In order to ensure that the rules in this subsection work properly with the rules set out in subsections 179(1) and (2) of the Act and in Division IV of Part IX of the Act, as amended, the rules are amended to clarify where and when these deemed transfers of physical possession of the goods by the registrant to a consignee are deemed to occur and for what purpose the consignee is acquiring the goods. In particular, the transfer is deemed to occur at the time and place where the bailee transfers physical possession of the goods to the consignee and the consignee is deemed to be acquiring the goods from the registrant for the same purpose for which it is acquiring the goods from the bailee.

An exception to the two scenarios described above may occur where the bailee is acquiring the goods for the purpose of storing them. This exception occurs when the bailee opts into the drop shipment rules by giving to the registrant a certificate that contains the information that is required to be included in a drop shipment certificate under subsection 179(2) after it receives the goods but before the consignee is identified. In this case, for the purposes of the drop shipment rules, under clause 179(6)(b)(ii)(B) physical possession of the goods is deemed to be transferred by the registrant to the bailee at the time the certificate is given and the certificate is deemed to be a valid drop-shipment certificate.

Other amendments to subsection 179(6) are consequential to the amendments to subsections 179(1) and (2) that are described above. In particular, subsection 179(6) is amended to replace the cross-references to paragraph 179(2)(c), which is the paragraph under which a drop-shipment certificate would be issued on or before the day on which the Act implementing this section receives royal assent, with a cross-reference to paragraph 179(2)(d), which is the paragraph under which a drop shipment certificate would be issued after that day.

Finally, this subsection is amended to update and clarify the wording in accordance with current legislative drafting standards.

Goods transferred to bailee by non-resident

ETA
179(7)

Subsection 179(7) of the Act (formerly subsection 179(6) of the Act) sets out a rule that applies to bailees that acquire goods from an unregistered non-resident person for the sole purpose of storing or shipping them. This subsection is amended to update and clarify the wording in accordance with current legislative drafting standards.

Lease from unregistered non-resident

ETA
179(8) to (12)

New subsections 179(8) to (12) of the Act set out new rules that apply for the purposes of the GST/HST drop shipment rules, as set out in section 179 of the Act and Division IV of Part IX of the Act, in circumstances involving leases. These new subsections apply where a registrant leases goods from an unregistered non-resident lessor and has either given a drop shipment certificate in respect of the goods or has claimed an input tax credit in respect of tax that it is deemed to have paid in respect of the goods under either subsection 178.8(2) or section 180 of the Act. Generally, under these rules the registrant lessee is deemed to have obtained physical possession of the goods at the beginning of the lease period and to retain physical possession of them until the end of the lease period. This is true even if the actual physical possession of the

goods is held during all or a part of the lease period by a third person, such as a sublessee. Therefore, these rules generally ensure that the registrant lessee (rather than other persons that have physical possession of the goods during the lease period) will have a potential GST/HST liability in respect of the goods either due to the application of subsection 179(1) of the Act or under Division IV of Part IX of the Act.

There is an exception to this general rule in cases where another registrant has physical possession of the goods during the lease period for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to the non-resident lessor or to another unregistered non-resident person. This exception is explained below in more detail under the description of subsection 179(11).

Beginning of lease from unregistered non-resident

ETA
179(8)

New subsection 179(8) of the Act sets out the rules that apply when a registrant lessee begins to lease goods from an unregistered non-resident lessor. These rules apply where, immediately before the beginning of the lease period, the goods were leased by another registrant from either the non-resident lessor or another unregistered non-resident person. They also apply where, immediately after the beginning of the lease period, another registrant had physical possession of the goods and where, immediately before the beginning of the lease period, the registrant lessee did not have possession or use of the goods under a lease, licence or similar arrangement between the registrant lessee and an unregistered non-resident.

In both of these cases, the other registrant (i.e., the previous lessee or the registrant that had physical possession of the goods) is deemed to have transferred, at the beginning of the lease period, physical possession of the goods to the registrant lessee. If the other registrant meets all of the other conditions for the application of subsection 179(1) in respect of the goods, this deeming rule would have the effect of placing a potential tax liability on the other registrant under the drop shipment rules unless one of the exceptions set out in subsection 179(2) to (4) applies. Additionally, the registrant lessee is deemed to have acquired physical possession of the goods as the recipient of the supply by way of lease of the goods by the non-resident lessor. This second deeming rule has two potential effects.

- If subsection 179(1) applies to place a potential tax liability in respect of the goods on the other registrant, this deeming rule allows the registrant lessee to issue a drop shipment certificate to the other registrant under subsection 179(2).
- If the registrant lessee either issues a drop shipment certificate in respect of the goods under subsection 179(2) or claims an input tax credit in respect of tax that the registrant lessee is deemed to have paid in respect of the goods under subsection 178.8(2) or section

180, this deeming rule places a potential tax liability on the registrant lessee under the drop shipment rules. This potential tax liability would arise if the registrant lessee acquires the goods for consumption, use or supply otherwise than exclusively in its commercial activities or if the registrant lessee causes (or is deemed to have caused) physical possession of the goods to be transferred in Canada to another person.

Under paragraph 179(8)(c), the rules in subsection 179(8) do not apply if another registrant acquired physical possession of the goods before the beginning of the lease period for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to the non-resident lessor or to another unregistered non-resident person and if that other registrant continues to retain physical possession of the goods after the beginning of the lease period. In this case, the other registrant would have a potential tax liability under the drop shipment rules.

As well, under paragraph 179(8)(b), the rules in subsection 179(8) do not apply if, immediately before the beginning of a new lease period, the registrant lessee is leasing the goods from the non-resident lessor or from another unregistered non-resident person. In this case, under the rules set out in subsection 179(10), the new lease is treated for the purposes of the drop shipment rules as a continuation of the previous lease, and the registrant lessee is deemed to retain physical possession throughout both lease periods, unless physical possession of the goods is transferred during the lease period to a registrant service provider in the circumstances described in subsection 179(11).

Lease subsequent to sale

ETA
179(9)

New subsection 179(9) of the Act applies where goods are sold in Canada by a particular registrant to an unregistered non-resident person that is not a consumer of the goods and, at the time when the goods are delivered or made available to the non-resident person under that sale, the particular registrant or another registrant is leasing the goods, or intends to lease the goods, from the non-resident person or from another unregistered non-resident person. An example of such a transaction would be a sale-leaseback agreement between a registrant and an unregistered non-resident person.

Where the goods are to be leased back by the particular registrant, subsection 179(9) deems the sale of the goods by the particular registrant to the non-resident person to have been made outside of Canada and the GST/HST is therefore relieved on the sale. Furthermore, the particular registrant is deemed to have re-acquired physical possession of the goods as the recipient of the supply by way of lease of the goods by the non-resident person. Additionally, the particular registrant is deemed to have given a drop shipment certificate described in paragraph 179(2)(d) in respect of that acquisition. This places a potential tax liability under the drop shipment rules

on the particular registrant if the particular registrant acquires the goods for consumption, use or supply otherwise than exclusively in its commercial activities or if the particular registrant causes (or is deemed to have caused) physical possession of the goods to be transferred in Canada to another person.

Where the goods are to be leased by another registrant, subsection 179(9) deems the particular registrant to have caused physical possession of the goods to be transferred to the other registrant at the place where, and at the time when, the goods are delivered or made available to the other registrant under the agreement for that other supply. It also deems the other registrant to have acquired, at the same time and place, physical possession of the goods from the particular registrant as the recipient of that other supply. These two deeming rules set up the conditions to ensure that subsection 179(1) applies in respect of the sale of the goods by the particular registrant to the unregistered non-resident purchaser. Therefore, the particular registrant will have a potential GST/HST liability in respect of the goods unless one of the exceptions in subsections 179(2) to (4) applies. These deeming rules also set up the conditions to allow this potential GST/HST liability of the particular registrant to be relieved under subsection 179(2) or (3).

Deemed possession during lease

ETA
179(10)

New subsection 179(10) of the Act sets out the rule that a registrant lessee of goods that are leased from an unregistered non-resident lessor is deemed to retain physical possession of the goods throughout the lease period, for the purposes of the drop shipment rules. This rule ensures that any potential tax liability that arises due to the application of the drop shipment rules generally rests with the registrant lessee and not with any other person (other than certain commercial service providers) that may have physical possession of the goods during the lease period, such as a sublessee. This rule only applies if the registrant lessee has either given a drop shipment certificate in respect of the goods or has claimed an input tax credit in respect of tax that the registrant is deemed to have paid in respect of the goods under either subsection 178.8(2) or section 180 of the Act.

If these conditions are met, subsection 179(10) deems the registrant lessee to retain physical possession of the goods throughout a particular period, which begins when the registrant lessee acquires physical possession of the goods as the recipient of the supply by way of lease of the goods by the non-resident lessor. This acquisition by the registrant lessee could occur at the beginning of the lease period. It could also occur at any time during the lease period when another registrant, that acquired physical possession of the goods for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to an unregistered non-resident person, transfers physical possession of the goods to the registrant lessee.

The end of the particular period during which the registrant lessee is deemed to retain physical possession of the goods is the earliest of the following times:

- the time at which the registrant lessee causes physical possession of the goods to be transferred to another registrant that is acquiring physical possession of the goods during a part of the lease period for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to an unregistered non-resident person;
- the time at which the registrant lessee causes physical possession of the goods to be transferred to any unregistered non-resident person; and
- the time at which the registrant lessee causes physical possession of the goods to be transferred to any other person, provided that the transfer occurs after the lease period and after the period of any subsequent lease from an unregistered non-resident lessor.

Possession by service provider during lease

ETA
179(11)

New subsection 179(11) of the Act sets out two rules that may apply where goods are being leased by a registrant and another registrant retains possession of the goods during a part of the lease period for the purpose of supplying a commercial service in respect of the goods to an unregistered non-resident person. These two rules are exceptions to the general rule in subsection 179(10) of the Act.

The first rule, as set out in paragraph 179(11)(d), applies in the following circumstances:

- a registrant lessee is leasing goods from an unregistered non-resident lessor;
- a particular person (e.g., a sub-lessee of the goods) causes physical possession of the goods to be transferred to a registrant service provider during the lease period;
- the registrant service provider is acquiring physical possession of the goods for the purpose of supplying a commercial service in respect of the goods to the non-resident lessor or to another unregistered non-resident person; and
- the particular person is neither the registrant lessee nor another registrant that had physical possession of the goods during the lease period for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to an unregistered non-resident person.

In this case, the registrant lessee of the goods is deemed to have caused the transfer of physical possession of the goods to the registrant service provider. Additionally, the particular person is

deemed to have not caused this transfer of physical possession of the goods. These deeming rules have the following two effects.

- The first effect only applies if the registrant lessee of the goods has either issued a drop shipment certificate in respect of the goods under subsection 179(2) or claimed an input tax credit in respect of tax that the registrant lessee of the goods is deemed to have paid in respect of the goods under subsection 178.8(2) or section 180. In this case, the registrant lessee will have a potential GST/HST liability in respect of the goods due to the operation of subsection 179(1) unless one of the exceptions in subsections 179(2) to (4) applies.
- The second effect is that the registrant service provider may provide a drop shipment certificate under subsection 179(2) to the registrant lessee of the goods, thereby relieving the registrant lessee of the goods of the potential tax liability described above.

The second rule, as set out in paragraph 179(11)(e), applies in the following circumstances:

- a registrant lessee is leasing goods from an unregistered non-resident lessor;
- a registrant service provider has physical possession of the goods during a part of the lease period for the purpose of supplying a commercial service in respect of the goods to the non-resident lessor or to another unregistered non-resident person;
- the registrant service provider causes physical possession of the goods to be transferred during the lease period to a particular person (e.g., a sub-lessee of the goods) at a particular place; and
- the particular person is neither the registrant lessee nor another registrant that has physical possession of the goods during the lease period for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to an unregistered non-resident person.

In this case, the registrant service provider is deemed to have caused physical possession of the goods to be transferred at the particular place to the registrant lessee of the goods and not to the particular person. Additionally, the registrant lessee is deemed to have acquired the goods for the purpose of leasing the goods from the non-resident lessor. These deeming rules have the following two effects.

- The first effect is that the registrant lessee of the goods may provide a drop shipment certificate under subsection 179(2) to the registrant service provider, thereby relieving the registrant service provider of any potential tax liability in respect of the goods that the registrant service provider may have due to the operation of subsection 179(1).
- The second effect only applies if the registrant lessee of the goods gives a drop shipment certificate to the registrant service provider. In this case, the registrant lessee will have a potential tax liability under the drop shipment rules if the registrant lessee acquires the

goods otherwise than for consumption, use or supply exclusively in its commercial activities or if the registrant lessee causes physical possession of the goods to be transferred in Canada to another person.

In either of the above cases, if the registrant service provider causes physical possession of the goods to be transferred in Canada to another person then due to the operation of subsection 179(1):

- the supply of a commercial service in respect of the goods made by the registrant service provider to the non-resident lessor or to another unregistered non-resident person is relieved from tax, and
- the registrant service provider has a potential tax liability in respect of the goods, unless one of the exceptions in subsections 179(2) to (4) applies.

End of lease period

ETA
179(12)

New subsection 179(12) of the Act sets out the rules that apply when a registrant stops leasing goods from an unregistered non-resident lessor. These rules apply at the end of such a lease only if no other rules set out in new subsections 179(8) to (11) of the Act apply. More particularly, the rules set out in subsection 179(12) apply if all of the following conditions are met:

- immediately after the particular lease agreement in respect of the goods between the registrant lessee and the non-resident lessor ends, a particular person other than the registrant lessee has physical possession of the goods;
- after the particular lease agreement ends, the registrant lessee does not lease the goods under another lease agreement with the non-resident lessor or with another unregistered non-resident person (if such a lease agreement is entered into, the registrant lessee would be considered to retain physical possession of the goods pursuant to subsection 179(10));
- after the particular lease agreement ends, another registrant does not lease the goods under another lease agreement with the non-resident lessor or with another unregistered non-resident person (if such a lease agreement is entered into, the other registrant would be considered to have acquired and to retain physical possession of the goods pursuant to subsections 179(8) and (10)); and
- the particular person that has physical possession of the goods immediately after the particular lease agreement ends is not a registrant that acquired physical possession of the goods before the end of the lease agreement for the purpose of making a taxable supply in Canada of a commercial service in respect of the goods to the non-resident lessor or to another unregistered non-resident person (if the particular person is a registrant that has

physical possession of the goods for such a purpose, physical possession of the goods would be considered to have been transferred to the particular person at the time when it acquired the goods pursuant to subsection 179(11)).

If all of these conditions are met, subsection 179(12) deems the registrant lessee to have caused physical possession of the goods to be transferred to the particular person at the time when the particular lease agreement ends and at the place where the particular person has physical possession of the goods immediately after that time. If the registrant lessee has either issued a drop shipment certificate in respect of the goods under subsection 179(2) or claimed an input tax credit in respect of tax that the registrant lessee is deemed to have paid in respect of the goods under subsection 178.8(2) or section 180, the registrant lessee may have a potential GST/HST liability in respect of the goods due to the operation of subsection 179(1) as a result of this deeming rule, unless one of the exceptions in subsections 179(2) to (4) applies.

Subsection 179(12) provides another deeming rule that applies where the particular person is a registrant that, immediately after the particular lease agreement ends, has physical possession of the goods for one of the following purposes:

- as the recipient of a taxable supply of the goods made by an unregistered non-resident person;
- for the purpose of making a supply in Canada of a service of manufacturing or producing other goods to an unregistered non-resident person that is not a consumer of those other goods, provided that the goods are incorporated or transformed into, attached to or combined or assembled with, those other goods, or are directly consumed or expended, in the manufacture or production of those other goods; or
- for the purpose of making a supply in Canada of a commercial service in respect of other goods (other than goods of a person that is resident in Canada) to an unregistered non-resident person that is not a consumer of those other goods, provided that the goods are incorporated into, attached to or combined or assembled with, those other goods, or are directly consumed or expended, in provision of the commercial service.

In these cases, the particular person is deemed to have acquired physical possession of the goods for that same purpose at the time when the particular lease agreement ends and at the place where the particular person has physical possession of the goods immediately after that time. This deeming rule allows the particular person to issue a drop shipment certificate to the registrant lessee. Additionally, this deeming rule may have the effect of placing a potential tax liability under the drop shipment rules on the particular person if the particular person acquires the goods otherwise than for consumption, use or supply exclusively in its commercial activities or if the particular person causes physical possession of the goods to be transferred in Canada to another person.

Use of Railway Rolling Stock

ETA
179(13)

Subsection 179(13) of the Act (formerly subsection 179(7) of the Act) provides a rule that applies where railway rolling stock is acquired in Canada and exported. It provides that the rolling stock may be subject to the exception to the drop shipment rules set out in subsection 179(3) of the Act even if the railway rolling stock is used to transport goods while the rolling stock is being exported from Canada. Subsection 179(13) is amended to update a cross-reference to a paragraph of subsection 179(4) (formerly subsection 179(3)) due to the renumbering of that subsection.

Clause 18

Receipt of property from non-resident

ETA
180(a)(ii)

Section 180 of the Act deals with situations where a registrant receives a supply of goods from an unregistered non-resident person, or acquires physical possession of goods for the purpose of supplying a commercial service in respect of the goods to an unregistered non-resident person, and the non-resident person pays tax on those goods either pursuant to the operation of subsection 179(1) or on their importation under Division III. In these circumstances, section 180 may permit the registrant to claim an input tax credit, or a rebate under section 259 or 260, in respect of the tax paid by the non-resident person.

Subparagraph 180(a)(ii) describes the situation where the registrant is acquiring physical possession of the goods for the purpose of supplying a commercial service in respect of the goods to the non-resident person. The amendments to this subparagraph are consequential to the amendments made to subsection 179(1). In particular, subparagraph 180(a)(ii) is amended to clarify that the goods may not be goods of a person resident in Canada and that the supply of the commercial service must be made in Canada, as the relief provided by section 180 is not intended to apply in respect of the goods of residents of Canada or where the commercial services are supplied outside of Canada.

These amendments to subparagraph 180(a)(ii) of the Act apply in respect of supplies made after July 22, 2016.

Clause 19

Seizure and repossession

ETA
183(1)(b) and (10.1)(d)

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

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French versions of paragraphs 183(1)(b) and (10.1)(d) are amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*".

These amendments come into force on royal assent.

Clause 20

Supply to insurer on settlement of claim

ETA
184(1)(b)

Existing subsection 184(1) of the Act treats a transfer of property to an insurer in the course of settling a claim as having occurred for no consideration for the purposes of Part IX of the Act (other than sections 193 and 257 of the Act).

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French version of paragraph 184(1)(b) is amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*".

This amendment comes into force on royal assent.

Clause 21

Definitions

ETA
217

Section 217 of the Act contains definitions that are used in Division IV of Part IX of the Act. Amendments to section 217 amend the definitions "imported taxable supply" and "permitted deduction".

Subclauses 21(1) to (4)

Definition "imported taxable supply"

ETA
217

Division IV of Part IX of the Act imposes tax in respect of "imported taxable supplies", which include certain supplies made outside of Canada and certain other supplies on which the recipient, as opposed to the supplier, is required to account for tax.

The existing definition "imported taxable supply" in section 217 of the Act includes, as a result of existing paragraph (b) of that definition, a taxable supply (other than a zero-rated supply) of goods that meets the following conditions. First, the taxable supply is made by an unregistered non-resident person to a registrant that issues a drop-shipment certificate when it acquires physical possession of the goods. Second, the registrant is acquiring the goods for consumption, use or supply otherwise than exclusively in its commercial activities. Alternatively, this second condition is satisfied if the goods are a passenger vehicle that the registrant is acquiring for use in Canada as capital property in the commercial activities of the registrant and the capital cost of the vehicle exceeds the capital cost threshold for the vehicle for income tax purposes.

Existing subparagraph (b)(i) of the definition "imported taxable supply" is superfluous insofar as the conditions described in existing subparagraph (b)(ii) can be met only if the conditions in existing subparagraph (b)(i) are also met. Paragraph (b) is therefore amended in order to remove the conditions described in existing subparagraph (i), and to renumber existing subparagraphs (ii) and (iii) accordingly. This paragraph is also amended to update the wording in accordance with current legislative drafting standards.

These amendments to paragraph (b) of the definition "imported taxable supply" in section 217 of the Act apply in respect of supplies made after the day on which the Act implementing this section receives royal assent.

New paragraph (b.01) of the definition of "imported taxable supply" in section 217 of the Act is introduced as a consequence of the introduction of new subsection 179(2.1) of the Act. That new

subsection provides an exception to the general drop shipment rule in subsection 179(1) of the Act in cases where a registrant issues an owner certificate in respect of a transfer of physical possession of goods at a place in Canada.

The amended definition of “imported taxable supply” now includes, as a result of new paragraph (b.01), a taxable supply (other than a zero-rated supply) by way of sale of goods that meets the following conditions. First, the taxable supply of goods by way of sale is made by an unregistered non-resident person to a registrant that issues an owner certificate in respect of the goods. Second, the registrant is acquiring the goods for consumption, use or supply otherwise than exclusively in the course of its commercial activities. Alternatively, this second condition is satisfied if the goods are a passenger vehicle that the registrant is acquiring for use in Canada as capital property in the course of its commercial activities and the capital cost of the vehicle exceeds the capital cost threshold for the vehicle for income tax purposes.

New paragraph (b.01) of the definition of “imported taxable supply” in section 217 of the Act applies in respect of supplies made after July 22, 2016.

Paragraph (b.01) of the definition of “imported taxable supply” in section 217 of the Act is further amended to replace the cross-reference to subparagraph 179(2.1)(e)(i), which is the subparagraph under which an owner certificate would be issued after July 22, 2016, with a cross-reference to subparagraph 179(3)(c)(i), which is the subparagraph under which an owner certificate would be issued after the day on which the Act implementing this section receives royal assent. This amendment applies in respect of supplies made after the day on which the Act implementing this section receives royal assent.

The existing definition “imported taxable supply” in section 217 of the Act also includes, as a result of exiting paragraph (b.1) of that definition, a taxable supply of goods that meets the following conditions. First, the taxable supply is made by an unregistered non-resident person to a resident of Canada. Second, the non-resident person previously made a taxable supply of the goods by way of lease, license or similar arrangement to a third person that is a registrant. Third, this third person was entitled to claim an input tax credit or was not required to self-assess tax under Division IV in respect of the goods. Finally, the third person either was not dealing at arm’s length with the non-resident person or was related to the resident recipient of the taxable supply.

As a consequence of the introduction of the new lessee rules in the drop-shipment rules, existing paragraph (b.1) is replaced with new paragraph (b.1). The amended definition “imported taxable supply” now includes, as a result of new paragraph (b.1), a taxable supply (other than a zero-rated supply) of goods made by way of sale by an unregistered non-resident person to a registrant that satisfies the following conditions:

- the registrant previously acquired physical possession of the goods as the recipient of another supply of the goods that was made by way of lease, license or similar arrangement;
- the registrant either gave to another registrant a drop shipment certificate in respect of the goods or has claimed an input tax credit in respect of tax that it is deemed to have paid in respect of the goods under either subsection 178.8(2) or section 180 of the Act; and
- the registrant purchases the goods for consumption, use or supply otherwise than exclusively in the course of its commercial activities, or the goods are a passenger vehicle that the registrant acquires for use in Canada as capital property in the course of its commercial activities and the capital cost of the vehicle exceeds the capital cost threshold for the vehicle for income tax purposes.

As a result of the amendments to paragraph (b.1), it generally applies in cases where a registrant leases goods located in Canada from an unregistered non-resident person and subsequently purchases the goods from the unregistered non-resident person or from another unregistered non-resident person.

Revised paragraph (b.1) of the definition “imported taxable supply” in section 217 of the Act applies in respect of supplies made after the day on which the Act implementing this section receives royal assent.

Subclause 21(5)

Definition “permitted deduction”

ETA
217

The existing definition “permitted deduction” in section 217 of the Act describes the amounts that can be deducted in determining an amount of qualifying consideration or an external charge (as those terms are defined in section 217) or in determining an internal charge under subsection 217.1(4)

The English version of paragraph (f) of the definition “permitted deduction” in section 217 is amended to correct a grammatical error.

This amendment comes into force on royal assent.

Clause 22

Imported supplies of financial institutions

ETA
217.1

Existing section 217.1 of the Act provides various interpretation rules that apply in respect of the self-assessment provisions in section 218.01 and subsection 218.1(1.2) of the Act, which apply to financial institutions that are qualifying taxpayers (as described in subsection 217.1(1)).

Amendments to section 217.1 amend subsections 217.1(6) and (7) in respect of the application of the interpretation rules contained in those subsections to the pension plan rebate and election rules contained in section 261.01 of the Act.

The amendments to section 217.1 apply in respect of any claim period (as defined in subsection 259(1) of the Act) of a pension entity of a pension plan (as those terms are defined in subsection 123(1) of the Act) that ends after September 23, 2009.

As well, two transitional rules apply in respect of the amendments to section 217.1. The first transitional rule applies where

- a pension entity of a pension plan claimed a rebate under subsection 261.01(2) of the Act for a claim period of the pension entity;
- one or more particular amounts were not included as eligible amounts (as defined in subsection 261.01(1) of the Act) of the pension entity for the claim period in determining the amount of the rebate; and
- as a result of the application of the amendments to section 217.1, those particular amounts are eligible amounts for the claim period.

This first transitional rule allows the pension entity to request that the Minister of National Revenue make an assessment, reassessment or additional assessment for the purpose of taking into account that those particular amounts are eligible amounts for the claim period. On receipt of the request, the Minister must with all due dispatch consider the request and under sections 296 and 297 of the Act assess, reassess or make an additional assessment of the rebate under subsection 261.01(2) for the claim period, and of any interest, penalty or other obligation of the pension entity, solely for the purpose of taking into account that the particular amounts are eligible amounts for the claim period. This request by the pension entity to the Minister must be made in writing on or before the day that is one year after the day on which the Act amending section 217.1 receives royal assent.

The second transitional rule applies where

- a pension entity of a pension plan has made an election under subsection 261.01(5), (6) or (9) of the Act with the qualifying employers of the pension plan for a claim period of the pension entity;
- as a result of the election for the claim period, a qualifying employer (as defined in subsection 261.01(1)) of the pension plan has made a deduction, in determining its net tax for a reporting period of the qualifying employer, in respect of the pension rebate amount (as defined in subsection 261.01(1)) of the pension entity for the claim period
- one or more particular amounts were not included as eligible amounts of the pension entity for the claim period in determining the pension rebate amount of the pension entity for the claim period and the deduction from the net tax of the qualifying employer in respect of that pension rebate amount; and
- as a result of the application of the amendments to section 217.1, those particular amounts are eligible amounts of the pension entity for the claim period.

This second transitional rule allows the qualifying employer to request that the Minister make an assessment, reassessment or additional assessment for the purpose of taking into account that those particular amounts are eligible amounts for the reporting period of the qualifying employer. On receipt of the request, the Minister must with all due dispatch consider the request and under section 296 of the Act assess, reassess or make an additional assessment of the net tax of the qualifying employer for the reporting period, and of any interest, penalty or other obligation of the qualifying employer, solely for the purpose of taking into account that the particular amounts are eligible amounts for the claim period of the pension entity in question. This request by the pension entity to the Minister must be made in writing on or before the day that is one year after the day on which the Act amending section 217.1 receives royal assent.

Subclause 22(1)

Qualifying rule for credits and rebates

ETA
217.1(6)

Existing subsection 217.1(6) of the Act sets out interpretation rules that are necessary for a qualifying taxpayer to determine whether an input tax credit may be claimed in respect of tax under section 218.01 or subsection 218.1(1.2) in respect of an external charge, or of an amount of qualifying consideration (as those terms are defined in section 217 of the Act), that becomes payable by the qualifying taxpayer, or is paid by the qualifying taxpayer without having become payable, during a reporting period of the qualifying taxpayer during which the qualifying taxpayer is a registrant. The rules in subsection 217.2(6) apply for the purpose of determining an input tax credit of a qualifying taxpayer.

Subsection 217.1(6) is amended to provide that the rules in the subsection also apply for the purpose of determining an eligible amount of a pension entity for a claim period of a qualifying taxpayer that is a pension entity. As a result, a pension entity may be eligible to claim a rebate under subsection 261.01(2) in respect of an external charge, or an amount of qualifying consideration, of the pension entity. Similarly, where a pension entity has made an election with one or more qualifying employers of the pension plan under any of subsections 261.01(5), (6) or (9) of the Act, those qualifying employers may be able to claim a deduction in determining their net tax in respect of an external charge, or an amount of qualifying consideration, of the pension entity.

