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, 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 100

Definitions

ETA
123(1)

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

Subclause 100(1)

Definition "reporting period"

ETA
123(1)

The definition "reporting period" in subsection 123(1) is amended by adding a reference to new section 211.18 of the Act, which concerns a person that is registered under new Subdivision E of Division II of Part IX of the Act (Electronic Commerce). Under new section 211.18, a person registered under Subdivision E of Division II is required to have a reporting period that is a calendar quarter for the purposes of Part IX of the Act.

This amendment comes into force, or is deemed to have come into force, on July 1, 2021.

Subclause 100(2)

Definition "commercial activity"

ETA
123(1)

Paragraph (c) of the French version of the definition "commercial activity", which is the definition "*activité commerciale*", in subsection 123(1) is amended in order to ensure better consistency with the English version and to remove potential ambiguities.

This amendment comes into force, or is deemed to have come into force, on July 1, 2021.

Subclause 100(3)

Definition "financial instrument"

ETA
123(1)

The definition "financial instrument" is primarily relevant to the definition "financial service" in subsection 123(1). A financial instrument is anything that is described in any of paragraphs (a) to (i) of the definition "financial instrument".

The definition “financial instrument” is amended to add new paragraph (f.1), with the result that a “virtual payment instrument” (as newly defined in this subsection) will now be a financial instrument.

This amendment is deemed to have come into force on May 18, 2019.

Subclause 100(4)

Definition “virtual payment instrument”

ETA
123(1)

Subsection 123(1) is amended to add the new definition “virtual payment instrument”, which is used in the definition “financial instrument” in this subsection.

A virtual payment instrument is property (as defined in this subsection and, as a result, does not include money) that

- is a digital representation of value that functions as a medium of exchange (i.e., like money, it is an instrument that is accepted as payment in transactions for property and services and is recognized as a measure of value); and
- exists only at a digital address of a publicly distributed ledger (e.g., blockchain).

Paragraphs (a) to (c) of the definition “virtual payment instrument” set out property that is excluded from that definition. Paragraph (a) describes property that confers a right of any kind to be exchanged or redeemed for money or specific property or services or to be converted into money or specific property or services. For example, a security token that confers the future contingent right to be exchanged for a common share of a corporation would be excluded from the definition “virtual payment instrument” by paragraph (a). Paragraph (b) describes property that is primarily for use within, or as part of, a gaming platform, an affinity or rewards program or a similar platform or program. Paragraph (c) describes property that is prescribed property. (Currently, no property is proposed to be prescribed.)

The new definition “virtual payment instrument” is deemed to have come into force on May 18, 2019.

Clause 101

Meaning of “endeavour”

ETA
141.01(1)

The term “endeavour” is defined in subsection 141.01(1) of the Act for the purposes of subsections 141.01(2) to (4), which set out rules for determining the extent to which property and services used in “endeavours” are used in commercial and non-commercial activities. The French version of paragraph 141.01(1)(c) is amended in order to ensure better consistency with the English version and to remove potential ambiguities.

This amendment comes into force, or is deemed to have come into force, on July 1, 2021.

Clause 102

Supply by non-resident

ETA
143(1)

Subsection 143(1) of the Act deems, subject to the exceptions set out in this subsection, a supply of personal property or a service made by a non-resident person to be made outside Canada for the purposes of Part IX of the Act. Currently, there are three exceptions to this deeming rule, which are set out in paragraphs (a), (b) and (c) of subsection 143(1).

Subsection 143(1) is amended by adding new paragraph (b.1), which adds a new exception to the deeming rule in subsection 143(1). The exception in paragraph (b.1) provides that if a non-resident person makes a "qualifying tangible personal property supply" (as defined in new subsection 211.1(1) of the Act) and the person is required under new section 211.22 of the Act to be registered under Subdivision D of Division V of Part IX of the Act at the time the supply is made, the supply is not deemed under subsection 143(1) to be made outside Canada.

This amendment comes into force, or is deemed to have come into force, on July 1, 2021. For the purposes of applying subsection 143(1) of the Act, as amended by this clause, in respect of a supply made before July 2021, the supply will be deemed to have been made on July 1, 2021 if all of the consideration for the supply becomes due, or is paid without having become due, after June 2021.

Clause 103

Non-application

ETA
148(3)

Section 148 of the Act sets out the rules to determine whether a supplier qualifies as a "small supplier" for purposes of Part IX of the Act. Small suppliers are relieved from the requirement to register for GST/HST purposes. Currently under subsection 148(3), the "small supplier" status is denied to a non-resident person whose only business carried on in Canada is the selling of admissions to places of amusement, seminars, activities or events.

Subsection 148(3) of the Act is amended to add a reference to a person that is registered under new Subdivision E of Division II of Part IX of the Act. This amendment provides that a person registered under that Subdivision is not subject to the rules under section 148 for determining whether the person qualifies as a "small supplier" for the purposes of Part IX of the Act.

This amendment comes into force, or is deemed to have come into force, on July 1, 2021.

Clause 104

Application

ETA
178.8(9)

Section 178.8 of the Act addresses circumstances in which a person (referred to as the "constructive importer") is the recipient of a supply made outside Canada of goods that are imported into Canada for that person's consumption, use or re-supply and that are not supplied by that person outside Canada before their release, but is not the person by or on whose behalf the goods are accounted for under the *Customs Act* at the time of their entry. Subsection 178.8(9) provides that section 178.8 does not apply in circumstances in which subsection 169(2) of the Act applies or section 180 of the Act deems a person to have paid tax in respect of a supply of property equal to the tax under Division III of Part IX of the Act in respect of the importation of goods.

Subsection 178.8(9) is amended to also provide that section 178.8 does not apply in circumstances in which new subparagraph 211.23(1)(c)(i) of the Act deems a person to have paid tax in respect of a supply of property equal to the tax under Division III of Part IX in respect of the importation of goods.

This amendment applies to goods imported on or after July 1, 2021 and to goods imported before that day that were not accounted for under section 32 of the *Customs Act* before that day.

Clause 105

Drop shipments

ETA
179

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

First, section 179 is amended to add new subsection 179(3.1) of the Act, which provides a new exception to the application of the general rule in subsection 179(1) in respect of a supply of goods, or of a service in respect of goods, that is made in Canada by a registrant to an unregistered non-resident person that is not a consumer of the goods or service. Similar to the existing exceptions in subsections 179(2) and (3), this new subsection provides that, in certain circumstances, a certificate (referred to as a "distribution platform operator certificate") may be

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

New subsection 179(3.1) generally provides that a distribution platform operator certificate may be issued if the following conditions are satisfied:

- a registrant makes a taxable in Canada of goods, a service of manufacturing or producing goods, or a commercial service in respect of goods (other than goods of a person that is resident in Canada), to an unregistered non-resident person that is not a consumer of the goods or service;
- the registrant causes the transfer of physical possession of those goods at a place in Canada to a consignee that is acquiring physical possession of the goods as the recipient of a taxable supply made by way of sale of the goods;
- the taxable supply made by way of sale of the goods is deemed, under new subsection 211.23(1) of the Act, to have been made by a "distribution platform operator" (as defined in new subsection 211.1(1) of the Act) that is registered under Subdivision D of Division V of Part IX of the Act, and would, in the absence of subsection 211.23(1), have been made by an unregistered non-resident vendor;
- the unregistered non-resident vendor gives to the registrant, and the registrant retains, a certificate that acknowledges that the consignee acquired physical possession of the goods as the recipient of a taxable supply and that the distribution platform operator is required to collect tax in respect of that taxable supply, and that states the distribution platform operator's name and registration number assigned under section 241 of the Act.

New subsection (3.1) comes into force, or is deemed to have come into force, on July 1, 2021.

Second, section 179 is amended to add new subsection 179(7.1), which provides an interpretative rule that generally ensures that the drop-shipment rules found section 179 apply to commercial services that involve fungible goods. The new interpretative rule does not, however, apply to commercial services that involve fungible goods that are continuous transmission commodities transferred to a consignee by means of a wire, pipeline or other conduit.

New subsection (7.1) applies in respect of any supply made after May 17, 2019 and in respect of any supply made on or before that day if the supplier did not, on or before that day, charge, collect or remit any amount as or on account of tax under Part IX of the Act in respect of the supply.

Clause 106

Holding corporations and takeovers

ETA
186

Section 186 of the Act sets out rules designed to enable registrants investing in related corporations that are engaged in commercial activities to claim input tax credits in respect of the shares or indebtedness of those corporations or related holding corporations.

Section 186 is amended to add new subsections 186(0.1) and (0.2) and to amend subsections 186(1), (2) and (3).

Definition "unit"

ETA
186(0.1)

New subsection 186(0.1) creates a definition of "unit" for the purposes of section 186. A definition of unit is introduced in respect of corporations and this definition is subsequently amended in respect of partnerships and trusts.

First, subsection (0.1) provides that unit means, in respect of a corporation, a share of the capital stock of the corporation.

New subsection (0.1) applies in respect of any property or service acquired, imported or brought into a participating province after July 27, 2018.

Second, subsection (0.1) is amended to provide that unit also means, in respect of a partnership, an interest of a person in the partnership, and, in respect of a trust, a unit of the trust.

Amended subsection (0.1) is deemed to have come into force on May 18, 2019.

Operating corporation

ETA
186(0.2)

New subsection 186(0.2) provides, for the purposes of amended section 186, an interpretation rule that sets out the test for determining if a particular corporation is an "operating corporation of another corporation". This interpretation rule is used in determining if the other corporation is entitled to benefit from the deeming rules in amended subsections 186(1) and (2) (see commentary below on those subsections), provided that the other conditions of those subsections are met.

First, new subsection (0.2) provides that a particular corporation is, at a particular time, an operating corporation of another corporation if two conditions are met at the particular time. The first condition is satisfied if all or substantially all of the property of the particular corporation is property that was last manufactured, produced, acquired or imported by the particular corporation for consumption, use or supply by the particular corporation exclusively in the

course of its commercial activities (within the meaning of subsection 123(1) of the Act). The second condition is satisfied if the particular corporation is related (within the meaning of subsection 126(2) of the Act) to the other corporation.

New subsection (0.2) applies in respect of any property or service acquired, imported or brought into a participating province after July 27, 2018.

Second, subsection (0.2) is amended to provide that a particular corporation may also be, at a particular time, an operating corporation of another person that is a partnership or a trust if two conditions are met at the particular time. The first condition is the same condition in respect of the property of the particular corporation that applies in cases where the other person is a corporation. The second condition is satisfied if at the particular time

- where the other person is a trust, the particular corporation is related (within the meaning of subsection 126(2)) to the trust; and
- where the other person is a partnership, the particular corporation is controlled by a person described in any of subparagraphs 186(0.2)(b)(i), (ii) or (iii) or a combination of such persons. Subparagraph (i) describes the other person (i.e., the partnership) itself. Subparagraph (ii) describes a corporation controlled by the other person (i.e., the partnership). Subparagraph (iii) describes a corporation related (within the meaning of subsection 126(2)) to a corporation controlled by the other person (i.e., the partnership).

Amended subsection (0.2) applies in respect of any property or service acquired, imported or brought into a participating province after May 17, 2019.

Input tax credit

ETA
186(1)

Existing subsection 186(1) applies when a corporation (referred to in this subsection as "the parent") acquires, imports or brings into a participating province property or a service for consumption or use in relation to the shares or indebtedness of another corporation that meets certain conditions. If the conditions of subsection (1) are met, the parent is deemed to have acquired or imported that property or service, or to have brought it into the participating province, in the course of a commercial activity of the parent. This enables the parent to claim input tax credits in respect of that property or service.

Three amendments are made to subsection 186(1).

