Explanatory Notes Relating to the Excise Tax Act, Air Travellers Security Charge Act, Excise Act, 2001, and Related Legislation

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Preface

These explanatory notes describe proposed amendments to the *Excise Tax Act*, *Air Travellers Security Charge Act*, *Excise Act, 2001* and related legislation. 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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Clause 41

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).

Subsection 123(1) is amended to add the new definitions "emission allowance" and "investment limited partnership".

Emission allowance

The new definition "emission allowance", which is used in new subsection 221(2.1) of the Act, in amended subsection 228(4) of the Act and in new subsection 261(2.1) of the Act, describes an allowance, credit or similar instrument that satisfies three criteria. First, it generally needs to be issued or created by a government or an international organization (a "regulator") or by a body established by, or an agency of, a regulator.

Second, it can be used to satisfy requirements under a scheme or arrangement implemented by a regulator to regulate greenhouse gas emissions, such as a cap-and-trade system.

Third, it has to represent a specific quantity of greenhouse gas emissions (e.g., one metric ton of carbon dioxide equivalent). An allowance, credit or similar instrument that does not represent a specific quantity of greenhouse gas emissions would not satisfy this third criterion even if it otherwise meets the requirements of a scheme that seeks to regulate greenhouse gas emissions. For example, an instrument that is required to undertake certain manufacturing activities that generate greenhouse gas emissions but that does not represent a specific quantity of emissions would not meet this third criterion.

In addition, it also means property that is prescribed by regulations. Currently, no property is proposed to be prescribed.

Finally, any allowance, credit or similar instrument that would otherwise be included in the definition "emission allowance" can be excluded from that definition if it is prescribed by regulations. Currently, no allowance, credit or similar instrument is proposed to be prescribed.

The new definition "emission allowance" is deemed to have come into force on June 27, 2018. It also applies in respect of any supply made before June 27, 2018 if any amount of tax under Division II of Part IX of the Act that is payable in respect of the supply was not collected before that day.

Investment limited partnership

The new definition “investment limited partnership” is used in subsections 132(6), 149(5) and 244.1(4) of the Act, in section 272.1 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 condition set out under either paragraph (a) or (b) of the definition.

The condition in paragraph (a) 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) 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 captured by the condition set out 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 new definition “investment limited partnership” is deemed to have come into force on September 8, 2017.

Clause 42

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

New subsection 132(6) is deemed to have come into force on September 8, 2017.

Clause 43

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. 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 included in 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.

Subsection 149(5) is amended by adding new paragraph 149(5)(f.1) to provide that an "investment limited partnership" (as newly defined in subsection 123(1)) is included in the definition "investment plan", and is therefore a listed financial institution for the purposes of Part IX of the Act.

This amendment to subsection 149(5) applies in respect of any taxation year of a person that begins after 2018. It also applies in respect of any taxation years of the person that begin in 2018 if the person makes an election to have new paragraph 149(5)(f.1) apply in respect of those taxation years. 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 or before the day that is 60 days after the day on which the legislation enacting new paragraph 149(5)(f.1) received royal assent or any later day that the Minister of National Revenue may allow. If a person makes this election, the person would become an investment plan as of 2018 and in applying new subsection 244.1(4) of the Act in respect of the person, the references in that subsection to "2018" and "2019" are to be read as "2017" and "2018", respectively.

Clause 44

Exception – emission allowance

ETA
221(2.1)

Section 221 of the Act provides that, in general, every person that makes a taxable supply shall collect the tax payable in respect of the supply as agent of the Crown. However, existing subsections 221(2) to (3.1) set out exceptions to that general rule.

New subsection 221(2.1) adds another exception to that general rule. New subsection 221(2.1) provides that a supplier (other than a prescribed supplier) is not responsible for collecting tax in respect of a supply of an emission allowance (as newly defined in subsection 123(1) of the Act). Currently, no supplier is proposed to be prescribed. When new subsection (2.1) applies, the recipient is required to account for the tax (see amended subsection 228(4) of the Act) but, in most cases, will not have any amount to remit since the recipient could be entitled to claim an offsetting input tax credit.