Subclause 22(2)

Qualifying rule for credits and rebates — internal charge

ETA
217.1(7)

Existing subsection 217.1(7) of the Act sets out interpretation rules that are necessary for a qualifying taxpayer to determine whether an input tax credit may be claimed in respect of tax under section 218.01 or subsection 218.1(1.2) that becomes payable by the qualifying taxpayer, or is paid by the qualifying taxpayer without having become payable, in respect of an internal charge (as described in subsection 217.1(4)) during a reporting period of the qualifying taxpayer during which the qualifying taxpayer is a registrant. The rules in subsection 217.1(7) apply for the purpose of determining an input tax credit of a qualifying taxpayer.

Subsection 217.1(7) is amended to provide that the rules in the subsection also apply for the purpose of determining an eligible amount (as defined in subsection 261.01(1) of the Act) of a pension entity for a claim period of a qualifying taxpayer that is a pension entity. As a result, a pension entity may be eligible to claim a rebate under subsection 261.01(2) in respect of an internal charge of the pension entity. Similarly, where a pension entity has made an election with one or more qualifying employers (as defined in subsection 261.01(1)) of the pension plan under any of subsections 261.01(5), (6) or (9), those qualifying employers may be able to claim a deduction in determining their net tax in respect of an internal charge of the pension entity.

Clause 23

Tax in participating province

ETA
218.1

Existing section 218.1 of the Act imposes tax in respect of the provincial component of the HST on an imported taxable supply (as defined in section 217 of the Act) of property or a service made outside Canada where the property or service is acquired for consumption, use or supply

otherwise than exclusively in the course of a commercial activity. It also includes a self-assessment provision in respect of the provincial component of the HST that is applicable to qualifying taxpayers (as described in subsection 217.1(1) of the Act) resident in a participating province.

Subclauses 23(1) to (4)

Tax in participating province

ETA
218.1(1)

Existing paragraph 218.1(1)(a) applies in respect of an imported taxable supply of intangible personal property or a service. It provides the following rules:

- Where a resident of a participating province that is the recipient of the supply acquires the property or service for a purpose prescribed by regulations in respect of the supply, that recipient is liable for the provincial component of the HST irrespective of the extent to which the property was acquired for consumption, use or supply in participating provinces. Currently, the *New Harmonized Value-added Tax System Regulations, No. 2* prescribe a purpose only in the case of stratified investment plans with one or more provincial series (defined in section 1 of those Regulations as generally a series of an investment plan that is created exclusively for investors resident in a single province) and in the case of provincial investment plans (defined in section 1 of those Regulations as generally an investment plan that is created exclusively for investors resident in a single province).
- In the absence of a prescribed purpose in respect of the supply, a second test applies whereby a resident of a participating province that is the recipient of an imported taxable supply of intangible personal property or a service is liable for the provincial component of the HST where the property or service is acquired by the resident for consumption, use or supply to an extent prescribed by regulations (currently, an extent of at least 10%) in the participating provinces.

Where a recipient of an imported taxable supply of intangible personal property or a service is liable for the tax under this paragraph, that tax is calculated using a formula whereby element C of the formula in paragraph 218.1(1)(a) is the prescribed percentage in respect of the supply or, in the absence of a prescribed percentage in respect of the supply, the extent to which the property or service is acquired for consumption, use or supply in each participating province. Currently, the *New Harmonized Value-added Tax System Regulations, No. 2* prescribe a percentage only in the case of supplies made to stratified investment plans with one or more provincial series and in the case of supplies made to provincial investment plans.

Paragraph 218.1(1)(a) is amended to remove the first test in that paragraph that refers to a prescribed purpose. As a result, paragraph 218.1(1)(a) now applies if a resident of a participating province is the recipient of an imported taxable supply of intangible personal property or a service and the property or service is acquired by the resident for consumption, use or supply to an extent prescribed by regulations (currently, an extent of at least 10%) in the participating provinces. In addition, element C of the formula in paragraph 218.1(1)(a) is amended to remove the reference to a prescribed percentage so that element C is always the extent to which the property or service is acquired for consumption, use or supply in each participating province.

Existing paragraph 218.1(1)(b) provides that the provincial component of the HST is also imposed upon a person that is either the recipient of a taxable supply described in any of paragraphs (b.1) to (b.3) or (c.1) to (e) of the definition "imported taxable supply" in section 217 of the Act or is both a registrant and the recipient of a taxable supply described paragraph (b) of that definition. Paragraph 218.1(1)(b) is amended in two ways.

The first amendment concerns subparagraph 218.1(1)(b)(ii), which currently provides that the provincial component of the HST is imposed on a supply of property described in any of paragraphs (b.1) to (b.3) of the definition "imported taxable supply" in section 217, if the property is delivered or made available to the recipient of the supply in a participating province and the recipient is either a resident in the province or a registrant. This subparagraph is amended to provide that the provincial component of the HST is also imposed on a supply of goods that is described in new paragraph (b.01) of the definition "imported taxable supply" in section 217, if the goods are delivered or made available to the recipient of the supply in a participating province and the recipient is either a resident in the province or a registrant.

The second amendment concerns the formula used to calculate the tax under paragraph 218.1(1)(b). Element C of this formula is, in the case of an imported taxable supply of intangible personal property, the prescribed percentage in respect of the supply or, in the absence of a prescribed percentage in respect of the supply, generally the extent to which the property is acquired for consumption, use or supply in the participating province in which the supply is made. Currently, the *New Harmonized Value-added Tax System Regulations, No. 2* prescribe a percentage only in the case of supplies made to stratified investment plans with one or more provincial series and in the case of supplies made to provincial investment plans.

Element C of the formula in paragraph 218.1(1)(b) is amended to remove the reference to a prescribed percentage so that element C of the formula is, in the case of an imported taxable supply of intangible personal property, generally the extent to which the property is acquired for consumption, use or supply in the participating province in which the supply is made.

The amendments to paragraphs 218.1(1)(a) and (b), other than the amendment to subparagraph 218.1(1)(b)(ii), are consequential to amendments to section 7.01 of the *New Harmonized Value-added Tax System Regulations, No. 2*, which adapts paragraphs 218.1(1)(a) and (b) in in the case

of provincial stratified investment plans and in the case of provincial investment plans (as those terms are defined in subsection 1(1) of the *New Harmonized Value-added Tax System Regulations, No. 2*).

The amendments to paragraphs 218.1(1)(a) and (b) apply in respect of any supply made after July 22, 2016.

Subclauses 23(5) to (7)

Tax in participating province

ETA
218.1(1.2)

Existing subsection 218.1(1.2) of the Act is a self-assessment provision that applies to a qualifying taxpayer (as described in subsection 217.1(1) of the Act) that is resident in a participating province. The tax imposed under this provision must be determined for each participating province if the qualifying taxpayer is resident in any participating province.

Existing paragraph 218.1(1.2)(a) applies where an election under subsection 217.2(1) of the Act is in effect for a specified year (as defined in section 217 of the Act) of the qualifying taxpayer. It requires a qualifying taxpayer that is resident in a participating province to self-assess the provincial component of the HST calculated for each participating province by the formula A plus B.

- Element A is the total of all amounts, each of which is determined for an internal charge (as described in subsection 217.1(4)) for the specified year that is greater than zero by the formula A_1 multiplied by A_2. Element A_1 is the internal charge. Element A_2 is the prescribed percentage in respect of the internal charge or, in the absence of a prescribed percentage in respect of the internal charge, the extent to which the internal charge is attributable to outlays or expenses that were made or incurred to consume, use or supply the whole or part of property or of a qualifying service (as defined in section 217), in respect of which the internal charge is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer in each participating province.
- Element B is the total of all amounts, each of which is determined for an external charge (as defined in section 217 of the Act) for the specified year that is greater than zero by the formula B_1 multiplied by B_2. Element B_1 is the external charge. Element B_2 is the prescribed percentage in respect of the external charge or, in the absence of a prescribed percentage in respect of the external charge, the extent to which the external charge is attributable to outlays or expenses that were made or incurred to consume, use or supply the whole or part of property or of a qualifying service, in respect of which the external

charge is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer in each participating province.

Currently, the *New Harmonized Value-added Tax System Regulations, No. 2* prescribe a percentage for elements A_2 and B_2 of paragraph 218.1(1.2)(a) only in the case of stratified investment plans with one or more provincial series (defined in section 1 of those Regulations as generally a series of an investment plan that is created exclusively for investors resident in a single province) and in the case of provincial investment plans (defined in section 1 of those Regulations as generally an investment plan that is created exclusively for investors resident in a single province).

Elements A_2 and B_2 of paragraph 218.1(1.2)(a) are each amended to remove the references to prescribed percentages. Element A_2 is always the extent to which the internal charge is attributable to outlays or expenses that were made or incurred to consume, use or supply the whole or part of property or of a qualifying service, in respect of which the internal charge is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer in each participating province. Element B_2 is always the extent to which the external charge is attributable to outlays or expenses that were made or incurred to consume, use or supply the whole or part of property or of a qualifying service, in respect of which the external charge is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer in each participating province.

Existing paragraph 218.1(1.2)(b) applies where no election under subsection 217.2(1) is in effect for a specified year of the qualifying taxpayer and requires a qualifying taxpayer that is resident in a participating province to analyze each amount of qualifying consideration (as defined in section 217) for the specified year that is greater than zero and to determine the provincial component of the HST in respect of each of these amounts using the formula C multiplied by D. Element C is the qualifying consideration. Element D of the formula is the prescribed percentage in respect of the qualifying consideration or, in the absence of a prescribed percentage in respect of qualifying consideration, the extent to which the qualifying consideration is attributable to outlays or expenses that were made or incurred to consume, use or supply the whole or part of property or of a qualifying service, in respect of which the qualifying consideration is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer in each participating province.

Currently, the *New Harmonized Value-added Tax System Regulations, No. 2* prescribe a percentage for element D of paragraph 218.1(1.2)(b) only in the case of stratified investment plans with one or more provincial series and in the case of provincial investment plans.

Element D of paragraph 218.1(1.2)(b) is amended to remove the reference to prescribed percentages. Element D is now always the extent to which the qualifying consideration is attributable to outlays or expenses that were made or incurred to consume, use or supply the

whole or part of property or of a qualifying service, in respect of which the qualifying consideration is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer in each participating province.

The amendments to subsection 218.1(1.2) are consequential to the enactment of new section 7.03 of the *New Harmonized Value-added Tax System Regulations, No. 2*, which adapts subsection 218.1(1.2) in the case of provincial stratified investment plans and in the case of provincial investment plans (as those terms are defined in subsection 1(1) of those Regulations).

The amendments to subsection 218.1(1.2) apply in respect of any specified year of a qualifying taxpayer that ends after July 22, 2016.

Clause 24

Pension entities

ETA
220.05(3.1)

Existing subsection 220.05(3.1) of the Act provides that no tax under subsection 220.05(1) becomes payable on the bringing into a participating province of tangible personal property by a pension entity of a pension plan where the tangible personal property had been supplied to the pension entity by a participating employer of the same pension plan and where the amount of the provincial component of the HST determined under paragraph 172.1(5)(c) of the Act (in respect of a supply made by the participating employer of the same tangible personal property) or under paragraph 172.1(6)(c) (in respect of a supply made by the participating employer of an employer resource (as defined in subsection 172.1(1)) consumed or used to make the supply of the same tangible personal property) is greater than zero.

Subsection 220.05(3.1) is amended to reflect the enactment of new subsections 172.1(5.1) and (6.1). It now also provides that no tax under subsection 220.05(1) becomes payable on the bringing into a participating province of tangible personal property by a master pension entity of a pension plan where the tangible personal property had been supplied to the master pension entity by a participating employer of the pension plan and where the amount of the provincial component of the HST determined under paragraph 172.1(5.1)(c) of the Act (in respect of a supply made by the participating employer of the same tangible personal property) or under paragraph 172.1(6.1)(c) (in respect of a supply made by the participating employer of an employer resource consumed or used to make the supply of the same tangible personal property) is greater than zero.

The amendments to subsection 220.05(3.1) are deemed to have come into force on July 22, 2016.

Clause 25

Tax on intangible property and services

ETA
220.08

Section 220.08 of the Act provides for the self-assessment of the provincial component of the HST in certain cases by persons who are residents of a participating province and who are the recipients of certain taxable supplies of intangible personal property or services acquired for consumption, use or supply in a participating province.

Section 220.08 is amended in respect of its application to supplies made to certain investment plans and to supplies made by a participating employer of a pension plan to a master pension entity of the same pension plan (as those terms are defined in subsection 123(1) of the Act).

Subclause 25(1)

Tax in participating province

ETA
220.08(1)

Existing subsection 220.08(1) of the Act provides for the self-assessment of the provincial component of the HST by a recipient of a taxable supply of intangible personal property or a service. It applies only where the recipient is a resident of a participating province. Self-assessment of the provincial component of the HST by a recipient of a taxable supply of intangible personal property or a service is required only if the property or service is acquired

- for a purpose prescribed by regulations in respect of the supply; or
- in the absence of a prescribed purpose, for consumption, use or supply in any of the participating provinces other than the province where the supply is made.

Currently, the *New Harmonized Value-added Tax System Regulations, No. 2* prescribe a percentage only in the case of supplies made to stratified investment plans with one or more provincial series (defined in section 1 of those Regulations as generally a series of an investment plan that is created exclusively for investors resident in a single province) and in the case of supplies made to provincial investment plans (defined in section 1 of those Regulations as generally an investment plan that is created exclusively for investors resident in a single province).

Subsection 220.08(1) is amended to remove the reference to a prescribed purpose. Thus subsection 220.08(1) only requires self-assessment of the provincial component of the HST by the recipient of a taxable supply of intangible personal property or a service if the property or

service is acquired for consumption, use or supply in any of the participating provinces other than the province where the supply is made.

The amendments to subsection 220.08(1) are consequential to the enactment of new section 12.2 of the *New Harmonized Value-added Tax System Regulations, No. 2*, which adapts subsection 220.08(1) in the case of supplies made to provincial stratified investment plans and in the case of supplies made to provincial investment plans (as those terms are defined in subsection 1(1) of those Regulations).

This amendment applies to any supply made after July 22, 2016.

Subclause 25(2)

Pension entities

ETA
220.08(3.1)

Existing subsection 220.08(3.1) of the Act provides that the requirement under subsection 220.08(1) to self-assess tax in respect of certain supplies of intangible personal property or services, does not apply to a supply of intangible personal property or a service by a participating employer of a pension plan to a pension entity of the same pension plan where the amount of the provincial component of the HST determined under paragraph 172.1(5)(c) of the Act (in respect of a supply of the same intangible personal property or service) or under paragraph 172.1(6)(c) (in respect of a supply of an employer resource (as defined in subsection 172.1(1)) consumed or used to make the supply of the same intangible personal property or service) is greater than zero.

Subsection 220.08(3.1) is amended to reflect the enactment of new subsections 172.1(5.1) and (6.1) of the Act. Amended subsection 220.08(3.1) also provides that subsection 220.08(1) does not apply to a supply of intangible personal property or a service made by a participating employer of a pension plan to a master pension entity of the pension plan where the amount of the provincial component of the HST determined under paragraph 172.1(5.1)(c) (in respect of a supply of the same intangible personal property or service) or under paragraph 172.1(6.1)(c) (in respect of a supply of an employer resource consumed or used to make the supply of the same intangible personal property or service) is greater than zero.

The amendments to subsection 220.08(3.1) are deemed to have come into force on July 22, 2016.

Clause 26

Net tax

ETA
225.1(2)

Section 225.1 of the Act sets out a streamlined accounting method by which registrants that are charities (as defined in subsection 123(1) of the Act) calculate their net tax. Subsection 225.1(2) sets out the formula for determining the net tax of a charity for a reporting period under this method. The formula takes the form A minus B. Element A represents amounts that are required to be added and element B represents amounts that are deductible in determining the net tax of a charity under this method. Element B is the total of the amounts described in paragraphs (a) to (d) of element B.

Element B is amended to add new paragraph (b.1) which describes further amounts that may be deducted by a charity in determining its net tax for a reporting period of the charity. Specifically, paragraph (b.1) describes 60 per cent of the total of the tax adjustments that may be deducted under paragraph 232.01(5)(a) or 232.02(4)(a) of the Act by the charity for the reporting period. As a result of this amendment, a charity may, in determining its net tax under subsection 225.1(2) for a reporting period of the charity, deduct 60 per cent of the total tax amount (as defined in subsection 232.01(2) or 232.02(1), as applicable) of a tax adjustment note that is issued by the charity on a day included in the reporting period.

The amendments to subsection 225.1(2) apply in respect of reporting periods of a charity that end on or after September 23, 2009. In addition, a transitional rule applies where

- a charity has issued a tax adjustment note under subsection 232.01(3) or 232.02(2) on a particular day;
- the charity has filed a return for the reporting period that includes the particular day and no election under subsection 225.1(6) is in effect during the reporting period;
- the charity did not, in determining its net tax under subsection 225.1(2) for the reporting period, include tax adjustments that may be deducted under paragraph 232.01(5)(a) or 232.02(4)(a) of the Act by the charity; and
- as a result of the application of the amendments to subsection 225.1(2), the charity was permitted, in determining its net tax under subsection 225.1(2) for the reporting period, to deduct amounts in respect of the tax adjustment notes it issued under subsection 232.01(3) or 232.02(2) during the reporting period.

This transitional rule allows the charity to request in writing that the Minister of National Revenue make an assessment, reassessment or additional assessment for the purpose of taking into account the deduction permitted under amended subsection 225.1(2) for the reporting period

of the charity in respect of the tax adjustment notes issued by the charity under subsection 232.01(3) or 232.02(2). On receipt of the request, the Minister must with all due dispatch consider the request and under section 296 of the Act assess, reassess or make an additional assessment of the net tax of the charity for the reporting period, and of any interest, penalty or other obligation of the charity, solely for the purpose of taking into account this amendment to subsection 225.1(2) for the reporting period in question. However, to be valid, this request by the charity to the Minister must be made in writing on or before the day that is one year after the day on which the Act amending subsection 225.1(2) receives royal assent.

Clause 27

Selected listed financial institutions

ETA
225.2

Section 225.2 of the Act sets out rules for determining the net tax of a selected listed financial institution (within the meaning of subsection 225.2(1)). These special rules provide for adjustments to the net tax of these financial institutions in respect of the provincial component of the HST.

Section 225.2 is amended in respect of the adjustment that a selected listed financial institution must make to its net tax in respect of the provincial component of the HST under subsection 225.2(2) and in respect of the election provided for under subsection 225.2(4).

Subclauses 27(1) to (3)

Adjustments to net tax

ETA
225.2(2)

Existing subsection 225.2(2) of the Act requires a person 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.

Element A of the formula generally includes GST or the federal component of the HST payable by a selected listed financial institution, as well as other amounts in respect of supplies received by the selected listed financial institution that are deemed under section 150 of the Act to be supplies of financial services. Paragraph (b) of the description of element A requires the selected listed financial institution to include in the formula all amounts each of which would be tax under subsection 165(1) of the Act in respect of a supply (other than a supply to which paragraph (c) of the description of element A applies) that would, in the absence of section of section 150, have become payable by the selected listed financial institution. Paragraph (c) applies where the selected listed financial institution has made both an election under section 150 and an election

under subsection 225.2(4) with the supplier that made the supply to the selected listed financial institution. Paragraph (c) requires the selected listed financial institution to include in the formula all amounts, each of which is an amount determined for a supply made by the supplier to the financial institution to which section 150 applies that is equal to the tax calculated on the supplier's cost of making the supply (excluding any remuneration to employees, the cost of financial services and tax payable under Part IX of the Act).

Element F of the formula is a deduction from the formula and generally describes the provincial component of the HST payable by a selected listed financial institution, as well as other amounts in respect of supplies received by the selected listed financial institution that are deemed under section 150 to be supplies of financial services. Paragraph (b) of the description of element F applies where the selected listed financial institution has made both an election under section 150 and an election under subsection 225.2(4) with the supplier that made the supply to the selected listed financial institution. Paragraph (b) requires the selected listed financial institution to include in element F an amount equal to the provincial component of the HST payable by the supplier that is included in the cost to the supplier of making these supplies.

Subsection 225.2(2) is amended in two ways. First, paragraph (c) of element A is amended to clarify that the amount to be included in the formula in subsection 225.2(2) is an amount that is equal to the GST or the federal component of the HST calculated on the supplier's cost of making these supplies, excluding any remuneration to employees, the cost of financial services and tax payable under this Part.

This amendment to paragraph (c) applies in respect of any reporting period of a selected listed financial institution that ends on or after July 1, 2010.

Second, consequential amendments are made to paragraph (c) of element A and paragraph (b) of element F to reflect amendments to subsection 225.2(4) that provide that the election made under that subsection in respect of a supply made by a person to a financial institution is no longer an election made jointly by the person and the financial institution and is now made solely by the financial institution.

These amendments to paragraph (c) of element A and paragraph (b) of element F apply in respect of any election made under subsection 225.2(4) that becomes effective after the day on which these amendments receive royal assent.

It should be noted that a July 22, 2016 news release of the Department of Finance proposed amendments that would have rearranged the effect of paragraphs (b) and (c) of element A and of paragraph (b) of element F. Specifically, those proposed amendments would have provided that, if an election under subsection 225.2(4) were in effect in respect of supplies made by a supplier to a selected listed financial institution in respect of which an election under section 150 has been made, the financial institution would include in elements A and F of the formula in subsection

225.2(2) the tax generally calculated on the supplier's cost of making the supply. As well, those proposed amendments would have provided that, if no election under subsection 225.2(4) were in effect in respect of supplies made by a supplier to a selected listed financial institution in respect of which an election under section 150 has been made, the financial institution would include in element A of the formula the tax that would otherwise apply in respect of the supply in the absence of an election made under section 150. However, following consultations those proposed amendments to rearrange the effect of paragraphs (b) and (c) of element A and of paragraph (b) of element F are no longer proposed to be enacted.

Subclause 27(4)

Election

ETA
225.2(4) and (5)

Existing subsection 225.2(4) of the Act provides that, where a selected listed financial institution that is a member of a closely related group (as defined in subsection 123(1) of the Act) has made a joint election under section 150 of the Act with another member of the closely related group, the selected listed financial institution can also make a second joint election with that member. This joint election applies to supplies made by the member to the selected listed financial institution and it allows the selected listed financial institution to have paragraph (c) of the description of element A in the formula in subsection 225.2(2) of the Act apply to these supplies rather than paragraph (b) of the description of element A.

Subsection 225.2(4) is amended to provide that the election under the subsection is now an election made solely by the selected listed financial institution and is no longer a joint election made by both the selected listed financial institution and the other member of the closely related group.

As well, subsection 225.2(4) is amended to require that the election be made in prescribed form containing prescribed information. This requirement was previously contained in subsection 225.2(5).

Existing subsection 225.2(5) sets out the requirements for making a valid election under subsection 225.2(4) in respect of supplies made to a selected listed financial institution. Subsection 225.2(5) requires that the election be made in prescribed form containing prescribed information, specify the day on which it is to become effective and be filed by the financial institution with the Minister of National Revenue.

Subsection 225.2(5) is repealed. As a result, an election made under subsection 225.2(4) is no longer required to be filed with the Minister in order to be a valid election.

The requirement in paragraph 225.2(5)(a) that the election be made in prescribed form containing prescribed information remains in force but is moved to subsection 225.2(4). Similarly, the requirement in paragraph 225.2(5)(b) that the election specify the day on which the election is to become effective also remains in force but is moved to subsection 225.2(6).

The amendments to subsection 225.2(4) and the repeal of subsection 225.2(5) apply in respect of any election made under subsection 225.2(4) that becomes effective after the day on which the Act implementing this clause receives royal assent.

Subclauses 27(5) and (6)

Effective period of election

ETA
225.2(6)

Existing subsection 225.2(6) of the Act specifies the length of the period during which an election made under subsection 225.2(4) of the Act is in effect. The election under subsection 225.2(4) is in respect of supplies made by a supplier to a selected listed financial institution, where the supplier and the financial institution have jointly made an election under section 150 of the Act, and affects the adjustment that a selected listed financial institution is required to make to its net tax calculation under subsection 225.2(2) of the Act (for further information, see the notes for the amendments to subsection 225.2(2)). Subsection 225.2(6) provides that an election under subsection 225.2(4) remains in effect until the earliest of:

- the day the election under section 150 ceases to be in effect;
- the day the two parties jointly revoke, in prescribed form containing prescribed information, the election;
- the day the supplier becomes a prescribed person, or a person of a prescribed class, for the purposes of subsection (4); and
- the day the selected listed financial institution ceases to be a selected listed financial institution.

Subsection 225.2(6) is amended in two ways. First, a consequential amendment is made to subsection 225.2(6) as a result of the amendment to subsection 225.2(4) that provide that the election is no longer a joint election between the selected listed financial institution and the person and is now an election made solely by the selected listed financial institution.

This first amendment to subsection 225.2(6) applies in respect of any election made under subsection 225.2(4) that becomes effective after the day on which the Act implementing this clause receives royal assent.

Second, a consequential amendment is made to paragraph 225.2(6)(b) to reflect that the revocation of an election made under subsection 225.2(4) is now made under new subsection 225.2(6.1).

This second amendment to paragraph 225.2(6)(b) applies in respect of any revocation that becomes effective after the day on which the Act implementing this clause receives royal assent.

Subclause 27(7)

Notice of election and revocation

ETA
225.2(6.1) and (6.2)

New subsection 225.2(6.1) of the Act permits a selected listed financial institution — that has made an election under subsection 225.2(4) in respect of supplies made by a supplier to the financial institution — to revoke that election. The revocation of the election must be made in prescribed form containing prescribed information. It becomes effective on a day that is specified in the revocation and that is at least 365 days after the day on which the election under subsection 225.2(4) becomes effective. These revocation provisions were formerly contained in paragraph 225.2(6)(b), except that that paragraph required that the revocation be made jointly by the financial institution and the supplier whereas subsection 225.2(6.1) provides that any revocation can be made solely by the financial institution.

New subsection 225.2(6.1) applies in respect of any revocation that becomes effective after the day on which the Act implementing this clause receives royal assent

New subsection 225.2(6.2) of the Act provides notification requirements in respect of an election made under subsection 225.2(4), as well as in respect of the cessation of an election made under that subsection. Subsection 225.2(6.2) applies where a particular selected listed financial institution that is a member of a closely related group has made a joint election under section 150 with another member of the group that is also a selected listed financial institution and where the particular selected listed financial institution has made an election under subsection 225.2(4) in respect of supplies made by the other member to the particular selected listed financial institution.

Where subsection 225.2(6.2) applies, it requires that the particular selected listed financial institution, in a manner satisfactory to the Minister of National Revenue, notify the other member of the fact that the election under subsection 225.2(4) was made and of the day the election becomes effective. This notification must be made on or before the day the election becomes effective or any later day that the Minister may allow.

Further, subsection 225.2(6.2) requires that, if the election under subsection 225.2(4) ceases to be effective on a particular day as specified in subsection 225.2(6), the particular selected listed

financial institution must, in a manner satisfactory to the Minister, notify the other member that the election has ceased to be effective. This notification must be made on or before the particular day the election ceases to be effective or any later day that the Minister may allow.

New subsection 225.2(6.2) applies in respect of any election made under subsection 225.2(4) that becomes effective after the day on which the Act implementing this clause receives royal assent.

Clause 28

Tax adjustment notes

ETA
232.01

Existing section 232.01 of the Act allows a participating employer of a pension plan (as those terms are defined in subsection 123(1) of the Act) to issue a note (referred to in section 232.01 as a "tax adjustment note") to a pension entity (as defined in subsection 123(1) of the Act) of the pension plan where the participating employer is deemed under subsection 172.1(5) to have made a taxable supply of property or a service and has also charged tax on an actual supply of the same property or service to the pension entity. Section 232.01 requires the pension entity receiving the tax adjustment note to pay back any input tax credit, or rebate under subsection 261.01(2) of the Act, that was claimable in respect of the deemed tax to the extent that the deemed tax was effectively reduced by the tax adjustment note. In addition, where the pension entity made an election with the participating employers of the pension plan under subsection 261.01(5), (6) or (9) for the claim period for which the deemed tax is an eligible amount (as defined in subsection 261.01(1)), section 232.01 requires each participating employer to pay back any deduction in respect of that deemed tax that it was entitled to as a result of that election to the extent that the deemed tax was effectively reduced by the tax adjustment note.

Section 232.01 is amended so that it also allows a participating employer of a pension plan to issue a tax adjustment note to a pension entity of the pension plan where the participating employer is deemed under subsection 172.1(5.1) to have made a taxable supply of property or a service and has also charged tax on an actual supply of the same property or service to a master pension entity (as defined in subsection 123(1) of the Act) of the pension plan. Section 232.01 is also amended with respect to the obligation of a pension entity to pay back a rebate that was claimable under subsection 261.01(2) and the obligation of a participating employer to pay back any deduction that it claimed in determining its net tax as a result of an election made under subsection 261.01(5), (6) or (9).