The first amendment to subsection 186(1) is made to paragraph 186(1)(b), which contains a "commercial operating corporation property test" that the other corporation must meet in order for the parent to benefit from the rule in subsection (1). Under existing subsection (1), this test must be applied at the time that tax in respect of the acquisition, importation or bringing in becomes payable, or is paid without having become payable, by the parent. This test requires that, at that time, all or substantially all of the property of the other corporation is property that

was last acquired or imported by the other corporation for consumption, use or supply by the other corporation exclusively in the course of its commercial activities.

Paragraph 186(1)(b) is amended to provide that the other corporation can meet the "commercial operating corporation property test" at that time if all or substantially all of its property is property that was last manufactured, produced, acquired or imported by it for consumption, use or supply by the other corporation exclusively in the course of its commercial activities.

This first amendment to subsection 186(1) applies in respect of any property or service acquired, imported or brought into a participating province before July 28, 2018 if tax became payable or was paid without having become payable in respect of the acquisition, importation or bringing into the participating province. In respect of any property or service acquired, imported or brought into a participating province after July 27, 2018, this amendment to the "commercial operating corporation property test" is instead incorporated into the term "operating corporation" that is defined in new subsection 186(0.2) (see commentary for that subsection) and through that term incorporated into subsection (1) as amended by the second amendment, which is described below.

The second amendment to subsection 186(1) provides greater precision as to the application of the deeming rule contained in the subsection.

In particular, subsection 186(1), as amended by the second amendment, applies to the acquisition, importation or bringing into a participating province of a particular property or service by a parent at a particular time if all of the following conditions are met at the particular time:

- the parent is a registrant (as defined in subsection 123(1)) and is a corporation resident in Canada;
- a particular corporation is an operating corporation of the parent (within the meaning of subsection 186(0.2)); and
- subsection 186(2) does not apply to the acquisition, importation or bringing in of the particular property or service.

If these conditions are met, amended subsection 186(1) provides that the parent is deemed, for the purpose of determining an input tax credit of the parent, to have acquired or imported the particular property or service or brought it into the participating province, as the case may be, for use in the course of commercial activities of the parent, but only to the extent that paragraph 186(1)(a), (b) or (c) describes the acquisition, importation or bringing in.

Paragraph 186(1)(a) describes cases where the parent acquired or imported the particular property or service, or brought it into the participating province, as the case may be, for any of the following purposes:

- the parent selling or otherwise disposing of units (as newly defined in subsection 186(0.1)) or indebtedness of the particular corporation;

- the parent purchasing or otherwise obtaining units or indebtedness of the particular corporation;
- the parent holding units or indebtedness of the particular corporation (e.g., custodial costs); or
- the particular corporation redeeming, issuing or converting or otherwise modifying units or indebtedness of itself.

This applies, for example, if a parent acquires property in part for the purpose of purchasing units of a particular corporation that is an operating corporation of the parent. In that example, the parent would, for the purposes of claiming an input tax credit, be deemed to have acquired the property in commercial activities of the parent to the extent that the property was acquired for that purpose, provided that all the conditions of subsection 186(1) are met.

Paragraph 186(1)(b) describes cases where the parent acquired or imported the particular property or service, or brought it into the participating province and

- the acquisition, importation or bringing into the participating province, as the case may be, by the parent is for the purpose of issuing or selling units or indebtedness of the parent;
- the parent transfers to the particular corporation (i.e., an operating corporation of the parent corporation) proceeds from the issuance or sale. This transfer is made either by lending money to the particular corporation or by purchasing or otherwise obtaining from the particular corporation units or indebtedness of the particular corporation; and
- the proceeds transferred to the particular corporation are for use by it in the course of its commercial activities.

Where paragraph 186(1)(b) applies, it deems the parent to have acquired the particular property or service or brought it into the participating province, as the case may be, for use in the course of commercial activities of the parent to an extent that is the product determined by multiplying the following three extents:

- the extent to which the acquisition, importation or bringing into the participating province by the parent is for the purpose of issuing or selling units or indebtedness of the parent;
- the extent to which the proceeds from the issuance or sale (meaning the net proceeds determined after deducting the cost of the issuance or sale from its gross proceeds) are transferred to the particular corporation; and
- the extent to which the proceeds that are transferred to the particular corporation are for use by the particular corporation in the course of its commercial activities.

For example, consider a case where a parent acquires legal services, 85 per cent of which are acquired for the purpose of issuing bonds, which in turn generate $1,000,000 in net proceeds for the parent. The parent then transfers $800,000 of those proceeds (i.e., 80 per cent) to an operating corporation of the parent through the purchase of common shares of the operating corporation. From that transfer, $600,000 of the $800,000 (i.e., 75 per cent) are for use by the

operating corporation to purchase equipment used exclusively in the course of its commercial activities and the remaining $200,000 invested in shares of unrelated corporations.

In that case, for the purposes of the parent claiming an input tax credit in respect of the legal services, paragraph 186(1)(b) would apply to deem the extent of the use of the legal services in commercial activities of the parent to be 51 per cent (85 per cent multiplied by 80 per cent multiplied by 75 per cent). This would be dependent on all the conditions of subsection 186(1) being met.

Paragraph 186(1)(c) only applies if, at the particular time the parent acquired, imported or brought into the participating province the particular property or service in question, the parent satisfies a property test. This property test is met if all or substantially all (i.e., 90 per cent or more) of the property of the parent is

- property that was last manufactured, produced, acquired or imported by the parent for consumption, use or supply exclusively in the course of its commercial activities;
- units of operating corporations of the parent;
- indebtedness of operating corporations of the parent; or
- a combination of such property, units or indebtedness.

If the property test is satisfied, paragraph 186(1)(c) describes cases where the parent acquired or imported the particular property or service, or brought it into the participating province, as the case may be, for the purpose of carrying on, engaging in or conducting an activity of the parent, other than an activity described in subparagraphs 186(1)(c)(i) or (ii).

Subparagraph 186(1)(c)(i) describes an activity that is primarily in respect of units or indebtedness of a person that is neither the parent nor an operating corporation of the parent. For example, consider a case where a parent that satisfies the property test acquires investment management services for the purpose of investing in shares generally (i.e., not limited to shares of the parent or of operating corporations of the parent). In that case, because the investment management services were acquired for the purpose of carrying on an activity described in subparagraph 186(1)(c)(i), the services would not be deemed to have been acquired for use in the course of commercial activities of the parent.

Subparagraph 186(1)(c)(ii) describes an activity that is carried on, engaged in or conducted in the course of making an exempt supply by the parent. However, excluded from subparagraph (c)(ii) is an activity that is a financial service (as defined in subsection 123(1), meaning that the activity must be described in any of paragraphs (a) to (m) of the definition and not be excluded by any of paragraphs (n) to (t) of the definition) and that is any of the following activities:

- the lending or borrowing of units or indebtedness of an operating corporation of the parent;
- the issue, granting, allotment, acceptance, endorsement, renewal, processing, variation, transfer of ownership or repayment of units or indebtedness of the parent or an operating corporation of the parent;

- the provision, variation, release or receipt of a guarantee, acceptance or indemnity in respect of units or indebtedness of the parent or an operating corporation of the parent;
- the payment or receipt of money as dividends (other than patronage dividends), interest, principal, benefits, or similar receipt or payment of money in respect of units or indebtedness of the parent or an operating corporation of the parent; or
- the underwriting of units or indebtedness of an operating corporation of the parent.

For example, consider a parent that satisfies the property test and acquires a computer to be used 80 per cent to make exempt supplies of residential units and 20 per cent to pay dividends to its shareholders. In that case, paragraph 186(1)(c) would deem the computer to be acquired 20 per cent for use in the course of commercial activities of the parent. This is because 20 per cent is the extent to which it is acquired for use in paying dividends and neither of the exclusions described in subparagraphs (c)(i) and (ii) would apply to that use. However, paragraph (c) would not deem the computer to be acquired for use in the course of commercial activities of the parent to the remaining 80 per cent extent that it is acquired for use in making exempt supplies of residential units, as this use is excluded by subparagraph (c)(ii).

The second amendment to subsection 186(1) applies to any acquisition, importation or bringing into a participating province of property or a service after July 27, 2018.

The third amendment to subsection 186(1) expands the scope of the subsection by replacing the requirement that the parent must be a corporation by a requirement that the parent must be a corporation, partnership or trust. All the other conditions of subsection (1) continue to apply.

The third amendment to subsection 186(1) applies in respect of any property or service acquired, imported or brought into a participating province after May 17, 2019.

Takeover fees

ETA
186(2)

Existing subsection 186(2) applies in situations where a corporation (referred to in this subsection as the "purchaser") acquires or proposes to acquire all or substantially all of the voting shares of the capital stock of another corporation that is engaged exclusively in commercial activities (the "target corporation"). This enables the purchaser to claim input tax credits for property or services that it acquires in relation to the take-over or proposed take-over.

Existing paragraph (2)(b) contains a "commercial operating corporation property test" that requires that all or substantially all of the property of the target corporation to be property that was acquired or imported by the target corporation for consumption, use or supply by it exclusively in the course of its commercial activities.

Paragraph (2)(b) is amended to provide that the target corporation can meet this "commercial operating corporation property test" if all or substantially all of its property is property that was last manufactured, produced, acquired or imported by it for consumption, use or supply by it exclusively in the course of its commercial activities.

This amendment applies to any acquisition, importation or bringing into a participating province of property or a service in respect of which tax is payable or is paid without having become payable.

Shares, etc., held by corporation

ETA
186(3)

Existing subsection 186(3) applies in cases where a parent corporation holds shares or indebtedness of a particular corporation that is related to the parent. Existing subsection (3) provides that if, at a particular time, the particular corporation meets a "commercial operating corporation property test", its shares and indebtedness held by the parent are treated as property acquired for use exclusively by the parent in commercial activities. The existing "commercial operating corporation property test" requires that, at the particular time, all or substantially all of the property of the particular corporation is property that was acquired or imported by the particular corporation for consumption, use or supply by it exclusively in the course of its commercial activities.

Two amendments are made to subsection 186(3).

The first amendment to subsection 186(3) provides that the particular corporation can meet the "commercial operating corporation property test" at the particular time if all or substantially all of its property is property that was last manufactured, produced, acquired or imported by it for consumption, use or supply by the particular corporation exclusively in the course of its commercial activities.

The first amendment to subsection 186(3) applies in respect of any property or service acquired, imported or brought into a participating province before July 28, 2018 if tax became payable or was paid without having become payable in respect of the acquisition, importation or bringing into the participating province.

The second amendment to subsection 186(3) is consequential to the enactment of new subsections 186(0.1) and (0.2). Subsection (3) is amended to remove the "commercial operating corporation property test" and the requirement that the particular corporation be related to the parent corporation. Instead, those two requirements are incorporated into subsection (3) by reference to the term "operating corporation" that is described by new subsection (0.2). As well, a consequential amendment is made to replace the term "shares of common stock" with "units", which is defined in new subsection (0.1) as being, in respect of a corporation, shares of the capital stock of the corporation.

The second amendment to subsection 186(3) applies in respect of any property or service acquired, imported or brought into a participating province after July 27, 2018.

Clause 107

Subdivision E
Electronic Commerce

This clause amends the Act by adding new Subdivision E of Division II of Part IX of the Act after section 211 of the Act. Subdivision E of Division II sets out rules for the application of the GST/HST in relation to electronic commerce supplies.

Interpretation

ETA
211.1

New section 211.1 of the Act sets out definitions and rules of interpretation that apply in respect of the rules set out in new Subdivision E of Division II of Part IX of the Act.

New section 211.1 comes into force, or is deemed to have come into force, on July 1, 2021.