New subsection 221(2.1) is deemed to have come into force on June 27, 2018. It also applies in respect of any supply of an emission allowance made before June 27, 2018 if any amount of tax under Division II of Part IX of the Act that is payable in respect of the supply was not collected before that day. It should be noted that the application rule to this amendment provides a transitional version of new subsection (2.1) that is applicable in respect of such supplies. Under the transitional version of new subsection (2.1), a supplier of an emission allowance is not required to collect the tax in respect of the supply only to the extent that the tax was not collected before June 27, 2018.

Clause 45

Real property and emission allowance – self-assessment

ETA
228(4)

Existing subsection 228(4) of the Act deals with tax payable under Division II of Part IX of the Act on the purchase of real property from a person that, under subsection 221(2) of the Act, is not required to collect tax on the sale. In this case, the purchaser is required to pay any tax payable on the purchase directly to the Receiver General — not to the supplier of the real property — and to report that tax in a return filed by the purchaser.

Subsection 228(4) is amended to add a reference to a supply of an emission allowance (as newly defined in subsection 123(1) of the Act). As a result, the tax payable under Division II of Part IX of the Act in respect of a supply of an emission allowance will have to be paid by the recipient directly to the Receiver General and reported in a return filed by the recipient.

This amendment is deemed to have come into force on June 27, 2018. It also applies in respect of any supply of an emission allowance made before June 27, 2018 if any amount of tax under Division II of Part IX of the Act that is payable in respect of the supply was not collected before that day. It should be noted that the application rule to this amendment provides a transitional version of amended subsection 228(4) applicable in respect of such supplies. Under the transitional version of amended subsection (4), the recipient of a supply of an emission allowance is only required to pay tax under Division II of Part IX of the Act directly to the Receiver General, and report it in a return, to the extent that the tax was not collected before June 27, 2018. To ensure that tax that became payable before June 27, 2018 and that was not collected before that day is only required to be accounted for by the recipient after that day, the transitional version of amended subsection (4) also provides for a modified timing with respect to the accounting of such tax (e.g., the tax is required to be accounted for in the recipient’s return for

the reporting period that includes June 27, 2018 as opposed to the reporting period in which the tax became payable).

Clause 46

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 Part IX of the Act (other than section 149 of the Act) the partnership is deemed, for the period beginning on January 1, 2019 and ending on the day preceding the first day of that taxation year, to be a financial institution, a listed financial institution and a person referred to in subparagraph 149(1)(a)(ix).

New subsection 244.1(4) is deemed to have come into force on September 8, 2017.

Clause 47

Rebate for printed books

ETA
259.1(2)

Existing subsection 259.1(2) of the Act provides authority for the Minister of National Revenue to pay to specified persons (e.g., public libraries, educational institutions, as well as certain literacy organizations prescribed by regulations) rebates equal to the GST or the federal component of the HST payable in respect of their acquisition or importation of printed books and other specified property (e.g., audio recordings of printed books). The terms “specified person” and “specified property” are defined in subsection 259.1(1).

An exception in subsection 259.1(2) generally provides that the rebate is not available if the specified person has acquired or imported the property for the purpose of supply by way of sale. The term “sale” is defined in subsection 123(1) of the Act and includes any transfer of ownership of property, including giving the property away for free. The exception is more narrow in the case of specified property acquired or imported by a charity or qualifying non-profit organization whose primary purpose is the promotion of literacy and that is prescribed under paragraph (f) of the definition “specified person” in subsection 259.1(1). Such organizations may remain eligible for the rebate if specified property is acquired or imported to be given away for free.

A recent court decision held that, where printed books were acquired by a university for the purpose of making a single supply of educational services (i.e., the books and instruction services were provided as part of a single all-inclusive fee for a course), the university could not be considered to acquire the books for the purpose of supply by way of sale, since it did not make a separate supply of the books. Accordingly, the exception to the rebate under subsection 259.1(2) was found not to apply.

Paragraphs 259.1(2)(a) and (b) are amended to clarify that the exception to the rebate applies whether specified property is acquired or imported for the purpose of making a supply by way of sale of the specified property or for the purpose of transferring ownership of the specified property in the course of supplying another property or a service.

This amendment applies to any acquisition or importation of property in respect of which tax becomes payable after July 27, 2018 without having been paid on or before that day or in respect of which tax is paid after July 27, 2018 without having become payable on or before that day.