Subclause 28(1)

Tax adjustment note — subsections 172.1(5) and (5.1)

ETA
232.01(3)

Existing subsection 232.01(3) generally allows a participating employer of a pension plan to issue a note (referred to in section 232.01 as a "tax adjustment note") in respect of a specified resource in the case where subsection 172.1(5) deems the participating employer to have made a taxable supply of all or part of the specified resource and a pension entity of the pension plan to have received such a supply and where tax is also payable, or is paid without having become payable, (otherwise than by operation of section 172.1) by the pension entity to the employer on an actual supply of the specified resource or part made to the pension entity.

Subsection 232.01(3) is amended to also allow a participating employer of a pension plan to issue a tax adjustment note in respect of a specified resource where new subsection 172.1(5.1) deems the participating employer to have made a taxable supply of all or part of a specified resource and where the participating employer makes an actual supply of the specified resource or part to a master pension entity of the pension plan. Specifically, the amendments to subsection 232.01(3) apply where the following circumstances exist:

- a participating employer of a pension plan is deemed under paragraph 172.1(5.1)(a) to have made a taxable supply of all or part of a specified resource and is deemed under paragraph 172.1(5.1)(b) to have collected tax in respect of this deemed supply;
- a pension entity of the pension plan is deemed under subparagraph 172.1(5.1)(d)(i) to have received a supply of all or part of the specified resource and is deemed under subparagraph 172.1(5.1)(d)(ii) to have paid tax in respect of that supply (note that this pension entity would be the specified pension entity of the pension plan, as determined under subsection 172.1(4)); and
- tax becomes payable, or is paid without having become payable, (otherwise than by operation of section 172.1) by a master pension entity of the pension plan to the participating employer on an actual supply of the specified resource or part made to the master pension entity.

Where the amendments to subsection 232.01(3) apply, the participating employer may issue a tax adjustment note in respect of the specified resource or part to the pension entity specifying a federal component amount determined in accordance with amended paragraph 232.01(4)(a) and a provincial component amount determined in accordance with amended paragraph 232.01(4)(b). The issuance of this note will then allow the employer to make an adjustment to its net tax under paragraph 232.01(5)(a). The tax adjustment note must be in compliance with subsection 232.01(6).

These amendments are deemed to have come into force on July 22, 2016.

Subclauses 28(2) and (3)

Federal and provincial component amounts

ETA
232.01(4)

Subsection 232.01(4) determines the maximum amount of both the federal component amount and the provincial component amount of a tax adjustment note that may be issued under subsection 232.01(3) on a particular day in respect of all or part of a specified resource. Existing subsection 232.01(4) applies where there is a taxable supply of the specified resource or part that is deemed to have been made under paragraph 172.1(5)(a). Subsection 232.01(4) is amended so that it also applies where there is a taxable supply of the specified resource or part that is deemed to have been made under new paragraph 172.1(5.1)(a).

Paragraph 232.01(4)(a) determines the maximum amount of the federal component amount of a tax adjustment note that is issued on a particular day. This amount is determined by the formula: A (adjustment for GST or the federal component of HST) minus B (total of all amounts, each of which is the federal component amount of another tax adjustment note previously issued under subsection 232.01(3) in respect of the specified resource or part).

Element A of the formula is amended to provide that, where there is a taxable supply of the specified resource or part that is deemed to have been made under new paragraph 172.1(5.1)(a), element A is the lesser of: (a) the federal component of the tax in respect of the specified resource or part, as determined under paragraph 172.1(5.1)(c); and (b) the amount determined by the formula A_1 multiplied by A_2. Element A_1 of the formula is all amounts of the GST or the federal component of the HST that became payable, or were paid without having become payable, by the master pension entity to the employer (otherwise than by operation of section 172.1), on or before the particular day, in respect of an actual taxable supply of the same specified resource or part. Element A_2 of the formula is the master pension factor in respect of the pension plan for the fiscal year of the master pension entity that includes the particular day. The master pension factor generally indicates the percentage to which units or shares of the master pension entity are owned by pension entities of the pension plan.

Paragraph 232.01(4)(b) determines the maximum amount of the provincial component amount of a tax adjustment note. This amount is determined by the formula: C (adjustment for provincial component of HST) minus D (total of all amounts, each of which is the provincial component amount of another tax adjustment note previously issued under subsection 232.01(3) in respect of the specified resource or part).

Element C of the formula is amended to provide that, where there is a taxable supply of the specified resource or part that is deemed to have been made under new paragraph 172.1(5.1)(a), element C is the lesser of: (a) the provincial component of the tax in respect of the specified resource or part, as determined under paragraph 172.1(5.1)(c); and (b) the amount determined by the formula C_1 multiplied by C_2. Element C_1 of the formula is all amounts of the provincial component of the HST that became payable, or were paid without having become payable, by the master pension entity to the employer (otherwise than by operation of section 172.1), on or before the particular day, in respect of an actual taxable supply of the same specified resource or part. Element C_2 of the formula is the master pension factor in respect of the pension plan for the fiscal year of the master pension entity that includes the particular day.

These amendments are deemed to have come into force on July 22, 2016.

Subclauses 28(4) to (10)

Effect of tax adjustment note

ETA
232.01(5)

Existing subsection 232.01(5) of the Act provides rules that apply where a participating employer of a pension plan (as those terms are defined in subsection 123(1)) is deemed under subsection 172.1(5) to have made a taxable supply of property or a service, has charged tax on an actual supply of the same property or service to a pension entity (as defined in subsection 123(1)) of the pension plan and has issued a note, referred to as a tax adjustment note, to the pension entity in respect of the same property or service. The rules that apply in these circumstances are set out in paragraphs 232.01(5)(a) to (d).

Subsection 232.01(5) is amended so that it also applies where a participating employer of a pension plan is deemed under new subsection 172.1(5.1) to have made a taxable supply of property or a service, has charged tax on an actual supply of the same property or service to a master pension entity (as defined in subsection 123(1)) of the pension plan and has issued a note, referred to as a tax adjustment note, to a pension entity of the pension plan in respect of the same property or service. This amendment to subsection 232.01(5) is deemed to have come into force on July 22, 2016.

Existing paragraph 232.01(5)(c) applies where the following conditions are met:

- any part of an amount of tax that a pension entity is deemed to have paid under subparagraph 172.1(5)(d)(ii) in respect of a supply of the property or service that a participating employer is deemed to have made under paragraph 172.1(5)(a) is an eligible amount (as defined in subsection 261.01(1) of the Act) of the pension entity for a particular claim period (as defined in subsection 259(1) of the Act) of the pension entity;

- the pension entity is eligible to claim for the particular claim period a rebate under subsection 261.01(2) of the Act in respect of the eligible amount; and
- a tax adjustment note has been issued in respect of the deemed tax.

Existing paragraph 232.01(5)(c) requires the pension entity to pay, for the particular claim period of the pension entity, an amount determined by a formula. The payment required under paragraph 232.01(5)(c) must be made by the pension entity to the Receiver General by the last day of the pension entity's claim period that immediately follows its claim period that includes the day on which the tax adjustment note is issued.

Paragraph 232.01(5)(c) is amended in three ways.

First, paragraph 232.01(5)(c) is amended to provide that it now only applies to require a pension entity to pay back an amount as a result of the receipt of a tax adjustment note in respect of an amount of deemed tax if the pension entity has included any part of the amount of deemed tax in its determination of its pension rebate amount (as defined in subsection 261.01(1)) for a particular claim period of the pension entity.

This amendment to paragraph 232.01(5)(c) applies in respect of any claim period of a pension entity that begins after September 22, 2009.

A transitional rule in respect of this first amendment to paragraph 232.01(5)(c) also applies where the following conditions are met:

- a particular amount was assessed under section 296 of the Act as an amount payable under paragraph 232.01(5)(c) by a pension entity of a pension plan in respect of a tax adjustment note issued to it,
- an eligible amount of the pension entity for a claim period of the pension entity was included in the determination of the particular assessed amount,
- the eligible amount is not included in the determination of the pension rebate amount of the pension entity for the claim period, and
- July 23, 2016 is after the last day of the claim period of the pension entity that immediately follows the claim period of the pension entity that includes the day on which the tax adjustment note is issued.

Where these conditions are met, the pension entity may, until the day that is one year after the day on which the Act implementing this clause receives royal assent, request in writing that the Minister of National Revenue make an assessment, reassessment or additional assessment for the purpose of taking into account that the particular amount is not an amount payable under

paragraph 232.01(5)(c) of the Act, as amended by this first amendment, and, on receipt of the request and with all due dispatch, the Minister must

- consider the request, and
- under section 296, assess, reassess, or make an additional assessment of the particular amount, and of any interest, penalty or other obligation of the pension entity, solely for the purpose of taking into account that the eligible amount is not an amount payable under paragraph 232.01(5)(c).

Second, paragraph 232.01(5)(c) is amended in respect of the deadline for the pension entity to make the payment required under this paragraph to the Receiver General. This payment must now be made by the later of

- the day on which the rebate claim is filed, and
- the last day of the claim period of the pension entity that immediately follows its claim period that includes the day on which the tax adjustment note is issued.

Third, the formula in paragraph 232.01(5)(c), which determines the amount that the pension entity is required to pay, is amended in respect of elements E and F of the formula. Currently, element E of the formula is the pension rebate amount of the pension entity for the particular claim period and element F of the formula is the total determined for element B in the formula in subsection 261.01(2) in respect of the pension entity for the particular claim period. Element E is amended so that it is now the amount of the rebate determined for the pension entity under subsection 261.01(2) for the particular claim period. Element F is amended so that it is now the pension rebate amount of the pension entity for the particular claim period. These amendments to elements E and F are consistent with the first amendment to paragraph 232.01(5)(c) described above.

The second and third amendments to paragraph 232.01(5)(c) apply in respect of claim periods of a pension entity that end after July 22, 2016.

Existing paragraph 232.01(5)(d) applies to a participating employer of a pension plan that made a deduction in determining its net tax as a result of being party to an election under subsection 261.01(5), (6) or (9), where the election is in respect of an eligible amount of a pension entity of the pension plan for a particular claim period of the pension entity. Paragraph 232.01(5)(d) applies where tax that the pension entity was deemed to have paid on a particular day under subparagraph 172.1(5)(d)(ii) was included in the eligible amount and where subsequently a tax adjustment note was issued in respect of that deemed tax. Paragraph 232.01(5)(d) generally requires the participating employer to add back an amount in respect of the amount deducted from its net tax. The amount required to be added back by the participating employer is determined by a formula where element F of the formula is

- where the pension entity was not a selected listed financial institution on the particular day, the pension rebate amount (as defined in subsection 261.01(1)) for the pension entity for the particular claim period; and
- where the pension entity was a selected listed financial institution on the particular day, the total of the pension rebate amount and the provincial pension rebate amount (as defined in subsection 261.01(1)) of the pension entity for the particular claim period.

The amount determined under existing paragraph 232.01(5)(d) must be added by the participating employer in determining its net tax for its reporting period that includes the day on which the tax adjustment note is issued.

Paragraph 232.01(5)(d) is amended in three ways.

First, paragraph 232.01(5)(d) is amended to provide that it now only applies to require a participating employer to add an amount to its net tax as a result of the receipt of a tax adjustment note in respect of an amount of deemed tax if the pension entity has included any part of the amount of deemed tax in its determination of its pension rebate amount for a claim period of the pension entity.

This first amendment to paragraph 232.01(5)(d) applies in respect of any reporting period of an employer for which the return is filed after September 22, 2009.

A transitional rule in respect of this first amendment to paragraph 232.01(5)(d) also applies where the following conditions are met:

- a particular amount was assessed under section 296 of the Act as an amount payable under paragraph 232.01(5)(d) by a participating employer of a pension plan in respect of a tax adjustment note issued to a pension entity of the pension plan,
- an eligible amount of the pension entity for a claim period of the pension entity was included in the determination of the particular assessed amount,
- the eligible amount is not included in the determination of the pension rebate amount of the pension entity for the claim period, and
- July 23, 2016 is after the day on which the return is filed for the reporting period of the participating employer that includes the day on which the tax adjustment note is issued.

Where these conditions are met, the participating employer may, until the day that is one year after the day on which the Act implementing this clause receives royal assent, request in writing that the Minister of National Revenue make an assessment, reassessment or additional assessment for the purpose of taking into account that the particular amount is not an amount

payable under paragraph 232.01(5)(d) of the Act, as amended by this first amendment, and, on receipt of the request and with all due dispatch, the Minister must

- consider the request, and
- under section 296, assess, reassess or make an additional assessment of the particular amount, and of any interest, penalty or other obligation of the employer, solely for the purpose of taking into account that the eligible amount is not an amount payable under paragraph 232.01(5)(d).

Second, paragraph 232.01(5)(d) is amended with respect to the reporting period of the participating employer for which it must add back an amount in computing its net tax. The participating employer must now make the addition required by paragraph 232.01(5)(d) in determining its net tax for the reporting period that includes the day that is the later of

- the day on which the tax adjustment note is issued, and
- the day on which the election under subsection 261.01(5), (6) or (9), as the case may be, is filed with the Minister of National Revenue.

Third, element F of the formula is amended so that it is now always the pension rebate amount of the pension entity, irrespective of whether the pension entity was a selected listed financial institution on the particular day or not.

The second and third amendments to paragraph 232.01(5)(d) apply in respect of any reporting period of a participating employer of a pension plan if the return for the reporting period is filed after July 22, 2016 or is required to be filed on or before a day that is after July 22, 2016.

Clause 29

Effect of tax adjustment note

ETA
232.02

Existing section 232.02 of the Act allows a participating employer of a pension plan (as those terms are defined in subsection 123(1) of the Act) to issue a note (referred to in section 232.02 as a "tax adjustment note") to a pension entity (as defined in subsection 123(1) of the Act) of the pension plan where the participating employer is deemed under subsection 172.1(6) to have made one or more taxable supplies of employer resources that were consumed or used for the purpose of making a supply of property or a service (referred to in section 232.02 as an "actual pension supply") to a pension entity of the pension plan and the participating employer has also charged tax on an actual pension supply of the same property or service made to the pension entity. Section 232.02 requires the pension entity receiving the tax adjustment note to pay back any input tax credit or rebate under subsection 261.01(2) of the Act that was claimable in respect

of the deemed tax to the extent that the deemed tax was effectively reduced by the tax adjustment note. In addition, where the pension entity made an election with the participating employers of the pension plan under subsection 261.01(5), (6) or (9) for the claim period for which the deemed tax is an eligible amount (as defined in subsection 261.01(1)), section 232.02 requires each participating employer to pay back any deduction in respect of that deemed tax that it was entitled to claim as a result of the election to the extent that the deemed tax was effectively reduced by the tax adjustment note.

Section 232.02 is amended so that it also allows a participating employer of a pension plan to issue a tax adjustment note to a pension entity of the pension plan where the participating employer is deemed under subsection 172.1(6.1) to have made one or more taxable supplies of employer resources that were consumed or used for the purpose of making an actual pension supply of property or a service to a master pension entity (as defined in subsection 123(1) of the Act) of the pension plan and the participating employer has also charged tax on an actual supply of the same property or service made to the master pension entity. Section 232.02 is also amended with respect to the obligation of a pension entity to pay back a rebate that was claimable under subsection 261.01(2) and the obligation of a participating employer to pay back any deduction that it claimed in determining its net tax as a result of an election made under subsection 261.01(5), (6) or (9).

Subclause 29(1)

Tax adjustment note — subsections 172.1(6) and (6.1)

ETA
232.02(2)

Existing subsection 232.02(2) generally allows a participating employer of a pension plan to issue a note (referred to in section 232.02 as a "tax adjustment note") in respect of employer resources that were consumed or used for the purpose of making a supply of property or service (referred to in section 232.02 as an "actual pension supply") to a pension entity. Subsection 232.01(2) applies where subsection 172.1(6) deems the participating employer to have made one or more taxable supplies of the employer resources and where tax is also payable, or is paid without having become payable, (otherwise than by operation of section 172.1) by the pension entity to the employer on the actual pension supply.

Subsection 232.02(2) is amended to now also allow a participating employer of a pension plan to issue a tax adjustment note in respect of employer resources that were consumed or used for the purpose of making an actual pension supply to a master pension entity of the pension plan. Specifically, the amendments to subsection 232.02(2) apply where the following circumstances exist:

- a participating employer of a pension plan is deemed under paragraph 172.1(6.1)(a) to have made one or more taxable supplies of employer resources that were consumed or used for the purpose of making an actual pension supply to a master pension entity of the pension plan and is deemed under paragraph 172.1(6.1)(b) to have collected tax in respect of each such deemed supply;
- a pension entity of the pension plan is deemed under subparagraph 172.1(6.1)(d)(i) to have received a supply of each of these employer resources and is deemed under subparagraph 172.1(6.1)(d)(ii) to have paid tax in respect of these supplies (note that this pension entity would be the specified pension entity of the pension plan, as determined under subsection 172.1(4)); and
- tax becomes payable, or is paid without having become payable, (otherwise than by operation of section 172.1) by the master pension entity to the employer in respect of the actual pension supply made to the master pension entity.

Where the amendments to subsection 232.02(2) apply, the participating employer may issue a tax adjustment note in respect of the employer resources to the pension entity specifying a federal component amount determined in accordance with amended paragraph 232.02(3)(a) and a provincial component amount determined in accordance with amended paragraph 232.02(3)(b). The issuance of this note will then allow the employer to make an adjustment to its net tax under paragraph 232.02(4)(a). The tax adjustment note must be in compliance with subsection 232.02(5).

These amendments are deemed to have come into force on July 22, 2016.

Subclauses 29(2) and (3)

Federal and provincial component amounts

ETA
232.02(3)

Subsection 232.02(3) determines the maximum amount of both the federal component amount and the provincial component amount of a tax adjustment note that may be issued under subsection 232.02(2) on a particular day in respect of employer resources. Existing subsection 232.02(3) applies where there is a taxable supply of employer resources that is deemed to have been made under paragraph 172.1(6)(a). Subsection 232.02(3) is amended so that it also applies where there is a taxable employer resource supply (within the meaning of paragraph 172.1(6.1)(a)) that is deemed to have been made under new paragraph 172.1(6.1)(a).

Paragraph 232.02(3)(a) determines the maximum amount of the federal component amount of a tax adjustment note issued by a participating employer of a pension plan in respect of employer resources used or consumed by the participating employer to make an actual pension supply.

This amount is determined by the formula: A (adjustment for GST or the federal component of HST) minus B (total of all amounts, each of which is the federal component amount of another tax adjustment note previously issued under subsection 232.02(2) in respect of employer resources used or consumed in making the actual pension supply).

Element A is amended to provide that, where there is a taxable employer resource supply that is deemed to have been made under new paragraph 172.1(6.1)(a), element A is the lesser of: (a) the total of all amounts, each of which is an amount of the federal component of the tax in respect of employer resources consumed or used to make the actual pension supply, as determined under paragraph 172.1(6.1)(c); and (b) the amount determined by the formula A_1 multiplied by A_2. Element A_1 of the formula is all amounts of the GST or the federal component of the HST that became payable, or were paid without having become payable, by the master pension entity to the employer (otherwise than by operation of section 172.1) in respect of the actual pension supply on or before the particular day the tax adjustment note is issued. Element A_2 of the formula is the master pension factor in respect of the pension plan for the fiscal year of the master pension entity that includes the particular day. The master pension factor generally indicates the percentage to which units or shares of the master pension entity are owned by pension entities of the pension plan.

Paragraph subsection 232.02(3)(b) determines the maximum amount of the provincial component amount of a tax adjustment note. This amount is determined by the formula: C (adjustment for provincial component of HST) minus D (total of all amounts, each of which is the provincial component amount of another tax adjustment note previously issued under subsection 232.02(3) in respect of employer resources used or consumed in making the actual pension supply).

Element C is amended to provide that, where there is a taxable employer resource supply that is deemed to have been made under new paragraph 172.1(6.1)(a), element C is the lesser of: (a) the total of all amounts, each of which is an amount of the provincial component of the tax in respect of employer resources consumed or used to make the actual pension supply, as determined under paragraph 172.1(6.1)(c); and (b) the amount determined by the formula C_1 multiplied by C_2. Element C_1 of the formula is all amounts of the provincial component of the HST that became payable, or were paid without having become payable, by the master pension entity to the employer (otherwise than by operation of section 172.1) in respect of the actual pension supply on or before the particular day the tax adjustment note is issued. Element C_2 of the formula is the master pension factor in respect of the pension plan for the fiscal year of the master pension entity that includes the particular day.

These amendments are deemed to have come into force on July 22, 2016.

Subclauses 29(4) to (10)

Effect of tax adjustment note

ETA
232.02(4)

Existing subsection 232.02(4) of the Act provides rules that apply where a participating employer of a pension plan (as those terms are defined in subsection 123(1)) is deemed under subsection 172.1(6) to have made a taxable supply of employer resources that were consumed or used for the purpose of making a supply of property or service to a pension entity of the pension plan and has issued a note, referred to as a tax adjustment note, to the pension entity in respect of those employer resources. The rules that apply in these circumstances are set out in paragraphs 232.02(4)(a) to (d).

Subsection 232.02(4) is amended so that it also applies where a participating employer of a pension plan is deemed under new subsection 172.1(6.1) to have made a taxable supply of employer resources that were consumed or used for the purpose of making a supply of property or service to a master pension entity (as defined in subsection 123(1)) of the pension plan, has charged tax on an actual supply of the property or service to the master pension entity and has issued a note, referred to as a tax adjustment note, to a pension entity of the pension plan in respect of those employer resources. This amendment to subsection 232.02(4) is deemed to have come into force on July 22, 2016.

Existing paragraph 232.02(4)(c) applies where the following conditions are met:

- any part of an amount of tax that a pension entity is deemed to have paid under subparagraph 172.1(6)(d)(ii) in respect of a supply that a participating employer is deemed to have made under paragraph 172.1(6)(a) is an eligible amount (as defined in subsection 261.01(1) of the Act) of the pension entity for a particular claim period of the pension entity;
- the pension entity is eligible to claim for the particular claim period a rebate under subsection 261.01(2) in respect of the eligible amount; and
- a tax adjustment note has been issued in respect of the deemed tax.

Existing paragraph 232.02(4)(c) requires the pension entity to pay, for the particular claim period of the pension entity, an amount determined by a formula. The payment required under paragraph 232.02(4)(c) must be made by the pension entity to the Receiver General by the last day of the pension entity's claim period that immediately follows its claim period that includes the day on which the tax adjustment note is issued.

Paragraph 232.02(4)(c) is amended in three ways.

First, paragraph 232.02(4)(c) is amended to provide that it now only applies to require a pension entity to pay back an amount as a result of the receipt of a tax adjustment note in respect of an amount of deemed tax if the pension entity has included any part of the amount of the deemed tax in its determination of its pension rebate amount (as defined in subsection 261.01(1)) for a claim period of the pension entity.

This first amendment to paragraph 232.02(4)(c) applies in respect of any claim period of a pension entity that begins after September 22, 2009.

A transitional rule in respect of this first amendment to paragraph 232.01(4)(c) applies where the following conditions are met:

- a particular amount was assessed under section 296 of the Act as an amount payable under paragraph 232.02(4)(c) by a pension entity of a pension plan in respect of a tax adjustment note issued to it,
- an eligible amount of the pension entity for a claim period of the pension entity was included in the determination of the particular assessed amount,
- the eligible amount is not included in the determination of the pension rebate amount of the pension entity for the claim period, and
- July 23, 2016 is after the last day of the claim period of the pension entity that immediately follows the claim period of the pension entity that includes the day on which the tax adjustment note is issued.

Where these conditions are met, the pension entity may, until the day that is one year after the day on which the Act implementing this clause receives royal assent, request in writing that the Minister of National Revenue make an assessment, reassessment or additional assessment for the purpose of taking into account that the eligible amount is not an amount payable under paragraph 232.02(4)(c), as amended by this first amendment, and, on receipt of the request and with all due dispatch, the Minister must

- consider the request, and
- under section 296, assess, reassess or make an additional assessment of the particular amount, and of any interest, penalty or other obligation of the pension entity, solely for the purpose of taking into account that the eligible amount is not an amount payable under paragraph 232.02(4)(c).

Second, paragraph 232.02(4)(c) is amended in respect of the deadline for the pension entity to make the payment required under this paragraph to the Receiver General. This payment must now be made by the later of

- the day on which the rebate claim is filed, and

- the last day of the claim period of the pension entity that immediately follows its claim period that includes the day on which the tax adjustment note is issued.

Third, the formula in paragraph 232.02(4)(c), which determines the amount that the pension entity is required to pay, is amended in respect of elements E and F of the formula. Currently, element E of the formula is the pension rebate amount of the pension entity for the particular claim period and element F of the formula is the total determined for element B in the formula in subsection 261.01(2) in respect of the pension entity for the particular claim period. Element E is amended so that it is now the amount of the rebate determined for the pension entity under subsection 261.01(2) for the particular claim period. Element F is amended so that it is now the pension rebate amount of the pension entity for the particular claim period. These amendments to elements E and F are consistent with the first amendment to paragraph 232.02(4)(c) described above.

The second and third amendments to paragraph 232.02(4)(c) apply in respect of claim periods of a pension entity that end after July 22, 2016.

Existing paragraph 232.02(4)(d) applies to a participating employer of a pension plan that made a deduction in determining its net tax as a result of being party to an election under subsection 261.01(5), (6) or (9), where the election is in respect of an eligible amount of a pension entity of the pension plan for a particular claim period of the pension entity. Paragraph 232.02(4)(d) applies where tax that the pension entity was deemed to have paid on a particular day under subparagraph 172.1(6)(d)(ii) was included in the eligible amount and where subsequently a tax adjustment note was issued in respect of that deemed tax. Paragraph 232.02(4)(d) generally requires the participating employer to add back an amount in respect of the amount deducted from its net tax. The amount required to be added back by the participating employer is determined by a formula where element F of the formula is

- where the pension entity was not a selected listed financial institution on the particular day, the pension rebate amount (as defined in subsection 261.01(1)) for the pension entity for the particular claim period; and
- where the pension entity was a selected listed financial institution on the particular day, the total of the pension rebate amount and the provincial pension rebate amount (as defined in subsection 261.01(1)) of the pension entity for the particular claim period.

The amount determined under paragraph 232.02(4)(d) must be added by the participating employer in determining its net tax for its reporting period that includes the day on which the tax adjustment note is issued.

Paragraph 232.02(4)(d) is amended in three ways.

First, paragraph 232.02(4)(d) is amended to provide that it now only applies to require a participating employer to add an amount to its net tax as a result of the receipt of a tax adjustment note in respect of an amount of deemed tax if the pension entity has included any part of the amount of deemed tax in its determination of its pension rebate amount for a claim period of the pension entity.

This first amendment to paragraph 232.02(4)(d) applies in respect of any reporting period of an employer for which the return is filed on after September 23, 2009.

A transitional rule in respect of the first amendment to paragraph 232.02(4)(d) described above applies where the following conditions are met:

- a particular amount was assessed under section 296 as an amount payable under paragraph 232.02(4)(d) by a participating employer of a pension plan in respect of a tax adjustment note that was issued to a pension entity of the pension plan,
- an eligible amount of the pension entity for a claim period of the pension entity was included in the determination of the particular assessed amount,
- the eligible amount is not included in the determination of the pension rebate amount of the pension entity for the claim period, and
- July 23, 2016 is after the day on which the return is filed for the reporting period of the participating employer that includes the day on which the tax adjustment note is issued.

Where these conditions are met, the participating employer may, until the day that is one year after the day on which the Act implementing this clause receives royal assent, request in writing that the Minister of National Revenue make an assessment, reassessment or additional assessment for the purpose of taking into account that the particular amount is not an amount payable under paragraph 232.02(4)(d) of the Act, as amended by this first amendment, and, on receipt of the request and with all due dispatch, the Minister must

- consider the request; and
- under section 296 of the Act, assess, reassess or make an additional assessment of the particular amount, and of any interest, penalty or other obligation of the employer, solely for the purpose of taking into account that the eligible amount is not an amount payable under paragraph 232.02(4)(d).

Second, paragraph 232.02(4)(d) is amended with respect to the reporting period of the participating employer for which it must add back an amount in computing its net tax. The participating employer must now make the addition required by paragraph 232.02(4)(d) in determining its net tax for the reporting period that includes the day that is the later of

- the day on which the tax adjustment note is issued; and
- the day on which the election under subsection 261.01(5), (6) or (9), as the case may be, is filed with the Minister of National Revenue.

Third, element F of the formula is amended so that it is now always the pension rebate amount of the pension entity, irrespective of whether the pension entity was a selected listed financial institution on the particular day or not.

The second and third amendments to paragraph 232.02(4)(d) apply in respect of any reporting period of a participating employer of a pension plan if the return for the reporting period is filed after July 22, 2016 or is required to be filed on or before a day that is after July 22, 2016.

