Explanatory Notes Relating to the Excise Tax Act, the Excise Act, 2001 and a Related Text

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Preface

These explanatory notes describe proposed amendments to the *Excise Tax Act*, the *Excise Act, 2001* and a related text. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, stakeholders 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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PART 2 – GST/HST MEASURES

Excise Tax Act

Clause 70

Definition "passenger vehicle"

ETA
123(1)

The definition "passenger vehicle" in subsection 123(1) of the *Excise Tax Act* (the Act) is relevant for purposes of the rules for claiming input tax credits in respect of capital property.

The definition is amended to include a vehicle that is a "zero-emission passenger vehicle", as that term is defined in subsection 248(1) of the *Income Tax Act*. It would not, however, include a vehicle for which an election is made under subsection 1103(2j) of the *Income Tax Regulations* as a vehicle for which such an election is made will not be a zero-emission passenger vehicle under the *Income Tax Act*. This amendment helps ensure that the Goods and Services Tax/Harmonized Sales Tax (GST/HST) treatment of expenses incurred in respect of zero-emission passenger vehicles continues to parallel the income tax treatment.

This amendment comes into force on March 19, 2019.

Clause 71

Value of passenger vehicle

ETA
201(b)

Section 201 of the Act limits the amount that a registrant is allowed to claim as an input tax credit in respect of the acquisition, importation or bringing into a province of a passenger vehicle to the amount of the maximum capital cost of the vehicle for the purposes of the *Income Tax Act*. The method of calculating the maximum capital cost of a passenger vehicle is currently set out in paragraphs 13(7)(g) and (h) of the *Income Tax Act*, which refer to paragraph 7307(1)(b) of the *Income Tax Regulations*. Since January 1, 2001, the maximum capital cost of a passenger vehicle is $30,000, exclusive of GST/HST and provincial sales taxes.

The description of A in paragraph 201(b), which describes the calculation of the amount of tax that would be payable in respect of a vehicle if it were acquired for consideration equal to the capital cost of the vehicle, is amended to also refer to new paragraph 13(7)(i) of the *Income Tax Act* and to new subsection 7307(1.1) of the *Income Tax Regulations*. These new income tax provisions describe the maximum capital cost of a zero-emission passenger vehicle, which is $55,000, exclusive of GST/HST and provincial sales taxes.

This amendment applies to zero-emission passenger vehicles that are acquired, imported or brought into a participating province after March 18, 2019.

Clause 72

Improvement to passenger vehicle

ETA
202(1)

Section 202 of the Act sets out rules governing input tax credits in respect of passenger vehicles and aircraft. Subsection 202(1) provides that if an improvement to a passenger vehicle of a registrant increases the cost to the registrant of the vehicle to an amount that exceeds the maximum capital cost of the vehicle for the purposes of the *Income Tax Act*, an input tax credit may not be claimed in respect of the tax on that excess. The method of calculating the maximum capital cost of a passenger vehicle is currently set out in paragraphs 13(7)(g) and (h) of the *Income Tax Act*, which refer to paragraph 7307(1)(b) of the *Income Tax Regulations*. Since January 1, 2001, the maximum capital cost of a passenger vehicle is $30,000, exclusive of GST/HST and provincial sales taxes.

Subsection 202(1) is amended to also refer to new paragraph 13(7)(i) of the *Income Tax Act* and to new subsection 7307(1.1) of the *Income Tax Regulations*. These new income tax provisions describe the maximum capital cost of a zero-emission passenger vehicle, which is $55,000, exclusive of GST/HST and provincial sales taxes.

This amendment applies to any improvements to zero-emission passenger vehicles that are acquired, imported or brought into a participating province after March 18, 2019.

Clause 73

Definition "imported taxable supply"

ETA
217

The definition "imported taxable supply" in section 217 of the Act includes, as a result of paragraphs (b) to (b.1) of that definition, certain taxable supplies that are subject to the drop-shipment rules under section 179 of the Act. Each of these paragraphs refer to a supply of a passenger vehicle where the capital cost of the vehicle exceeds the maximum capital cost currently set out in paragraphs 13(7)(g) and (h) of the *Income Tax Act*, which refer to paragraph 7307(1)(b) of the *Income Tax Regulations*. Since January 1, 2001, the maximum capital cost of a passenger vehicle is $30,000, exclusive of GST/HST and provincial sales taxes.

Paragraphs (b) to (b.1) of the definition of "imported taxable supply" in section 217 of the Act are amended to also refer to new paragraph 13(7)(i) of the *Income Tax Act*. This new income tax provision describes the maximum capital cost of a zero-emission passenger vehicle, which is $55,000, exclusive of GST/HST and provincial sales taxes.