Clause 48

Rebate of payment made in error

ETA
261

Section 261 of the Act provides that if a person pays or remits an amount of tax, net tax, penalty or interest that is later found not to be payable or remittable, the person may claim a rebate of that amount if the applicable conditions are met.

Subclause 48(1)

Rebate of payment made in error

ETA
261(1)

The English version of subsection 261(1) of the Act contains a reference to subsections 261(2) and (3), which provide restrictions to the payment of a rebate under subsection (1).

Consequential to the addition of new subsection 261(2.1) (see commentary on new subsection 221(2.1) of the Act), subsection 261(1) is amended to replace the reference to subsections “(2) and (3)” by a reference to subsections “(2) to (3)”.

This amendment is deemed to have come into force on June 27, 2018 but does not apply in respect of an amount that was, before June 27, 2018, paid as or on account of, or taken into account as, tax, net tax, penalty, interest or other obligation under Part IX of the Act.

Subclause 48(2)

Restriction – emission allowance

ETA
261(2.1)

New subsection 261(2.1) of the Act provides for restrictions to the payment of a rebate under subsection (1) in respect of an amount paid in respect of a supply of an emission allowance (as newly defined in subsection 123(1) of the Act). Specifically, a tax paid in error rebate will not be paid to a person in respect of an amount paid in respect of an emission allowance unless the person paid the amount to the Receiver General or circumstances prescribed by regulation exist or conditions prescribed by regulation are met. Currently, no circumstances or conditions are proposed to be prescribed.

New subsection 261(2.1) is deemed to have come into force on June 27, 2018 but does not apply in respect of an amount that was, before June 27, 2018, paid as or on account of, or taken into account as, tax, net tax, penalty, interest or other obligation under Part IX of the Act.

Clause 49

Partnerships

ETA
272.1

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

Subclause 49(1)

Supply to partnership

ETA
272.1(3)

Existing subsection 272.1(3) of the Act applies to deem the amount of consideration where a partner (or prospective partner) supplies property or service to the partnership otherwise than in the course of the partnership's activities.

Existing paragraph 272.1(3)(b) applies specifically where a member supplies property or service to a partnership that is not for consumption, use or supply exclusively in the course of commercial activities of the partnership. In such cases, the rule provides that the consideration is deemed to be equal to the fair market value of the property or service that is so acquired by the partnership at the time the supply is made. Subsection 272.1(3) is amended by renumbering existing paragraph (3)(b) as (3)(c) and by adding new paragraph 272.1(3)(b).

New paragraph 272.1(3)(b) applies in respect of management or administrative services rendered by a general partner of an investment limited partnership to the partnership under an agreement for the particular supply of those services.

Where subsection 136.1(2) of the Act applies in respect of the particular supply of management or administrative services (i.e., the particular supply is made for consideration that includes a payment attributable to a billing period that is whole or part of the period during which the service is or is to be rendered), then the separate supply of these services that is deemed under paragraph 136.1(2)(a) to have been made by the general partner for a billing period is, despite paragraph 136.1(2)(c), deemed under this paragraph to be made for consideration that becomes due on the last day of the billing period and equal to the fair market value of these services rendered during the billing period.

Conversely, where subsection 136.1(2) does not apply in respect of the particular supply of management or administrative services, the general partner is deemed to have made, and the investment limited partnership is deemed to have received, a separate supply of the services for each reporting period during which the services are, or are to be, rendered under the agreement. Further, each separate supply is deemed to be made on the first day of the reporting period and for consideration that becomes due on the last day of the reporting period and equal to the fair market value of services rendered during the reporting period.

For the purposes of applying paragraphs 272.1(3)(b) and (3)(c), the fair market value is determined as though the partner and partnership were dealing at arm's length and represents the value of the entire property or service, including the supplying partner's interest in it.

The amendment applies in respect of any supply made after September 7, 2017.

Subclause 49(2)

Investment limited partnership – supply by general partner

ETA
272.1(8)

New subsection 272.1(8) of the Act applies in respect of the rendering 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)) by a general partner of the investment limited partnership.

Subsection 272.1(8) clarifies that, even if the general partner renders the management or administrative service pursuant to its obligations as a member of the partnership, the rendering 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.