Clause 30

Net tax if passenger vehicle leased

ETA
235(1)

The purposes of existing section 235 of the Act is to recapture input tax credits in respect of leased passenger vehicles if the lease costs exceed the maximum lease costs that are deductible under the *Income Tax Act*.

The French version of subsection 235(1) is amended to correct inconsistencies with the English version of that subsection that arose when that subsection was last amended.

This amendment applies in respect of reporting periods that end after November 27, 2006 and in respect of any reporting period that ends on or before that day unless:

- an amount was added pursuant to section 235 in determining the net tax for the reporting period;
- the amount was determined on the basis that the capital cost of the passenger vehicle for the purposes of the *Income Tax Act* included federal and provincial sales tax; and
- the return for the reporting period was filed under Division V of Part IX of the Act on or before that day.

This application rule corresponds to the application rule of the last amendment to subsection 235(1).

Clause 31

Fiscal year — investment limited partnership

ETA
244.1(4)

New subsection 244.1(4) of the Act provides that if a particular fiscal year (as defined in subsection 123(1) of the Act) of an investment limited partnership begins in 2018 and includes January 1, 2019 and if the investment limited partnership would be a selected listed financial institution (within the meaning of subsection 225.2(1) of the Act) throughout a reporting period in the particular fiscal year if the particular year were to begin on January 1, 2019 and end on December 31, 2019, a number of special rules apply.

Firstly, the particular fiscal year ends on December 31, 2018. Secondly, subject to subsection (2), the fiscal years of the partnership are calendar years as of January 1, 2019. Thirdly, any election made by the investment limited partnership under section 244 of the Act ceases to have effect. Finally, if the first taxation year of the investment limited partnership that begins after 2018 does not begin on January 1, 2019, for the purposes of subsection 225.2(1) of the Act the partnership is deemed to be a financial institution for the period beginning on January 1, 2019 and ending on the day preceding the first day of that taxation year.

New subsection 244.1(4) is deemed to have come into force on Announcement Date.

Clause 32

Joint and several liability

ETA
252.41(3)

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

Existing subsection 252.41(3) provides that, if an installer pays or credits the rebate to the non-resident recipient of the services and the installer knew or ought to have known that the non-resident was not entitled to the rebate or that the amount paid or credited exceeded the rebate to which the non-resident was entitled, the installer and the non-resident are jointly and severally liable to repay the excess amount to the Receiver General.

In the English version of subsection 252.41(3), only the expression “jointly and severally” is used. This expression is maintained for common law purposes. The expression “jointly and severally” is no longer adequate in civil law in English and has been replaced with the term “solidarily”. Therefore, it is appropriate to add the term “solidarily” in the English version in

order to reflect the civil law. No amendment is required to the French version of that subsection as it uses the term "*solidairement*". This term is appropriate for both civil law and common law.

This amendment comes into force on royal assent.

Clause 33

Liability for amount paid or credited

ETA
252.5(c)

Existing section 252.5 of the Act provides that, if a registrant has paid or credited an amount to a person in respect of a non-resident rebate and the person was not entitled to the rebate or was paid or credited an amount in excess of the rebate, the registrant and the person are jointly and severally liable to pay to the Receiver General that amount or excess if, at the time the amount was paid or credited, the registrant knew or ought to have known that the person was not entitled to the rebate so paid or credited.

In the English version of paragraph 252.5(c), only the expression "jointly and severally" is used. This expression is maintained for common law purposes. The expression "jointly and severally" is no longer adequate in civil law in English and has been replaced with the term "solidarily". Therefore, it is appropriate to add the term "solidarily" in the English version in order to reflect the civil law. No amendment is required to the French version of that paragraph as it uses the term "*solidairement*". This term is appropriate for both civil law and common law.

This amendment comes into force on royal assent.

Clause 34

Joint and several liability

ETA
254(6)

Section 254 of the Act 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.

If the builder pays or credits a rebate to the individual directly, and the builder knew or should have known that the individual was not entitled to the rebate or that the amount paid or credited exceeded the rebate to which the individual was entitled, existing subsection 254(6) makes the builder and the individual jointly liable to repay the excess amount to the Receiver General.

In the English version of subsection 254(6), only the expression “jointly and severally” is used. This expression is maintained for common law purposes. The expression “jointly and severally” is no longer adequate in civil law in English and has been replaced with the term “solidarily”. Therefore, it is appropriate to add the term “solidarily” in the English version in order to reflect the civil law. No amendment is required to the French version of that subsection as it uses the term “*solidairement*”. This term is appropriate for both civil law and common law.

This amendment comes into force on royal assent.

Clause 35

Joint and several liability

ETA
254.1(6)

Section 254.1 of the Act provides for a rebate to an individual of an amount in respect of the purchase of a building that forms part of a single unit residential complex or residential condominium unit if the individual leases from the builder of the complex or unit, on a long-term basis or with an option to purchase, the land on which the complex or unit is situated.

Existing subsection 254.1(6) provides that, if a builder pays or credits a rebate to the purchaser and the builder knew or ought to have known that the individual was not entitled to the rebate or that the amount paid or credited exceeded the rebate to which the individual was entitled, the builder and the individual are jointly and severally liable to repay the excess amount to the Receiver General.

In the English version of subsection 254.1(6), only the expression “jointly and severally” is used. This expression is maintained for common law purposes. The expression “jointly and severally” is no longer adequate in civil law in English and has been replaced with the term “solidarily”. Therefore, it is appropriate to add the term “solidarily” in the English version in order to reflect the civil law. No amendment is required to the French version of that subsection as it uses the term “*solidairement*”. This term is appropriate for both civil law and common law.

This amendment comes into force on royal assent.

Clause 36

Application for rebate — subsequent claim period

ETA
259(6.1)

Section 259 of the Act provides for rebates to charities, substantially government funded non-profit organizations and other public service bodies (e.g., universities, public colleges, school authorities, hospital authorities and municipalities).

Subject to the applicable rules, a rebate under section 259 in respect of property or a service for a particular claim period of a person is determined based on the amount of GST/HST in respect of the property or service that became payable during the particular claim period or that was paid during the particular claim period without having become payable. Under the requirements of existing section 259, the rebate must be claimed in an application for the particular claim period.

New subsection 259(6.1) provides that, if certain conditions are met, a person may claim a rebate under section 259 in respect of property or a service for a particular claim period of the person in an application for a claim period of the person that is subsequent to the particular claim period.

New subsection (6.1) does not change the underlying substantive requirements for claiming a rebate under section 259. As a result, if a person cannot otherwise claim a rebate under section 259 in respect of property or a service for a particular claim period in an application for the particular claim period, then the person cannot rely on new subsection (6.1) to claim the rebate in an application for a subsequent period. For example, a person cannot rely on subsection (6.1) to extend a lapsed limitation period under subsection 259(5) that prevents the person from claiming the rebate in an application for the particular claim period. Similarly, subsection (6.1) does not change the underlying rules for determining the amount of a rebate under section 259. For example, the amount of a rebate determined under section 259 is the same regardless of whether it is claimed in an application for the particular claim period or in an application for a subsequent claim period.

The first condition that a person must satisfy under new subsection (6.1) in order to be allowed to claim a rebate in respect of property or a service for a claim period in an application for a subsequent claim period is found in the preamble and in paragraph (a). This condition requires that the rebate in respect of the property or service for the particular claim period must not have been claimed in an application for the particular claim period or for any other claim period. For example, consider a person with a quarterly reporting period that seeks to claim a rebate in respect of property or a service for which tax became payable on January 27, 2019. The person does not claim the rebate in its application for the particular claim period of January to March 2019, but instead claims the rebate in its application for the subsequent claim period of April to June 2019. In this example, the person will not be able to claim the rebate in its application for

the claim period of July to September 2019 even if the rebate, which was claimed in the application for the April to June claim period, was denied and thus not paid.

The second condition is found in paragraph (b). It is a time-based restriction on when a person may claim a rebate in respect of property or a service for a particular claim period in an application for a subsequent claim period. This condition provides that if the person is a GST/HST registrant, the rebate can only be claimed in the application for the subsequent claim period where the application is filed by the person within two years after the day on or before which the person is required to file the return under Division V of the Act for the particular claim period. On the other hand, if the person is not a registrant, the application for the subsequent claim period must be filed within two years after the day that is three months after the last day of the particular claim period.

The third condition is found in paragraph (c). It requires that a person must not, at any time throughout a specified period, have become or ceased to be any of the types of public service body described in that paragraph. The specified period begins on the first day of the particular claim period and ends on the last day of the subsequent claim period. For example, consider a person that has been a charity for many years and then also becomes a hospital authority on a particular day. If the particular day is after the first day of the particular claim period and before the end of the subsequent claim period then, as result of the person's change in status, the person will not be able claim a rebate in respect of property or a service for the particular claim period in an application for the subsequent claim period. As another example, consider a person that has been a charity and a hospital authority for many years and then, on a particular day, ceases to be a hospital authority but continues to be a charity. If the particular day is after the first day of the particular claim period and before the end of the subsequent claim period then, as result of the person's change in status, the person will not be able claim a rebate in respect of property or a service for the particular claim period in an application for the subsequent claim period.

The fourth condition is found in paragraph (d). It requires that, in order for a person to claim a rebate in respect of property or a service for a particular claim period in an application for a subsequent claim period, certain percentages remain constant throughout a specified period. The specified period begins on the first day of the particular claim period and ends on the last day of the subsequent rebate claim period. The percentages — being the specified percentage, the specified provincial percentage, and any other percentage specified in section 259, or in regulations made under Part IX of the Act, that applies for the purposes of section 259 — that must remain constant are those that would be applicable in determining the amount of the rebate, if tax in respect of the property or service had become payable and had been paid by the person on each day in the specified period. This paragraph has the effect of, for example, preventing a person from claiming a rebate for a particular claim period in an application for a subsequent claim period if, during the specified period, there were a legislative or regulatory change to a

rebate rate (e.g., a specified percentage or specified provincial percentage) applicable in determining the amount of the rebate.

New subsection 259(6.1) applies in respect of subsequent claim periods ending after Announcement Date.

Clause 37

Pension plan rebates

ETA
261.01

Existing section 261.01 of the Act provides for a GST/HST rebate for pension entities of a pension plan (as those terms are defined in subsection 123(1) of the Act) and allows a pension entity of a pension plan and qualifying employers (as defined in subsection 261.01(1)) of the pension plan to make a joint election to transfer some or all of the pension entity's rebate entitlement to some or all of the qualifying employers. These qualifying employers would then be able to claim a deduction in determining their net tax in respect of the transferred amount.

Amendments to section 261.01 amend the definitions "eligible amount" and "pension rebate amount" in subsection 261.01(1) and the requirements in respect of an application for a rebate under subsection 261.01(2) and in respect of the joint elections provided for under subsections 261.01(5), (6) and (9).

Subclause 37(1)

Eligible amount

ETA
261.01(1)

The definition "eligible amount" in subsection 261.01(1) is used to determine the pension rebate amount (as defined in subsection 261.01(1)) of a pension entity of a pension plan for a claim period (as defined in subsection 259(1) of the Act) of the pension entity so that a rebate can be claimed under subsection 261.01(2) or deductions from net tax may be claimed by qualifying employers of the pension plan under subsection 261.01(5), (6) or (9). In general, an eligible amount is an amount of tax that is not a recoverable amount (as defined in subsection 261.01(1)) and that is described in paragraph (a) or (b) of this definition.

Paragraph (b) of this definition describes amounts of tax that the pension entity is deemed to have paid under section 172.1 of the Act to a participating employer (as defined in subsection 123(1) of the Act) of a pension plan during the claim period. As a consequence of amendments to section 172.1, paragraph (b) now also describes amounts of tax that the pension entity is

deemed to have paid under any of new subsections 172.1(5.1), (6.1) and (7.1), in addition to existing subsections 172.1(5), (6) and (7), to a participating employer of a pension plan.

Further, paragraph (b) is amended to also describe amounts of tax that the pension entity is deemed to have paid under new section 172.2 to a participating employer during the claim period.

The amendments to paragraph (b) are deemed to have come into force on July 22, 2016.

Subclause 37(2)

Pension rebate amount

ETA
261.01(1)

A "pension rebate amount" of a pension entity of a pension plan for a claim period of the pension entity represents the amount of a rebate for the claim period that either the pension entity, if it is a "qualifying pension entity" (as defined in this subsection), may be entitled to claim under subsection 261.01(2) or in respect of which a deduction from net tax may be claimed by participating employers of the pension plan under any of subsections 261.01(5), (6) or (9). The pension rebate amount of a pension entity of a pension plan for a claim period of the pension entity is the amount determined by the formula element A multiplied by element B, with element B being the total of all amounts, each of which is an eligible amount (as defined in subsection 261.01(1)) of the pension entity. An eligible amount is generally an amount of tax that actually became payable by the pension entity (or that was paid by the pension entity without having become payable) or an amount of tax that the pension entity is deemed to have paid under section 172.1 or 172.2 of the Act.

Element B of the definition pension rebate amount is amended with respect to the inclusion of amounts of tax that the pension entity is deemed to have paid so that such an amount will only be included in a pension entity's pension rebate amount if the pension entity elects to include it.

More specifically, element B is now the amount determined by the formula element G plus element H. Element G is the total of all amounts, each of which is an eligible amount of the pension entity for the claim period that is described in paragraph (a) of the definition "eligible amount" (i.e., generally, amounts of tax that actually became payable by the pension entity during the claim period or that were paid by the pension entity without having become payable during the claim period). Element H depends on whether an application for a rebate under subsection 261.01(2) or an election under subsection 261.01 (9) is validly made (i.e., in accordance with subsection 261.01(3) or (10), as the case may be) for the claim period. If such an application or election is validly made, element H is the total of all amounts, each of which is an eligible amount of the pension entity for the claim period that is described in paragraph (b) of

the definition “eligible amount” (i.e., an amount of tax that the pension entity is deemed to have paid under section 172.1 or 172.2 of the Act) and that the pension entity elects to include in the determination of the pension rebate amount of the pension entity for the claim period under new subsection 261.01(3.1) or new paragraph 261.01(10)(c), as applicable. If no such application or election is validly made, element H is zero.

The amendments to element B apply in respect of any claim period of a pension entity beginning after September 22, 2009.

Subclause 37(3)

Application for rebate — pension rebate amount election

ETA
261.01(3.1)

New subsection 261.01(3.1) provides an application requirement in respect of a rebate under subsection 261.01(2). This application requirement is in addition to general application requirements in respect of rebates set out in section 262 of the Act.

Specifically, subsection 261.01(3.1) requires that an application for a rebate under subsection 261.01(2) for a claim period of a pension entity indicate the total of all amounts, each of which is an eligible amount of the pension entity for the claim period that is described in paragraph (b) of the definition “eligible amount” in subsection 261.01(1) (i.e., an amount of tax that the pension entity is deemed to have paid under section 172.1 or 172.2 of the Act) and that the pension entity elects to include in the determination of its pension rebate amount for the claim period.

New subsection 261.01(3.1) applies in respect of any claim period of a pension entity beginning after September 22, 2009.

Subclause 37(4)

Form and manner of filing

ETA
261.01(8)

Existing subsection 261.01(8) contains requirements in respect of the joint elections provided for under subsections 261.01(5) and (6) relating to the sharing of a qualifying pension entity’s pension rebate amount for a claim period of the qualifying pension entity and its provincial pension rebate amount (as defined in subsection 261.01(1)) for the same claim period. It requires, among other requirements, that these elections be filed with the Minister of National Revenue by the qualifying pension entity at the time the qualifying pension entity’s application for the pension plan rebate under subsection 261.01(2) for the claim period is filed by the qualifying pension entity.

Subsection 261.01(8) is amended with respect to the timing of the filing of a joint election provided for under either of subsections 261.01(5) and (6). In addition to being required to be filed at the time the qualifying pension entity's application for the pension plan rebate under subsection 261.01(2) for the claim period is filed by the qualifying pension entity, the election must also be filed by the qualifying pension entity with the Minister within two years after the day that is

- if the qualifying pension entity is a registrant, the day on or before which it is required to file a return under Division V of Part IX of the Act for the claim period; and
- in any other case, the last day of the claim period.

If the election is not filed with the rebate application within the two-year deadline specified in subsection 261.01(8), the election will not be a valid election and no qualifying employer that is a party to the election will be able to make a deduction in determining its net tax as a result of the election.

The amendments to subsection 261.01(8) apply in respect of any election made under subsection 261.01(5) or (6) other than an election that is required to be filed on or before July 22, 2016.

Subclause 37(5)

Form and manner of filing

ETA
261.01(10)

Existing subsection 261.01(10) of the Act contains requirements in respect of the joint election provided for under subsection 261.01(9) between a non-qualifying pension entity (as defined in subsection 261.01(1)) of a pension plan and the qualifying employers of the pension plan relating to the sharing of the non-qualifying pension entity's pension rebate for a claim period of the non-qualifying pension entity and its provincial pension rebate amount (as defined in subsection 261.01(1)) for the same claim period.

Subsection 261.01(10) is amended to add new paragraph 261.01(10)(c), which provides additional information requirements with respect to an election made under subsection 261.01(9) by a non-qualifying pension entity of the pension plan and the qualifying employers of the pension plan. Specifically, paragraph 261.01(10)(c) requires that an application for an election under subsection 261.01(9) for a claim period of the pension entity indicate the total of all amounts, each of which is an eligible amount of the pension entity for the claim period that is described in paragraph (b) of the definition "eligible amount" in subsection 261.01(1) (i.e., an amount of tax that the pension entity is deemed to have paid under section 172.1 or 172.2 of the Act) and that the pension entity elects to include in the its determination of its pension rebate amount for the claim period.

New paragraph 261.01(10)(c) applies in respect of any claim period of a pension entity beginning after September 22, 2009.

Clause 38

Joint and several liability

ETA
261.31(7)

Existing subsection 261.31(7) of the Act provides that, if an insurer, in determining its net tax for a reporting period, deducts an amount that the insurer paid or credited to a segregated fund of the insurer on account of a rebate of the provincial component of the HST under subsection 261.31(2) in respect of supplies made by the insurer to the segregated fund and the insurer knew or ought to have known that the segregated fund was not entitled to the rebate or that the amount paid or credited exceeded the rebate to which the segregated fund was entitled, the insurer and the segregated fund are jointly and severally liable to repay the excess amount to the Receiver General.

In the English version of subsection 261.31(7), only the expression "jointly and severally" is used. This expression is maintained for common law purposes. The expression "jointly and severally" is no longer adequate in civil law in English and has been replaced with the term "solidarily". Therefore, it is appropriate to add the term "solidarily" in the English version in order to reflect the civil law. No amendment is required to the French version of that subsection as it uses the term "*solidairement*". This term is appropriate for both civil law and common law.

This amendment comes into force on royal assent.

Clause 39

Receivership rules

ETA
266(2)(d)

Section 266 of the Act provides GST/HST rules for receivers. Paragraph 266(2)(d) provides that the insolvent person and the receiver are jointly and severally liable for certain payment and remittance of GST/HST.

In the English version of paragraph 266(2)(d), only the expression "jointly and severally" is used. This expression is maintained for common law purposes. The expression "jointly and severally" is no longer adequate in civil law in English and has been replaced with the term "solidarily". Therefore, it is appropriate to add the term "solidarily" in the English version in order to reflect the civil law. No amendment is required to the French version of that paragraph as it uses the term "*solidairement*". This term is appropriate for both civil law and common law.

A necessary consequential amendment is also made to the English version of subparagraph 266(2)(d)(iii), which currently refer to the expression “joint liability”.

These amendments come into force on royal assent.

Clause 40

Joint and several liability

ETA
267.1(3)

Existing subsection 267.1(3) of the Act clarifies the extent of joint and several liability imposed on a trustee (or personal representative) with a trust (or estate).

In the English version of subsection 267.1(3), only the expression “jointly and severally” is used. This expression is maintained for common law purposes. The expression “jointly and severally” is no longer adequate in civil law in English and has been replaced with the term “solidarily”. Therefore, it is appropriate to add the term “solidarily” in the English version in order to reflect the civil law. No amendment is required to the French version of that subsection as it uses the term “*solidairement*”. This term is appropriate for both civil law and common law. A necessary consequential amendment is also made to the English version of paragraph 267.1(3)(b), which currently refers to the expression “joint liability”.

These amendments come into force on royal assent.

Clause 41

Partnerships

ETA
272.1

Section 272.1 of the Act sets out rules pertaining to the activities, liabilities, formation and dissolution of a partnership.

Subclauses 41(1) and (2)

Joint and several liability

ETA
272.1(5)

In the English version of the preamble of subsection 272.1(5), only the expression “jointly and severally” is used. This expression is maintained for common law purposes. The expression “jointly and severally” is no longer adequate in civil law in English and has been replaced with

the term “solidarily”. Therefore, it is appropriate to add the term “solidarily” in the English version in order to reflect the civil law. No amendment is required to the French version of that subsection in that regard as it uses the term “*solidairement*”. This term is appropriate for both civil law and common law.

A necessary consequential amendment is also made to subparagraph 272.1(5)(a)(ii), which currently refer to the expression “joint liability”. Finally, the French version of that subparagraph is also amended to ensure better consistency between the English and French versions.

These amendments come into force on royal assent.

Subclause 41(3)

Investment limited partnership — supply by general partner

ETA
272.1(8)

New subsection 272.1(8) of the Act applies in respect of the provision of any management or administrative service (as defined in subsection 123(1) of the Act) to an investment limited partnership (as defined in subsection 123(1) of the Act) by a general partner of the investment limited partnership.

Subsection 272.1(8) clarifies that, even if the general partner provides the management or administrative service pursuant to its obligations as a member of the partnership, the provision of the service is deemed not to be done by the general partner as a member of the investment limited partnership and that the supply of the service by the general partner to the investment limited partnership is deemed to have been made otherwise than in the course of the investment limited partnership’s activities. Therefore, subsection 272.1(3) of the Act, rather than subsection 272.1(1) of the Act, applies in respect of the supply.

Subsection 272.1(8) applies in respect of the provision of a management or administrative service if any consideration for a supply of the service becomes due on or after Announcement Date or is paid on or after that day without having become due, or if all of the consideration for a supply of the service became due or was paid before Announcement Date unless the supplier did not, on or before that day, charge, collect or remit any amount as or on account of tax under Part IX of the Act in respect of the supply.

Clause 42

Non-arm's length transactions

ETA
273.1(6)

Section 273.1 of the Act empowers the Minister of National Revenue to authorize the use of export distribution centre certificates if certain criteria are satisfied. The use of export distribution centre certificates is targeted at businesses that provide limited value added in the course of processing goods.

Existing subsection 273.1(6) provides that the supplies that factor into the determination of a person's export revenue percentage or the value added to inventory or customers' goods — that are relevant in determining the person's eligibility to be authorized to use, or continue to use, an export distribution centre certificate to acquire or import certain goods on a tax-free basis — are deemed to be made for consideration equal to fair market value in the case of non-arm's length supplies that are actually made for no consideration or for less than fair market value.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French version of subsection 273.1(6) is amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*".

This amendment comes into force on royal assent.

Clause 43

Judicial authorization

ETA
289(3)

Subsection 289(2) of the Act provides that the Minister of National Revenue must obtain judicial authorization from a judge of the Federal Court judge before imposing a requirement on a third party to provide any information related to an unnamed person or persons. Subsection 289(3) of the Act provides that the judge may grant a judicial authorization subject to such conditions that the judge considers appropriate if the judge is satisfied that the unnamed person or persons are ascertainable and that the requirement is made to verify compliance with Part IX of the Act.

Subsection 289(3) is amended to update a cross reference so that the reference to the term "group" only applies to subsection 289(3) as this term is not used in another subsection of section 289.

This amendment comes into force on royal assent.

Clause 44

Assessments

ETA
296(1)(d)

Existing subsection 296(1) of the Act provides the Minister of National Revenue with the authority to assess a person for net tax and other amounts payable or remittable under Part IX of the Act. Paragraph 296(1)(d) provides the Minister with the authority to assess any amount payable by a person under any of paragraphs 228(2.1)(b) and (2.3)(d) and section 230.1 of the Act.

Paragraph 296(1)(d) is amended to also provide the Minister with the authority to assess any amount payable under paragraph 232.01(5)(c) or paragraph 232.02(4)(c) of the Act, which may require a pension entity (as defined in subsection 123(1) of the Act) to pay an amount to the Receiver General as a result of the issuance of a tax adjustment note to the pension entity under subsection 232.01(3) or 232.02(2).

The amendment to paragraph 296(1)(d) is deemed to have come into force on September 23, 2009.

Clause 45

Period for assessment

ETA
298(1)(a.1)

Existing subsection 298(1) of the Act sets out limitation periods with respect to assessments under section 296 of the Act for net tax or certain other amounts payable under various provision of Part IX. Under paragraph 298(1)(a.1), an assessment may not be made more than four years after the day the amount referred to in paragraph 228(2.1)(b) or paragraph 228(2.3)(d) of the Act is required to be paid.

Paragraph 298(1)(a.1) is amended to also provide that an assessment may not be made more than four years after the day the amount referred to in paragraph 232.01(5)(c) or paragraph 232.02(4)(c) is required to be paid. These paragraphs may require a pension entity (as defined in subsection 123(1) of the Act) to pay an amount to the Receiver General as a result of the issuance of a tax adjustment note to the pension entity under subsection 232.01(3) or 232.02(2).

The amendment to paragraph 298(1)(a.1) is deemed to have come into force on September 23, 2009.

Clause 46

When application to be granted

ETA
304(5)(b)(iv)

Section 304 of the Act allows a person to apply to the Tax Court of Canada for an extension of time to file an objection or request an adjustment under subsection 274(6) of the Act, if the person has previously applied to the Minister of National Revenue for such an extension and that application was refused or not responded to within 90 days.

Existing subsection 304(5) sets out the conditions for an application made under section 304 to be granted.

In order to correct an inconsistency between the French and English versions of the Act, the French version of subsection 304(5) is amended to repeal subparagraph (b)(iv) as the condition set out in that subparagraph never existed in the English version of subsection 304(5).

This amendment comes into force on royal assent.

Clause 47

Compliance by unincorporated bodies

ETA
324(1) and (3)

Section 324 of the Act provides the obligations and liabilities under Part IX of the Act in the case of unincorporated bodies and the circumstances under which the Minister of National Revenue may make an assessment.

In the English versions of subsections 324(1) and (3), only the expression “jointly and severally” is used. This expression is maintained for common law purposes. The expression “jointly and severally” is no longer adequate in civil law in English and has been replaced with the term “solidarily”. Therefore, it is appropriate to add the term “solidarily” in the English version in order to reflect the civil law. No amendment is required to the French version of that subsection as it uses the term “*solidairement*”. This term is appropriate for both civil law and common law.

These amendments come into force on royal assent.

Clause 48

Transfer not at arm's length

ETA
325(1) to (3)

Section 325 of the Act provides rules under which a transferee of property may be liable for unpaid taxes, interest and penalties of the transferor when the two parties are not dealing at arm's length.

In the English versions of subsections 325(1) and (3), only the expression "jointly and severally" is used. This expression is maintained for common law purposes. The expression "jointly and severally" is no longer adequate in civil law in English and has been replaced with the term "solidarily". Therefore, it is appropriate to add the term "solidarily" in the English version in order to reflect the civil law. No amendment is required to the French version of that subsection in that regard as it uses the term "*solidairement*". This term is appropriate for both civil law and common law. In addition, necessary consequential amendments to the English version and an amendment to correct a misspelled word in the French version are also made in subsection 325(3).

The French version of subsection 325(2) does not specify when the Minister of National Revenue may assess a transferee in respect of any amount payable by reason of section 325 while the English version of that provision clearly states that the Minister may make such assessment at any time. Consequently, the French version of subsection 325(2) is amended to explicitly provide that an assessment under section 325 may be made at any time consistent with the English version of that subsection.

These amendments come into force on royal assent.

Clause 49

Evidence and procedure

ETA
335(6), (7), (10) and (10.1)

Section 335 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of Part IX of the Act.

Subsections 335(6) and (7) are amended to replace the term "Agency" with the term "Canada Revenue Agency" as a consequence of the repeal of the definition "Agency" in subsection 123(1) of the Act.

Also, the French versions of subsections 335(10) and (10.1) are amended to replace the term "*réputée*" with "*présumée*" to correct inconsistencies with the English version of these subsections that uses "presumed" and not "deemed". Additionally, a time reference is added to the French version of subsection 335(10.1) to ensure better consistency with the English version.

These amendments come into force on royal assent.