These amendments apply in respect of supplies made after March 18, 2019.

Clause 74

Net tax where passenger vehicle leased

ETA
235(1)

The purpose of 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 method of calculating the maximum lease costs is set out in section 67.3 of the *Income Tax Act*, which currently refers to paragraphs 7307(1)(b) and (3)(b) of the *Income Tax Regulations*.

Subsection 235(1) is amended to include a reference to subsection 7307(1.1) of the *Income Tax Regulations*, as that new subsection is relevant to the calculation of the maximum lease costs for zero-emission passenger vehicles.

This amendment comes into force on March 19, 2019.

Clause 75

Multidisciplinary health services

ETA
Sch. V, Pt. II, s. 7.4

Existing sections 5 to 7.3 of Part II of Schedule V to the Act have the effect of exempting from the GST/HST certain supplies of health care services rendered by physicians, dentists, nurses, health care practitioners, dieticians, social workers and pharmacists.

New section 7.4 has the effect of exempting the supply of a service rendered by a multidisciplinary team of two or more of these professionals working together, or toward a common goal. The supply of a service is exempt if all or substantially all of the consideration for the supply is reasonably attributable to two or more particular services, each of which meets two conditions: (1) the particular service is rendered in the course of making the supply, and (2) a supply of the particular service would be included in any of existing sections 5 to 7.3 if the particular service were supplied separately.

An example of a supply of a multidisciplinary service that could be exempt if it met the conditions of this provision is the supply of an assessment and individualized rehabilitation plan for an individual with a traumatic brain injury, rendered by a team comprising an occupational therapist, a physiotherapist and a psychologist.

This amendment applies to any supply made after March 19, 2019.

Clause 76

Human ova

ETA
Sch. VI, Pt. I, s.6

Part I of Schedule VI to the Act contains a list of prescription drugs and biologicals, the supply of which is zero-rated under the GST/HST. Goods, the supply of which is zero-rated, are also not subject to the GST/HST when imported into Canada, pursuant to section 6 of Schedule VII to the Act.

New section 6 of Part I of Schedule VI to the Act provides that a supply of an ovum, as defined in section 3 of the *Assisted Human Reproduction Act*, is zero-rated and that an ovum is not subject to the GST/HST when imported into Canada. The *Assisted Human Reproduction Act* defines an ovum as a human ovum, whether mature or not.

This amendment comes into force on March 20, 2019.

Clause 77

Definition "specified professional"

ETA
Sch. VI, Pt. II, s. 1

Section 1 of Part II of Schedule VI to the Act contains definitions referred to in that Part, which enumerates a number of supplies of medical and assistive devices that are zero-rated for the purposes of the GST/HST. Supplies of medical and assistive devices listed in sections 3, 4, 5.1, 7, 14.1, 21.1, 21.2, 23, 24.1, 30, 35, 36 and 41 of that Part are zero-rated only when supplied on the written order of a specified professional.

The existing definition "specified professional" means a person that is entitled under the laws of a province to practise the profession of medicine, physiotherapy or occupational therapy, or who is a registered nurse. The definition is amended so that, in respect of any of sections 23, 24.1 and 35 of that Part, it also includes a person that is entitled under the laws of a province to practise the profession of podiatry or chiropody. This expands the circumstances where certain foot-related medical and assistive devices are zero-rated to include supplies made on the written order of a podiatrist or chiropodist.

This amendment applies to any supply made after March 19, 2019.

Clause 78

***In vitro* embryos**

ETA
Sch. VII, s. 13

Schedule VII to the Act contains a list of goods that are not subject to the GST/HST when imported into Canada.

New section 13 of Schedule VII to the Act provides that *in vitro* embryos, as defined in section 3 of the *Assisted Human Reproduction Act*, are not subject to the GST/HST when imported into Canada. The *Assisted Human Reproduction Act* defines an *in vitro* embryo as an embryo that exists outside the body of a human being. That Act defines an embryo as a human organism during the first 56 days of its development following fertilization or creation, excluding any time during which its development has been suspended, and includes any cell derived from such an organism that is used for the purpose of creating a human being.

This amendment comes into force on March 20, 2019.

Clause 79

***In vitro* embryos**

ETA
Sch. X, Pt. I, s.27

Part I of Schedule X to the Act lists property that is not subject to the provincial component of the HST when brought into an HST participating province.

New section 27 of Part I of Schedule X to the Act provides that *in vitro* embryos, as defined in section 3 of the *Assisted Human Reproduction Act*, are not subject to the provincial component of the HST when brought into a participating province. The *Assisted Human Reproduction Act* defines an *in vitro* embryo as an embryo that exists outside the body of a human being. That Act defines an embryo as a human organism during the first 56 days of its development following fertilization or creation, excluding any time during which its development has been suspended, and includes any cell derived from such an organism that is used for the purpose of creating a human being.