Subsection 272.1(8) is deemed to have come into force on September 8, 2017. It also applies in respect of management or administrative services rendered under an agreement entered into before that day, if tax was charged, collected or remitted before September 8, 2017 in respect of these services or any other supply made under the agreement.

Further, where subsection 272.1(8) applies in respect of management or administrative services rendered before September 8, 2017 by a general partner of an investment limited partnership

under an agreement entered into before that day, the following rules also apply for the purposes of Part IX of the Act:

- subsection 272.1(3) does not apply in respect of the supply of management or administrative services rendered before September 8, 2017;

- any amount that the investment limited partnership pays or credits to the general partner after September 7, 2017 and that is reasonably attributable to management or administrative services rendered before that day is deemed to be consideration for the supply of those services that becomes due at the time the amount is paid or credited by the investment limited partner to the general partner; and

- if an amount was charged, collected or remitted as or on account of tax in respect of a particular amount that the investment limited partnership paid or credited to the general partner before September 8, 2017 and that is reasonably attributable to management or administrative services rendered before that day, the particular amount is deemed to be consideration for a taxable supply of those services that became due at the time the particular amount was paid or credited by the investment limited partner to the general partner.

Transitional rule

For the purposes of the application rules described above for new paragraph 272.1(3)(b) and subsection 272.1(8) and for the purposes of Part IX of the Act, a transitional rule applies in respect of management or administrative services rendered by a general partner of an investment limited partnership under a particular agreement entered into before September 8, 2017 where some or all of those management or administrative services are rendered on or after September 8, 2017.

In respect of those management or administrative services that are rendered on or after September 8, 2017 (referred to as the "subsequent services"), the following rules apply:

- the general partner is deemed to have made, and the investment limited partnership is deemed to have received, a particular supply of the subsequent services and the supply is deemed to have been made on September 8, 2017;

- the subsequent services are deemed to have been rendered under an agreement for the particular supply that is deemed to have been entered into September 8, 2017 and not under the particular agreement;

- where any amount is charged, collected or remitted as or on account of tax at any time under Part IX of the Act in respect of an amount of consideration that is reasonably attributable to the rendering of the subsequent services, that amount is deemed to be an amount of tax that is collected at that time in respect of the particular supply; and

- if the total of all amounts of tax that are payable under Part IX of Act before February 27, 2018 in respect of the particular supply is in excess of the total of all amounts that are deemed to have been collected in respect of the particular supply, then despite subsection

272.1(3) of the Act, the excess is deemed to have become payable on February 27, 2018 and the general partner is deemed to have collected that excess on February 27, 2018.

In respect of those management or administrative services that are rendered before September 8, 2017 (referred to as the "prior services"), the following rules apply:

- the general partner is deemed to have made, and the investment limited partnership is deemed to have received, a supply of the prior services (referred to as the "earlier supply") and the earlier supply is deemed to have been made on the day on which the particular agreement is entered into;

- the prior services are deemed to have been rendered under an agreement for the earlier supply and not under the particular agreement and the agreement for the earlier supply is deemed to have been entered into on the day the particular agreement was entered into; and

- where any amount is charged, collected or remitted as or on account of tax at any time under Part IX of the Act in respect of an amount of consideration that is reasonably attributable to the rendering of the prior services, that amount is deemed to be an amount of tax that is collected at that time in respect of the earlier supply.

Clause 50

Time period not to count

ETA
289.2

New section 289.2 of the Act extends the reassessment period when a person makes an application for judicial review of a requirement for information (other than a requirement for foreign-based information or document under section 292 of the Act) or when a person files a notice of appearance or otherwise challenges a compliance order. Section 289.2 provides that the period of time that elapses between the application for review of a requirement for information or the filing of a notice of appearance, or otherwise challenging the application for a compliance order, and the time either the application for judicial review or the application to obtain the compliance order is disposed of, will not be counted toward the statutory limit for making tax assessments.

New section 289.2 comes into force on royal assent.

Clause 51

Time period not to count

ETA
292(7)

Under section 292 of the Act, the Minister of National Revenue may, by notice and subject to judicial review, require any person resident in Canada or a non-resident person that carries on business in Canada to provide any "foreign-based information or document", as defined in subsection 292(1), relevant to the administration or enforcement of Part IX of the Act.