Clause 50

Definitions

ETA
Sch. V, Pt.VI, section 1

Municipal transit service

Under section 24 of Part VI of Schedule V to the Act, certain supplies of municipal transit services are exempt. Under the existing definition "municipal transit service" in section 1 of that Part, a public passenger transportation service (except a charter service or service that is part of a tour) is considered a municipal transit service if it is supplied by a transit authority (as defined in section 1 of that Part). Additionally, all or substantially all of that transit authority's supplies must be supplies of public passenger transportation services provided within a particular municipality and its environs. Under the existing definition, this all or substantially all condition is a characterization of the transit authority itself, even though the condition is described in the definition "municipal transit service" instead of in the definition "transit authority".

Therefore, to improve clarity and for ease of reference within amended section 24 and new section 24.1 of Part VI of Schedule V to the Act, the definition "municipal transit service" is amended by removing the all or substantially all condition, which is instead incorporated directly into the amended definition "transit authority". Additionally, the definition "municipal transit service" is amended to explicitly include circumstances where a transit authority supplies a right that exclusively entitles an individual to use a public passenger transportation service. Therefore, this amendment explicitly clarifies that a supply of a public passenger transportation service made by a transit authority is considered a municipal transit service regardless of whether the supply to the transit user is made as a supply of a service or a supply of a right to use the service (for example, through the sale of a pass).

This amendment applies to any supply made after July 22, 2016 and to any supply made on or before that day unless, on or before that day, an amount was charged, collected, or remitted in respect of the supply as or on account of tax under Part IX of the Act.

Transit authority

The existing definition “transit authority” includes a division, department, or agency of a government, municipality, or school authority the primary purpose of which is to supply public passenger transportation services. It also includes non-profit organizations in receipt of government funding to support the supply of public passenger transportation services, as well as non-profit organizations (whether or not in receipt of government funding) that are established and operated for the purpose of providing public passenger transportation services to individuals with a disability. In addition to these conditions, for an entity to be considered to be providing exempt municipal transit services under existing section 24 of Part VI of Schedule V to the Act, it must meet certain requirements described under the existing definition “municipal transit service”. More specifically, for an entity to provide exempt municipal transit services, that entity must be a transit authority and all or substantially all of its supplies must be supplies of public passenger transportation services within a particular municipality and its environs. This condition is a characterization of the transit authority itself, even though the condition is described in the existing definition “municipal transit service”.

The definition “transit authority” is amended in order to make it consistent with the amended definition “municipal transit service”, amended section 24 and new section 24.1 of Part VI of Schedule V to the Act. Therefore, the amended definition “transit authority” directly incorporates the all or substantially all condition that was removed from the definition “municipal transit service”. As a result of this amendment, all of the conditions that an entity must satisfy in order to be considered a transit authority under amended section 24 and new section 24.1 are described directly in the amended definition “transit authority”.

Additionally, the all or substantially all condition in the amended definition “transit authority” is amended to explicitly contemplate supplies of rights to use a public passenger transportation service. Therefore, under the amended definition “transit authority”, an entity can be considered a transit authority if all or substantially all of that entity’s supplies are supplies of public passenger transportation services provided within a particular municipality and its environs or supplies of rights for individuals to use those services.

This amendment applies to any supply made after July 22, 2016 and to any supply made on or before that day unless, on or before that day, an amount was charged, collected, or remitted in respect of the supply as or on account of tax under Part IX of the Act.

Clause 51

Supply by government, municipality, etc.

ETA
Sch. V, Pt. VI, paras. 20(f) to (i)

Existing section 20 of Part VI of Schedule V to the Act sets out a number of supplies relating to regulatory and administrative functions that are exempt when made by a government, municipality, or a board, commission or other body established by a government or municipality.

The French versions of paragraphs 20(f) to (i) are amended to ensure better consistency with the English version of that section and to correct a grammatical error.

This amendment comes into force on royal assent.

Clause 52

Exempt municipal transit services

ETA
Sch. V, Pt.VI, sections 24 and 24.1

Existing section 24 of Part VI of Schedule V to the Act exempts a supply of a municipal transit service, as defined in section 1 of Part VI of Schedule V to the Act, if that supply is made to a member of the public. Additionally, existing section 24 gives the Minister of National Revenue the authority to designate a particular public passenger transportation service to be an exempt municipal transit service. However, existing section 24, in conjunction with the existing definition "municipal transit service" in section 1 of that Part, does not explicitly exempt a supply of a right for an individual to use these services.

Section 24 is amended and new section 24.1 of Part VI of Schedule V to the Act is enacted to clarify that supplies of rights to use certain public passenger transportation services, and not just supplies of the services themselves, are exempt. The preamble of amended section 24 specifies that the exemption does not apply to supplies that are made to transit authorities; however, such supplies may meet the requirements for exemption under new section 24.1. This new condition replaces the condition under existing section 24 that provides that only supplies made to members of the public are exempt. Therefore, as under the existing condition, a supply of a right or service is not exempt under section 24 if it is simply an input acquired by a transit authority for use in making supplies of public passenger transportation services. For example, if a transit authority pays consideration to a third party organization for a supply of a public passenger transportation service that is an input to the transit authority's overall mandate, then the supply made by that organization to the transit authority for the provision of these services is intended to

be taxable. However, in that scenario, the supply of the service to a member of the public, whether made by the organization or the transit authority, is intended to be exempt.

Paragraph (a) of amended section 24 exempts a supply of a municipal transit service. As a result of the amendments made to the definition "municipal transit service", this exemption includes a supply made by a transit authority of a public passenger transportation service (other than a charter service or a service that is part of a tour) or a right that exclusively entitles an individual to use such a service.

Paragraph (b) of amended section 24 exempts a supply of a right that exclusively entitles an individual to use a public passenger transportation service (other than a charter service or a service that is part of a tour) that is operated by a transit authority. The supply of such a right is exempt regardless of the identities of the supplier and the recipient (except if the recipient is a transit authority), provided that the underlying service is operated by a transit authority. For example, if a transit authority supplies to a third party vendor that is not a transit authority a quantity of transit passes, each of which exclusively entitles an individual to use the transit authority's services, and if each pass is subsequently supplied to an individual transit user then, as a result of the amendments to section 24, both of those supplies are exempt, provided that the underlying service satisfies the conditions of the exemption. Similarly, as a further example, if a transit authority supplies a university with the right for the university's students to use its public passenger transportation service, then the supply of the right to the university and the subsequent supplies to the students are both exempt supplies provided that the underlying service is operated by a transit authority.

Paragraph (c) of amended section 24 provides that a supply of a public passenger service is exempt if the service is designated by the Minister to be a municipal transit service. Similarly, paragraph (d) of amended section 24 exempts a supply of a right exclusively entitling an individual to use a service designated by the Minister to be a municipal transit service.

Under amended section 24, supplies of municipal transit services and supplies of rights to use public passenger transportation services are not exempt if they are made to transit authorities. However, under new section 24.1 of Part VI of Schedule V to the Act, a supply made to a transit authority of a right to use a public passenger transportation service may be exempt in certain circumstances.

New section 24.1 only applies to supplies of intangible personal property that is a right evidenced by a ticket, pass, voucher, or other similar physical or electronic media that meet either the criteria in paragraph (a) or paragraph (b).

Under paragraph (a) of new section 24.1, a supply will be exempt if, in addition to the condition in the preamble, two conditions are satisfied. First, the property must exclusively entitle an individual to use a public passenger transportation service (other than a charter service or a

service that is part of a tour) that is operated by a transit authority other than the transit authority receiving the supply. Alternatively, this first condition is also satisfied if the property exclusively entitles an individual to use a public passenger transportation service designated by the Minister to be a municipal transit service under paragraph (c) of amended section 24. Second, the transit authority receiving the supply must acquire the property exclusively for the purpose of making a supply of the property. As an example, if a first transit authority supplies a quantity of transit passes, each of which exclusively entitles an individual to use the first transit authority's services, to another transit authority for the purpose of re-sale, then the supply from the first transit authority to the other transit authority will be an exempt supply under paragraph (a) of new section 24.1.

Under paragraph (b) of new section 24.1, a supply will be exempt if, in addition to the condition in the preamble, the property being supplied exclusively entitles an individual to use a public passenger transportation service (other than a charter service or service that is part of a tour) that is operated by the transit authority that is receiving the supply. Furthermore, the transit authority must have previously supplied that property. For example, if a transit authority supplies a quantity of transit passes, each of which exclusively entitles an individual to use the transit authority's services, to a third party vendor, new section 24.1 will exempt the supply of any unsold passes that are returned back to the transit authority.

These amendments apply to any supply made after July 22, 2016 and to any supply made on or before that day unless, on or before that day, an amount was charged, collected, or remitted in respect of the supply as or on account of tax under Part IX of the Act.

Clause 53

Labour organizations

ETA
Sch. V, Pt. VI, s. 26

Existing section 26 of Part VI of Schedule V to the Act provides that supplies of property or services between a non-profit organization that is established for the benefit of organized labour and any of its members or affiliated trade unions are exempt.

The French version of section 26 is amended to replace the references to "*organisme sans but lucratif*" with "*organisme à but non lucratif*", which is a defined term in subsection 123(1) of the Act. The corresponding reference in the English version of section 26 is a reference to the defined term.

This amendment comes into force on royal assent.

Clause 54

Tourist literature

ETA
Sch. VII, para. 3(b)

Section 3 of Schedule VII to the Act allows tourist literature of governments or other organizations described in the section to be imported free of GST/HST when such literature is for public distribution without charge.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expressions "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French version of paragraph 3(b) is amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*".

This amendment comes into force on royal assent.

Clause 55

Imported goods under a warranty

ETA
Sch. VII, ss. 5 and 5.1

Schedule VII to the Act enumerates a short list of goods of different classes that are not taxable upon importation into Canada.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French versions of sections 5 and 5.1 are amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*".

These amendments come into force on royal assent.

Clause 56

Tourist literature

ETA
Sch. X, Pt. I, para. 12(b)

Section 12 of Part I of Schedule X to the Act allows tourist literature of governments or other organizations described in the section to be brought into a participating province without a

requirement to self-assess tax under section 220.05 or 220.06 of the Act when such literature is for public distribution without charge.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French version of paragraph 12(b) is amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*".

This amendment comes into force on royal assent.

Clause 57

Goods supplied under warranty and brought into a participating province

ETA
Sch. X, Pt. I, s. 14

Section 14 of Part I of Schedule X to the Act provides that if a person brings into a participating province property that is supplied to the person for no consideration, other than shipping and handling fees, as a replacement part or as replacement property under a warranty, no tax is payable under section 220.05 or 220.06 of the Act in respect of the bringing in.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and to remove potential ambiguities, the French version of section 14 is amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*".

This amendment comes into force on royal assent.

Clause 58

Definition "Agency"

ETA
276(1), 291(1), 295(5)(d)(ix), 303(3), 332(1) and 335(1) to (5) and (14)

Consequential amendments are made to subsections 276(1) and 291(1), subparagraph 295(5)(d)(ix) and subsections 303(3), 332(1) and 335(1) to (5) and (14) of the Act to replace the term "Agency" with the term "Canada Revenue Agency" following the repeal of the definition "Agency" in subsection 123(1) of the Act.

These amendments come into force on royal assent.

Clause 59

Definition "specified Crown agent"

ETA
123(1), 200(4)(a)(i)(A), 209(2) and 273(1.1)(a)

The term "specified Crown agent", as defined in subsection 123(1) of the Act, refers to an agent of Her Majesty in right of a province that pays tax because of an agreement under section 32 of the *Federal-Provincial Fiscal Arrangements Act* or to an agent of Her Majesty in right of Canada or of a province that is prescribed by regulations. The term is relevant for purposes of special rules contained in the Act.

To remove potential ambiguities, the French version of the Act is amended to replace the relevant references to "*mandataire désigné*" in the Act, including in the label of the definition "*mandataire désigné*" in subsection 123(1), by references to "*mandataire de la Couronne désigné*".

These amendments come into force on royal assent.

Clause 60

Definition "specified Crown agent"

Specified Crown Agents (GST/HST) Regulations and *Public Service Body Rebate (GST/HST) Regulations*

Consequential to the amendment made to the French version of the definition "specified crown agent" in subsection 123(1) of the Act, the French versions of the *Specified Crown Agent (GST/HST) Regulations* and *Public Service Body Rebate (GST/HST) Regulations* are amended to reflect the new label of the definition "*mandataire de la Couronne désigné*".

These amendments come into force on royal assent of the amendment made to the French version of the definition "specified crown agent" in subsection 123(1) of the Act.

Clause 61

Assessment – trust for group registered educations savings

Clause 61 provides an exception to the limitation periods set out in paragraphs 298(1)(a) and (e) of the Act with respect to assessments, reassessments and additional assessments of net tax, amounts payable under section 230.1 of the Act and penalties. This clause applies only in respect of assessments, reassessments and additional assessments made solely for the purpose of determining an amount for a province, or a penalty in respect of such an amount, that is required to be added to, or deducted from, the net tax of a trust governed by a registered education savings

plan (as defined in subsection 248(1) of the *Income Tax Act*), or the manager (within the meaning of subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*) of such a trust, under subsection 225.2(2) of the Act for reporting periods of the trust or manager that begins before July 22, 2016 and ends after June 2010.

As a result of the limitation of clause 61 to amounts determined by subsection 225.2(2) and to those reporting periods, clause 61 will only apply to a trust, or to its manager, if

- the trust is governed by a group registered education savings plan;
- the trust acted as if it were a selected listed financial institution (within the meaning of subsection 225.1(1) of the Act) throughout its reporting periods that begin before July 22, 2016 and end after June 2010; and
- the trust has made an election under the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* that has the effect of making certain amendments to those Regulations apply to the trust throughout its reporting periods that begin before July 22, 2016 and end after June 2010. Those amendments have the effect of extending the rules for determining a net tax adjustment under subsection 225.2(2) of the Act to a trust governed by a group registered education savings plan.

New subclause 61(1) applies in respect of an assessment, reassessment or additional assessment of net tax of a trust governed by a group registered education savings plan for a reporting period of the trust that begins before July 22, 2016 and ends after June 2010. However, this subclause only applies where that assessment, reassessment or additional assessment is made solely for the purpose of determining the amount for a participating province (as defined in subsection 123(1) of the Act) that, under subsection 225.2(2), is required to be added to, or may be deducted from, that net tax. Where this subclause applies, it provides that, despite the limitation period set out in paragraph 298(1)(a) of the Act, the assessment, reassessment or additional assessment shall not be made under section 296 of the Act more than four years after the later of

- the day on which the Act implementing this clause receives royal assent; and
- the day on which the return under section 238 of the Act for the reporting period was filed.

New subclause 61(2) applies in respect of an assessment, reassessment or additional assessment of any penalty that is payable by a trust governed by a group registered education savings plan and that relates solely to the amount for a participating province that, under subsection 225.2(2) of the Act, is required to be added to, or may be deducted from, the net tax of the trust for a reporting period of the trust that begins before July 22, 2016 and ends after June 2010. Where this subclause applies, it provides that the assessment, reassessment or additional assessment

under section 296 may be made at any time, but if the penalty is other than a penalty under section 280.1, 285, 285.01 or 285.1, it shall not be made more than four years after the later of

- the day on which the Act implementing this clause receives royal assent, and
- the day on which the trust becomes liable to pay the penalty.

New subclause 61(3) applies if a manager of a trust governed by a group registered educations savings plan has made an election with the trust under section 55 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* that is in effect at any time in a particular reporting period of the manager that ends during a reporting period of the trust that begins before July 22, 2016 and ends after June 2010. This election has the effect of transferring from the trust to the manager an amount that would otherwise be an amount for a participating province that, under subsection 225.2(2), is required to be added to, or may be deducted from, the net tax of the trust. Where this subclause applies to a manager, paragraphs 61(3)(a) and (b) apply to the manager in respect of an assessment, reassessment or additional assessment in a similar manner as subclauses 61(1) and (2) apply to a trust governed by a registered education savings plan.

Paragraph 61(3)(a) applies in respect of an assessment, reassessment or additional assessment of the net tax of a manager for a particular reporting period of the manager that begins before July 22, 2016 and ends on or after July 1, 2010, but only where that assessment, reassessment or additional assessment is made solely for the purpose of determining the amount for a participating province that, under subsection 225.2(2) and due to the application of section 55 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*, is required to be added to, or may be deducted from, that net tax. Where this paragraph applies, it provides that, despite the limitation period set out in paragraph 298(1)(a) of the Act, the assessment, reassessment or additional assessment shall not be made under section 296 more than four years after the later of

- the day on which the Act implementing this clause receives royal assent; and
- the day on which the return under section 238 of the Act for the particular reporting period was filed.

Paragraph 61(3)(b) applies in respect of an assessment, reassessment or additional assessment of any penalty that is payable by the manager and that relates solely to the amount for a participating province that, under subsection 225.2(2) of the Act and due to the application of section 55 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*, is required to be added to, or may be deducted from, the net tax of the manager for a reporting period of the manager that begins before July 22, 2016 and ends after June 2010. Where this paragraph applies, it provides that the assessment, reassessment or additional assessment under section 296 may be made at any time, but if the penalty is other than a penalty

under section 280.1, 285, 285.01 or 285.1, it shall not be made more than four years after the later of

- the day on which the Act implementing this clause receives royal assent; and
- the day on which the manager becomes liable to pay the penalty.

Excise Act

Clause 62

Non-application – transformation of beer concentrate

EA
1.2

New section 1.2 of the *Excise Act* (the Act) provides that the Act does not apply to the process of transforming beer concentrate into beer (other than beer concentrate) for consumption on the premises where it is transformed if the transformation is done in a manner approved by the Minister.

This amendment is deemed to have come into force on June 5, 2017.

Clause 63

Definitions

EA
4

Section 4 of the Act defines terms used in Part III of the Act and in the Schedules to the Act relating to breweries.

Subclause 63(1)

Definition "beer" or "malt liquor"

EA
4

The existing definition "beer" or "malt liquor" in section 4 of the Act means all fermented liquor that is brewed in whole or in part from malt, grain or any saccharine matter without any process of distillation and that has an alcoholic strength not in excess of 11.9% absolute ethyl alcohol by volume, which is not wine as defined at section 2 of the *Excise Act, 2001*.

The definition "beer" or "malt liquor" is amended to include beer concentrate as a type of beer.

This amendment is deemed to have come into force on June 5, 2017.

Subclause 63(2)

Definition “beer concentrate”

EA
4

The new definition “beer concentrate” in section 4 of the Act defines a type of beer that is subject to duties of excise as set out in new subsection 170(1.1) of the Act. A product is beer concentrate if

- it is not intended or marketed for consumption as a beverage without being further transformed;
- it has an alcoholic strength in excess of 11.9% absolute ethyl alcohol by volume; and
- it is made by dehydrating beer (other than beer concentrate) or is intended, before being offered for consumption as a beverage, to be transformed by dilution or hydration into beer (other than beer concentrate).

This amendment is deemed to have come into force on June 5, 2017.

Clause 64

Duties – beer or malt liquor and beer concentrate

EA
170

Existing subsection 170(1) imposes the duties of excise set out in Part II of the schedule on every hectolitre of beer or malt liquor. Subsection 170(1) is amended to exclude beer that is beer concentrate from the application of subsection 170(1).

New subsection 170(1.1) imposes duties of excise on beer concentrate according to the maximum quantity of beer (other than beer concentrate) that can be transformed, in a manner approved by the Minister, from that concentrate. The rate of duties of excise applied to that quantity of beer (other than beer concentrate) is the applicable rate set out in Part II of the schedule.

This amendment is deemed to have com into force on June 5, 2017.

Clause 65

Exclusion – beer concentrate

EA
170.1(1.1)

Existing subsection 170.1(1) applies the reduced duties of excise in Part II.1 of the schedule to the first 75,000 hectolitres of beer or malt liquor brewed in Canada per year by a licensed brewer.

Subsection 170.1(1.1) excludes beer concentrate and beer transformed from beer concentrate from the application of the reduced rates referred to in subsection 170.1(1). Also, subsection 170.1(1.1) provides that beer concentrate and beer transformed from beer concentrate do not count towards the first 75,000 hectolitres referred to in subsection 170.1(1).

This amendment is deemed to have come into force on June 5, 2017.

Artists' Representatives (GST/HST) Regulations

Clauses 66 to 68

Prescribed registrants

Artists' Representatives (GST/HST) Regulations
Schedule

The schedule to the *Artists' Representatives (GST/HST) Regulations* lists the names of the entities that are prescribed for the purposes of subsection 177(2) of the Act. These regulations are amended to reflect a change, effective February 19, 2014, in the corporate name of one of these prescribed entities.

This amendment is deemed to have come into force on February 19, 2014.

Financial Service and Financial Institutions (GST/HST) Regulations

Clauses 69 and 70

Definitions and interpretation

Financial Service and Financial Institutions (GST/HST) Regulations
2

Existing section 2 of the *Financial Service and Financial Institutions (GST/HST) Regulations* provides that, in the Regulations, the expression "Act" means the *Excise Tax Act*.

Section 2 is amended to renumber section 2 as subsection 2(1) and to add new subsection 2(2). New subsection 2(2) provides that the terms "employee life and health trust", "registered disability savings plan", "registered education savings plan", "registered retirement income fund", "registered retirement savings plan" and "TFSA" have the same meanings as in subsection 248(1) of the *Income Tax Act*, which usually refers to more specific provisions of the *Income Tax Act* or the *Income Tax Regulations*. New subsection 2(2) defines the same terms as existing subsection 3.1(1) of the Regulations, which is concurrently repealed, and adds the new terms "registered disability savings plan", "registered education savings plan" and "TSFA", which are used in amended paragraph 3.1(2)(c) of the Regulations, as well as "employee life and health trust", which is used in new section 4.1 of the Regulations.

As a consequential amendment, the heading before section 2 of the French version of the Regulations is amended to reflect the addition of interpretation rules in subsection 2(2).

These amendments are deemed to have come into force on July 23, 2016.

Clause 71

Prescribed service

Financial Service and Financial Institutions (GST/HST) Regulations
3.1

A service will be included in the definition "financial service" in subsection 123(1) of the Act 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. Subparagraph (q)(i) of the definition "financial service" excludes from that definition management or administrative services that are provided to an investment plan described in subsection 149(5) of the Act or to a corporation, trust or partnership whose principal activity is the investing of funds. Subparagraph (q)(ii) also excludes from that definition any other service, other than a prescribed service, provided by a person who provides management or administrative services to a recipient described in subparagraph (q)(i).

Existing section 3.1 of the Regulations specifies which services are prescribed for the purposes of subparagraph (q)(ii) of the definition "financial service" in subsection 123(1) of the Act. Subsection 3.1(1) provide that certain terms used in subsection 3.1(2) have the same meaning as those assigned by subsection 248(1) of the *Income Tax Act*. Subsection 3.1(1) is repealed as a consequence of the addition of new subsection 2(2) (see the notes for section 2 of the Regulations).

Subsection 3.1(2) provides that the services that are prescribed for the purposes of subparagraph (q)(ii) are the services that are described in paragraphs 3.1(2)(a) to (c) of the Regulations. Paragraph 3.1(2)(c) describes the service of arranging for the issuance, renewal, variation or transfer of ownership of a financial instrument for a trust governed by a self-directed registered retirement investment fund (as defined in subsection 146.3(1) of the *Income Tax Act*) or a self-directed registered retirement savings plan (as defined in subsection 146(1) of the *Income Tax Act*).

Paragraph 3.1(2)(c) is amended to also include the service of arranging for the issuance, renewal, variation or transfer of ownership of a financial instrument for a trust governed by a self-directed registered disability savings plan (as defined in subsection 146.4(1) of the *Income Tax Act*), a self-directed registered education savings plan (as defined in subsection 146.1(1) of the *Income Tax Act*) or a self-directed TFSA (within the meaning assigned by subsection 146.2(5) of the *Income Tax Act*).

These amendments are deemed to have come into force on July 23, 2016.

Clause 72

Prescribed member

Financial Service and Financial Institutions (GST/HST) Regulations
4.1 and 4.2

New subsection 132(6) of the Act provides that if, at any time, the total value of all interests in an investment limited partnership that are held by non-resident members of the partnership is 95 per cent or more of the total value of all interests in the partnership, the investment limited partnership is deemed to not be resident in Canada at that time. Any non-resident member of the partnership that is a prescribed member of the partnership for the purposes of subsection 132(6) is not to be treated as a non-resident member for the purposes of this determination.

New section 4.1 of the Regulations provides that a member of an investment limited partnership that is a non-resident trust is a prescribed member for the purposes of subsection 132(6) if the total value of the assets of the member in which one or more persons resident in Canada have a beneficial interest is more than 5 per cent of the total value of the assets of the member. Section 4.1 also provides that a member of an investment limited partnership that is a non-resident limited partnership is a prescribed member for the purposes of subsection 132(6) if the total value of all interests in the member held by persons resident in Canada is more than 5 per cent of the total value of all interests in the member.

New section 4.1 is deemed to have come into force on Announcement Date.

Paragraph 149(5)(g) of the Act states that a prescribed person is an investment plan for the purposes of section 149 of the Act. New section 4.2 of the Regulations provides that an employee life and health trust (within the meaning assigned by subsection 144.1(2) of the *Income Tax Act*) is a prescribed person for the purposes of paragraph 149(5)(g) of the Act. This provision was formerly section 8 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* but has been moved to the *Financial Service and Financial Institutions (GST/HST) Regulations* as a result of amendments to paragraph 149(5)(g) of the Act.

New section 4.2 applies in respect of any taxation year of a person that begins after July 22, 2016.

Games of Chance (GST/HST) Regulations

Clause 76

Prescribed registrants

Games of Chance (GST/HST) Regulations
3

The net tax of a provincial gaming authority listed in section 3 of the *Games of Chance (GST/HST) Regulations* is to be determined in accordance the rules set out in those Regulations.

One of the listed authorities, the Nova Scotia Gaming Corporation, has been continued under the name Nova Scotia Provincial Lotteries and Casino Corporation, effective November 13, 2012. Therefore, section 3 is amended to replace the reference to the predecessor corporation with a reference to the continued corporation.

This amendment is deemed to have come into force on November 13, 2012.

Clause 77

Definition "promotional supply"

Games of Chance (GST/HST) Regulations
5(1)

Existing subsection 5(1) of the *Games of Chance (GST/HST) Regulations* contains definitions of terms used in these regulations.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and its regulations and to remove potential ambiguities, the French version of the definition "*fourniture de promotion*" in subsection 5(1) is amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*".

This amendment comes into force on the day on which the Regulations implementing it are published in the *Canada Gazette*.

Amalgamations and Windings-up Continuation (GST/HST) Regulations

Clause 79

Amalgamations and Windings-up

Amalgamations and Windings-up Continuation (GST/HST) Regulations
Schedule

Paragraphs 271(b) and 272(a) of the Act provide that, for prescribed purposes, a new successor corporation is deemed to be the same corporation as, and a continuation of, a predecessor merged, amalgamated or wound-up corporation. Section 2 of the *Amalgamations and Windings-up Continuation (GST/HST) Regulations* provides that the "prescribed purposes", referred to in paragraphs 271(b) and 272(a), means for the purpose of applying any provision of that Act set out in the Schedule to the Regulations.

The Schedule of the Regulations is amended to add section 273.2 of the Act to the list of provisions set out in the Schedule. As a result, section 273.2 is now a prescribed purpose referred to in paragraphs 271(b) and 272(a) of the Act. This means that, for the purpose of determining if a particular corporation is a reporting institution within the meaning of subsection 273.2(2) throughout a fiscal year of the particular corporation,

- if the particular corporation was formed from the merger or amalgamation of two or more predecessor corporations, the particular corporation is deemed to be the same corporation as, and a continuation of, the predecessor corporations and amounts included in computing, for the purposes of the *Income Tax Act*, any of the predecessors' income are considered to be amounts included in computing, for the purposes of that Act, the particular corporation's income; and
- if the particular corporation wound-up a subsidiary corporation, the particular corporation is deemed to be the same corporation as, and a continuation of, the subsidiary corporation and amounts included in computing, for the purposes of the *Income Tax Act*, the subsidiary corporation's income are considered to be amounts included in computing, for the purposes of that Act, the particular corporation's income.

This amendment is deemed to have come into force on July 23, 2016.

Offset of Taxes (GST/HST) Regulations

Clause 81

Application

Offset of Taxes (GST/HST) Regulations
3

Subsection 228(7) of the Act provides authority for a person, in prescribed circumstances and subject to prescribed conditions and rules, to reduce or offset the tax payable that is required to be remitted or paid under certain provisions of the Act at any time by the amount of any refund or rebate to which another person may at that time be entitled to under Part IX of the Act. Section 3 of the *Offset of Taxes (GST/HST) Regulations* provide that the Regulations, which in sections 4 to 6 prescribe circumstances, conditions and rules for the purposes of subsection 228(7), apply in respect of tax required to be remitted under subsection 228(2) or (4) of the Act.