This amendment comes into force on March 20, 2019.

Streamlined Accounting (GST/HST) Regulations

Clause 80

Input tax credits – passenger vehicle

Streamlined Accounting (GST/HST) Regulations
21.3(4)

Section 227 of the Act and the *Streamlined Accounting (GST/HST) Regulations* (the Regulations) provide small businesses and eligible public service bodies with simplified methods of calculating their GST/HST remittances. These methods allow the business or public service body to remit an amount of tax that is a percentage (the "remittance rate") of its gross sales.

One of the simplified methods under the streamlined accounting rules is the streamlined input tax credit method, which is described in Part V.1 of the Regulations. Subsection 21.3(4) in Part V.1 of the Regulations describes, for purposes of that Part, the calculation of input tax credits available in respect of a passenger vehicle, which is based on the maximum capital cost of the vehicle for income tax purposes. The calculation of the maximum capital cost of passenger vehicles for income tax purposes is currently set out in paragraphs 13(7)(g) and (h) of the *Income Tax Act*. Since January 1, 2001, the maximum capital cost of a passenger vehicle is $30,000, exclusive of GST/HST and provincial sales taxes.

Subsection 21.3(4) is amended to also refer to new paragraph 13(7)(i) of the *Income Tax Act*. This new income tax provision describes the maximum capital cost of a zero-emission passenger vehicle, which is $55,000, exclusive of GST/HST and provincial sales taxes.

The amendment comes into force on March 19, 2019.

PART 3 – EXCISE ACT, 2001

Excise Act, 2001

Clause 81

Definitions

EA, 2001
2

Section 2 of the *Excise Act, 2001* (the "Act") defines terms used in the Act.

These amendments to section 2 come into force on May 1, 2019.

Subclause 81(1)

"dutiable amount"

EA, 2001
2

The definition "dutiable amount" in section 2 of the Act is used to determine the amount of an *ad valorem* duty on a cannabis product. It means the amount on which a rate of duty is applied to determine an *ad valorem* cannabis duty on the cannabis product. The dutiable amount generally represents the portion of the producer's sales price that does not include any cannabis duties.

Due to the renumbering of the provisions of Schedule 7 to the Act, as described below, the reference to "section 2 of Schedule 7" in the description of B in the definition "dutiable amount" is replaced by a reference to "paragraph 2(a) of Schedule 7".

Subclause 81(2)

"low-THC cannabis product"

EA, 2001
2

The definition "low-THC cannabis product" in section 2 of the Act means a cannabis product that meets two criteria. The first, as stated in paragraph (a), is that it consists entirely of cannabis of a class referred to in any of items 1 to 3 of Schedule 4 to the *Cannabis Act*. These items are dried cannabis, cannabis oil and fresh cannabis. The second, as stated in paragraph (b), is that any part of the cannabis product does not have a maximum yield of more than 0.3% THC w/w (weight per weight), taking into account the potential to convert delta-9-tetrahydrocannabolic acid into THC, as determined in accordance with the *Cannabis Act*.

Paragraph (a) of this definition is amended so that the reference to the *Cannabis Act* is removed and instead fresh cannabis, dried cannabis and cannabis oil (i.e., oil that contains cannabis and that is in liquid form at a temperature of 22 ± 2º C) are listed directly in the paragraph. Paragraph (b) of the same definition is amended to replace the reference to "delta-9-tetrahydrocannabolic acid" with a reference to the newly defined term "THCA."

Subclause 81(3)

New Definitions

EA, 2001
2

"*dried cannabis*"

The new definition "dried cannabis" in section 2 of the Act has the same meaning as in subsection 2(1) of the *Cannabis Act*.

The *Cannabis Act* defines "dried cannabis" as any part of a cannabis plant that has been subjected to a drying process, other than seeds.

"*fresh cannabis*"

The new definition "fresh cannabis" in section 2 of the Act has the same meaning as in subsection 1(1) of the *Cannabis Regulations*.

The *Cannabis Regulations* define "fresh cannabis" as freshly harvested cannabis buds and leaves, but does not include plant material that can be used to propagate cannabis.

"*THCA*"

The new definition "THCA" in section 2 of the Act means delta-9-tetrahydrocannabolic acid.

"*total THC*"

The new definition "total THC" of a cannabis product in section 2 of the Act means the total quantity of THC, in milligrams, that the cannabis product could yield, taking into account the potential to convert THCA into THC, as determined in accordance with the *Cannabis Act*.