Existing subsection 292(7) provides that the period of time that elapses between an application for review and final disposition of the issue does not count towards the limitation period for making assessments under section 296 or 297 of the Act nor in the time permitted for the production of the information or document under section 292.

To ensure consistency with the wording of new section 289.2 of the Act, which extends the limitation period upon challenges to compliance orders and requirements for information that do not involve foreign-based information or documents, subsection 292(7) is amended to clarify that the period of time that does not count towards the limitation period for making assessments, or in the time permitted to produce the information or document, lasts until final disposition of the issue. For further information, see the commentary for section 289.2.

This amendment comes into force on royal assent.

Clause 52

Disclosure of personal information

ETA
295(5)

Subsection 295(5) of the Act authorizes the communication of confidential information to government officials for limited purposes.

Paragraph 295(5)(d.1) is amended by adding new subparagraphs 295(5)(d.1)(ii) and (iii). New subparagraph 295(5)(d.1)(ii) is added to permit an official to provide confidential information, or allow the inspection of or access to confidential information, under and solely for the purposes of an order made under subsection 462.48(3) of the *Criminal Code*. New subparagraph 295(5)(d.1)(iii) is added to permit an official to provide confidential information, or allow the inspection of or access to confidential information, under and solely for the purposes of an order made under the *Mutual Legal Assistance in Criminal Matters Act*, with respect to an investigation or prosecution relating to an act or omission that, if it had occurred in Canada, would constitute an offence for which an order could be obtained under subsection 462.48(3) of the *Criminal Code*, in response to a request made pursuant to

- an administrative arrangement entered into under section 6 of the *Mutual Legal Assistance in Criminal Matters Act*; or

- a bilateral agreement for mutual legal assistance in criminal matters to which Canada is a party.

Paragraph 295(5)(n) permits an official to provide confidential information, or allow the inspection of or access to confidential information, solely for the purposes of a provision contained in a “listed international agreement”, as defined in subsection 123(1) of the Act. This paragraph is amended to also permit an official to provide confidential information, or allow the inspection of or access to confidential information, solely for the purposes of a provision contained in a “tax treaty”, as defined in subsection 248(1) of the *Income Tax Act*.

These amendments come into force on royal assent.

Clause 53

Period for assessment

ETA
298(1)(b)

Existing section 298 of the Act sets out the limitation periods for assessments (including reassessments) under Part IX of the Act. Existing paragraph 298(1)(b) provides the limitation period in respect of assessments of tax payable under Division II of Part IX of the Act on the purchase of real property from a person that, under subsection 221(2) of the Act, is not required to collect tax on the sale.

Paragraph 298(1)(b) is amended to also apply to assessments of tax payable on a supply of an emission allowance from a person that, under new subsection 221(2.1), is not required to collect tax on the supply.

This amendment is deemed to have come into force on June 27, 2018.

Financial Services and Financial Institutions (GST/HST) Regulations

Clause 54

Prescribed member for subsection 132(6) of the Act

Financial Services and Financial Institutions (GST/HST) Regulations
4.1

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 not to 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 *Financial Services and Financial Institutions (GST/HST) 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 September 8, 2017.

Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations

Clause 55

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* (the Regulations) defines terms used in the Regulations. In subsection 1(1), amendments are made to the definitions "distributed investment plan", "permanent establishment", "provincial series", "series" and "unit".

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.

The definition is 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) applies in respect of any reporting period of a person that begins after 2018. It also applies in respect of any reporting period of a person that begins in 2018 if the person is a listed financial institution throughout the reporting period of the person that includes January 1, 2018. This would be the case where the investment limited partnership has elected to be an investment plan in respect of its taxation years that begin in 2018.

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) of the Regulations provide rules relating to permanent establishments of investment plans.

The amendments to the definition "permanent establishment" are deemed to have come into force on September 8, 2017.

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 September 8, 2017.

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 September 8, 2017.

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 September 8, 2017.

Clause 56

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 September 8, 2017.

Clause 57

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 September 8, 2017.

Clause 58

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 September 8, 2017.