Definitions

ETA
211.1(1)

New subsection 211.1(1) of the Act defines a number of terms that are used in new Subdivision E of Division II of Part IX of the Act.

accommodation platform

An "accommodation platform" is a digital platform (as defined in subsection 211.1(1)) that facilitates (e.g., through its listing or advertising services) the supply of short-term accommodation situated in Canada by a third-party that is not registered under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration).

accommodation platform operator

An "accommodation platform operator", in respect of the supply of short-term accommodation made through an accommodation platform, is a person that controls or sets the essential elements of the transaction between the supplier and the person acquiring the accommodation, for example, by providing listing services in respect of supplies of short-term accommodation in Canada and setting payment terms and conditions. If no person controls or sets the essential elements of the transaction between the supplier and the person acquiring the accommodation, then the accommodation platform operator in respect of the supply is a person that is involved, directly or through arrangements with third parties, in collecting, receiving or charging the consideration for the supply and transmitting all or part of the consideration to the supplier. A person that is prescribed by regulation is also an accommodation platform operator in respect of the supply (currently no person is proposed to be prescribed). In all cases, an accommodation platform operator in respect of a supply of short-term accommodation cannot be the supplier or an excluded operator (as defined in subsection 211.1(1)) in respect of the supply.

Canadian accommodation related supply

A "Canadian accommodation related supply" is a taxable supply of service, the consideration for which represents a booking fee, administration fee or other similar charge, that is made to a person in connection with a supply of short-term accommodation situated in Canada made to the person.

digital platform

A "digital platform" includes a website, an electronic portal, gateway, store or distribution platform or any other similar electronic interface, but does not include an electronic interface that solely processes payments or a prescribed platform or interface (currently, no platform or interface is proposed to be prescribed).

distribution platform operator

A "distribution platform operator", in respect of a supply of property or a service made through a specified distribution platform (as defined in subsection 211.1(1)), is a person that controls or sets the essential elements of the transaction between the supplier and the recipient. If no person controls or sets the essential elements of the transaction, then the distribution platform operator in respect of the supply is a person that is involved, directly or through arrangements with third parties, in collecting, receiving or charging the consideration for the supply and transmitting all or part of the consideration to the supplier. A person that is prescribed by regulation is also a distribution platform operator in respect of the supply (currently no person is proposed to be prescribed). In all cases, a distribution platform operator in respect of a supply of property or service cannot be the supplier or an excluded operator (as defined in subsection 211.1(1)) in respect of the supply.

electronic filing

The defined term "electronic filing" is used in new Subdivision E of Division II of Part IX of the Act in the context of the filing of a document with the Minister of National Revenue. "Electronic filing" is defined to mean using electronic media in a manner specified by the Minister.

excluded operator

A person is an "excluded operator" in respect of a supply of short-term accommodation made through an accommodation platform or of property or a service made through a specified distribution platform if the person:

- does not set, directly or indirectly, any of the terms and conditions under which the supply is made, is not involved, directly or indirectly, in authorizing the charge to the recipient of the supply in respect of the payment of the consideration for the supply and is not involved, directly or indirectly, in the ordering or delivery of the property or rendering of the service;
- solely provides for the listing or advertising of the property or service or for the redirecting or transferring to a digital platform on which the property or service is offered;

- is solely a payment processor; or
- is a prescribed person (currently, no person is proposed to be prescribed).

The term "excluded operator" is relevant to the definitions "accommodation platform operator" and "distribution platform operator" in subsection 211.1(1). In particular, a person that is an excluded operator in respect of a supply of short-term accommodation made through an accommodation platform cannot be an accommodation platform operator in respect of the supply. Similarly, a person that is an excluded operator in respect of a supply of property or a service made through a specified distribution platform cannot be a distribution platform operator in respect of the supply.

false statement

The term "false statement" is defined so that it also includes a statement that is misleading because of an omission from the statement.

qualifying tangible personal property supply

A "qualifying tangible personal property supply" is a supply made by way of sale of tangible personal property that is, under the agreement for the supply, to be delivered or made available to the recipient in Canada, other than

- an exempt or zero-rated supply;
- a supply of tangible personal property sent by mail or courier to the recipient at an address in Canada from an address outside Canada by the supplier or by another person acting on behalf of the supplier, if the supplier maintains evidence satisfactory to the Minister of National Revenue that the property was so sent;
- a supply that is deemed under subsection 180.1(2) of the Act to have been made outside Canada (subsection 180.1(2) provides that a supply of tangible personal property made to an individual on board an aircraft on an international flight or a vessel on an international voyage is made outside Canada if physical possession of the property is transferred to the individual on board the aircraft or vessel); and
- a prescribed supply (currently, no supply is proposed to be prescribed).

specified Canadian recipient

A "specified Canadian recipient" is a recipient of a supply where the recipient has not provided to the supplier, or to a distribution platform operator (as defined in subsection 211.1(1)), evidence satisfactory to the Minister of National Revenue of being registered for the GST/HST under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration) and the usual place of residence of the recipient is in Canada.

specified distribution platform

A "specified distribution platform" is a digital platform (as defined in subsection 211.1(1)) through which a person (e.g., a distribution platform operator) facilitates the making of specified

supplies (as defined in subsection 211.1(1)) by another person that is a specified non-resident supplier (as defined in subsection 211.1(1)) or the making of qualifying tangible personal property supplies (as defined in subsection 211.1(1)) by another person that is not registered under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration).

specified non-resident supplier

A "specified non-resident supplier" is a non-resident person that does not make supplies in the course of carrying on a business in Canada and that is not registered under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration).

specified supply

A "specified supply" is a taxable supply of intangible personal property or a service other than:

- a supply of intangible personal property that may not be used in Canada, that relates to real property situated outside of Canada, or that relates to tangible personal property ordinarily situated outside of Canada;
- a supply of a service that may only be consumed or used outside of Canada, that is in relation to real property situated outside of Canada, or that is rendered in connection with criminal, civil or administrative litigation (other than a service rendered before the commencement of such litigation) that is under the jurisdiction of a court or other tribunal established under the laws of a country other than Canada, or in the nature of an appeal from a decision of a court or other tribunal established under the laws of a country other than Canada;
- a supply of a service that is deemed under subsection 180.1(2) of the Act to have been made outside Canada (subsection 180.1(2) provides that a supply of a service made to an individual on board an aircraft on an international flight or a vessel on an international voyage is made outside Canada if the service is wholly performed on board the aircraft or vessel); and
- a supply of a service made to a person in connection with a supply of short-term accommodation made to the person and the consideration for which represents a booking fee, administration fee or other similar charge; and
- a prescribed supply (currently, no supply is proposed to be prescribed).

Registration

ETA
211.1(2)

New subsection 211.1(2) of the Act clarifies that in Part IX of the Act, other than new Subdivision E of Division II of Part IX, and in Schedules V to X to the Act, a reference to registration does not include registration under new Subdivision E of Division II of Part IX.

Residence of a recipient of a supply

ETA
211.11

New section 211.11 of the Act sets out rules concerning the residence of a recipient of a supply for the purposes of new Subdivision E of Division II of Part IX of the Act. In particular, these rules determine whether, for the purposes of this Subdivision, the usual place of residence of a recipient of a supply is in Canada and, if it is in Canada, whether the recipient's usual place of residence is in a particular participating province or is not in any participating province.

New section 211.11 comes into force, or is deemed to have come into force, on July 1, 2021.

Residence indicators

ETA
211.11(1)

New subsection 211.11(1) of the Act specifies, for the purposes of Subdivision E of Division II of Part IX of the Act, the indicators that may be used for the purposes of determining the usual place of residence of a recipient of a supply. These indicators are the following:

- the home address of the recipient;
- the business address of the recipient;
- the billing address of the recipient;
- the Internet Protocol address of the device used by the recipient or similar data obtained through a geolocation method;
- payment-related information of the recipient or other information used by the payment system;
- the information from a subscriber identity module, or other similar module, used by the recipient;
- the place at which a landline communication service is supplied to the recipient; and
- any other relevant information that the Minister of National Revenue may specify.

Indicator — Canada and provinces

ETA
211.11(2)

New subsection 211.11(2) of the Act specifies that an indicator obtained in connection with a supply is classified for the purposes of section 211.11 of the Act as:

- a Canadian indicator in respect of the recipient of the supply if the indicator reasonably supports the conclusion that the usual place of residence of the recipient is situated in Canada;

- a foreign indicator in respect of the recipient of the supply if the indicator reasonably supports the conclusion that the usual place of residence of the recipient is situated outside Canada;
- a participating province indicator in respect of the recipient of the supply if the indicator reasonably supports the conclusion that the usual place of residence of the recipient is situated in a participating province; and
- a non-participating province indicator in respect of the recipient of the supply if the indicator reasonably supports the conclusion that the usual place of residence of the recipient is situated in a non-participating province.

Usual place of residence — Canada

ETA
211.11(3)

New subsection 211.11(3) of the Act sets out rules for the purpose determining whether the usual place of residence of a recipient of a supply is in Canada for the purposes of Subdivision E of Division II of Part IX of the Act. In this respect, the usual place of residence of the recipient of a supply is situated in Canada if the supplier or a distribution platform operator in respect of the supply has:

- in the ordinary course of their operations, obtained two or more Canadian indicators in respect of the recipient (as determined under subsection 211.11(2) of the Act) and has not obtained more than one foreign indicator (as determined under that subsection) in respect of the recipient;
- in the ordinary course of their operations, obtained two or more Canadian indicators in respect of the recipient and two or more foreign indicators in respect of the recipient but the Canadian indicators, in the circumstances, are more reliable in determining a place of residence; or
- if neither of the above situations apply, determined that the usual place of residence of the recipient is situated in Canada based on any method that the Minister of National Revenue may allow.

Usual place of residence — participating province

ETA
211.11(4) to 211.11(6)

If the usual place of residence of the recipient of a supply is situated in Canada (as determined under subsection 211.11(3) of the Act), new subsections 211.11(4) to 211.11(6) of the Act set out rules for determining whether the usual place of residence of the recipient is in a participating province for the purposes of Subdivision E of Division II of Part IX of the Act.

Under subsection 211.11(4) of the Act, if the supplier or a distribution platform operator in respect of a supply has obtained in the ordinary course of their operations one or more addresses

that are a home or business address of the recipient of the supply in a participating province and has not obtained in the ordinary course of their operations the same number or a greater number of addresses that are a home or business address of the recipient in a non-participating province, then the usual place of residence of the recipient is to be determined to be in a particular participating province according to one of the following two rules, if either one is applicable:

- if those addresses of the recipient that are in a participating province are all in the same participating province, then the usual place of residence of the recipient is determined to be in that participating province; and
- if those addresses of the recipient that are in a participating province are in two or more participating provinces and if the tax rates for those participating provinces are the same, then the usual place of residence of the recipient is determined to be in the participating province among those participating provinces that has the largest population.

If the usual place of residence of the recipient of a supply is not determined under subsection 211.11(4) of the Act to be in a participating province then, under subsection 211.11(5) of the Act, where the supplier or a distribution platform operator in respect of the supply has obtained in the ordinary course of their operations one or more participating province indicators in respect of the recipient and has not obtained in the ordinary course of their operations the same number or a greater number of non-participating province indicators in respect of the recipient that are as reliable in determining a place of residence as those participating province indicators, the usual place of residence of the recipient is determined to be situated in a particular participating province:

- where those participating province indicators are all in respect of the particular participating province;
- where those participating province indicators are in respect of the particular participating province and one or more other participating provinces but the participating province indicators in respect of the particular participating province are, in the circumstances, more reliable in determining a place of residence;
- where the previous two situations do not apply and the supplier or distribution platform operator has determined that the usual place of residence of the recipient is situated in the particular participating province based on any method that the Minister of National Revenue may allow; or
- where the previous three situations do not apply, those participating province indicators are in respect of two or more participating provinces and either the particular participating province is the province among those participating provinces for which the tax rate is the lowest or, if the tax rates for those participating provinces are the same, the particular participating province that has the largest population.