Section 3 is amended to provide that the Regulations also apply in respect of tax required to be remitted under subsection 228(2.3) of the Act or required to be paid under 228(4) or Division IV or IV.1 of Part IX of the Act. Subsection 228(2.3) generally requires a selected listed financial institution (as described in subsection 225.2(1) of the Act) to remit its net tax for a reporting period of the financial institution where that reporting period is a fiscal month or fiscal quarter. Subsection 228(4) generally requires a recipient of a supply of real property to pay tax to the Receiver General in respect of the supply in the case where the supplier is not required to collect tax on the supply. Division IV generally requires the self-assessment of tax in respect of certain imported supplies of property or services and in respect of certain expenses incurred outside Canada by certain financial institutions that relate to those financial institutions' Canadian activities. Division IV.1 generally requires self-assessment of the provincial component of the HST in respect of property or services that are acquired in or brought into a participating province (as defined in subsection 123(1) of the Act).

This amendment applies in respect of any amount that is required to be remitted for a reporting period of a person that ends after July 22, 2016 and in respect of any amount that is required to be paid after July 22, 2016.

Clause 82

Prescribed conditions

Offset of Taxes (GST/HST) Regulations
5

Subsection 228(7) of the Act provides authority for a person, in prescribed circumstances and subject to prescribed conditions and rules, to reduce or offset the tax that is required to be

remitted or paid under certain provisions of the Act at any time by the amount of any refund or rebate to which another person may at that time be entitled to under Part IX of the Act. Section 5 of the *Offset of Taxes (GST/HST) Regulations* prescribes conditions for the purposes of subsection 228(7). Paragraphs 5(e) and (i) are amended to replace references to the Department with references to the Canada Revenue Agency.

The amendments to section 5 come into force on the day on which the Regulations implementing them are published in the *Canada Gazette*.

Clause 83

Prescribed rules

Offset of Taxes (GST/HST) Regulations
6

Subsection 228(7) of the Act provides authority for a person, in prescribed circumstances and subject to prescribed conditions and rules, to reduce or offset the tax that is required to be remitted or paid under certain provisions of the Act at any time by the amount of any refund or rebate to which another person may at that time be entitled to under Part IX of the Act. Section 6 of the *Offset of Taxes (GST/HST) Regulations* prescribes rules for the purposes of subsection 228(7). Existing paragraph 6(e) sets out the filing requirements that the coordinator of a closely related group must meet with respect to a joint application by all the members of the group to reduce or offset the tax that is remittable by one member of the group by the amount of the refund or rebate, or portion thereof, that any other member is entitled to.

Paragraph 6(e) is amended to replace the requirement in subparagraph 6(e)(i) that a joint application or revised application must be filed at a Regional or District Excise Office with a requirement that a joint application or revised application must be filed with the Minister of National Revenue. In addition, subparagraphs 6(e)(ii) and (iii), which require that the coordinator file any direction, return, refund or rebate application or list referred to in subparagraph 6(e)(iii) with the Minister, are amended to remove the requirements that these documents be filed specifically at the Excise Processing Center.

The amendments to paragraph 6(e) come into force on the day on which the Regulations implementing them are published in the *Canada Gazette*.

Streamlined Accounting (GST/HST) Regulations

Clause 85

Quick Method of Accounting — not dealing at arm's length

Streamlined Accounting (GST/HST) Regulations
24(4)

Existing subsection 24(4) of the *Streamlined Accounting (GST/HST) Regulations* provides the rules that apply if an election to use the Quick Method of Accounting is in effect at the time a registrant makes a taxable supply of property or a service to a person with whom the registrant is not dealing at arm's length for no consideration or for consideration that is less than the fair market value of the property or service at that time.

In the French version of the Act, the references to the expression "for no consideration" are references to the expression "*à titre gratuit*" in some cases and to the expression "*sans contrepartie*" in other cases. To ensure better consistency throughout the French version of the Act and its regulations and to remove potential ambiguities, the French version of subsection 24(4) is amended to replace the expression "*à titre gratuit*" with the expression "*sans contrepartie*".

This amendment comes into force on the day on which the Regulations implementing it are published in the *Canada Gazette*.

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations

Clause 86

Definitions

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
1(1)

Subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* defines terms used in these Regulations. In subsection 1(1), amendments are made to the definitions "investment plan", "distributed investment plan", "permanent establishment", "plan member", "provincial series", "series", "specified resource" and "unit" and the new definition "subscriber" is added.

Investment plan

The existing definition "investment plan" in subsection 1(1) of the Regulations means a segregated fund of an insurer (as those terms are defined in subsection 123(1) of the Act) or an investment plan (within the meaning of subsection 149(5) of the Act). However, the definition

"investment plan" does not include a trust governed by a registered retirement savings plan (as defined in subsection 146.1(1) of the *Income Tax Act*), a registered retirement income fund (as defined in subsection 146.3(1) of the *Income Tax Act*) or a registered education savings plan (as defined in subsection 146(1) of the *Income Tax Act*). The definition "investment plan" is amended in two ways.

Firstly, the definition "investment plan" is amended to also exclude a trust governed by a registered disability savings plan (as defined in subsection 146.4(1) of the *Income Tax Act*) or a TFSA (within the meaning assigned by subsection 146.2(5) of the *Income Tax Act*).

These first amendments to the definition "investment plan" apply in respect of any reporting period of a person that begins after July 22, 2016.

Secondly, the definition "investment plan" is amended with respect to the exclusion for a trust governed by a registered education savings plan. A trust governed by an individual or family registered education savings plan remains excluded from the definition "investment plan", but a trust governed by a group registered education savings plan is now included in that definition. Specifically, the exclusion from the definition "investment plan" of a trust governed by registered education savings plan is now limited to

- a trust that does not have more than one beneficiary at any one time (i.e., the trust is a trust for an individual registered education savings plan); or
- a trust where it is the case that each of the beneficiaries of the trust is connected to each living subscriber under the plan, or was connected to a deceased original subscriber under the plan, by blood relationship or adoption, within the meaning of subsection 251(6) of the *Income Tax Act* (i.e., the trust is a trust for a family registered education savings plan).

The second amendments to the definition "investment plan" apply in respect of reporting periods of a person that begin after July 21, 2016. They also apply in respect of any particular reporting period of a person that end after June 2010 but begins before July 22, 2016, if the following three conditions are satisfied in respect of the person:

- The person was a trust governed by a registered education savings plan throughout each of those particular reporting periods.
- For each of those particular reporting periods, it is the case that either
  - the person, or the manager (as defined in subsection 1(1) of the Regulations) of the person, reported in the return for the particular reporting period an amount on account of net tax that was determined as though

        - the person were a selected listed financial institution throughout the particular reporting period; and
        - section 35 of the Regulations applied to the person in respect of the particular reporting period; or.
    - the manager of the person reported in the return for the reporting period of the manager that ends in the particular reporting period an amount on account of net tax that was determined as though
        - the person were a selected listed financial institution throughout the particular reporting period;
        - section 35 of the Regulations applied to the person in respect of the particular reporting period; and
        - a joint election made under section 55 of the Regulations by the manager and the person were in effect throughout that reporting period of the manager.
- The person elects to have the amendments to sections 1, 35 and 52 of the Regulations in respect of group registered education savings plans apply in respect of those particular reporting periods. To be effective, this election must be made in prescribed form containing prescribed information and be filed with the Minister of National Revenue in prescribed manner on before the day that is one year after the day on which the Regulations making these amendments are published in the *Canada Gazette* or any later day that the Minister of National Revenue may allow.

Where these conditions are satisfied and the second amendments to the definition "investment plan" — as well as sections 35 and 52, new definition "subscriber" in subsection 1(1) and amendments to the definition "plan member" in subsection 1(1) (see notes to those provisions for more information) — apply to a trust in respect of the particular reporting periods of the trust that ends after June 2010 but begins before July 22, 2016, the following six additional consequences follow in respect of the particular reporting periods:

1. Despite the normal time limitations for filing an election made under sections 14, 53, 54 and 55 of the Regulations, if the trust makes an election under any of those sections — either by itself or jointly with other persons — that is in effect at any time in the particular reporting periods, that election does not have to be filed until the day that is six months after the day on which the Regulations making these amendments are published in the *Canada Gazette* or any later day that the Minister of National Revenue may allow.
2. Despite the registration requirement in paragraph 56(1)(b) of the Regulations, if the trust makes an election under either section 53 or 55 of the Regulations with its manager that comes into effect at any time in a particular reporting period and if the trust is not party to an election under section 54 that applies at that time, for the purposes of paragraph

240(2.1)(a.1) of the Act, the trust is not required to be registered until the day that is six months after the day on which the Regulations making these amendments are published in the *Canada Gazette*.

3. Despite the registration requirement in paragraph 56(2)(b) of the Regulations, if the following circumstances exist:

    a. the trust had previously made an election under section 54 of the Regulations to file its returns as part of a consolidated group,

    b. the trust subsequently withdraws from or revokes its election under section 54, with that withdrawal or revocation coming into effect at a time that is during a particular reporting period but before July 22, 2016, and

    c. an election under either of section 53 or 55 is in effect at that time,

    then, for the purposes of paragraph 240(2.1)(a.1) of the Act, the trust is not be required to be registered as an individual entity until the day that is six months after the day on which the Regulations making these amendments are published in the *Canada Gazette.* (The trust would have six months to be registered as subsection 240(2.1) would require it to be registered 30 days after the day that is prescribed for the purposes of paragraph 240(2.1) and that prescribed day would be five months after the day on which the Regulations making these amendments are published in the *Canada Gazette*.)

4. Despite the group registration requirement in paragraph 56(3)(b) of the Regulations, if the following circumstances exist:

    a. the trust makes a joint election under subsection 54(1) of the Regulations with its manager and with one or more other selected listed financial institutions, each of which is also a trust governed by a group registered education savings plan, and

    b. the election under subsection 54(1) applies in respect of any of the particular reporting periods,

    then, for the purposes of paragraph 240(1.3)(b) of the Act, the group of selected listed financial institutions is not required to be registered until the day that is six months after the day on which the Regulations making these amendments are published in the *Canada Gazette*.

5. Despite the time limitations contained in paragraph 240(1.4)(b) of the Act on making an application to add a new member to a group registration, if the following circumstances exist:

    a. the trust makes a joint election under subsection 54(2) with its manager to include the trust in a consolidated filing group election made under subsection 54(1),

b. the joint election under subsection 54(2) applies in respect of any of the particular reporting period and comes into effect before July 22, 2016,

then the trust or its manager has until the day that is six months after the day on which the Regulations making these amendments are published in the *Canada Gazette* to make an application under paragraph 240(1.4)(b) to the Minister to add the trust to the group registration.

6. Despite the filing due-dates contained in subsections 238(1) and (2.1) of the Act and subsection 54(8) of the Regulations for filing a return, if the trust makes a joint election under section 55 of the Regulations with its manager that applies at any time during a particular reporting period, any return for the reporting period that is required by subsection 238(1) or (3.1) of the Act to be filed is not required to be filed until the day that is six months after the day on which the Regulations making these amendments are published in the *Canada Gazette*.

Distributed investment plan

The existing definition "distributed investment plan" in subsection 1(1) of the Regulations means an investment plan (as defined in subsection 1(1)) that is described by any of paragraphs (a) to (h) of the definition. Paragraph (h) describes a unit trust (as described in subsection 108(2) of the *Income Tax Act*).

Paragraph (h) is amended to exclude from the definition "distributed investment plan" an investment plan that is a unit trust described by any of subparagraphs 149(5)(a)(i) to (ix) and (xiii) of the Act. As a result, a unit trust governed by a employees profit sharing plan, a registered supplementary unemployment insurance plan, a registered retirements savings plan, a deferred profit sharing plan, a registered education savings plan, a registered retirement income fund, an employee benefit plan, an employee trust or a retirement compensation arrangement, as those terms are defined for the purposes of the *Income Tax Act*, will be included in the definition "private investment plan" in subsection 1(1) and not in the definition of "distributed investment plan" in that subsection.

The amendment to paragraph (h) of the definition "distributed investment plan" applies in respect of any reporting period of a person that ends on or after July 1, 2010.

The definition is also amended by adding new paragraph (i), which adds an "investment limited partnership" (as newly defined in subsection 123(1) of the Act) to the definition "distributed investment plan".

New paragraph (i) comes into force on January 1, 2019.

Permanent establishment

The existing definition "permanent establishment" of a person in subsection 1(1) of the Regulations means any permanent establishment that the person is deemed to have under section 3 of the Regulations and any permanent establishment that is described by any of paragraphs (a) to (d) of the definition.

Paragraphs (c) and (d) of the definition describe permanent establishments of certain partnerships.

As a result of the amendments, paragraph (d) is repealed and new subparagraph (c)(i) applies to the partnerships to which paragraph (c) previously applied, other than a partnership that is an investment plan, while new subparagraph (c)(ii) applies to the partnerships to which paragraph (d) previously applied, other than a partnership that is an investment plan. Paragraphs 3(e) and (f) provide rules relating to permanent establishments of investment plans.

The amendments to the definition "permanent establishment" are deemed to have come into force on Announcement Date.

Plan member

The existing definition "plan member" of a private investment plan or a pension plan in subsection 1(1) of the Regulations means an individual who has a right, either immediate or in the future and either absolute or contingent, to receive benefits under the private investment plan or the pension plan, as the case may be.

The definition "plan member" is amended to add a reference to registered education savings plans, following the inclusion of trusts governed by a group registered education savings plan in the definition "private investment plan" in subsection 1(1) as a result of the amendment to the definition "investment plan" described above.

The amendments to the definition "plan member" apply in respect of reporting periods of a person that begin after July 21, 2016. They also apply in respect of any particular reporting period of a person that end after June 2010 but begin before July 22, 2016, if the following three conditions are satisfied in respect of the person:

- The person was a trust governed by a registered education savings plan throughout each of those particular reporting periods.
- For each of those particular reporting periods, it is the case that either
    - the person, or the manager (as defined in subsection 1(1) of the Regulations) of the person reported in the return for the particular reporting period an amount on account of net tax that was determined as though

        - the person were a selected listed financial institution throughout the particular reporting period; and
        - section 35 of the Regulations applied to the person in respect of the particular reporting period; or
    - the manager of the person reported in the return for the reporting period of the manager that ends in the particular reporting period an amount on account of net tax that was determined as though
        - the person were a selected listed financial institution throughout the particular reporting period;
        - section 35 of the Regulations applied to the person in respect of the particular reporting period; and
        - a joint election made under section 55 of the Regulations by the manager and the person were in effect throughout that reporting period of the manager.
- The person elects to have the amendments to sections 1, 35 and 52 of the Regulations in respect of group registered education savings plans apply in respect of those particular reporting periods. To be effective, this election must be made in prescribed form containing prescribed information and be filed with the Minister of National Revenue in prescribed manner on before the day that is one year after the day on which the Regulations making these amendments are published in the *Canada Gazette* or any later day that the Minister of National Revenue may allow.

Where these conditions are satisfied and the amendments to the definition “plan member” — as well as sections 35 and 52, new definition “subscriber” in subsection 1(1) and amendments to the definition “investment plan” in subsection 1(1) (see notes to those provisions for more information) — apply to a trust in respect of the particular reporting periods of the trust that end after June 2010 but begin before July 22, 2016, additional consequences follow in respect of the particular reporting periods. See notes relating to the definition “investment plan” in subsection 1(1) of the Regulations for more information regarding these consequences.

Provincial series

Under the existing definition “provincial series”, a series of a stratified investment plan is a provincial series for a fiscal year of the stratified investment plan if it meets three conditions, described in paragraphs (a), (b) and (c) of the definition, throughout the fiscal year in respect of a particular province.

Paragraph (b) of the definition contains the second condition, which is that, under the terms of the prospectus, registration statement or other similar document for the series, or under the laws of Canada or a province, the conditions for a person owning or acquiring units of the series

include that the person be resident in the particular province when the units are acquired, and that the units are required to be sold, transferred or redeemed within a reasonable time after the person ceases to be resident in the particular province.

Paragraph (b) of the definition is amended consequentially as a result of the inclusion of the new term "investment limited partnership" to the definition of "distributed investment plan". As a result of the amendment, the conditions for a person owning or acquiring units of a series of the financial institution (i.e., that the person be resident in the particular province when the units are acquired, and that the units are required to be sold, transferred or redeemed within a reasonable time after the person ceases to be resident in the particular province) may be set out in a partnership agreement.

The amendment to paragraph (b) of the definition "provincial series" is deemed to have come into force on Announcement Date.

Series

The existing definition "series" in subsection 1(1) of the Regulations means, in respect of a trust, a class of units of the trust, and in respect of a corporation, a class of the capital stock of the corporation that has not been issued in one or more series, and a series of a class of the capital stock of the corporation that has been issued in one or more series.

The definition is amended to include, in respect of a partnership, a class of units of the partnership.

The amendment to the definition "series" is deemed to have come into force on Announcement Date.

Specified resource

The existing definition "specified resource" in subsection 1(1) of the Regulations means a specified resource within the meaning of subsection 172.1(5) of the Act.

A consequential amendment is made to definition "specified resource" as a result of amendments to section 172.1 of the Act. The definition "specified resource" in the Regulations now has the same meaning as in subsection 172.1(1) of the Act.

The amendment to the definition "specified resource" is deemed to have come into force on July 22, 2016.

Unit

The existing definition "unit" in subsection 1(1) of the Regulations means: in respect of a trust or of a series of a trust, a unit of the trust or of the trust of that series; in respect of a corporation or

of a series of a corporation, a share of the capital stock of the corporation or of the corporation of that series; or in respect of a segregated fund of an insurer, an interest of a person, other than the insurer, in the segregated fund.

The definition is amended to include, in respect of a partnership, an interest of a person in the partnership or, in respect of a series of a partnership, a unit of the partnership of that series.

The amendment to the definition "unit" is deemed to have come into force on Announcement Date.

Subscriber

The new definition "subscriber" under a registered education savings plan in subsection 1(1) of the Regulations has the meaning assigned by subsection 146.1(1) of the *Income Tax Act*, which generally provides that a subscriber under a registered education savings plan is the individual (or individuals) who entered into the plan with the promoter of the plan. The definition in subsection 146.1(1) of the *Income Tax Act* also provides for replacement subscribers under certain circumstances relating to marriage breakdown and death.

The new definition "subscriber" applies in respect of reporting periods of a person that begin after July 21, 2016. It also applies in respect of any particular reporting period of a person that end after June 2010 but begin before July 22, 2016, if the following conditions are satisfied in respect of the person:

- The person was a trust governed by a registered education savings plan throughout each of those particular reporting periods.
- For each of those particular reporting periods, it is the case that either
    - the person, or the manager (as defined in subsection 1(1) of the Regulations) of the person reported in the return for the particular reporting period an amount on account of net tax that was determined as though
        - the person were a selected listed financial institution throughout the particular reporting period; and
        - section 35 of the Regulations applied to the person in respect of the particular reporting period; or
    - the manager of the person reported in the return for the reporting period of the manager that ends in the particular reporting period an amount on account of net tax that was determined as though
        - the person were a selected listed financial institution throughout the particular reporting period;

- section 35 of the Regulations applied to the person in respect of the particular reporting period; and
- a joint election made under section 55 of the Regulations by the manager and the person were in effect throughout that reporting period of the manager.

- The person elects to have the amendments to sections 1, 35 and 52 of the Regulations in respect of group registered education savings plans apply in respect of those particular reporting periods. To be effective, this election must be made in prescribed form containing prescribed information and be filed with the Minister of National Revenue in prescribed manner on before the day that is one year after the day on which the Regulations making these amendments are published in the *Canada Gazette* or any later day that the Minister of National Revenue may allow .

Where these conditions are satisfied and new definition "subscriber" — as well as sections 35 and 52 and amendments to the definitions "investment plan" and "plan member" in subsection 1(1) (see notes to those provisions for more information) — apply to a trust in respect of the particular reporting periods of the trust that end after June 2010 but begin before July 22, 2016, additional consequences follow in respect of those reporting periods. See notes relating to the definition "investment plan" in subsection 1(1) of the Regulations for more information regarding these consequences.

Clause 87

Meaning of qualifying partnership

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
2

Existing section 2 of the Regulations defines a "qualifying partnership" as a partnership that, at any time in its taxation year, has at least one member described in each of paragraphs 2(a) and 2(b). These paragraphs generally require a partnership to have a member that has a permanent establishment in a particular participating province through which a business of the partnership is carried on or that is deemed under section 3 to be a permanent establishment of the member, as well as a member that has a permanent establishment in another province through which a business of the partnership is carried on or that is deemed under section 3 to be a permanent establishment of the member.

Section 2 is amended to exclude an investment plan (as described in subsection 149(5) of the Act) from being a qualifying partnership.

This amendment is deemed to have come into force on Announcement Date.

Clause 88

Permanent establishment in province

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
3(a)

Section 3 of the Regulations contains rules governing permanent establishments of financial institutions for the purposes of the Regulations. Paragraph 3(a) contains rules that apply to banks (as defined in subsection 123(1) of the Act).

Paragraph 3(a) is amended so that it also applies to credit unions (as defined in subsection 123(1) of the Act).

The amendment to paragraph 3(a) applies in respect of any reporting period of a person that begins after July 22, 2016.

Clause 89

Meaning of unrecoverable tax amount

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
7(1)

Subsection 7(1) of the Regulations defines the term "unrecoverable tax amount", which is used in subsection 7(2) of the Regulations to determine if an investment plan (as defined in subsection 1(1) of the Regulations) is a qualifying small investment plan for a fiscal year of the investment plan. Under section 10 of the Regulations a qualifying small investment plan for a fiscal year is generally not a selected listed financial institution (within the meaning of subsection 225.2(1) of the Act) for the following fiscal year unless it elects to be one under section 14 of the Regulations.

The "unrecoverable tax amount" for a reporting period of an investment plan is determined by the formula A minus B. Element A of the formula is the total of all amounts, each of which is described in paragraphs (a), (b) or (c) of element A. Existing paragraph (b) applies where the investment plan is a pension entity (as defined in subsection 123(1) of the Act) and describes an amount of tax that the pension entity would be deemed to have paid under subparagraph 172.1(5)(d)(ii) or (6)(d)(ii) or paragraph 172.1(7)(d) of the Act during the reporting period, if the pension entity were a selected listed financial institution throughout the reporting period (i.e., the federal component of tax that the pension entity is deemed to have paid under those provisions during the reporting period).

Paragraph (b) is amended to also include an amount of tax that the pension entity would be deemed to have paid under new subparagraph 172.1(5.1)(d)(ii) or 172.1(6.1)(d)(ii) or new paragraph 172.1(7.1)(d) of the Act during the reporting period, if the pension entity were a

selected listed financial institution throughout the reporting period (i.e., the federal component of tax that the pension entity is deemed to have paid under those provisions during the reporting period).

The amendment to subsection 7(1) is deemed to have come into force on July 22, 2016.

Clause 90

Prescribed person — paragraph 149(5)(g) of Act

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
8

Paragraph 149(5)(g) of the Act states that a prescribed person is an investment plan for the purposes of section 149 of the Act. Existing section 8 of the Regulations provides that an employee life and health trust (within the meaning assigned by subsection 144.1(2) of the *Income Tax Act*) is a prescribed person for the purposes of paragraph 149(5)(g) of the Act.

Section 8 is repealed. The repeal is consequential to an amendment to paragraph 149(5)(g) of the Act. Employee life and health trusts are now prescribed for the purposes of that paragraph by new section 4.1 of the *Financial Service and Financial Institutions (GST/HST) Regulations* rather than by section 8 of the Regulations

The repeal of section 8 applies in respect of any taxation year of a person that begins after July 22, 2016.

Clause 91

Exception — provincial investment plan

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
11(b)

Under existing section 11 of the Regulations, a financial institution that is a non-stratified investment will not be a prescribed financial institution, and therefore not a selected listed financial institution, throughout a reporting period in a fiscal year that ends in a taxation year of the financial institution if it meets three conditions, described in paragraphs 11(a) to 11(c), throughout the fiscal year in respect of a particular province.

Paragraph 11(b) contains the second condition, which is that, under the terms of the prospectus, registration statement or other similar document for the financial institution, or under the laws of Canada or a province, the conditions for a person owning or acquiring units of the financial institution include that the person be resident in the particular province when the units are acquired, and that the units are required to be sold, transferred or redeemed within a reasonable time after the person ceases to be resident in the particular province.

Paragraph 11(b) is amended consequentially as a result of the inclusion of the new term "investment limited partnership" (as newly defined in subsection 123(1) of the Act) to the definition of "distributed investment plan". As a result of this amendment, the conditions for a person owning or acquiring units of the financial institution (i.e., that the person be resident in the particular province when the units are acquired, and that the units are required to be sold, transferred or redeemed within a reasonable time after the person ceases to be resident in the particular province) may be set out in a partnership agreement.

This amendment is deemed to have come into force on Announcement Date.

Clause 92

Definitions

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
16(1)

The existing definition "plan merger" in subsection 16(1) of the Regulations means the merger or combination of two or more trusts or corporations, each of which was, immediately before the merger or combination, a distributed investment plan and each of which is referred to in this definition as a "predecessor", to form one trust or corporation (referred to in this definition as the "continuing plan") in such a manner that:

- the continuing plan is a predecessor and is, immediately after the merger or combination, a distributed investment plan;
- for each predecessor other than the continuing plan, all or substantially all of the outstanding units of the predecessor are converted, by any means, into units of the continuing plan or are cancelled; and
- the merger or combination is otherwise than as a result of the acquisition of property of one trust or corporation by another trust or corporation, pursuant to the purchase of that property by the other trust or corporation or as a result of the distribution of that property to the other trust or corporation on the winding-up of the trust or corporation.

The definition is amended consequential to the addition of the term "investment limited partnership" (as newly defined in subsection 123(1) of the Act) to the definition "distributed investment plan". As a result, an investment limited partnership may be a party to a plan merger as a predecessor and also as a continuing plan.

These amendments are deemed to have come into force on Announcement Date.

Clause 93

Definition “net premiums”

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
24(1)(c)

Subsection 24(1) of the Regulations defines the expression “net premiums” of a selected listed financial institution for a particular period for the purposes of section 24. Among the amounts that can be deducted for the gross premiums to arrive at the net premiums is certain amounts payable in respect of the cancellation of policies. The reference to the expression “cancellation of policies” in the French version of subsection 24(1) is a reference to the expression “*résiliations de police*”.

The French version of paragraph 24(1)(c) is amended to replace the reference to the term “*résiliation*” by a reference to the term “*annulation*” to ensure a better consistency with the English version.

This amendment comes into force on the day on which the Regulations implementing it are published in the *Canada Gazette*.

Clauses 94 and 95

Determination of percentage

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
25

Subsection 25(1) of the Regulations contains rules applying to banks governing the determination of a bank’s percentage for a particular period (as defined in section 16(1) of the Regulations) and for a participating province (as defined in subsection 123(1) of the Act). Subsection 25(1) and the heading before section 25 are amended to also apply to credit unions (as defined in subsection 123(1)).

The amendment to the heading before section 25 is deemed to have come into force on July 23, 2016. The amendment to subsection 25(1) applies in respect of any reporting period of a person that begins after July 22, 2016.

Clause 96

Percentage — defined contribution plans, profit sharing plans, RESPs and retirement compensation arrangements

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
35

Existing section 35 of the Regulations provides rules for determining the prescribed percentage for a participating province (as defined in subsection 123(1) of the Act) and for a particular period (as defined in subsection 16(1) of the Regulations) of an investment plan that is a pension entity of a defined contribution pension plan (other than a pension entity of a mixed pension plan governed by section 38 of these Regulations) or a trust governed by a deferred profit sharing plan, by an employees profit sharing plan or by a retirement compensation arrangement. The prescribed percentage determined by section 35 is principally used, among other purposes, by these investment plans to determine the adjustment to net tax for a reporting period in respect of the provincial component of the HST. Subsection 35(1) contains the rules that these investment plans are required to use to determine their prescribed percentage for a participating province and for a particular period. Subsection 35(2) contains rules that apply to these investment plans for the purposes of subsection 35(1) where the information they have respecting the province of residence of their plan members (as defined in subsection 1(1) of the Regulations) falls below a certain threshold.

Subsections 35(1) and 35(2) are amended to provide that the rules contained in those subsections also apply to investment plans that are trusts governed by certain registered education savings plans. In particular, because trusts governed by individual or family registered education savings plans are excluded from the definition "investment plan" in subsection 1(1), only trusts governed by group registered education savings plans will be subject to section 35.