Clause 59

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 relation to "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 generally 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 the percentage of a selected listed financial institution or of another investment limited partnership described in new subsection 73(2), for a series, for a participating province and for a particular period (as defined in subsection 16(1) of the Regulations) under section 30 of the Regulations or for a participating province and for a particular period (as defined in subsection 16(1) of the Regulations) under section 32 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). 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) 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, three 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 determining the percentage of the investment limited partnership for a series, for a participating province and for a particular period (as defined in subsection 16(1) of the Regulations) under section 30 or 33 of the Regulations or for a participating province and for a particular period (as defined in subsection 16(1) of the Regulations) under section 32 or 34 of the Regulations, the investment limited partnership is deemed, throughout 2018, to be a selected listed financial institution and an investment plan that is a distributed investment plan, 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(2)(b).

Subparagraph 73(2)(b)(i) refers to the determination of the positive amount that the investment limited partnership is required to add, or the negative amount that the 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 investment limited partnership that begins in 2019.

Subparagraph 73(2)(b)(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 investment limited partnership for a reporting period in a fiscal year of the investment limited partnership that begins in 2019.

Subparagraph 73(2)(b)(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 investment limited partnership that begins in 2019.

Subparagraph 73(2)(b)(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 investment limited partnership and the 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(2)(b)(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(2)(b)(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.

Finally, 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 September 8, 2017.

Transitional Provisions – Excise Tax Act (GST/HST Measures)

Clause 60

Assessment – trust governed by group registered education savings plan

Clause 60 provides an exception to the limitation periods set out in paragraphs 298(1)(a) and (e) of the *Excise Tax Act* (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 60 to amounts determined by subsection 225.2(2) and to those reporting periods, clause 60 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 225.2(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) to a trust governed by a group registered education savings plan.

Subclause 60(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), 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.

Subclause 60(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), 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 of the Act, 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.

Subclause 60(3) applies if a manager of a trust governed by a group registered education 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 60(3)(a) and (b) apply to the manager in respect of an assessment, reassessment or additional assessment in a similar manner as subclauses 60(1) and (2) apply to a trust governed by a registered education savings plan.

Paragraph 60(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), 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 for the particular reporting period was filed.

Paragraph 60(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.

PART 3 – AMENDMENTS TO THE EXCISE TAX ACT (EXCISE MEASURES), THE AIR TRAVELLERS SECURITY CHARGE ACT AND THE EXCISE ACT, 2001

Excise Tax Act (Excise Measures)

Clause 61

Payment for end-users – diesel fuel

ETA
68.01

Subsection 68.01(1) of the *Excise Tax Act* (the Act) describes to whom and under what circumstances a refund may be paid in respect of excise tax paid on diesel fuel that is used exclusively as heating oil or to generate electricity, other than to generate electricity in or by a vehicle, including a conveyance attached to a vehicle, of any mode of transportation.

Subclause 61(1)

Payment for end-users – diesel fuel

ETA
68.01(1)(a)

Existing paragraph 68.01(1)(a) provides that, in the case where a vendor delivers diesel fuel to a purchaser for use exclusively as heating oil, if excise tax has been paid in respect of the diesel fuel, an application for a refund may be made. The refund may be paid:

- to the vendor, if the vendor applies for the payment, if the purchaser certifies that the diesel fuel is for use exclusively as heating oil and if the vendor reasonably believes that the purchaser will use the diesel fuel exclusively as heating oil; or

- to the purchaser, if the purchaser applies for the payment, if the purchaser uses the diesel fuel as heating oil and if no application in respect of the diesel fuel can be made by the vendor.

In cases where excise tax-paid diesel fuel is used by a purchaser to generate electricity (other than to generate electricity in or by a vehicle, including a conveyance attached to a vehicle, of any mode of transportation), which is a non-taxable use under paragraph 23(8)(c) of the Act, existing subsection 68.01(1) does not permit the vendor to apply for a refund of excise tax. Instead, the purchaser can make an application for a refund of excise tax under paragraph 68.01(1)(b).

Amended paragraph 68.01(1)(a) expands the refund regime to allow a vendor to apply for a refund where a purchaser will use excise tax-paid diesel fuel to generate electricity (other than in or by a vehicle, including a conveyance attached to the vehicle, of any mode of transportation). For such a refund to be payable, new subparagraph 68.01(1)(a)(i.1) sets out the following four criteria: the quantity of diesel fuel delivered by the vendor to the purchaser must be at least 1,000 litres; the vendor must apply for the refund; the purchaser must certify that the diesel fuel is to be used exclusively to generate electricity (other than to generate electricity in or by a vehicle,

including a conveyance attached to a vehicle, of any mode of transportation); and, the vendor must reasonably believe that the purchaser will use the diesel fuel exclusively to generate electricity (other than to generate electricity in or by a vehicle, including a conveyance attached to a vehicle, of any mode of transportation).