If the usual place of residence of the recipient of a supply is not determined under subsection 211.11(4) or 211.11(5) of the Act to be in a participating province then, under subsection 211.11(6) of the Act, if the supplier or a distribution platform operator in respect of the supply

has determined that the usual place of residence of the recipient is situated in a particular participating province based on any method that the Minister of National Revenue may allow, then the usual place of residence of the recipient is situated in the particular participating province.

Registration

ETA
211.12

New section 211.12 of the Act sets out rules concerning the registration of a person for the purposes of new Subdivision E of Division II of Part IX of the Act.

New section 211.12 of the Act comes into force, or is deemed to have come into force, on July 1, 2021. For the purposes of applying new section 211.12 of the Act in respect of a supply made before July 2021 if all or part of the consideration for the supply becomes due, or is paid without having become due, after June 2021, the supply is deemed to have been made on July 1, 2021.

Threshold amount

ETA
211.12(1)

New subsection 211.12(1) of the Act sets out that, for the purposes of section 211.12 of the Act, the threshold amount of a particular person for a period (which is used for determining whether the person is required to register under new Subdivision E of Division II of Part IX of the Act) is the total of all amounts that is, or that could reasonably be expected to be, the value of the consideration for a supply that is, or could reasonably be expected to be:

- a specified supply (other than a zero-rated supply) made during that period by the particular person to a specified Canadian recipient, other than a supply that is deemed to have been made by the particular person under
  - paragraph 211.13(1)(a) of the Act, which concerns a specified supply made through a specified distribution platform that is deemed to have been made by a distribution platform operator that is registered under Subdivision E of Division II, or
  - subparagraph 211.13(2)(a)(i) of the Act, which concerns a specified supply made through a specified distribution platform that is deemed to have been made by a distribution platform operator that is registered under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration),
- a Canadian accommodation related supply made during that period by the particular person to another person that is not registered under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration),
- if the particular person acts as a distribution platform operator in respect of a specified distribution platform during that period (see below), a specified supply (other than a zero-rated supply) made during that period through the specified distribution platform to a

specified Canadian recipient where the supply is made by a specified non-resident supplier and any person is a distribution platform operator in respect of the supply,

- for the purposes of this rule, a person acts as a distribution platform operator in respect of a distribution platform during that period if the person is a distribution platform operator in respect of any specified supply that is made during that period through the specified distribution platform by any specified non-resident supplier to any specified Canadian recipient, or

– if the particular person acts as an accommodation platform operator in respect of an accommodation platform during that period (see below), a taxable supply of short-term accommodation situated in Canada made during that period through the accommodation platform to a recipient that is not registered under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration) where the supply is made by a person that is not registered under that Subdivision and any person is an accommodation platform operator in respect of the supply,

- for the purposes of this rule, a person acts as an accommodation platform operator in respect of an accommodation platform during that period if the person is an accommodation platform operator in respect of any taxable supply of short-term accommodation situated in Canada made during that period through the accommodation platform by any person that is not registered under Subdivision D of Division V of Part IX of the Act to any recipient that is not registered under that Subdivision.

As set out under paragraph 211.12(1)(c) of the Act, the determination of the threshold amount for a particular person that is a distribution platform operator during that period in respect of a specified supply made through a specified distribution platform by a specified non-resident supplier to a specified Canadian recipient would include such specified supplies made during that period through the specified distribution platform by any distribution platform operator. This generally ensures that each distribution platform operator accounts for the specified supplies of other operators (generally being related companies) in the determination of their threshold amount. Similarly, as set out under paragraph 211.12(1)(d) of the Act, the determination of the threshold amount for a particular person that is an accommodation platform operator during that period in respect of a supply of short-term accommodation situated in Canada made by a person not registered under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration) to a recipient also not registered under that Subdivision and made through an accommodation platform would include such supplies of short-term accommodation made during that period through the accommodation platform by any accommodation platform operator (generally being related companies).

Registration required

ETA
211.12(2)

New subsection 211.12(2) of the Act requires a person (other than a registrant or a person that carries on a business in Canada) that is, at any time, a specified non-resident supplier, a distribution platform operator or an accommodation platform operator to be registered, at that time, under new Subdivision E of Division II of Part IX of the Act if the threshold amount of the person for any period of 12 months (other than a period that begins before July 2021) that includes that time exceeds $30,000.

For example, when determining if a person is required to be registered on July 1, 2021, only the 12-month period that begins on July 1, 2021 and that ends on June 30, 2022 would have to be considered. However, when determining if a person is required to be registered on say August 1, 2022, all the 12-month periods that include that day (such as the 12-month period that begins on that day and the 12-month period that ends on that day) would have to be considered and the person would be required to be registered on that day if the threshold amount of the person for any of those 12-month periods exceeds $30,000.

Application

ETA
211.12(3)

Where a person is required under new subsection 211.12(2) of the Act to be registered under new Subdivision E of Division II of Part IX of the Act, new subsection 211.12(3) of the Act sets out that the person shall make an application for registration in prescribed form containing prescribed information and filed with the Minister of National Revenue by way of electronic filing on or before the first day on which the person is required to be registered under that Subdivision.

Registration

ETA
211.12(4)

New subsection 211.12(4) of the Act specifies that the Minister of National Revenue may register any person that applies for registration under new subsection 211.12(3) of the Act and, upon doing so, notify the person of the assigned registration number and the effective date of the registration.

Notice of intent

ETA
211.12(5)

New subsection 211.12(5) of the Act specifies that if the Minister of National Revenue has reason to believe that a person that is not registered under new Subdivision E of Division II of

Part IX of the Act is required to be registered under new subsection 211.12(2) of the Act, and has failed to apply for registration under new subsection 211.12(3) of the Act as and when required, the Minister may send a notice in writing to the person indicating that the Minister proposes to register the person under new subsection 211.12(7) of the Act.

Representations to Minister

ETA
211.12(6)

Where a person receives a notice of intent issued under new subsection 211.12(5) of the Act by the Minister of National Revenue, new subsection 211.12(6) of the Act specifies that the person shall apply for registration under new subsection 211.12(3) of the Act, or establish to the satisfaction of the Minister that the person is not required to be registered under new subsection 211.12(2) of the Act.

Registration by Minister

ETA
211.12(7)

New subsection 211.12(7) of the Act specifies that if, after 60 days after the particular day on which a notice of intent issued under new subsection 211.12(5) of the Act was sent by the Minister of National Revenue to a person, the person has not applied for registration under new subsection 211.12(3) of the Act and the Minister is not satisfied that the person is not required to be registered under new subsection 211.12(2) of the Act, the Minister may register the person under new Subdivision E of Division II of Part IX of the Act and, upon doing so, shall assign a registration number to the person and notify the person in writing of the registration number and the effective date of the registration. The effective date of registration is not to be earlier than 60 days after the particular day.

Cessation of registration

ETA
211.12(8)

New subsection 211.12(8) of the Act sets out that if a person is registered under new Subdivision E of Division II of Part IX of the Act and on a particular day the person becomes registered for GST/HST under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration), the person's registration under Subdivision E of Division II of Part IX of the Act ceases on the particular day.

Cancellation on notice

ETA
211.12(9)

New subsection 211.12(9) of the Act specifies that the Minister of National Revenue may, upon giving reasonable written notice to a person registered under new Subdivision E of Division II of

Part IX of the Act, cancel the person's registration if the Minister is satisfied that the registration is not required under that Subdivision.

Cancellation on request

ETA
211.12(10)

New subsection 211.12(10) of the Act specifies that on request from a person registered under new Subdivision E of Division II of Part IX of the Act, the Minister of National Revenue shall cancel the registration of the person if satisfied that the registration is not required under that Subdivision.

Cancellation — notification

ETA
211.12(11)

New subsection 211.12(11) of the Act specifies that where the Minister of National Revenue cancels the registration of a person under new subsection 211.12(9) or (10) of the Act, the Minister shall notify the person of the cancellation and its effective date.

Public disclosure

ETA
211.12(12)

New subsection 211.12(12) of the Act specifies that, despite section 295 of the Act that generally limits the provision of confidential information by an official or other representative of a government other than in certain circumstances specified under that section, the Minister of National Revenue may make available to the public the names of persons registered under new Subdivision E of Division II of Part IX of the Act (including any trade name or other name used by these persons), their registration numbers and the effective date of the registration, and, if a person ceases to be registered under that Subdivision, the date on which the person ceases to be registered.

Specified supplies and supplies of short term accommodation

ETA
211.13

New section 211.13 of the Act sets out rules that apply in respect of specified supplies made through specified distribution platforms and in respect of supplies of short-term accommodation made through accommodation platforms.

Subsections 211.13(1) to (4) of the Act apply in respect of supplies made after June 2021, and in respect of supplies made before July 2021 if all or part of the consideration for the supply becomes due, or is paid without having become due, after June 2021. Subsection 211.13(5) comes into force, or is deemed to have come into force, on July 1, 2021.

For the purposes of applying new section 211.13 in respect of a supply made before July 2021 if all or part of the consideration for the supply becomes due, or is paid without having become due, after June 2021, the supply is deemed to have been made on July 1, 2021. Supplies to which subsections 211.13(3) and (4) apply are also subject to certain transitional rules, which are described in the notes for those subsections below.

Specified supply — operator

ETA
211.13(1)

New subsection 211.13(1) of the Act sets out rules that apply in respect of specified supplies made through specified distribution platforms, if certain conditions are met. Subsection 211.13(1) applies if a specified supply is made through a specified distribution platform by a specified non-resident supplier to a specified Canadian recipient and if a distribution platform operator in respect of the specified supply is registered under Subdivision E of Division II of Part IX of the Act. If these conditions are met then the following rules apply for the purposes of Part IX of the Act (other than section 211.1 of the Act, paragraph 211.12(1)(c) of the Act and section 240 of the Act):

- the specified supply is deemed to have been made by the distribution platform operator and not by the specified non-resident supplier; and
- the distribution platform operator is deemed not to have made a supply to the specified non-resident supplier of services relating to the specified supply.

Specified supply — registered operator

ETA
211.13(2)

New subsection 211.13(2) of the Act sets out rules that apply in respect of specified supplies made through specified distribution platforms, if certain conditions are met. The first condition is met if a specified supply is made by a specified non-resident supplier through a specified distribution platform of a distribution platform operator that is registered for the GST/HST under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration) or that carries on a business in Canada. The second condition is met if, in the absence of section 143 of the Act (which generally concerns a supply by a non-resident person that may be deemed to be made outside of Canada), the specified supply would have been a supply made in Canada. If these conditions are met then the following rules apply:

- if the distribution platform operator is registered under Subdivision D of Division V
  - the specified supply is deemed, for the purposes of Part IX of the Act (other than section 211.1 of the Act, paragraph 211.12(1)(c) of the Act and section 240 of the Act), to have been made by the distribution platform operator and not by the specified non-resident supplier, and

    - the distribution platform operator is deemed, for the purposes of Part IX (other than section 211.1, paragraph 211.12(1)(c) and section 240), not to have made a supply to the specified non-resident supplier of services relating to the specified supply; and

– in any other case, the specified supply is deemed, for the purposes of sections 148 (which sets out the rules for determining whether a supplier qualifies as a "small supplier" for the purposes of Part IX of the Act) and 249 of the Act, to have been made by the distribution platform operator and not by the specified non-resident supplier.