The amendments to section 35 apply in respect of reporting periods of a person that begin after July 21, 2016. They also apply in respect of any particular reporting period of a person that end after June 2010 but begin before July 22, 2016 if the following conditions are satisfied in respect of the person:

- The person was a trust governed by a registered education savings plan throughout each of those particular reporting periods.
- For each of those particular reporting periods, it is the case that either
    - the person, or the manager (as defined in subsection 1(1) of the Regulations) of the person reported in the return for the particular reporting period an amount on account of net tax that was determined as though

        - the person were a selected listed financial institution throughout the particular reporting period; and
        - this section applied to the person in respect of the particular reporting period; or
    - the manager of the person reported in the return for the reporting period of the manager that ends in the particular reporting period an amount on account of net tax that was determined as though
        - the person were a selected listed financial institution throughout the particular reporting period;
        - section 35 of the Regulations applied to the person in respect of the particular reporting period; and
        - a joint election made under section 55 of the Regulations by the manager and the person were in effect throughout that reporting period of the manager.
- The person elects to have the amendments to sections 1, 35 and 52 of the Regulations in respect of group registered education savings plans apply in respect of those reporting periods. To be effective, this election must be made in prescribed form containing prescribed information and be filed with the Minister of National Revenue in prescribed manner on before the day that is one year after the day on which the Regulations making these amendments are published in the *Canada Gazette* or any later day that the Minister of National Revenue may allow.

Where these conditions are satisfied and the amendments to section 35 — as well as amendments to section 52 and to the definitions “investment plan”, “plan member” and “subscriber” in subsection 1(1) (see notes to those provisions for more information) — apply to a trust in respect of the particular reporting periods of the trust that end after June 2010 but begin before July 22, 2016, additional consequences follow in respect of those particular reporting periods. See notes relating to the definition “investment plan” in subsection 1(1) of the Regulations for more information regarding these consequences.

Clause 97

Specific adjustments

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
46

Section 46 of the Regulations contains prescribed amounts — for a particular reporting period in a fiscal year that ends in a taxation year of a selected listed financial institution and for a participating province — for the purpose of the description of G in subsection 225.2(2) of the Act. These amounts are added or deducted, as the case may be, in determining the net tax of the

financial institution for the particular reporting period. Each paragraph of section 46 of the Regulations describes a prescribed amount that is the positive or negative amount determined by a formula. Section 46 is modified by two groups of amendments, the first group modifying paragraphs 46(a) and (b) and the second group modifying paragraphs 46(a), (b) and (d).

The first group of amendments modify paragraphs 46(a) and (b) as a consequence of the enactment of new subsections 172.1(5.1) and 172.1(6.1) of the Act and of amendments to sections 232.01 and 232.02 of the Act (see notes relating to those provisions for more information). The amendments apply where the selected listed financial institution is a pension entity (as defined in subsection 123(1) of the Act).

Existing element G_1 of the formula in paragraph 46(a) is the total of certain amounts in respect of the provincial component of tax. Subparagraph (vi) of element G_1 describes all amounts, each of which is the provincial component amount of a tax adjustment note issued under either subsection 232.01(3) or 232.02(2) of the Act to the selected listed financial institution during the particular reporting period in respect of a specified resource or employer resources, as the case may be. Subparagraph (vi) only applies if an amount in respect of a supply of all or part of the specified resource deemed to have been made under subsection 172.1(5) of the Act, or in respect of a supply of employer resources deemed to have been made under subsection 172.1(6) of the Act, was included in the description of element G_{12} in the formula in paragraph 46(b) for the particular reporting period or an earlier reporting period of the selected listed financial institution.

Subparagraph (vi) of element G_1 is amended to reflect amendments to element G_{12} in in the formula in paragraph 46(b) that include the provincial component of tax in respect of a supply deemed to have been made by new subsections 172.1(5.1) and 172.1(6.1) of the Act. Subsection 172.1(5.1) of the Act applies where a participating employer (as defined in subsection 172.1(1) of the Act) of a pension plan acquires a specified resource (as defined in that subsection) with the intention of re-supplying all or a part of it to a master pension entity (as defined in subsection 123(1) of the Act) of the pension plan, and deems the employer to have made a taxable supply of the whole or part of the specified resource and to have collected tax in respect of that supply. Subsection 172.1(6.1) of the Act applies where a participating employer of a pension plan consumes or uses an employer resource (as defined in subsection 172.1(1) of the Act) for the purpose of making a supply of property or a service to a master pension entity of a pension plan, and deems the employer to have made a taxable supply of the employer resource and to have collected tax in respect of that supply.

Specifically, subparagraph (vi) of element G_1 is amended to also include the provincial component amount of a tax adjustment note that is issued under either subsection 232.01(3) or 232.02(2) of the Act to the selected listed financial institution during the particular reporting period and that is in respect of a specified resource or employer resources, if an amount that is in

respect of a supply of all or part of the specified resource deemed to have been made under subsection 172.1(5.1) of the Act or that is in respect of a supply of employer resources deemed to have been made under subsection 172.1(6.1) of the Act, as the case may be, was included in the description of element G_{12} in the formula in paragraph 46(b) for the particular reporting period or an earlier reporting period of the selected listed financial institution.

Existing element G_2 of the formula in paragraph 46(a) is the total of certain amounts in respect of the federal component of tax, such as rebates or other adjustments in respect of that component. Element G_2 is amended to add new subparagraph (iii.1), which describes all amounts each of which is an amount that, during the particular reporting period, was rebated under section 261.01 of the Act to a selected listed financial institution that is a pension entity (as defined in subsection 123(1) of the Act), to the extent that the amount is in respect of tax that is deemed to have been paid by the selected listed financial institution under new subsection 172.2(3) of the Act. Subsection 172.2(3) of the Act deems a pension entity to have paid an amount of tax representing all or part of an amount of tax paid by a master pension entity of the pension plan.

Existing element G_3 of the formula in paragraph 46(a) is the total of certain amounts in respect of the federal component of tax. Clauses (C) and (D) of subparagraph (iii) of element G_3 describe amounts that the selected listed financial institution was required by paragraph 232.01(5)(c) or 232.02(4)(c) of the Act to pay to the Receiver General during the particular reporting period. Clause (C) is amended to reflect that paragraph 232.01(5)(c) of the Act may now apply in respect of a specified resource where a supply of the specified resource or part is deemed to have been made under new subsection 172.1(5.1). Similarly, clause (D) is amended to reflect that paragraph 232.02(4)(c) of the Act may now apply in respect of employer resources where supplies of the employer resources are deemed to have been made under new subsection 172.1(6.1) of the Act.

Existing element G_7 of the formula in paragraph 46(b) is the total of certain amounts in respect of the federal component of tax. Subparagraph (iv) of element G_7 is currently all amounts each of which is an amount of tax that the selected listed financial institution was deemed to have paid during the particular reporting period under subparagraph 172.1(5)(d)(ii) or 172.1(6)(d)(ii) or paragraph 172.1(7)(d) of the Act. Subparagraph (iv) is amended to also include all amounts each of which is an amount of tax that the selected listed financial institution was deemed to have paid during the particular reporting period under new subparagraph 172.1(5.1)(d)(ii) or 172.1(6.1)(d)(ii) or new paragraph 172.1(7.1)(d) of the Act.

Existing element G_{12} of the formula in paragraph 46(b) is the total of certain amounts described in subparagraphs (i) to (iv) of element G_{12} in respect of the provincial component of tax. Element G_{12} is amended to include amounts in relation to the provincial component of tax in respect of a supply that the selected listed financial institution is deemed to have received during the particular reporting period under any of new paragraphs 172.1(5.1)(d), 172.1(6.1)(d) and 172.1(7.1)(d) of the Act.

The first group of amendments to paragraphs 46(a) and (b) of the Regulations apply in respect of any reporting period of a selected listed financial institution that ends after July 22, 2016.

The second group of amendments modify paragraphs 46(a), (b) and (d) of the Regulations as a consequence of amendments to subsections 225.2(2), (4) and (6) of the Act (see notes relating to those provisions for more information).

More specifically, subparagraph (v) of the description of G_1 and subparagraph (vi) of the description of G_2 in paragraph 46(a) of the Regulations and subparagraph (ii) of the description of G_8 in paragraph 46(b) of the Regulations apply to a selected listed financial institution that makes a supply to another selected listed financial institution that is deemed under section 150 of the Act to be a supply of a financial service. Where these subparagraphs apply, each requires the selected listed financial institution supplier to include an amount in respect of the supply in determining the net tax of the financial institution for the reporting period. Subparagraph (v) of the description of G_1 and subparagraph (vi) of the description of G_2 apply where the selected listed financial institution supplier and the selected listed financial institution recipient have also made an election under subsection 225.2(4) of the Act that applies in respect of the supply. Subparagraph (ii) of the description of element G_8 applies where the selected listed financial institution supplier and the selected listed financial institution recipient have not made an election under subsection 225.2(4) of the Act that applies in respect of the supply.

Amendments are made to the above subparagraphs that are consistent with amendments made to subsections 225.2(2), (4) and (6) of the Act that provide that the election made under subsection 225.2(4) is now an election made only by the selected listed financial institution recipient, rather than being a joint election (see notes relating to subsections 225.2(2), (4) and (6) of the Act for more information). The corresponding amendments to subparagraph (v) of the description of G_1 and subparagraph (vi) of the description of G_2 in paragraph 46(a) and subparagraph (ii) of the description of G_8 in paragraph 46(b) reflect that the election under subsection 225.2(4) is now made solely by the selected listed financial institution recipient.

The amendments to subparagraph (v) of the description of G_1 and subparagraph (vi) of the description of G_2 in paragraph 46(a) and subparagraph (ii) of the description of element G_8 in paragraph 46(b) apply in respect of any supply to which an election made under subsection 225.2(4) of the Act applies, provided that the election becomes effective after the day on which the Act implementing the proposal released on Announcement Date to amend subsection 225.2(4) receives royal assent.

Paragraph 46(d) of the Regulations determines prescribed amounts in respect of Ontario, British Columbia and Prince Edward Island in respect of recaptured input tax credits of a selected listed financial institution. Paragraph 46(d) is amended in respect of elements G_{19} and G_{21}.

Element G_{19} in paragraph 46(d) contains inclusions regarding the GST or the federal component of the HST payable by a selected listed financial institution, as well as other amounts in respect of supplies or importations of property or services. Existing clause (C) of element A in the formula in element G_{19} applies where the selected listed financial institution and the supplier that made the supply have also made an election under subsection 225.2(4) of the Act that applies in respect of the supply. It requires the selected listed financial institution to instead include in the formula in element G_{19} an amount equal to tax calculated on the supplier's cost of making these supplies (excluding any remuneration to employees, the cost of financial services and tax payable under Part IX of the Act).

Element G_{19} is amended in two ways. First, consistent with an amendment to paragraph (c) of element A in the formula in subsection 225.2(2) of the Act, clause (C) of element A in the formula in element G_{19} is amended to clarify that the amount to be included in the formula in element G_{19} is an amount that is equal to the GST or the federal component of the HST (and not the provincial component of the HST) calculated on the supplier's cost of making these supplies, excluding any remuneration to employees, the cost of financial services and tax payable under this Part.

This first amendment to element G_{19} applies in respect of any reporting period of a selected listed financial institution that ends on or after July 1, 2010.

Second, consistent with amendments made to subsections 225.2(2) and (4) of the Act, clause (C) of element A in the formula in element G_{19} is amended to reflect amendments to subsections 225.2(2), (4) and (6) that provide that the election made under subsection 225.2(4) is now an election made only by the selected listed financial institution recipient, rather than being a joint election.

The second amendments to element G_{19} apply in respect of any supply to which an election made under subsection 225.2(4) of the Act applies, provided that the election becomes effective after the day on which the Act implementing the proposal released on Announcement Date to amend subsection 225.2(4) of the Act receives royal assent.

Element G_{21} in paragraph 46(d) is the tax rate for the participating province in question, unless subparagraph (ii) or (iii) applies. Subparagraph (iii) applies if the participating province is Prince Edward Island and if the particular reporting period of a financial institution includes October 1, 2016 (the date the tax rate for Prince Edward Island increased from 9% to 10%). Where subparagraph (iii) applies, it provides that element G_{21} is the sum of 9% and the amount determined by multiplying 1% by the formula element A divided by element B.

Where the selected listed financial institution is a distributed investment plan (as defined in subsection 1(1) of the Regulations), element A is intended to be the total of all amounts, each of which is

- an amount of tax payable, or paid without having become payable, under any of subsection 165(1), section 212 and section 218 of the Act during the particular reporting period in respect of a supply of property or a service, multiplied by the extent to which the property is delivered or made available, or the service is rendered, after September 30, 2016; or
- an amount of tax payable, or paid without having become payable, under section 218.01 of the Act during the particular reporting period in respect of a supply of property or a service for a particular specified year (as defined in section 217 of the Act) of the financial institution, multiplied by the ratio of days in the particular specified year after September 30, 2016 to the total number of days in the particular specified year.

Element B is the total of all amounts, each of which is amount of tax payable, or paid without having become payable, under any of subsection 165(1), section 212, section 218 and section 218.01 of the Act during the particular reporting period.

Where the financial institution is not a distributed investment plan, element A is intended to be the number of days in the particular reporting period after September 30, 2016. Element B is the number of days in the particular reporting period.

Element A of the formula in subparagraph (iii) element G_{21} is amended to correct an error. Currently, the actual wording of element A refers to tax payable or paid without having become payable, or to the number of days in the particular reporting period, before October 1, 2016. Element A is amended to replace all references to "before October 1, 2016" with references to "after September 30, 2016", consistent with the policy intent of subparagraph (iii).

The amendments to element A are deemed to have come into force on June 16, 2016.

Clause 98

Adaptation of subsection 225.2(2) of Act

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
48

Section 48 of the Regulations contains adaptations of certain provisions of the Act. Subsections 48(1) and (2) contain adaptations of the formula contained in subsection 225.2(2) of the Act. This formula determines the amount of an adjustment in respect of the provincial component of the HST to the net tax of a selected listed financial institution (within the meaning of subsection 225.2(1) of the Act) for each reporting period during which it is a selected listed financial institution. Subsection 48(1) applies to a selected listed financial institution that is a stratified investment plan (as defined in subsection 1(1) of the Regulations). Subsection 48(2) applies to a selected listed financial institution that is a non-stratified investment plan (as defined in

subsection 1(1) of the Regulations) and that has made an election under section 49 or 61 of the Regulations that is in effect for the fiscal year that includes the reporting period.

Subsections 48(1) and (2) are amended as a consequence of amendments to subsections 225.2(2), (4) and (6) of the Act (see notes relating to those provisions for more information).

More specifically, existing subparagraph (ii) of the description of A_1, subparagraph (ii) of the description of A_4 and paragraph (b) of the description of D in subsection 48(1) and paragraph (b) of the description of A_1 in subsection 48(2) all apply to a selected listed financial institution that has received a supply made by another selected listed financial institution that is deemed under section 150 of the Act to be a supply of a financial service and where no election under subsection 225.2(4) applies in respect of the supply. Subparagraph (iii) of the description of A_1, subparagraph (iii) of the description of A_4 and paragraph (c) of the description of D in subsection 48(1) and paragraph (c) of the description of A_1 in subsection 48(2) all apply to a selected listed financial institution that has received a supply from another selected listed financial institution that is deemed under section 150 of the Act to be a supply of a financial service where an election under subsection 225.2(4) applies in respect of the supply.

Subsections 48(1) and (2) are amended in a number of ways. First, subparagraph (iii) of the description of A_1 and subparagraph (iii) of the description of A_4 in subsection 48(1) and paragraph (c) of the description of element A_1 in subsection 48(2) are all amended to clarify that the amount to be included by the selected financial institution in these provisions, where an election under subsection 225.2(4) applies in respect of a supply, is an amount that is equal to the GST or the federal component of the HST (and not the provincial component of the HST) calculated on the supplier's cost of making these supplies, excluding any remuneration to employees, the cost of financial services and tax payable under this Part.

These first amendments to subsections 48(1) and (2) apply in respect of any reporting period of a selected listed financial institution that ends on or after July 1, 2010.

Second, subsections 48(1) and 48(2) are amended to reflect amendments made respecting the election under subsection 225.2(4) of the Act that provide that this election is now an election made only by the selected listed financial institution recipient, rather than being a joint election (see the notes for the amendments to subsections 225.2(2), (4) and (6) of the Act for more information). Specifically, subparagraph (iii) of the description of A_1 and subparagraph (iii) of the description of A_4 in subsection 48(1), paragraph (b) of the description of D in subsection 48(1), paragraph (c) of the description of A_1 in subsection 48(2) and paragraph (b) of the description of D in subsection 48(2) are all amended to reflect that the election under subsection 225.2(4) is now made solely by the selected listed financial institution recipient.

These second amendments to subsections 48(1) and 48(2) apply in respect of any supply to which an election made under subsection 225.2(4) of the Act applies, provided that the election

becomes effective after the day on which the Act implementing the proposal released on Announcement Date to amend subsection 225.2(4) of the Act receives royal assent.

Clause 99

Affiliated person

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
52(2)(b)

Existing section 52 of the Regulations contains rules governing information sharing respecting persons holding units of distributed investment plans. Subsection 52(2) contains an interpretation rule which determines when persons are affiliated with each other for the purposes of section 52. Paragraph 52(2)(b) provides that two trusts are affiliated with each other if they are governed by the same deferred profit sharing plan, employee benefit plan, registered supplementary unemployment benefit plan, employees profit sharing plan, retirement compensation arrangement or employee trust.

Paragraph 52(2)(b) is amended to also provide that two trusts are affiliated with each other if they are governed by the same registered educations savings plan.

The amendments to paragraph 52(2)(b) apply in respect of reporting periods of a person that begin after July 21, 2016. They also apply in respect of any particular reporting period of a person that end after June 2010 but begin before July 22, 2016, if the following conditions are satisfied in respect of the person:

- The person was a trust governed by a registered education savings plan throughout the particular reporting periods.
- For each of those particular reporting periods, it is the case that either
    - the person, or the manager (as defined in subsection 1(1) of the Regulations) of the person reported in the return for the particular reporting period an amount on account of net tax that was determined as though
        - the person were a selected listed financial institution throughout the particular reporting period; and
        - section 35 of the Regulations applied to the person in respect of the particular reporting period; or
    - the manager of the person reported in the return for the reporting period of the manager that ends in the particular reporting period an amount on account of net tax that was determined as though

- the person were a selected listed financial institution throughout the particular reporting period;
- section 35 of the Regulations applied to the person in respect of the particular reporting period; and
- a joint election made under section 55 of the Regulations by the manager and the person were in effect throughout that reporting period of the manager.

- The person elects to have the amendments to sections 1, 35 and 52 of the Regulations in respect of group registered education savings plans apply in respect of those reporting periods. To be effective, this election must be made in prescribed form containing prescribed information and be filed with the Minister of National Revenue in prescribed manner on before the day that is one year after the day on which the Regulations making these amendments are published in the *Canada Gazette* or any later day that the Minister of National Revenue may allow.

Where these conditions are satisfied and the amendments to section 52 — as well as amendments to section 35 and to the definitions "investment plan", "plan member" and "subscriber" in subsection 1(1) (see notes to those provisions for more information) — apply to a trust in respect of particular reporting periods of the trust that end after June 2010 but begin before July 22, 2016, additional consequences follow in respect of those particular reporting periods. See notes relating to the definition "investment plan" in subsection 1(1) of the Regulations for more information regarding these consequences.

Clause 100

Investment plans — 149(1)(o.2) of *Income Tax Act*

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
70.1

New section 70.1 of the Regulations contains a transitional rule in respect of certain investment plans (as defined in subsection 1(1) of the Regulations). Section 70.1 applies if

- the investment plan is a corporation (other than a pension entity, as defined in subsection 123(1) of the Act) that is exempt from tax under the *Income Tax Act* by reason of paragraph 149(1)(o.2) of that Act;
- the investment plan was a selected listed financial institution (within the meaning of subsection 225.2(1) of the Act) throughout a reporting period of the investment plan;
- a return for that reporting period was filed on or after July 1, 2010 but before May 8, 2013, and

- the investment plan reported in the return for that reporting period an amount on account of net tax that was determined as though section 23 of the Regulations — which applies to a corporation that is not a bank (as defined in subsection 123(1) of the Act), insurer (as defined in that subsection), investment plan or trust and loan corporation — applied in respect of the reporting period.

Where section 70.1 applies, it permits the investment plan to elect in prescribed form containing prescribed information to have that section 23 apply in respect of all of the reporting periods of the investment plan for which a return was filed on or after July 1, 2010 but before May 8, 2013.

In effect, section 70.1 allows certain pension corporations that applied section 23 — rather than the rules in sections 29 to 34 that apply to distributed investment plans — for the purpose of determining adjustments to net tax under subsection 225.2(2) of the Act for its reporting periods for which it filed a return on or after July 1, 2010 but before May 8, 2013 to make an election to affirm this application of section 23. This is the case even though, as distributed investment plans, sections 29 to 34 actually applied to those corporations. However, a corporation that makes the election under section 70.1 must still apply sections 29 to 34 in determining any adjustment to net tax under subsection 225.2(2) of the Act for all reporting periods for which it files a return on or after May 8, 2013.

This amendment comes into force on the day that it is published in the *Canada Gazette*.

Clause 101

Investment limited partnerships – 2019

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations
73

New section 73 of the Regulations contains transitional rules that apply in respect of "investment limited partnerships" (as newly defined in subsection 123(1) of the Act). In general, these rules require that a selected listed financial institution (including any investment limited partnership that becomes a selected listed financial institution) treat its investors that are investment limited partnerships to which subparagraph 149(1)(a)(ix) of the Act does not yet apply (given that the amendment to add an "investment limited partnership" to the definition of "investment plan" in subsection 149(5) of the Act only applies in respect of any taxation year of a person that begins after 2018) as though they were investment plans in determining its 2019 net tax adjustments and related amounts. For example, if a selected listed financial institution is using the "preceding year method" in determining its 2019 net tax adjustments, its investors that are investment limited partnerships would be regarded as investment plans for the purpose of the determination of an "investor percentage" at an "attribution point" in the preceding year. The transitional rules also ensure that the appropriate investor percentages can be requested and shared among

investment plans to facilitate the determination of every selected listed financial institution's 2019 net tax adjustments and related amounts.

New subsection 73(1) provides that where a person is an investment limited partnership to which subparagraph 149(1)(a)(ix) of the Act does not yet apply, the person is deemed to be an investment plan that is a distributed investment plan for the purposes that are set out in paragraphs 73(1)(a) to (c).

Under paragraph 73(1)(a), an investment limited partnership is deemed to be an investment plan that is a distributed investment plan for the purposes of determining, under any of sections 30 and 32 to 34 of the Regulations, the percentage for a participating province and for a particular period (as defined in subsection 16(1) of the Regulations) of a selected listed financial institution or of another investment limited partnership described in new subsection 73(2) of the Regulations, but only if the percentage is to be used in the determination of an amount referred to in one of the subparagraphs to paragraph 73(1)(a).

Subparagraph 73(1)(a)(i) refers to the determination of the positive amount that the financial institution or other investment limited partnership is required to add, or the negative amount that the financial institution or other investment limited partnership is able to deduct, in determining its net tax under subsection 225.2(2) of the Act (having regard to any applicable adaptations made to that subsection under the Regulations) for a reporting period in a fiscal year of the financial institution or other investment limited partnership that begins in 2019.

Subparagraph 73(1)(a)(ii) refers to the determination of the instalment base under subsection 237(2) of the Act (having regard to any applicable adaptations made to that subsection under the Regulations) of the financial institution or other investment limited partnership for a reporting period in a fiscal year of the financial institution or other investment limited partnership that begins in 2019.

Subparagraph 73(1)(a)(iii) refers to the determination of interim net tax under subsection 228(2.1) of the Act (having regard to any applicable adaptations made to that subsection under the Regulations) for a reporting period in a fiscal year of the financial institution or other investment limited partnership that begins in 2019.

Subparagraph 73(1)(a)(iv) refers to the determination of an amount, where a tax adjustment transfer election is made jointly under section 55 of the Regulations by a manager of the financial institution or other investment limited partnership and the financial institution or other investment limited partnership is in effect at any time in a fiscal year of the manager that begins in 2019. These amounts are:

- as per clause (A) of subparagraph 73(1)(a)(iv), an amount that is, under paragraph 55(2)(c) of the Regulations, is a prescribed amount for the purposes of the description of element G of the formula in subsection 225.2(2) of the Act for a reporting period in the fiscal year, and
- as per clause (B) of subparagraph 73(1)(a)(iv), the positive amount that the manager is required to add, or the negative amount that the manager is able to deduct, in determining its net tax under subsection 225.2(2) of the Act (having regard to the adaptations made to that subsection under paragraph 55(2)(d) of the Regulations) for a reporting period in the fiscal year.

Under paragraph 73(1)(b), an investment limited partnership is deemed to be an investment plan that is a distributed investment plan for the purposes of determining, under section 28 of the Regulations, an investor percentage of the investment limited partnership as of a day in 2018.

Under paragraph 73(1)(c), an investment limited partnership is deemed to be an investment plan that is a distributed investment plan for the purpose of applying section 52 of the Regulations to the investment limited partnership in respect of any information that is requested under that section by a selected listed financial institution or by another investment limited partnership described in new subsection 73(2) of the Regulations. This is the case only if the information is required either for the determination of a percentage referred to in paragraph 73(1)(a) of the financial institution or the other investment limited partnership, or for the determination, under section 28 of the Regulations, of an investor percentage of the financial institution or the other investment limited partnership as of a day in 2018.

New subsection 73(2) of the Regulations provides that where an investment limited partnership is a selected listed financial institution throughout the reporting period of the partnership that includes January 1, 2019, two transitional rules apply.

Firstly, the investment limited partnership is deemed to be a selected listed financial institution for the purposes of the determination, under section 28 of the Regulations, of an investor percentage of the investment limited partnership as of a day in 2018.

Secondly, for the purposes of section 52 of the Regulations, the investment limited partnership is deemed to be a selected stratified investment plan throughout 2018 if the units of the investment limited partnership are issued in two or more series, or a selected non-stratified investment plan throughout 2018 in any other case.

New section 73 is deemed to have come into force on Announcement Date.

New Harmonized Value-added Tax System Regulations

Clause 113

Adaptation — section 172.1 of Act

New Harmonized Value-added Tax System Regulations
58.59

Section 58.59 of the *New Harmonized Value-added Tax System Regulations* contains transitional rules that apply in the case of the Prince Edward Island component of the HST deemed to have become payable under subsection 172.1(5), (6) and (7) of the Act for the fiscal year of an employer that includes October 1, 2016, which is the implementation date of the increase of the rate of the Prince Edward Island component of the HST from 9% to 10%.

Section 58.59 is amended to add new subsections 58.59(1.1), (3) and (4), which contain transitional rules that apply in the case of the Prince Edward Island component of the HST deemed to have become payable under new subsections 172.1(5.1), (6.1) and (7.1) of the Act for the fiscal year of an employer that includes October 1, 2016.

New subsection 58.59(1.1) provides a transitional rule for the determination of the Prince Edward Island component of the HST in respect of a supply deemed to have been made under subsection 172.1(5.1). This transitional rule applies where a person that is a participating employer of a pension plan acquires property or a service for the purpose of making a supply of all or part of the property or service to a master pension entity of the pension plan (as those terms are defined in subsection 123(1) of the Act) but not for the purpose of making a supply of any part of the property or service to a master pension entity of the pension plan after September 30, 2016. Where the transitional rule applies, the amount determined for element B in the formula in paragraph 172.1(5.1)(c) for Prince Edward Island in respect of a taxable supply of all or part of the property or service that is deemed to have been made under paragraph 172.1(5.1)(a) shall be determined on the basis that the tax rate for Prince Edward Island is 9% rather than 10%.

New subsection 58.59(3) provides a transitional rule for the determination of the Prince Edward Island component of the HST in respect of an employer resource supply under subsection 172.1(6.1). This transitional rule applies for the fiscal year of an employer that begins before October 1, 2016 and ends on or after that day. The transitional rule provides that, for that fiscal year, the Prince Edward Island component of the HST in respect of an employer resource supply is adjusted to reflect a rate of only 9 per cent based on the number of days in the fiscal year that are before October 2016 and a rate of 10 per cent based only on the number of days in the fiscal year that are after September 2016.

New subsection 58.59(4) provides a similar transitional rule for the determination of the Prince Edward Island component of the HST as that contained in subsection 58.59(3), except that it is in respect of an employer resource supply under subsection 172.1(7.1).

The amendments to section 58.59 apply in respect of fiscal years of an employer beginning after July 21, 2016.

New Harmonized Value-added Tax System Regulations, No. 2

Clauses 115 and 116

Definitions

New Harmonized Value-added Tax System Regulations, No. 2
1

Section 1 of the *New Harmonized Value-added Tax System Regulations, No. 2* contains definitions that are used throughout the Regulations.

Section 1 is renumbered as subsection 1(1). As well, it is amended to modify the definition "provincial investment plan" and to add the new definitions "imported taxable supply", "provincial stratified investment plan" and "series" in subsection 1(1) and to add new subsection 1(2).