If a vendor cannot make an application for the refund because the relevant criteria are not satisfied, then the purchaser may make an application pursuant to paragraph 68.01(1)(b) (see commentary for the amendment to paragraph 68.01(1)(b) below).

This amendment comes into force on royal assent.

Subclause 61(2)

Payment to end-users – diesel fuel

ETA
68.01(1)(b)

Existing paragraph 68.01(1)(b) provides that if excise tax has been paid in respect of diesel fuel, an application may be made and a refund may be paid to a purchaser that uses the diesel fuel to generate electricity (unless the diesel fuel is used in or by a vehicle, including a conveyance attached to a vehicle, of any mode of transportation).

Pursuant to the addition of subparagraph 68.01(1)(a)(i.1), paragraph 68.01(1)(b) is amended to limit the ability of a purchaser to apply for a refund in respect of diesel fuel used to generate electricity. Amended paragraph 68.01(1)(b) allows a purchaser to make an application for the refund only if no application under new subparagraph 68.01(a)(i.1) in respect of the diesel fuel can be made by the vendor.

This amendment comes into force on royal assent.

Subclause 61(3)

Timing of application

ETA
68.01(3)(a)

Existing subsection 68.01(3) provides that no payment shall be made to a vendor described in subparagraph 68.01(1)(a)(i) unless the vendor applies for the payment within two years of selling the diesel fuel to the purchaser, and that no payment may be made to a purchaser described in subparagraph 68.01(a)(ii) or paragraph 68.01(1)(b) unless the purchaser applies for the payment within two years of the purchase.

Paragraph 68.01(3)(a) is amended to also provide that no payment may be made to a vendor described in new subparagraph 68.01(1)(a)(i.1) unless the vendor applies for the payment within two years of selling the diesel fuel to the purchaser.

This amendment comes into force on royal assent.

Air Travellers Security Charge Act

Clause 62

Time period not to count

ATSCA
38(6)

Under section 38 of the *Air Travellers Security Charge Act* (the Act), the Minister of National Revenue may, by notice and subject to judicial review, require a person resident in Canada or a non-resident person that carries on business in Canada to provide information or records relevant to the administration or enforcement of the Act.

Existing subsection 38(6) provides that the period of time that elapses between an application for review and final disposition of the issue does not count towards the limitation period for making assessments under section 42 of the Act nor in the time permitted for the production of the information or record under section 38.

Subsection 38(6) is amended to clarify that the period of time that does not count towards the limitation period for making assessments, or in the time permitted to produce the information or record, lasts until final disposition of the issue. In addition, the French version of this subsection is also amended to ensure better consistency with other federal statutes.

These amendments come into force on royal assent.

Excise Act, 2001

Clause 63

Dutiable amount

EA, 2001
2.1

New section 2.1 of the *Excise Act, 2001* (the Act) sets out rules that apply in determining an amount of consideration for the purposes of the definition "dutiable amount" in section 2 of the Act. The concept of consideration as determined for the purposes of Part IX of the *Excise Tax Act*, which relates to the goods and services tax/harmonized sales tax, is relevant for the determination of the dutiable amount in respect of a cannabis product. The dutiable amount is itself used to determine the amount of an *ad valorem* duty on the cannabis product.

New paragraph 2.1(a) provides that if a provision of Part IX of the *Excise Tax Act* deems the consideration, or part of the consideration, for a supply not to be consideration for the supply, a supply to be made for no consideration or a supply not to have been made by a person, then that deeming does not apply for the determination of an amount of consideration for the purposes of the definition "dutiable amount".

New paragraph 2.1(b) provides that, in determining an amount of consideration for the purposes of the definition "dutiable amount", subsection 155(1) of the *Excise Tax Act* is to be read without

reference to the words “and the recipient of the supply is not a registrant who is acquiring the property or service for consumption, use or supply exclusively in the course of commercial activities of the recipient,”.