Accommodation – operator

ETA
211.13(3)

New subsection 211.13(3) of the Act sets out rules that apply in respect of supplies of short-term accommodation made through accommodation platforms, if certain conditions are met. The first condition is met if a taxable supply of short-term accommodation situated in Canada is made by a particular person that is not registered for the GST/HST under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration) through an accommodation platform of an accommodation platform operator that is registered under Subdivision E of Division II of Part IX of the Act. The second condition is met if the recipient of the accommodation supply has not provided to the accommodation platform operator evidence satisfactory to the Minister of National Revenue that the recipient is registered for the GST/HST under Subdivision D of Division V. If these conditions are met then the following rules apply for the purposes of Part IX of the Act (other than sections 148 and 211.1 of the Act, paragraph 211.12(1)(d) of the Act and sections 240 and 249 of the Act):

– the particular supply (of the short-term accommodation to the recipient) is deemed to have been made by the accommodation platform operator and not by the particular person; and

– the accommodation platform operator is deemed not to have made a supply to the particular person of services relating to facilitating the particular supply.

If new subsection 211.13(3) applies in respect of a supply of short-term accommodation and if part of the consideration for the supply becomes due, or is paid without having become due, before July 2021 and part of the consideration for the supply becomes due, or is paid without having become due, after June 2021, then for the purposes of Division II of Part IX of the Act, the part of the consideration that becomes due, or is paid without having become due, before July 2021 is not to be included in calculating the tax payable in respect of the supply.

Accommodation – registered operator

ETA
211.13(4)

New subsection 211.13(4) of the Act sets out rules that apply if a taxable supply of short-term accommodation situated in Canada is made by a particular person that is not registered for the GST/HST under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST

registration) through an accommodation platform of an accommodation platform operator that is carrying on a business in Canada or that is registered under that Subdivision. If these conditions are met then the following rules apply for the purposes of Part IX of the Act (other than for the purposes of applying sections 148 and 249 of the Act in respect of the particular person and other than for the purposes of section 211.1 of the Act, paragraph 211.12(1)(d) of the Act and section 240 of the Act),

- the particular supply (of the short-term accommodation to the recipient) is deemed to have been made by the accommodation platform operator and not by the particular person; and
- the accommodation platform operator is deemed not to have made a supply to the particular person of services relating to facilitating the particular supply.

If new subsection 211.13(4) applies in respect of a supply of short-term accommodation and if part of the consideration for the supply becomes due, or is paid without having become due, before July 2021 and part of the consideration for the supply becomes due, or is paid without having become due, after June 2021, then for the purposes of Division II of Part IX of the Act, the part of the consideration that becomes due, or is paid without having become due, before July 2021 is not to be included in calculating the tax payable in respect of the supply.

Joint and several, or solidary, liability

ETA
211.13(5)

New subsection 211.13(5) of the Act sets out rules that apply, if certain conditions are met, in connection with the application of the deeming rules contained in subsections 211.13(1) to (4) of the Act. The first condition is met if a particular person is deemed under paragraph 211.13(1)(a), subparagraph 211.13(2)(a)(i) or paragraph 211.13(3)(a) or 211.13(4)(a) not to have made a supply and another person is deemed to have made the supply. The second condition is met if the particular person made a false statement to the other person and the false statement is relevant to the determination of whether the other person is required to collect tax in respect of the supply or the determination of the amount of tax that the other person is required to collect in respect of the supply. If these conditions are met then the rules in paragraphs 211.13(5)(a) and (b) apply. The rules in paragraph 211.13(5)(c) will apply if the additional conditions contained in that paragraph are also met.

Paragraph (a) provides that the particular person and the other person are jointly and severally, or solidarily, liable for all obligations under Part IX of the Act (referred to in subsection 211.13(5) as the "obligations in respect of the supply") that arise upon, or as a consequence of,

- the tax in respect of the supply becoming collectible by the other person, and
- a failure to account for or pay as and when required under Part IX an amount of net tax of the other person, or an amount required under section 230.1 of the Act to be paid by the other person, that is reasonably attributable to the supply.

Paragraph (b) provides that the Minister of National Revenue may assess the particular person for any amount for which the particular person is liable under subsection 211.13(5) and sections 296 to 311 of the Act apply with any modifications that the circumstances may require.

Paragraph (c) will apply if the certain additional conditions are met. The first such condition is that other person did not know and could not reasonably be expected to have known, that the particular person made a false statement and that the other person relied in good faith on the false statement. The second such condition is met if, because of the other person's reliance on the false statement, the other person did not charge, collect or remit all the tax in respect of the supply that the other person was required to charge, collect or remit. If these conditions are met then, despite section 296 of the Act, the Minister of National Revenue is not to assess the other person for any obligations in respect of the supply in excess of the obligations in respect of the supply that arise upon or as a consequence of the other person having charged, collected or remitted an amount of tax in respect of the supply.

Supply – Canada and participating province

ETA
211.14

New section 211.14 of the Act sets out rules in respect of specified supplies made to specified Canadian recipients and in respect of Canadian accommodation related supplies.

Section 211.14 applies in respect of supplies made after June 2021, and in respect of supplies made before July 2021 if all or part of the consideration for the supply becomes due, or is paid without having become due, after June 2021.

For the purposes of applying new section 211.14 in respect of a supply made before July 2021 if all or part of the consideration for the supply becomes due, or is paid without having become due, after June 2021, the supply is deemed to have been made on July 1, 2021.

If section 211.14 applies in respect of a specified supply or a Canadian accommodation related supply, if paragraph 143(1)(c) of the Act does not apply in respect of the supply and if part of the consideration for the supply becomes due, or is paid without having become due, before July 2021 and part of the consideration for the supply becomes due, or is paid without having become due, after June 2021, then the following rules apply:

- for the purposes of Division II of Part IX of the Act, the part of the consideration that becomes due, or is paid without having become due, before July 2021 is not to be included in calculating the tax payable in respect of the supply; and
- for the purposes of Division IV of Part IX of the Act, the supply is deemed to be made outside Canada and the part of the consideration that becomes due, or is paid without having become due, after June 2021 is not to be included in calculating the tax payable in respect of the supply

Supply — Canada

ETA
211.14(1)

New subsection 211.14(1) of the Act applies, despite paragraphs 136.1(1)(d) and (2)(d) of the Act, subsection 142(2) of the Act and section 143 of the Act, if a person registered under Subdivision E of Division II of Part IX of the Act makes a specified supply to a specified Canadian recipient or makes a Canadian accommodation related supply to a recipient that has not provided to the person evidence satisfactory to the Minister of National Revenue that the recipient is registered for the GST/HST under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration). If these conditions are met then the supply is deemed for the purposes of Part IX of the Act to be made in Canada and, in the case of a Canadian accommodation related supply that is included in Schedule VI to the Act, the supply is deemed not to be included in that Schedule.

Supply — Canada

ETA
211.14(2)

New subsection 211.14(2) of the Act applies, despite paragraph 136.1(2)(d) of the Act, subsection 142(2) of the Act and section 143 of the Act, if a person that is registered for the GST/HST under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration) or that is carrying on a business in Canada makes a Canadian accommodation related supply. If these conditions are met then the supply is deemed for the purposes of Part IX of the Act to be made in Canada and, if the supply is included in Schedule VI to the Act, the supply is deemed not to be included in that Schedule.

Specified supply — participating province

ETA
211.14(3)

New subsection 211.14(3) of the Act applies, despite section 144.1 of the Act (which sets out rules for determining whether a supply is made in a province), if a specified supply (other than a supply of intangible personal property, or a service, that relates to real property) is deemed to be made in Canada under subsection 211.14(1) of the Act. If these conditions are met then the following rules apply for the purposes of Part IX of the Act:

- if the usual place of residence of the specified Canadian recipient is located in a participating province, the supply is deemed to be made in the participating province; and
- in any other case, the supply is deemed to be made in a non-participating province.

Canadian accommodation related supply — participating province

ETA
211.14(4)

New subsection 211.14(4) of the Act applies, despite section 144.1 of the Act (which sets out rules for determining whether a supply is made in a province), if a Canadian accommodation related supply is deemed to be made in Canada under subsection 211.14(1) or (2) of the Act. If these conditions are met then the supply is deemed for the purposes of Part IX of the Act to be made in the province in which the accommodation is situated.

Billing Agent

ETA
211.15

New subsection 211.15 of the Act applies if a particular person that is registered under Subdivision E of Division II of Part IX of the Act makes an election in respect of a supply under subsection 177(1.1) of the Act with a registrant described in subsection 177(1.11) of the Act. If these conditions are met then the registrant is deemed, for the purposes of Part IX of the Act, not to have made a supply to the particular person of services of acting as an agent described in subsection 177(1.11) in respect of the supply.

Section 211.15 comes into force, or is deemed to have come into force, on July 1, 2021.

Disclosure of tax

ETA
211.16

New section 211.16 of the Act sets out that a person registered for the GST/HST under Subdivision E of Division II of Part IX of the Act and that is required under section 221 of the Act to collect tax in respect of a supply shall indicate to the recipient, in a manner satisfactory to the Minister of National Revenue:

- the consideration paid or payable by the recipient for the supply and the tax payable in respect of the supply; or
- that the amount paid or payable by the recipient for the supply includes the tax payable in respect of the supply.

Section 211.16 comes into force, or is deemed to have come into force, on July 1, 2021.

Restrictions

ETA
211.17

New section 211.17 of the Act sets out restrictions, subject to certain exceptions, related to the amounts that are credited, paid, granted or allowed under the Act or any other Act of Parliament.

Section 211.17 comes into force, or is deemed to have come into force, on July 1, 2021.

Restrictions

ETA
211.17(1)

New subsection 211.17(1) of the Act specifies that no amount of an input tax credit, rebate, refund or remission in respect of tax shall be credited, paid, granted or allowed under the Act or any other Act of Parliament to the extent that the amount can reasonably be regarded as determined, directly or indirectly, in relation to an amount of tax that is collected, or that is required to be collected, by a person required to be registered for the GST/HST under Subdivision E of Division II of Part IX of the Act.

Exception

ETA
211.17(2)

New subsection 211.17(2) of the Act sets out circumstances to which subsection 211.17(1) of the Act does not apply. Paragraph 221.17(2)(a) provides that subsection (1) does not apply to a rebate, refund or remission in relation to an amount that a person may

- deduct under subsection 231(1), 232(3) or 234(3) of the Act in determining the net tax of the person for a reporting period of the person,
- claim as a rebate under section 259 or 259.1 of the Act, or
- claim as a rebate under section 261 of the Act in respect of an amount that is collected as or on account of tax from the person at a time when the person is not registered under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration).

Paragraph 221.17(2)(b) provides that subsection (1) does not apply for the purposes of subsections 232(1) and (2) of the Act (regarding an adjustment or refund of an amount charged to, or collected from, a person as or on account of tax). Paragraph 221.17(2)(c) provides that subsection (1) does not apply for prescribed purposes (currently no purpose is proposed to be prescribed).

Returns and reporting periods

ETA
211.18

New section 211.18 of the Act sets out rules for persons registered under Subdivision E of Division II of Part IX of the Act relating to reporting periods and the requirement to file returns.

Section 211.18 comes into force, or is deemed to have come into force, on July 1, 2021.

Return

ETA
211.18(1)

New subsection 211.18(1) of the Act specifies that, despite subsection 238(2) of the Act, every person registered under Subdivision E of Division II of Part IX of the Act shall file a return with the Minister of National Revenue by way of electronic filing for each reporting period of the person within one month after the end of the reporting period.

Reporting period

ETA
211.18(2)

New subsection 211.18(2) of the Act applies despite section 245 of the Act (which sets out the general rules for determining a registrant's reporting period) and section 251 of the Act (which sets out rules relating to reporting periods where a person becomes or ceases to be a registrant) and is subject to subsections 211.18(3) and (4) of the Act. Subsection 211.18(2) specifies that the reporting period of a person registered under Subdivision E of Division II of Part IX of the Act is a calendar quarter.