Clause 82

Application of interest provisions

EA, 2001
172

Section 172 of the Act clarifies that should the Act be amended by a provision that comes into force on, or applies as of a particular day that is before the day it is assented to, the provisions of the Act relating to interest shall apply as if the amending provisions were assented to on the particular day.

This section is amended so that it also applies where an amendment or enactment that relates to this Act, such as an amendment to a regulation made under this Act, comes into force on, or applies as of, a particular day that is before the day the amendment or enactment is assented to or promulgated. This section is further amended to also clarify that, in all cases where this section applies, the provisions of the *Customs Act* relating to interest shall also apply as if the amendment or enactment were assented to, or promulgated, on the particular day.

This amendment comes into force on May 1, 2019.

Clause 83

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.

Due to the renumbering of the provisions of Schedule 7, as described below, section 233.1 is amended to replace a reference to “section 4 of Schedule 7” with a reference to “paragraph 4(a) of Schedule 7”.

This amendment comes into force on May 1, 2019.

Clause 84

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 sections 158.11 (selling unstamped cannabis) or 158.12 (sale or distribution by a licensee) of the Act is liable to a penalty.

Due to the renumbering of the provisions of Schedule 7, as described below, section 234.1 is amended to replace a reference to “section 4 of Schedule 7” with a reference to “paragraph 4(a) of Schedule 7”.

This amendment comes into force on May 1, 2019.

Clause 85

Penalty in respect of unaccounted excise stamps

EA, 2001
238.1

Existing section 238.1 of the Act establishes a penalty for unaccounted excise stamps.

Due to the renumbering of the provisions of Schedule 7, as described below, amended section 238.1 replaces references to “paragraph 1(a) of Schedule 7” with references to “subparagraph 1(a)(i) of Schedule 7”.

This amendment comes into force on May 1, 2019.

Clause 86

Duty on cannabis products

EA, 2001
Sch. 7

Schedule 7 to the Act provides rules for determining the amount of duty imposed on cannabis products under various sections of the Act as well as the amount of certain fines and penalties related to that duty.

Existing section 1 of Schedule 7 specifies the duty imposed on cannabis products produced in Canada or imported into Canada. The amount of that duty is the total of the amounts imposed on the flowering material, non-flowering material, viable seeds and vegetative cannabis plant included in or used in the production of the cannabis product.

Section 1 of Schedule 7 is amended so that the amount of duty is calculated as described above only in the case of cannabis products that are dried cannabis, fresh cannabis, cannabis plants or cannabis plant seeds. For any other cannabis product produced in Canada or imported into Canada, such as edibles, extracts, topicals and oils, the amount of duty is the amount obtained by multiplying the number of milligrams of total THC, as defined in section 2 of the Act, of the cannabis product by the specified rate per milligram of total THC. The rate is $0.0025 per milligram of total THC of the cannabis product.

Existing section 2 of Schedule 7 specifies the duty imposed on cannabis products produced in Canada, the amount of which is determined by multiplying the dutiable amount for the cannabis product by a percentage of 2.5%.

Amended section 2 of Schedule 7 specifies that the percentages are 2.5% in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, and 0% in the case of any other cannabis product, such as edibles, extracts, topicals and oils.

Existing section 3 of Schedule 7 specifies the duty on imported cannabis products, the amount of which is determined by multiplying the value of the cannabis product by a percentage of 2.5%.

Amended section 3 of Schedule 7 specifies that the percentages are 2.5% in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, and 0% in the case of any other cannabis product, such as edibles, extracts, topicals and oils.

Existing section 4 of Schedule 7 specifies the duty on cannabis products taken for use or unaccounted for, the amount of which is determined by multiplying the fair market value of the cannabis product by a percentage of 2.5%.

Amended section 4 of Schedule 7 specifies that the percentages are 2.5% in the case of dried cannabis, fresh cannabis, cannabis plants and cannabis plant seeds, and 0% in the case of any other cannabis product, such as edibles, extracts, topicals and oils.

Note that in all cases an additional cannabis duty in respect of a province or territory may also apply. The conditions under which these additional duties may apply and the rates for these additional duties are set out in the *Excise Duties on Cannabis Regulations*.

The amendments to sections 1 to 4 of Schedule 7 come into force on May 1, 2019 except that for the purpose of determining the amount of duty imposed on or after that day under subsection 158.19(2) of the Act on any cannabis product that is packaged before that day, section 2 of Schedule 7 to the Act is to be read as it did on April 30, 2019. Therefore, for cannabis products produced in Canada that are packaged before May 1, 2019 and are delivered to a purchaser on or after that day, the rates of excise duty that apply on April 30, 2019 will apply in respect of those cannabis products.