New section 2.1 is deemed to have come into force on July 27, 2018.

Clause 64

Time period not to count

EA, 2001
209.1

New section 209.1 of the Act extends the reassessment period when a person makes an application for judicial review of a requirement for information (other than a requirement for foreign-based information or record under section 210 of the Act) or when a person files a notice of appearance or otherwise challenges a compliance order. Section 209.1 provides that the period of time that elapses between the application for review of a requirement for information or the filing of a notice of appearance, or otherwise challenging the application for a compliance order, and the time either the application for judicial review or the application to obtain the compliance order is disposed of, will not be counted toward the statutory limit for making tax assessment.

New section 209.1 comes into force on royal assent.

Clause 65

Time period not to count

EA, 2001
210(7)

Under section 210 of the Act, the Minister of National Revenue may, by notice and subject to judicial review, require any person resident in Canada or a non-resident person that carries on business in Canada, to provide any “foreign-based information or records”, as defined in subsection 210(1), relevant to the administration or enforcement of the Act.

Existing subsection 210(7) provides that the period of time that elapses between an application for review and final disposition of the issue does not count towards the limitation period for making assessments under section 188 or 189 of the Act nor in the time permitted for the production of the information or record under section 210.

To ensure consistency with the wording of new section 209.1 of the Act, which extends the limitation period upon challenges to compliance orders and requirements for information that do not involve foreign-based information or records, subsection 210(7) is amended to clarify that the period of time that does not count towards the limitation period for making assessments, or in the time permitted to produce the information or record, lasts until final disposition of the issue. For further information, see the commentary for section 209.1.

This amendment comes into force on royal assent.

Clause 66

Disclosure of personal information

EA, 2001
211(6)

Subsection 211(6) of the Act authorizes the communication of confidential information to government officials for limited purposes.

Paragraph 211(6)(d.1) is amended by adding new subparagraphs 211(6)(d.1)(ii) and (iii). New subparagraph 211(6)(d.1)(ii) is added to permit an official to provide confidential information, or allow the inspection of or access to confidential information, under and solely for the purposes of an order made under subsection 462.48(3) of the *Criminal Code*. New subparagraph 211(6)(d.1)(iii) is added to permit an official to provide confidential information, or allow the inspection of or access to confidential information, under and solely for the purposes of an order made under the *Mutual Legal Assistance in Criminal Matters Act*, with respect to an investigation or prosecution relating to an act or omission that, if it had occurred in Canada, would constitute an offence for which an order could be obtained under subsection 462.48(3) of the *Criminal Code*, in response to a request made pursuant to

- an administrative arrangement entered into under section 6 of the *Mutual Legal Assistance in Criminal Matters Act*; or

- a bilateral agreement for mutual legal assistance in criminal matters to which Canada is a party.

Paragraph 211(6)(l) permits an official to provide confidential information, or allow the inspection of or access to confidential information, solely for the purposes of a provision contained in a "listed international agreement", as defined in section 2 of the Act. This paragraph is amended to also permit an official to provide confidential information, or allow the inspection of or access to confidential information, solely for the purposes of a provision contained in a "tax treaty", as defined in subsection 248(1) of the *Income Tax Act*.

These amendments come into force on royal assent.

Clause 67

Contravention of section 158.13

EA, 2001
233.1

Section 233.1 of the Act provides that a cannabis licensee that contravenes section 158.13 of the Act (packaging and stamping of cannabis) is liable to a penalty. Amendments are made to section 233.1 of the Act in order to ensure consistency between the English and French versions of the Act.

These amendments come into force on royal assent.

Clause 68

Contravention of section 158.02, 158.1, 158.11 or 158.12

EA, 2001
234.1

Section 234.1 of the Act provides that any person that contravenes section 158.02 of the Act (production of cannabis products without a licence), that receives for sale cannabis products in contravention of section 158.1 of the Act (prohibition regarding cannabis products for sale, etc.) or that sells or offers to sell cannabis products in contravention of section 158.11 (selling unstamped cannabis) or 158.12 (sale or distribution by a licensee) of the Act is liable to a penalty. Amendments are made to section 234.1 of the Act in order to ensure consistency between the English and French versions of the Act.

These amendments come into force on royal assent.