The amendments to section 1 are deemed to have come into force on July 23, 2016.

Provincial investment plan

The existing definition "provincial investment plan" for a particular province means an investment plan described by section 11 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* where the units (as defined in subsection 1(1) of those Regulations) of the investment plan are permitted, under the laws of Canada or a province, to be sold in the particular province. Generally, an investment plan is described by section 11 of those Regulations if its units are permitted to be sold or distributed in one province and not in any other province, if the unit holders are required to be resident in that province under the terms of the prospectus, registration statement or other similar document for the investment plan and if the value of the units of unit holders resident in that province is 90% or more of the value of the units of the investment plan.

The definition "provincial investment plan" is amended to also include two other types of investment plans where the unit holders of the investment plan either are required to be resident, or are actually resident, in a particular province.

In particular, a "provincial investment plan" for a particular province at any time means an investment plan that is described by any of paragraph (a), (b) or (c) of the definition.

Paragraph (a) of the definition describes an investment plan that is, at that time, an investment plan described by section 11 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*, where the units of the investment plan are permitted, under the laws of Canada or a province, to be sold only in the particular province.

Paragraph (b) of the definition describes an investment plan that, at that time, is a stratified investment plan, all the series of which are provincial series (as those terms are defined in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*) for the particular province. Generally, a provincial series for a province is a series of an investment plan where the units of the series are permitted to be sold or distributed in that province and not in any other province, the unit holders in the series are required to be resident in that province under the terms of the prospectus, registration statement or other similar document for the investment plan, and the value of the units in the series of unit holders resident in that province is 90% or more of the value of the units of the series.

Paragraph (c) of the definition describes an investment plan that

- has throughout the taxation year in which the fiscal year of the investment plan that includes that time ends, a permanent establishment in the particular province (as determined in accordance with section 3 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*); and
- does not have, throughout that taxation year, a permanent establishment in a province other than the particular province (as determined in accordance with section 3 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*).

It should be noted that the rules in section 3 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* provide that an investment plan will have a permanent establishment throughout a taxation year of the investment plan if it has a permanent establishment at any time in that taxation year.

Imported taxable supply

The new definition "imported taxable supply" means an imported taxable supply as defined in section 217 of the Act.

Provincial stratified investment plan

The new definition "provincial stratified investment plan" means a stratified investment plan with one or more provincial series (as those terms are defined in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*). However, excluded

from provincial stratified investment plan is a provincial investment plan (as defined in subsection 1(1) of the *New Harmonized Value-added Tax System Regulations, No. 2*).

Series

The new definition "series" means a "series" as defined in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*. Generally, a series of an investment plan that is a trust or a corporation means

- in the case of a trust, a class of units of the trust; and
- in the case of a corporation, a class of the capital stock of the corporation that has not been issued in one or more series, and a series of a class of the capital stock of the corporation that has been issued in one or more series.

Application of definitions to adaptations

New subsection 1(2) of the *New Harmonized Value-added Tax System Regulations, No. 2* provides that, for greater certainty, the definitions in subsection 1(1) of the Regulations apply in subsections 218.1(1) and (1.2), 220.07(1) to (4) and 220.08(1) of the Act, as those provisions are adapted by these Regulations. As a consequence, the heading of the French version of the Regulations before section 1 is amended to reflect this interpretation rule.

Clause 117

Permanent establishment in province

New Harmonized Value-added Tax System Regulations, No. 2
2

Existing section 2 of the *New Harmonized Value-added Tax System Regulations, No. 2* contains rules deeming certain persons to be prescribed persons and deeming a prescribed person to have a permanent establishment in a province for the purposes of subsection 132.1(3) of the Act.

Section 2 is amended by repealing subsections 2(3) and (4). These subsections are no longer necessary due to the amendments to sections 7 to 7.02 and 13 of the Regulations and the introduction of new sections 7.03, 12.1 and 12.2 of the Regulations.

These amendments are deemed to have come into force on July 23, 2016.

Clause 118

Imported Taxable Supplies

New Harmonized Value-added Tax System Regulations, No. 2
7 to 7.03

Existing sections 7 to 7.02 of the Regulations prescribe certain things for the purposes of the provisions of Division IV of Part IX of the Act that impose the provincial component of the HST in respect of imported taxable supplies of property and services and in respect of qualifying consideration, internal charges and external charges, as those terms are defined for the purposes of that Division.

Prescribed extent — paragraph 218.1(1)(a) of Act

New Harmonized Value-added Tax System Regulations, No. 2
7

Existing section 7 of the Regulations contains rules for determining a prescribed purpose and a prescribed extent for the purposes of determining tax imposed under subsection 218.1(1) of the Act on an imported taxable supply (as defined in section 217 of the Act) of property or a service. Section 7 provides for a prescribed purpose in respect of a supply made to a provincial investment plan (as described in section 11 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*) or to a stratified investment plan with one or more provincial series (as those terms are defined in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*). Section 7 also provides that, for a supply made to a person that is not a provincial investment plan or a stratified investment plan with one or more provincial series, the prescribed extent is an extent of at least 10 per cent.

Section 7 is amended so that it no longer applies in respect of provincial investment plans or stratified investment plans with one or more provincial series. As a result, section 7 simply provides that the prescribed extent for the purposes of subsection 218.1(1) is an extent of at least 10 per cent.

This amendment applies to supplies made after July 22, 2016.

Adaptation — subsection 218.1(1) of Act

New Harmonized Value-added Tax System Regulations, No. 2
7.01

Existing section 7.01 of the Regulations contains rules for determining a prescribed percentage in respect of an imported taxable supply (as defined in section 217 of the Act) of intangible personal property or a service for the purposes of determining tax in respect of a particular participating province (as defined in subsection 123(1) of the Act) under the self-assessment

rules in paragraphs 218.1(1)(a) and (b) of the Act. Section 7.01 provides a prescribed percentage where the recipient of the supply is a provincial investment plan (as described in section 11 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*) or a stratified investment plan with one or more provincial series (as those terms are defined in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*).

Section 7.01 is amended so that it now provides an adaptation of subsection 218.1(1) of the Act, which applies in respect of a supply of an imported taxable supply of property or a service. However, section 7.01 only applies in respect of an amount of consideration for the supply if the recipient of the supply is a provincial investment plan or a provincial stratified investment plan (as those terms are defined in subsection 1(1) of these Regulations) at the time the amount of consideration becomes due or is paid without having become due.

Where section 7.01 applies in respect of an amount of consideration for an imported taxable supply of intangible personal property or a service, paragraphs (a) and (b) of subsection 218.1(1) are adapted as follows in respect of the amount of consideration for the supply.

Adapted paragraph 218.1(1)(a) imposes an obligation to self-assess tax where a provincial investment plan or provincial stratified investment plan is the recipient of an imported taxable supply of intangible personal property or service. The obligation to self-assess tax arises each time an amount of consideration for the supply becomes due, or is paid without having become due. Unlike unadapted paragraph 218.1(1)(a), the obligation to self-assess tax under adapted paragraph 218.1(1)(a) does not depend on the province of residence of the provincial investment plan or provincial stratified investment plan. Where adapted paragraph 218.1(1)(a) imposes tax at any time, that tax is determined for each participating province by the formula A multiplied by B multiplied by C.

Element A of the formula in adapted paragraph 218.1(1)(a) is the tax rate for the participating province. Element B of the formula in adapted paragraph 218.1(1)(a) is the value of the consideration that is paid or becomes due at that time. Element C of the formula in adapted paragraph 218.1(1)(a) is

- where the recipient of the supply is a provincial stratified investment plan, the total of all amounts, each of which is the extent (expressed as a percentage) to which the property or service was acquired for consumption, use or supply in the case of activities relating to a provincial series of the investment plan for the participating province, as determined in accordance with section 51 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*;
- where the recipient is a provincial investment plan for the participating province, 100 per cent; and

- where the recipient is a provincial investment plan for a province other than the participating province, 0 per cent.

However, in the case of a provincial stratified investment plan, this obligation to self-assess tax under adapted paragraph 218.1(1)(a) is subject to section 7.02 of the Regulations, which may result in paragraph 218.1(1)(a) not applying in respect of an amount of consideration for an imported taxable supply of intangible personal property or a service made to the provincial stratified investment plan.

Adapted paragraph 218.1(1)(b) provides that the provincial component of the HST is also imposed upon every provincial investment plan or provincial stratified investment plan that either is both a registrant and the recipient of a taxable supply described in paragraph (b) of the definition "imported taxable supply" in section 217 the Act or is the recipient of a taxable supply described in any of paragraphs (b.01) to (b.3) or (c.1) to (e) of that definition. The obligation to self-assess tax arises each time an amount of consideration for the supply becomes due, or is paid without having become due. Unlike unadapted paragraph 218.1(1)(b), the obligation to self-assess tax under adapted paragraph 218.1(1)(b) does not depend on the province of residence of the provincial investment plan or provincial stratified investment plan or the province in which the supply is made. Where adapted paragraph 218.1(1)(b) imposes tax at any time, that tax is determined for each participating province by the formula A multiplied by B multiplied by C.

Element A of the formula in adapted paragraph 218.1(1)(b) is the tax rate for the participating province. Element B of the formula in adapted paragraph 218.1(1)(b) is the value of the consideration that is paid or becomes due at that time. Element C of the formula in adapted paragraph 218.1(1)(b) is

- where the recipient of the supply is a provincial stratified investment plan, the total of all amounts, each of which is the extent (expressed as a percentage) to which the property was acquired for consumption, use or supply in the course of activities relating to a provincial series of the investment plan for the participating province, as determined in accordance with section 51 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*;
- where the recipient is a provincial investment plan for the participating province, 100 per cent; and
- where the recipient is a provincial investment plan for a province other than the participating province, 0 per cent.

The amendments to section 7.01 apply to supplies made to a provincial investment plan or to a provincial stratified investment plan after July 22, 2016.

Non-application — paragraph 218.1(1)(a) of Act

New Harmonized Value-added Tax System Regulations, No. 2
7.02

Existing section 7.02 of the *Regulations* contains rules for determining a prescribed percentage in respect of an external charge (as defined in section 217 of the Act), an internal charge (within the meaning of subsection 217.1(4) of the Act) or an amount of qualifying consideration (as defined in section 217 of the Act) for the purposes of determining tax in respect of a particular participating province (as defined in subsection 123(1) of the Act) under the self-assessment rules in paragraphs 218.1(1.2)(a) and 218.1(1.2)(b) of the Act.

Section 7.02 is amended so that it now determines when paragraph 218.1(1)(a) of the Act does not apply in respect of an amount of consideration for an imported taxable supply (as defined in section 217 of the Act) where the recipient of the supply is a provincial stratified investment plan (as defined in subsection 1(1) of the Regulations). Where section 7.02 applies in respect of an amount of consideration, neither unadapted paragraph 218.1(1)(a) of the Act nor paragraph 218.1(1)(a) of the Act as adapted by section 7.01 applies in respect of the amount of consideration.

Section 7.02 applies in respect of an amount of consideration for an imported taxable supply where two conditions are met. The first condition is that the recipient of the supply is a provincial stratified investment plan at the time the consideration for the supply becomes due or is paid without having become due. The second condition is that the amount determined by the formula A divided by B is, expressed as a percentage, less than 10 per cent.

Element A of the formula is the total of all amounts, each of which is the extent (expressed as a percentage) to which the property or service was acquired for consumption, use or supply in the course of activities relating to a provincial series of the provincial stratified investment plan for a participating province. Element B of the formula is total of all amounts, each of which is the extent (expressed as a percentage) to which the property or service is acquired for consumption, use or supply in the course of activities relating to a provincial series of the provincial stratified investment plan for any province. Each extent in element A and element B is to be determined in accordance with section 51 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*.

The amendments to section 7.02 apply to supplies made to a provincial stratified investment plan after July 22, 2016.

Adaptation — subsection 218.1(1.2) of Act

New Harmonized Value-added Tax System Regulations, No. 2
7.03

New section 7.03 of the Regulations provides an adaptation of subsection 218.1(1.2) of the Act. However, section 7.03 only applies to a person that is a qualifying taxpayer (within the meaning of subsection 217.1(1) of the Act) throughout a specified year (as defined in section 217 of the Act) of the person and that is either a provincial investment plan or a provincial stratified investment plan (as those terms are defined in subsection 1(1) of the Regulations) at any time in a fiscal year of the person that ends in the specified year.

Where section 7.03 applies to a qualifying taxpayer that is one of these types of investment plans, adapted subsection 218.1(1.2) of the Act provides that the qualifying taxpayer shall, for each specified year of the qualifying taxpayer and for each participating province (as defined in subsection 123(1) of the Act), pay an amount determined by adapted paragraph 218.1(1.2)(a) of the Act or by adapted paragraph 218.1(1.2)(b) of the Act.

Adapted paragraph 218.1(1.2)(a) of the Act applies if the qualifying taxpayer has made an election under subsection 217.2(1) of the Act for the specified year. It requires the qualifying taxpayer to self-assess the provincial component of the HST calculated for the particular participating province by the formula A plus B. Element A is the total of all amounts, each of which is determined for an internal charge (as described in subsection 217.1(4) of the Act) for the specified year that is greater than zero by the formula A_1 multiplied by A_2. Element A_1 is the amount of the internal charge. Element A_2 is

- if the qualifying taxpayer is a provincial stratified investment plan, the total of all amounts, each of which is the extent (expressed as a percentage) to which the internal charge is attributable to outlays or expenses that were made or incurred to consume, use or supply the whole or part of property or of a qualifying service (as defined in section 217), in respect of which the internal charge is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer relating to a provincial series of the investment plan for the particular participating province, as determined in accordance with section 51 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*;
- if the qualifying taxpayer is a provincial investment plan for the particular participating province, 100 per cent; and
- if the qualifying taxpayer is a provincial investment plan for a province other than the particular participating province, 0 per cent.

Element B is the total of all amounts, each of which is determined for an external charge (as defined in section 217 of the Act) for the specified year that is greater than zero by the formula B_1 multiplied by B_2. Element B_1 is the amount of the external charge. Element B_2 is

- if the qualifying taxpayer is a provincial stratified investment plan, the total of all amounts, each of which is the extent (expressed as a percentage) to which the whole or the part of the outlay or expense (which corresponds to the external charge) was made or incurred to consume, use or supply the whole or part of property or of a qualifying service, in respect of which the external charge is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer relating to a provincial series of the qualifying taxpayer for the particular participating province, as determined in accordance with section 51 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations;*
- if the qualifying taxpayer is a provincial investment plan for the particular participating province, 100 per cent; and
- if the qualifying taxpayer is a provincial investment plan for a province other than the particular participating province, 0 per cent.

Adapted 218.1(1.2)(b) of the Act applies if the qualifying taxpayer that is a provincial investment plan or provincial stratified investment plan has not made an election under subsection 217.2(1) of the Act for the specified year. It requires the qualifying taxpayer to analyze each amount of qualifying consideration (as defined in section 217 of the Act) for the specified year that is greater than zero and to determine the provincial component of the HST for the particular participating province in respect of the amount of qualifying consideration by the formula C multiplied by D. Element C is the amount of the qualifying consideration. Element D is

- if the qualifying taxpayer is a provincial stratified investment plan, the total of all amounts, each of which is the extent (expressed as a percentage) to which the whole or part of the outlay or expense, which corresponds to the qualifying consideration, was made or incurred to consume, use or supply the whole or part of property or of a qualifying service, in respect of which the qualifying consideration is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer relating to a provincial series of the qualifying taxpayer for the particular participating province, as determined in accordance with section 51 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations;*
- if the qualifying taxpayer is a provincial investment plan for the particular participating province, 100 per cent; and
- if the qualifying taxpayer is a provincial investment plan for a province other than the particular participating province, 0 per cent.

Unlike unadapted paragraph 218.1(1.2)(a) or (b), the obligation to self-assess tax under adapted paragraph 218.1(1.2)(a) or (b) does not depend on the province of residence of the provincial investment plan or provincial stratified investment plan.

New section 7.03 applies in respect of any specified year of a provincial investment plan or of a provincial stratified investment plan that ends after July 22, 2016.

Clause 119

Non-taxable property — subsection 220.05(3) of Act

New Harmonized Value-added Tax System Regulations, No. 2
10

Existing section 10 of the Regulations sets out prescribed circumstance for the purposes of paragraph 220.05(3)(b) of the Act. No tax is payable under subsection 220.05(1) of the Act when tangible personal property is brought into a participating province (as defined in subsection 123(1) of the Act) in prescribed circumstances set out in section 10 of the Regulations.

Section 10 is amended by adding new paragraph 10(c). Paragraph 10(c) provides that no tax is payable when a person brings tangible personal property into a participating province where two conditions are met. The first condition is that the property is not a specified motor vehicle (as defined in subsection 123(1) of the Act) that the person is required to register under the laws of the province relating to the registration of motor vehicles. The second condition is that the person is either

- a provincial investment plan (as defined in subsection 1(1) of the Regulations); or
- a provincial stratified investment plan (as defined in subsection 1(1) of the Regulations) where the person is acquiring the property for the purpose of consumption, use or supply in the course of activities relating to one or more of its provincial series (as defined in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*).

This amendment applies in respect of property that is brought into a participating province after July 22, 2016.

Clause 120

Non-taxable property — subsection 220.06(3) of Act

New Harmonized Value-added Tax System Regulations, No. 2
11

Existing section 11 of the Regulations sets out the prescribed circumstances for the purposes of paragraph 220.06(3)(b) of the Act. No tax is payable under subsection 220.06(1) of the Act in respect of certain supplies of tangible personal property made by a non-resident supplier that is not registered for the purposes of the GST/HST in prescribed circumstances set out in section 11 of the Regulations.

Section 11 is amended by adding new paragraph 11(c). New paragraph 11(c) provides that no tax is payable under subsection 220.06(1) in respect of a supply of property made to a recipient that is delivered or made available to the recipient in a participating province (as defined in subsection 123(1) of the Act), or is sent by mail or courier to an address in the participating province, where the recipient is either

- a provincial investment plan (as defined in subsection 1(1) of the Regulations); or
- a provincial stratified investment plan (as defined in subsection 1(1) of the Regulations) where the person is acquiring the property for the purpose of consumption, use or supply in the course of activities relating to one or more provincial series (as defined in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*) of the person.

This amendment applies in respect any supply made after July 22, 2016.

Clause 121

Adaptation of sections 220.07 and 220.08 of Act

New Harmonized Value-added Tax System Regulations, No. 2
12.1 and 12.2

New section 12.1 of the Regulations adapts subsections 220.07(1) to (4) of the Act and new section 12.2 of the Regulations adapts subsection 220.08(1) of the Act. These adaptations generally apply in respect of provincial investment plans and provincial stratified investment plans (as those terms are defined in subsection 1(1) of the Regulations).

Adaptation — subsections 220.07(1) to (4) of Act

New Harmonized Value-added Tax System Regulations, No. 2
12.1

New section 12.1 of the Regulations provides an adaptation of subsections 220.07(1) to (4) of the Act in respect of the importation of certain goods into Canada. However, section 12.1 only applies if the person importing the goods into Canada is a provincial investment plan or a provincial stratified investment plan at the time the goods are released. Further, in the case of a provincial stratified investment plan, section 12.1 only applies if the investment plan is importing the goods for the purpose of consumption, use or supply in the course of activities relating to one or more provincial series (as defined in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*) of the investment plan. As well, section 12.1 does not apply where the goods being imported are a specified motor vehicle (as defined in subsection 123(1) of the Act). Where section 12.1 does not apply in respect of the importation of goods into Canada, subsection 220.07(1) to (4) of the Act, without the adaptations contained in section 12.1, may apply in respect of the importation.

Where section 12.1 applies in respect of an importation of goods, subsections 220.07(1) to (4) of the Act are adapted as follows.

Adapted subsection 220.07(1) of the Act imposes a requirement to self-assess the provincial portion of the HST on every person that imports goods, other than a specified motor vehicle, where two conditions are met. The first condition is that the goods are, for customs purposes, accounted for as commercial goods (within the meaning assigned by subsection 212.1(1) of the Act). The second condition is that the person is a provincial investment plan or provincial stratified investment plan at the time the goods are released. Unlike unadapted subsection 220.07(1) of the Act, the obligation to self-assess tax under adapted subsection 220.07(1) of the Act does not depend on the province of residence of the provincial investment plan or provincial stratified investment plan nor does it depend on the province into which the goods are imported.

The amount of tax that applies in respect of the importation is the total of all amounts, each of which is determined for a participating province by the formula A multiplied by B multiplied by C. Element A of the formula is the value of the goods. Element B of the formula is the tax rate for the participating province. Element C of the formula is

- in the case of a provincial stratified investment plan, the total of all amounts, each of which is the extent (expressed as a percentage) to which the investment plan acquired the goods for consumption, use or supply in the course of activities of the investment plan relating to a provincial series of the investment plan for the participating province, as determined in accordance with section 51 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations;*

- in the case of a provincial investment plan for the participating province, 100 per cent; and
- in the case of a provincial investment plan for a province other than the participating province, 0 per cent.

Adapted subsection 220.07(2) of the Act provides that there is no requirement to self-assess the tax under adapted subsection 220.07(1) in respect of the importation of goods that are included in Schedule VII to the Act.

Adapted subsection 220.07(3) of the Act provides that the tax imposed under adapted subsection 220.07(1) of the Act will be calculated on the excise and duty-paid value of the goods, in accordance with section 215 of the Act.

Adapted subsection 220.07(4) of the Act provides that the tax imposed under adapted subsection 220.07(1) in respect of goods will become payable on the day on which they are released.

New section 12.1 applies in respect of goods released after July 22, 2016.

Adaptation — subsection 220.08(1) of Act

New Harmonized Value-added Tax System Regulations, No. 2
12.2

New section 12.2 of the Regulations provides an adaptation of subsection 220.08(1) of the Act in respect of a taxable supply of property or a service made in a particular province. However, section 12.2 only applies to an amount of consideration for the supply if the recipient of the supply is a provincial investment plan or a provincial stratified investment plan (as those terms are defined in subsection 1(1) of the Regulations) at the time the amount becomes due or is paid without having become due. Further, in the case of a provincial stratified investment plan, section 12.2 only applies if the investment plan is acquiring the property or service for consumption, use or supply in the course of activities relating to one or more provincial series (as defined in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*) of the investment plan. Where section 12.2 does not apply in respect of a taxable supply of property or a service, subsection 220.08(1) of the Act, without the adaptations contained in section 12.2, may apply in respect of the supply.

Where section 12.2 applies in respect of a taxable supply of property or a service made in a particular province, subsection 220.08(1) is adapted to provide that a provincial investment plan or provincial stratified investment plan that is the recipient of the taxable supply of property or a service must pay tax equal to the amount determined in accordance with amended section 13 of the Regulations. The liability to pay this tax in respect of a supply arises each time an amount of consideration for the supply becomes due or is paid without having become due.

It should be noted that adapted subsection 220.08(1) imposes tax in respect of a taxable supply of any property or service, unlike unadapted subsection 220.08(1), which does not apply to a taxable supply of tangible personal property. As well, unlike unadapted subsection 220.08(1), the obligation to self-assess tax under adapted subsection 220.08(1) does not depend on the province of residence of the provincial investment plan or provincial stratified investment plan.

New section 12.2 applies in respect of any supply made after July 22, 2016.

Clause 122

Calculation of tax — subsection 220.08(1) of Act

New Harmonized Value-added Tax System Regulations, No. 2
13

Existing section 13 of the Regulations sets out the prescribed manner for the determination of tax under subsection 220.08(1) of the Act in respect of a taxable supply made in a province of intangible personal property or a service.

Section 13 is amended to set out the prescribed manner for the determination of tax under subsection 220.08(1) in respect of a taxable supply of any property, not just intangible personal property, or a service. The amendment is consequential to new section 12.2 of these Regulations which adapts subsection 220.08(1) to impose tax in respect of taxable supplies of property or service that are made to certain types of investment plans.

This amendment applies in respect of any supply made after July 22, 2016.

Clause 123

Prescribed purposes — subsection 220.08(1) of Act

New Harmonized Value-added Tax System Regulations, No. 2
13.1

Existing section 13.1 of the Regulations sets out the prescribed purposes in respect of a supply of intangible personal property or a service for the purposes of subsection 220.08(1) of the Act. Section 13.1 provides prescribed purposes in the case of a supply made to a provincial investment plan (as described in section 11 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*) or a stratified investment plan with one or more provincial series (as those terms are defined in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*).

Section 13.1 is repealed. This amendment is a consequence of new section 12.2 of the Regulations, which provides an adaptation of subsection 220.08(1) in respect of supplies to these investment plans.

This amendment applies in respect of any supply made after July 22, 2016.

Clause 124

Non-taxable property and services — subsection 220.08(3) of Act

New Harmonized Value-added Tax System Regulations, No. 2
15

Existing section 15 of the Regulations specifies prescribed circumstances for the purposes of subsection 220.08(3) of the Act. No tax is payable under subsection 220.08(1) of the Act in respect of a supply of property or a service in prescribed circumstances set out in section 15 of the Regulations.

Existing paragraph 15(a) provides that no tax is payable under subsection 220.08(1) of the Act in respect of an amount of consideration for a supply of intangible personal property or a service made in a particular province to a person that becomes due, or is paid without having become due, at a particular time if the extent to which the person acquired the property or service for consumption, use or supply in participating provinces (as defined in subsection 123(1) of the Act) that, at the particular time, have a tax rate that is greater than the provincial rate for the particular province is less than ten per cent. However, paragraph 15(a) applies only if the person is neither a stratified investment plan with one or more provincial series (as those terms are defined in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*) nor a provincial investment plan (as described in section 11 of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*).

Paragraph 15(a) is amended in respect of its application to provincial stratified investment plans and provincial investment plans (as those terms are defined in subsection 1(1) of the Regulations). Amended paragraph 15(*a*) applies only if the person is neither

- a provincial investment plan; nor
- a provincial stratified investment plan that acquired the property or service for consumption, use or supply in the course of activities relating to one or more of its provincial series.

Existing paragraph 15(a.1) applies in respect of a supply of intangible personal property or a service made to a person but it applies only if the person is a stratified investment plan with one or more provincial series.

Paragraph 15(a.1) is amended to reflect the new definition “provincial stratified investment plan” in subsection 1(1) of these Regulations, which replaces the term “stratified investment plan with one or more provincial series”. Paragraph 15(a.1) is also amended in respect of its application to these investment plans. Paragraph 15(a.1) is amended so that it now applies only if the person is

a provincial stratified investment plan that acquired the property or service for consumption, use or supply in the course of activities relating to one or more of its provincial series.

These amendments apply in respect of any supply made after July 22, 2016.

Clause 125

Prescribed person and amount — subsection 261.31(2) of Act

New Harmonized Value-added Tax System Regulations, No. 2
21.1

Existing section 21.1 of the Regulations specifies prescribed persons and prescribed amounts for the purposes of subsection 261.31(2) of the Act, which allows certain persons to claim a rebate of the provincial component of the HST payable in respect of certain supplies. The rebate is limited to investment plans (as described in subsection 149(5) of the Act) and segregated funds of insurers (as those terms are defined in subsection 123(1) of the Act) that are not selected listed financial institutions (as described in subsection 225.2(1) of the Act) and to persons that are prescribed by subsection 21.1(1) of the Regulations for the purposes of subsection 261.31(2). The amount of the rebate is equal to the amount determined in the manner prescribed by subsection 21.1(2) of the Regulations.

Subsection 21.1(1) and (2) are amended with respect to persons and amounts those subsections prescribe.

These amendments are deemed to have come into force on July 23, 2016.

Prescribed person — subsection 261.31(2) of Act

New Harmonized Value-added Tax System Regulations, No. 2
21.1(1)

Existing subsection 21.1(1) of the Regulations specifies that a stratified investment plan with one or more provincial series (as those terms are defined in subsection 1(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*) is a prescribed person for the purposes of subsection 261.31(2) of the Act.

Subsection 21.1(1) is amended to reflect the new definition “provincial stratified investment plan” in subsection 1(1) of the Regulations, which replaces the term “stratified investment plan with one or more provincial series”. As a result, subsection 21.1(1) now specifies that a provincial stratified investment plan is a prescribed person for the purposes of subsection 261.31(2).

Prescribed amount — subsection 261.31(2) of Act

New Harmonized Value-added Tax System Regulations, No. 2
21.1(2)

Existing subsection 21.1(2) of the Regulations specifies the prescribed amount of a rebate that a person may claim under subsection 261.31(2) of the Act. Paragraph 21.1(2)(a) applies to a stratified investment plan with one or more provincial series.

Paragraph 21.1(2)(a) is amended to reflect the new definition "provincial stratified investment plan" in subsection 1(1) of the Regulations, which replaces the term "stratified investment plan with one or more provincial series". As a result, paragraph 21.1(2)(a) now applies to a provincial stratified investment plan.