Becoming registered

ETA
211.18(3)

New subsection 211.18(3) of the Act sets out that two separate reporting periods of a person are established when the person becomes registered under Subdivision E of Division II of Part IX the Act on a particular day. Paragraph 211.18(3)(a) provides that the first of those reporting periods is the period beginning on the first day of the reporting period of the person, as otherwise determined under section 245 of the Act, that includes the particular day and ends on the day immediately preceding the particular day. Paragraph 211.18(3)(b) provides that a separate reporting period then follows that is the period beginning on the particular day and ending on the last day of the calendar quarter that includes that particular day.

Cessation of registration

ETA
211.18(4)

New subsection 211.18(4) of the Act sets out that two separate reporting period of a person are established when the person ceases to be registered under Subdivision E of Division II of Part IX of the Act on a particular day. Paragraph 211.18(4)(a) provides that the first of those reporting periods is the period beginning on the first day of the calendar quarter that includes the particular day and ending on the day immediately preceding the particular day. Paragraph 211.16(4)(b) provides that a separate reporting period then follows that is the period beginning on the particular day and ending on the last day of the reporting period of the person, as otherwise determined under section 245 of the Act, that includes the particular day.

Payment or remittance of amounts

ETA
211.19

New section 211.19 of the Act sets out the rules for the payment or remittance of amounts to the Receiver General by persons registered for the GST/HST under new Subdivision E of Division II of Part IX of the Act.

Section 211.19 comes into force, or is deemed to have come into force, on July 1, 2021.

Definition of "qualifying foreign currency"

ETA
211.19(1)

New subsection 211.19(1) of the Act specifies that for the purpose of section 211.19, a "qualifying foreign currency" refers to the U.S. dollar, the euro or another foreign currency that the Minister of National Revenue may specify.

Manner of payment

ETA
211.19(2)

Under new subsection 211.19(2) of the Act, every person registered, or required to be registered, under new Subdivision E of Division II of Part IX of the Act that is required under subsection 278(2) of the Act to pay or remit an amount to the Receiver General shall pay or remit that amount in the manner determined by the Minister of National Revenue.

Non application – subsection 278(3)

ETA
211.19(3)

New subsection 211.19(3) of the Act specifies that persons registered, or required to be registered, under new Subdivision E of Division II of Part IX of the Act are not subject to the requirement of subsection 278(3) of the Act that the payment or remittance to the Receiver General of an amount of $50,000 or more be made through a financial institution that is described in subsection 278(3).

Foreign currency — no designation

ETA
211.19(4)

New subsection 211.19(4) of the Act sets out the rules for the conversion, from a foreign currency to Canadian currency, of the value of the consideration in respect of certain supplies. Subsection 211.19(4) applies if tax is collected, or required to be collected, in respect of a supply made by a person registered, or required to be registered, under new Subdivision E of Division II of Part IX of the Act and if the value of the consideration for the supply is expressed in a foreign

currency. Specifically, the consideration for the supply is to be converted into Canadian currency using the exchange rate applicable on the last day of the reporting period in which the tax is collected, or required to be collected, or using any other conversion method that the Minister of National Revenue may allow. Subsection 211.19(4) applies despite section 159 of the Act, which specifies that consideration expressed in a foreign currency is to be converted to the Canadian dollar equivalent on the date the consideration is payable. Subsection 211.19(4) is also subject to subsection 211.19(7) of the Act, which sets out the rules that apply if a person is designated by the Minister to determine their net tax for a reporting period in a qualifying foreign currency.

Foreign currency — application

ETA
211.19(5)

New subsection 211.19(5) of the Act enables a person registered under new Subdivision E of Division II of Part IX of the Act to apply to the Minister of National Revenue to be designated as a person eligible to determine the net tax for their reporting period in a qualifying foreign currency. The application is to be made in prescribed form containing prescribed information and filed in prescribed manner with the Minister. The Minister may require that the application be filed by way of electronic filing.

Foreign currency — authorization

ETA
211.19(6)

New subsection 211.19(6) of the Act specifies that the Minister of National Revenue may, subject to such conditions as the Minister may at any time impose, designate a person from whom an application is received under subsection 211.19(5) of the Act as a person eligible to determine the net tax for their reporting period in the qualifying foreign currency indicated by the Minister.

Foreign currency — designated persons

ETA
211.19(7)

New subsection 211.19(7) of the Act sets out the rules for the conversion of net tax or other amounts to be remitted or paid to the Receiver General to a qualifying foreign currency where a person is designated under subsection 211.19(6) of the Act as a person eligible to determine their net tax in the qualifying foreign currency indicated by the Minister of National Revenue in respect of a reporting period. Subsection 211.19(7) specifies that the net tax for the reporting period and any amount to be remitted or paid by the person to the Receiver General in respect of the reporting period is to be converted into the qualifying foreign currency indicated by the Minister using the exchange rate applicable on the last day of the reporting period or using any other conversion method that the Minister may allow. Subsection 211.19(7) applies despite section 159 of the Act, which specifies that consideration expressed in a foreign currency is to be converted to the Canadian dollar equivalent on the date the consideration is payable.

Prohibition

ETA
211.2

New section 211.2 of the Act prohibits any person, in respect of a supply of property or a service made to a person who is a consumer of the property or service, from supplying evidence that the person is registered under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration), such as a GST/HST registration number, to another person that is registered, or required to be registered, under new Subdivision E of Division II of Part IX of the Act.

Section 211.2 comes into force, or is deemed to have come into force, on July 1, 2021.

Information return — accommodation platform operator

ETA
211.21

New section 211.21 of the Act requires a person (other than a prescribed person) that, at any time during a calendar year, is registered, or required to be registered, under new Subdivision E of Division II of Part IX of the Act or is a registrant and that is an accommodation platform operator in respect of a supply of short-term accommodation situated in Canada made in the calendar year to file with the Minister of National Revenue an annual information return for the calendar year. The information return is to be filed in prescribed form containing prescribed information before July of the following calendar year and the Minister may require that the information return be filed by way of electronic filing. Currently, no person is proposed to be prescribed.

Section 211.21 applies to 2021 and subsequent calendar years except that, in applying section 211.21 to the 2021 calendar year, the references to "calendar year" in that section are to be read as references to the period that begins on July 1, 2021 and ends on December 31, 2021.

Registration

ETA
211.22

New section 211.22 of the Act sets out rules concerning the registration of a person under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration).

Section 211.22 comes into force, or is deemed to have come into force, on July 1, 2021. In addition, for the purposes of applying section 211.22 in respect of a supply made before July 2021, if all of the consideration for the supply becomes due, or is paid without having become due, after June 2021, the supply is deemed to have been made on July 1, 2021.

Definition "specified recipient"

ETA
211.22(1)

New subsection 211.22(1) of the Act defines the term "specified recipient" for the purposes of section 211.22. A "specified recipient" in respect of a supply of property is a person that is the recipient of the supply and that is not registered under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration). A non-resident person that is not a consumer of the property is not a specified recipient.

Registration required

ETA
211.22(2)

New subsection 211.22(2) of the Act requires every person that is a non-resident person that does not at any time make supplies in the course of a business carried on in Canada or a distribution platform operator in respect of a supply made at any time to be registered at that time under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration) if, for any period of 12 months (other than a period that begins before July 2021) that includes that time, the threshold amount of the person is greater than $30,000.

The threshold amount of the person is the sum of:

- the total of all amounts each of which is an amount that is, or that could reasonably be expected to be, the value of the consideration for a taxable supply that is, or that could reasonably be expected to be, a qualifying tangible personal property supply made during that period by the person to a specified recipient (other than a supply deemed to have been made by the person under subparagraph 211.23(1)(a)(i) of the Act); and
- if the person is a distribution platform operator in respect of a qualifying tangible personal property supply made during that period through a specified distribution platform, the total of all amounts, each of which is an amount that is, or that could reasonably be expected to be, the value of the consideration for a supply that is, or that could reasonably be expected to be, a qualifying tangible personal property supply made during that period through the specified distribution platform to a specified recipient and in respect of which any person is a distribution platform operator.

For example, when determining if a person is required to be registered on July 1, 2021, only the 12-month period that begins on July 1, 2021 and that ends on June 30, 2022 would have to be considered. However, when determining if a person is required to be registered on say August 1, 2022, all the 12-month periods that include that day (such as the 12-month period that begins on that day and the 12-month period that ends on that day) would have to be considered and the person would be required to be registered on that day if the threshold amount of the person for any of those 12-month periods exceeds $30,000.

Qualifying tangible personal property supplies

ETA
211.23

New section 211.23 of the Act sets out rules that apply in respect of qualifying tangible personal property supplies made through specified distribution platforms.

Qualifying supply – operator

ETA
211.23(1)

New subsection 211.23(1) sets out the rules that apply if a qualifying tangible personal property supply is made through a specified distribution platform by a supplier that is not registered under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration) and if another person that is registered under that Subdivision, or is carrying on a business in Canada, is a distribution platform operator in respect of the qualifying tangible personal property supply.

Paragraph (a) provides that for the purposes of Part IX of the Act (other than for the purposes of applying sections 148 and 249 of the Act in respect of the supplier and other than for the purposes of section 211.1 of the Act, paragraph (a) of the description of B in subsection 211.22(2) of the Act and section 240 of the Act):

- the qualifying tangible personal property supply is deemed to have been made by the distribution platform operator and not by the supplier; and
- the qualifying tangible personal property supply is deemed to be a taxable supply.

Paragraph (b) provides that for the purposes of Part IX (other than sections 179 and 180 of the Act), the distribution platform operator is deemed not to have made a supply to the supplier of services relating to the qualifying tangible personal property supply.

Paragraph (c) provides that if the distribution platform operator is registered under Subdivision D of Division V and the supplier has paid tax under Division III of Part IX of the Act in respect of the importation of the tangible personal property then, for the purposes of determining an input tax credit of the distribution platform operator, the distribution platform operator is deemed to have paid, at the time the supplier paid the tax in respect of the importation, tax in respect of a supply made to the distribution platform operator of the tangible personal property equal to the tax paid in respect of the importation and to have acquired the tangible personal property for use exclusively in commercial activities of the distribution platform operator.

However, this deeming rule under paragraph (c) does not apply if:

- another person is entitled to claim an input tax credit or a rebate under Part IX in respect of the tax paid in respect of the importation;
- section 180 deems any person to have paid tax in respect of a supply of the tangible personal property that is equal to the tax paid in respect of the importation; or

- the supplier does not provide to the distribution platform operator evidence satisfactory to the Minister of National Revenue that the tax in respect of the importation has been paid.

In addition, no portion of the tax paid by the supplier in respect of the importation shall be rebated, refunded or remitted to the supplier, or shall otherwise be recovered by the supplier, under the Act or any other Act of Parliament.

Subsection 211.23(1) applies in respect of supplies made after June 2021 and in respect of supplies made before July 2021 if all of the consideration for the supply becomes due, or is paid without having become due, after June 2021. In addition, for the purposes of applying subsection 211.23(1) in respect of a supply made before July 2021, if all of the consideration for the supply becomes due, or is paid without having become due, after June 2021, the supply is deemed to have been made on July 1, 2021.

Joint and several, or solidary, liability

ETA
211.23(2)

New subsection 211.23(2) of the Act sets out rules that apply, if certain conditions are met, in connection with the application of the deeming rules contained in subsection 211.23(1) of the Act. The first condition is met if a supplier is deemed under subparagraph 211.23(1)(a)(i) not to have made a qualifying tangible personal property supply and a distribution platform operator is deemed to have made the supply. The second condition is met if the supplier made a false statement to the distribution platform operator and the false statement is relevant to the determination of whether the distribution platform operator is required to collect tax in respect of the supply or the determination of the amount of tax that the distribution platform operator is required to collect in respect of the supply. If these conditions are met then the rules in paragraphs 211.23(2)(a) and (b) apply. The rules in paragraph 211.23(2)(c) will apply if the additional conditions contained in that paragraph are also met.

