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# **Explanatory Notes Relating to the Excise Tax Act**

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## **Preface**

These explanatory notes describe proposed amendments to the *Excise Tax Act*. 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).

Subsection 123(1) is amended to add 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.

The new definition “emission allowance” 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 Announcement Date. It also applies in respect of any supply made before Announcement Date 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.

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## **Clause 2**

### **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 Announcement Date. It also applies in respect of any supply of an emission allowance made before Announcement Date 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 Announcement Date.

## **Clause 3**

### **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 Announcement Date. It also applies in respect of any supply of an emission allowance made before Announcement Date 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 Announcement Date. To ensure that tax that became payable before Announcement Date 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 Announcement Date as opposed to the reporting period in which the tax became payable).

#### **Clause 4**

##### **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 4(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)".

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This amendment is deemed to have come into force on Announcement Date but does not apply in respect of an amount that was, before Announcement Date, 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 4(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 Announcement Date but does not apply in respect of an amount that was, before Announcement Date, 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 5**

##### **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 Announcement Date.