Paragraph (a) provides that the supplier and the distribution platform operator are jointly and severally, or solidarily, liable for all obligations under Part IX of the Act (referred to in subsection 211.23(2) as the "obligations in respect of the supply") that arise upon, or as a consequence of,

- the tax in respect of the supply becoming collectible by the distribution platform operator; and
- a failure to account for or pay as and when required under Part IX an amount of net tax of the distribution platform operator, or an amount required under section 230.1 of the Act to be paid by the distribution platform operator, that is reasonably attributable to the supply.

Paragraph (b) provides that the Minister of National Revenue may assess the supplier for any amount for which the supplier is liable under subsection 211.23(2) and sections 296 to 311 of the Act apply with any modifications that the circumstances may require.

Paragraph (c) will apply if certain additional conditions are met. The first such condition is that the distribution platform operator did not know and could not reasonably be expected to have known that the supplier made a false statement and that the distribution platform operator relied in good faith on the false statement. The second such condition is met if, because of the distribution platform operator's reliance on the false statement, the distribution platform operator did not charge, collect or remit all the tax in respect of the supply that the distribution platform operator was required to charge, collect or remit. If these conditions are met then, despite section 296, the Minister of National Revenue is not to assess the distribution platform operator for any obligations in respect of the supply in excess of the obligations in respect of the supply that arise upon, or as a consequence of, the distribution platform operator having charged, collected or remitted an amount of tax in respect of the supply.

Subsection 211.23(2) comes into force, or is deemed to have come into force, on July 1, 2021.

Joint and several, or solidary, liability

ETA
211.23(3)

New subsection 211.23(3) of the Act sets out rules that apply, if certain conditions are met, in connection with the application of paragraph 211.23(1)(c) of the Act. The first condition is met if a supplier provides to a distribution platform operator evidence that tax in respect of an importation has been paid. The second condition is met if the supplier made a false statement to the distribution platform operator and the false statement is relevant to the determination of whether paragraph 211.23(1)(c) is applicable in respect of the importation. The third condition is met if the distribution platform operator claimed an input tax credit (referred to in subsection 211.23(3) as the "non-allowable input tax credit") to which the distribution platform operator was not entitled but to which the distribution platform operator would have been entitled if paragraph 211.23(1)(c) were applicable in respect of the importation. If these conditions are met then the rules in paragraphs 211.23(3)(a) and (b) apply. The rules in paragraph 211.23(3)(c) will apply if the additional conditions contained in that paragraph are also met.

Paragraph (a) provides that the supplier and the distribution platform operator are jointly and severally, or solidarily, liable for all obligations under Part IX of the Act that arise upon, or as a consequence of, the distribution platform operator having claimed the non-allowable tax credit.

Paragraph (b) provides that the Minister of National Revenue may assess the supplier for any amount for which the supplier is liable under subsection 211.23(3) and sections 296 to 311 of the Act apply with any modifications that the circumstances may require.

Paragraph (c) will apply if certain additional conditions are met. The first such condition is that the distribution platform operator did not know and could not reasonably be expected to have known that the supplier made a false statement and that the distribution platform operator relied in good faith on the false statement. The second such condition is met if, because of the distribution platform operator's reliance on the false statement, the distribution platform operator claimed the non-allowable input tax credit. If these conditions are met then, despite section 296,

the Minister of National Revenue is not to assess the distribution platform operator for any obligations under Part IX that arise upon, or as a consequence of, the distribution platform operator having claimed the non-allowable input tax credit.

Subsection 211.23(3) comes into force, or is deemed to have come into force, on July 1, 2021.

Notification and records – warehouse

ETA
211.24

New section 211.24 of the Act requires a person that in the course of a business makes one or more particular supplies of a service of storing in Canada tangible personal property offered for sale by a non-resident person to:

- notify the Minister of National Revenue of this fact, in prescribed form containing prescribed information and filed with the Minister in prescribed manner; and
- in respect of those particular supplies, maintain records containing information specified by the Minister of National Revenue.

However, the person is not required to notify the Minister of National Revenue or to maintain records under this section in respect of a supply of a service that is incidental to the supply by the person of a freight transportation service, as defined in section 1 of Part VII of Schedule VI to the Act. A person that is prescribed by regulation is also not required to notify the Minister or to maintain records under this section (currently, no person is proposed to be prescribed).

Under section 211.24, a person is required to notify the Minister of National Revenue on or before:

- January 1, 2022, if the person makes the particular supplies in the course of a business carried on as of July 1, 2021;
- six months after the day on which the person last began making the particular supplies in the course of a business, in any other case; or
- any later day that the Minister may allow.

Section 211.24 comes into force, or is deemed to have come into force, on July 1, 2021.

Information return – operator

ETA
211.25

New section 211.25 of the Act requires a person that is a registrant at any time during a calendar year and that is a distribution platform operator in respect of a qualifying tangible personal property supply (as defined in subsection 211.1(1) of the Act) made in the calendar year to file with the Minister of National Revenue an information return for the calendar year, in prescribed form containing prescribed information, before July of the following calendar year. The Minister may require that the information return be filed by way of electronic filing.

This section does not apply to persons that are prescribed by regulation (currently, no person is proposed to be prescribed).

Section 211.25 applies to 2021 and subsequent calendar years except that, in applying section 211.25 to the 2021 calendar year, the references to "calendar year" in that section are to be read as references to the period that begins on July 1, 2021 and ends on December 31, 2021.

Coming into force

Subclauses 107(2) to (6)

Subclauses 107(2) to (6) specify the coming into force of the amendments to the Act as enacted by subclause 107(1) (see commentary above on those amendments, which includes descriptions of the related coming-into-force provisions).

Clause 108

Registration

ETA
240

Section 240 of the Act sets out the registration requirements that apply for purposes of the GST/HST. Under subsection 240(1) of the Act, every person that makes a taxable supply in Canada in the course of a commercial activity in Canada is required to be registered for the purposes of Part IX of the Act, other than a small supplier, a person whose only commercial activity is the sale of real property otherwise than in the course of a business or a non-resident person that does not carry on any business in Canada. Section 240 of the Act is amended to add new subsection 240(1.5) and to amend subsections 240(2), (2.1) and (3).

Subclause 108(1)

Non-resident supplier – tangible personal property

ETA
240(1.5)

Section 240 of the Act is amended to add new subsection 240(1.5) to specify that, despite the exceptions in subsection 240(1), every person that is required under new section 211.22 of the Act to be registered under Subdivision D of Division V of Part IX of the Act is required to be registered for the purposes of Part IX of the Act.

This amendment comes into force, or is deemed to have come into force, on July 1, 2021.

Non-resident performers, etc.

ETA
240(2)

Subsection 240(2) of the Act requires every person that enters Canada for the purpose of making taxable supplies of admissions in respect of a place of amusement, a seminar, an activity or an event is required to be registered for Part IX of the Act.

Subsection 240(2) is amended to exclude from this registration requirement under Subdivision D of Division V of Part IX of the Act persons that are registered under Subdivision E of Division II of Part IX of the Act.

This amendment comes into force, or is deemed to have come into force, on July 1, 2021.

Subclauses 108(2) and (3)

Application

ETA
240(2.1)

Subsection 240(2.1) of the Act requires registrants to file an application for registration with the Minister of National Revenue.

Subsection 240(2.1) is amended to add a reference to new subsection 240(1.5) of the Act, concerning persons required under new section 211.22 of the Act to be registered under Subdivision D of Division V of Part IX of the Act, and to add new paragraph 240(2.1)(a.2). Under paragraph 240(2.1)(a.2), a person required under subsection 240(1.5) to be registered must apply to the Minister of National Revenue for registration before the day that is 30 days after the first day on which the person is required under section 211.22 to be registered under Subdivision D of Division V of Part IX of the Act.

This amendment comes into force, or is deemed to have come into force, on July 1, 2021.

Subclauses 108(4) to (6)

Registration permitted

ETA
240(3)

Subsection 240(3) of the Act permits persons engaged in a commercial activity in Canada and certain other specified persons to apply to become registered for purposes of the GST/HST. Subsection 240(3) applies only to persons not otherwise required to register under subsection 240(1), (1.1), (1.2) (2) or (4) of the Act and that are not required to be included in, or added to, an application for registration of a group under subsections 240(1.3) or (1.4) of the Act.

First, subsection 240(3) is amended to provide that it also applies to persons not required to register under new subsection 240(1.5) of the Act.

This amendment comes into force, or is deemed to have come into force, on July 1, 2021.

Second, amendments are made to paragraph 240(3)(d). Existing paragraph 240(3)(d) generally allows a particular corporation resident in Canada to register where it is deemed by subsection 186(1) or (2) of the Act to have acquired, imported or brought into a participating province property or a service in the course of its commercial activities. To qualify to register under paragraph (d), the particular corporation must either (1) own shares of the capital stock or hold indebtedness of another corporation that is related to the particular corporation and that meets a "commercial operating corporation property test"; or (2) be acquiring or proposing to acquire all or substantially all of the voting shares of another corporation that meets this commercial operating corporation property test. This commercial operating corporation property test in existing paragraph 240(3)(d) requires that all or substantially all of the property of the other corporation is property that was acquired or imported by the other corporation for consumption, use or supply by the other corporation exclusively in the course of its commercial activities.

Two amendments are made to paragraph 240(3)(d).

The first amendment to paragraph 240(3)(d) provides that the other corporation can meet the "commercial operating corporation property test" if all or substantially all of its property is property that was last manufactured, produced, acquired or imported by it for consumption, use or supply by the other corporation exclusively in the course of its commercial activities.

The first amendment to paragraph 240(3)(d) applies in respect of any application for registration for the purposes of Part IX of the Act made on or before May 17, 2019.

In respect of applications made after May 17, 2019, the first amendment is instead incorporated into the term "operating corporation" that is defined in new subsection 186(0.2) (see commentary for that subsection) and through that term incorporated into paragraph 240(3)(d), as amended by the second amendment, which is described below.

The second amendment is consequential to amendments to subsection 186(1) that generally allow a partnership or trust to benefit from the rule in that subsection if it meets the requirements of that subsection. To qualify to register under amended paragraph 240(3)(d), the partnership or trust must be resident in Canada and must own units (as defined in new subsection 186(0.1)) or hold indebtedness of an operating corporation of the partnership or trust (within the meaning of new subsection 186(0.2)).

The second amendment to paragraph 240(3)(d) applies in respect of any application for registration for the purposes of Part IX of the Act made after May 17, 2019.

Clause 109

New Housing Rebates - Group of individuals

ETA
262(3)

Subsection 262(3) of the Act sets out rules for applying the GST New Housing Rebate provisions under sections 254 to 256 of the Act in cases where a supply of a residential complex or a share of the capital stock of a cooperative housing corporation is made to two or more

individuals or where two or more individuals construct or substantially renovate, or engage another person to construct or substantially renovate, a residential complex. Pursuant to these rules, the references in sections 254 to 256 to a particular individual are required to be read as references to all of those individuals as a group.

Subsection 262(3) is amended by adding two new rules, which take precedence over the aforementioned rule.

- The first new rule is contained in paragraph (b) and provides that the references in paragraphs 254(2)(b), 254.1(2)(b), 255(2)(c) and 256(2)(a) and (2.2)(b) to the primary place of residence of the particular individual or a relation of the particular individual are to be read as references to the primary place of residence of any of those individuals or a relation of any of those individuals.
- The second new rule is contained in paragraph (c) and provides that the references in clause 254(2)(g)(i)(A), subparagraphs 254.1(2)(g)(i), 255(2)(f)(i) and 256(2)(d)(i) and paragraph 256(2.2)(c) to the particular individual or a relation of the particular individual are to be read as references to any of those individuals or a relation of any of those individuals.

These amendments apply in respect of any rebate under subsection 254(2), 254.1(2) or 255(2) in respect of which the agreement referred to in paragraph 254(2)(b), 254.1(2)(a) or 255(2)(c), as the case may be, is entered into after April 19, 2021. These changes also apply in respect of any rebate under subsection 256(2) in respect of a residential complex (other than a mobile home or floating home) if the construction or substantial renovation of the residential complex is substantially completed after April 19, 2021, or in respect of a mobile home or floating home acquired or imported after April 19, 2021.

Clause 110

Penalty

ETA
285.02

In addition to any other penalty under Part IX of the Act, new section 285.02 of the Act imposes a penalty on the recipient of a supply of property or a service that by providing false information to a person that is registered or required to be registered under Subdivision E of Division II of Part IX of the Act, or by providing to that person evidence of being registered under Subdivision D of Division V of Part IX of the Act (i.e., the regular GST/HST registration) if they are a consumer of the property or service, evades or attempts to evade the payment or collection of tax payable under Division II of the Act in respect of the supply. In such a case, the recipient of the supply is liable to pay a penalty equal to the greater of $250 and 50% of the amount of tax that has been so evaded or attempted to be evaded.

This amendment comes into force on royal assent.

Clause 111

Keeping books and records

ETA
286

Subsection 286(1) of the Act requires every person that carries on a business or is engaged in a commercial activity in Canada, that is required under Part IX of the Act to file a return or that makes an application for a rebate or refund to keep records to enable the determination of their liabilities and obligations under Part IX of the Act or the amount of a rebate or refund.

Section 286 is amended to generally update the wording in accordance with current legislative drafting standards by amending subsection 286(1) and by adding new subsections 286(1.1) and (1.2). As a result of this amendment, certain rules previously dealt with under subsection 286(1) are now contained in subsections 286(1.1) and (1.2). In particular, subsection 286(1.1) allows the Minister of National Revenue to specify the form a record is to take and any information that the record shall contain and subsection 286(1.2) requires that records be kept in Canada in English or in French, unless otherwise authorized by the Minister.

This amendment comes into force, or is deemed to have come into force, on July 1, 2021.

Clause 112

Confirmation of registration and business number

ETA
295

Section 295 of the Act prohibits a government official from using or communicating any confidential information obtained in the administration of the GST/HST under Part IX of the Act, unless specifically authorized by one of the exceptions found in that section. Currently, subsection 295(6.1) allows an official to confirm whether a person is registered under Subdivision D of Division V of Part IX of the Act and the business number of the identified person.

To allow an official to confirm whether a person is registered under Subdivision E of Division II of Part IX of the Act and the business number of the identified person, the definition of business number in subsection 295(1) and paragraph 295(6.1)(a) are amended to add a reference to a person registered under that Subdivision.

This amendment comes into force, or is deemed to have come into force, on July 1, 2021.

Clause 113

Period for assessment

ETA
298(1)(e)

Subsection 298(1) of the Act sets out the limitation periods for assessments and reassessments of amounts under Part IX of the Act. Paragraph 298(1)(e) establishes that if a person is liable to pay a penalty, other than a penalty under section 280, 285, 285.01 or 285.1 of the Act, the person may not be assessed in respect of the penalty more than four years from when the person became liable.

The amendment to paragraph 298(1)(e) adds a reference to the new penalty imposed under new section 285.02 of the Act in the list of provisions not subject to the limitation period provided for in this paragraph.

This amendment comes into force on royal assent.

Clause 114

Face masks and face shields

ETA
Sch. VI, Pt. II.1

Schedule VI to the Act zero-rates supplies of the property and services included in the Schedule. Currently Part II.1 (Other Products) of Schedule VI zero-rates the supply of a product that is marketed exclusively for feminine hygiene purposes and is a sanitary napkin, tampon, sanitary belt, menstrual cup or other similar product.

Part II.1 of Schedule VI is amended to add, under new sections 2 to 5, the supplies of certain face masks and face shields to the list of products that are zero-rated under Part II.1.

The amendments to Part II.1 of Schedule VI apply to supplies made after December 6, 2020 and are intended to remain in effect until the use of face masks and face shields will no longer be broadly recommended by public health officials for the COVID-19 pandemic.

Face masks and respirators for medical use

ETA
Sch. VI, Pt. II.1, section 2

New section 2 of Part II.1 of Schedule VI to the Act zero-rates supplies of face masks and respirators that are designed for human use and are authorized for medical use in Canada.

N95, KN95, etc. face masks and respirators

ETA
Sch. VI, Pt. II.1, section 3

New section 3 of Part II.1 of Schedule VI to the Act zero-rates supplies of face masks and respirators that meet N95, KN95 or equivalent certification requirements, if the face masks and respirators are designed for human use and do not have an exhalation valve or vent.

Other face masks and respirators

ETA
Sch. VI, Pt. II.1, section 4

New section 4 of Part II.1 of Schedule VI to the Act zero-rates supplies of face masks and respirators designed for human use that are used in preventing the transmission of infectious agents such as respiratory viruses, if they meet the following construction requirements:

- they are made of multiple layers of dense material, but may, under certain conditions, have a portion in front of the lips that permits lip reading;
- they are large enough to completely cover the nose, mouth and chin without gaping;
- they have ear loops, ties or straps for securing the face mask or respirator to the head; and
- they do not have an exhalation valve or vent.

This section also zero-rates supplies of prescribed masks and respirators (currently, no mask or respirator is proposed to be prescribed).

Face shields

ETA
Sch. VI, Pt. II.1, section 5

New section 5 of Part II.1 of Schedule VI to the Act zero-rates supplies of face shields designed for human use that have a transparent and impermeable window or visor, cover the entire face and have a head strap or cap for holding them in place, and supplies of shields prescribed by regulations (currently, no shield is proposed to be prescribed). This section does not zero-rate supplies of face shields specifically designed or marketed for a use other than preventing the transmission of infectious agents such as respiratory viruses.

Clause 115

Definitions

ETA
Sch. VI, Pt. VII, s. 1(1)

Subsection 1(1) of Part VII of Schedule VI to the Act defines terms used in that Part. Under Part VII of Schedule VI, certain supplies of freight transportation services are zero-rated.

The definition “freight transportation service” in subsection 1(1) is amended to include a service of driving an automotive vehicle that is designed or adapted to be used on highways and streets for the purpose of delivering the vehicle to a destination. As a result of this amendment, these driving services will be subject to the zero-rating and other GST/HST rules that apply to freight transportation services.

This amendment is deemed to have come into force on May 18, 2019 but also applies in respect of any supply made on or before that day if the supplier did not, before that day, charge, collect or remit any amount as or on account of tax under Part IX of the Act in respect of the supply.

New Harmonized Value-added Tax System Regulations, No. 2

Clause 116

New housing rebates — group of individuals

New Harmonized Value-added Tax System Regulations, No. 2
40

Section 40 of the *New Harmonized Value-added Tax System Regulations, No. 2* is amended consequential to an amendment to subsection 262(3) of the *Excise Tax Act* made in clause 109 (see commentary above on that subsection). Subsection 262(3) of the Act sets out rules for applying the GST New Housing Rebate provisions under sections 254 to 256 of the Act and the amendments to section 40 of the Regulations make the corresponding changes in relation to the new housing rebate provisions in respect of the provincial component of the HST.

Excise Act, 2001

Clause 117

Definition "adjustment day"

EA, 2001
58.1

Section 58.1 of the *Excise Act, 2001* (the "Act") defines terms used in Part 3.1 of the Act regarding the cigarette inventory tax. The existing definition "adjustment day" in section 58.1 defines the date on which a cigarette inventory tax is imposed.

The definition "adjustment day" is amended by adding April 20, 2021 as an adjustment day. This amendment has the effect of imposing a tax on taxed cigarettes (as defined in section 58.1) held in inventory on April 20, 2021.

This amendment is deemed to have come into force on April 20, 2021.

Clause 118

Imposition of tax – 2021 increase

EA, 2001
58.2(1.2)

Existing section 58.2 of the Act imposes a tax on taxed cigarettes (as defined in section 58.1 of the Act) held in inventory at a particular time when tobacco duty rates are increased.

Section 58.2 is amended by adding new subsection 58.2(1.2), which imposes a tax on inventories of taxed cigarettes held at the beginning of April 20, 2021 at a rate of $0.02 per cigarette.

This amendment is deemed to have come into force on April 20, 2021.

Clause 119

Returns

EA, 2001
58.5(1)

Existing subsection 58.5(1) of the Act requires every person liable to pay an inventory tax under Part 3.1 of the Act to file a return with the Minister on or before the date set out in that subsection.

Subsection 58.5(1) is amended to provide for a deadline of June 30, 2021 for filing a return in the case of a tax imposed on April 20, 2021 under new subsection 58.2(1.2) of the Act.

This amendment is deemed to have come into force on April 20, 2021.

Clause 120

Payment

EA, 2001
58.6(1)

Existing subsection 58.6(1) of the Act requires every person liable to pay an inventory tax under Part 3.1 of the Act to pay the total amount owing to the Receiver General on or before the date set out in that subsection.

Subsection 58.6(1) is amended to provide for a deadline of June 30, 2021 for paying an amount owing in the case of a tax imposed on April 20, 2021 under new subsection 58.2(1.2) of the Act.

This amendment is deemed to have come into force on April 20, 2021.

Clause 121

Rate of duty on cigarettes

EA, 2001
Sch. 1, paragraph 1(a)

Schedule 1 to the Act specifies the rates of duty imposed under section 42 of the Act on tobacco products.

Section 1 of Schedule 1 sets out the rate for cigarettes. Paragraph 1(a) is amended to increase the rate to $0.72725 (from $0.62725) for each five cigarettes or fraction of five cigarettes contained in any package (the new duty rate will be $29.09 per carton of 200 cigarettes).

This amendment is deemed to have come into force on April 20, 2021.

Clause 122

Rate of duty on tobacco sticks

EA, 2001
Sch. 1, paragraph 2(a)

Schedule 1 to the Act specifies the rates of duty imposed under section 42 of the Act on tobacco products.

Section 2 of Schedule 1 sets out the rate for tobacco sticks. Paragraph 2(a) is amended to increase the rate to $0.14545 (from $0.12545) per stick.

This amendment is deemed to have come into force on April 20, 2021.

Clause 123

Rate of duty on manufactured tobacco other than cigarettes and tobacco sticks

EA, 2001
Sch. 1, paragraph 3(a)

Schedule 1 to the Act specifies the rates of duty imposed under section 42 of the Act on tobacco products.

Section 3 of Schedule 1 sets out the rate for manufactured tobacco other than cigarettes and tobacco sticks. Paragraph 3(a) is amended to increase the rate to $9.09062 (from $7.84062) per 50 grams or fraction of 50 grams contained in any package.

This amendment is deemed to have come into force on April 20, 2021.

Clause 124

Rate of duty on cigars

EA, 2001
Sch. 1, paragraph 4(a)

Schedule 1 to the Act specifies the rates of duty imposed under section 42 of the Act on tobacco products.

Section 4 of Schedule 1 sets out the rate for cigars. Paragraph 4(a) is amended to increase the rate to $31.65673 (from $27.30379) per 1,000 cigars.

This amendment is deemed to have come into force on April 20, 2021.

Clause 125

Additional duty on cigars

EA, 2001
Sch. 2

Schedule 2 to the Act sets out the rates of additional duty on cigars imposed under section 43 of the Act.

The additional duty on cigars is the greater of the specific rate set out in paragraph (a) of Schedule 2 and the amount obtained by multiplying the percentage set out in paragraph (b) of Schedule 2 by the sale price or duty-paid value, as the case may be.

Subparagraph (a)(i) of Schedule 2 is amended to increase the specific rate for the additional duty on cigars to $0.11379 (from $0.09814) per cigar.

This amendment is deemed to have come into force on April 20, 2021.