
Explanatory Notes Relating to the Excise Tax Act, the Air Travellers Security Charge Act, the Excise Act, 2001, the Greenhouse Gas Pollution Pricing Act and a Related Text

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Preface

These explanatory notes describe proposed amendments to the *Excise Tax Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Greenhouse Gas Pollution Pricing Act* 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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Excise Tax Act

Clause 1

Inspection

ETA

98(3)

Existing subsection 98(3) of the *Excise Tax Act* (the Act) requires that all persons required by subsection 98(1) to keep records and books of account must make such records and books of account available to officers of the Canada Revenue Agency (CRA). Those persons must also provide officers of the CRA and all other persons authorized by the Minister of National Revenue every facility necessary to perform an inspection.

Subsection 98(3) is amended by adding paragraphs (a) to (d).

Similar to existing paragraph 98(3), new paragraphs 98(3)(a) and (b) obligate persons required by subsection 98(1) to keep records and books of account to make them available to officers of the CRA and all other persons authorized by the Minister, and to give those officers and authorized persons all reasonable assistance to inspect, audit or examine them, at all reasonable times and for any purpose related to the administration or enforcement of this Act (which means the Act except Part IX and Schedules V to X).

New paragraph 98(3)(c) requires that officers of the CRA and all other persons authorized by the Minister be given all reasonable assistance and that all their proper questions relating to the administration or enforcement of this Act be answered. It also requires persons required by subsection 98(1) to keep records and books of account to attend with officers of the CRA and all other persons authorized by the Minister at a place designated by such persons, or by video-conference or another form of electronic communication, and sets out the requirement to answer questions orally. Paragraph 98(3)(c) also sets out that officers of the CRA and all other persons authorized by the Minister may require that questions be answered in writing, in any form that they specify. For example, such persons may require answers to be provided in electronic form, such as by way of an electronic spreadsheet or table. They may also require that questions be answered by means of an organizational chart, or by another similar form of presentation.

New paragraph 98(3)(d) sets out that officers of the CRA and all other persons authorized by the Minister may require persons required by subsection 98(1) to keep records and books of account to give the authorized person all reasonable assistance with anything those officers and authorized persons are authorized to do under this Act.

This amendment comes into force on royal assent.

Clause 2**Evidence**

ETA

106.1

Existing section 106.1 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of this Act (which means the Act except Part IX and Schedules V to X).

Subclause 2(1)**Date electronic notice sent**

ETA

106.1(3.1)

Subsection 106.1(3.1) allows for the electronic communication of certain notices.

Although for security reasons a notice of assessment is not itself to be conveyed electronically to a person, existing subsection 106.1(3.1) provides that a notice or other communication will be, for the purposes of this Act, deemed to be sent by the Minister of National Revenue and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person's most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person's secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Consequential on the introduction of new subsection (3.2), subsection (3.1) is amended to limit its application to notices or other communications sent electronically by the Minister to a person that do not refer to the business number of a person.

This amendment comes into force on royal assent.

Subclause 2(2)**Date electronic notice sent – business account**

ETA

106.1(3.2)

New subsection 106.1(3.2) changes the default method of correspondence for persons that use the CRA's My Business Account service.

Subsection (3.2) provides that a notice or other communication that refers to the business number of a person is presumed to be sent and received by the person on the date that it is posted in the

secure electronic account in respect of the business number of a person. With at least 30 days notice, a person may request in the prescribed manner that notices or other communications making reference to the business number of a person be sent by mail.

This amendment comes into force on royal assent.

Clause 3

Cryptoassets

ETA
188.2

New section 188.2 of the Act contains rules respecting the application of GST/HST to mining activities in respect of cryptoassets and to remuneration received as a consequence of performing a mining activity.

Section 188.2 is deemed to come into force on the day after Announcement Date, except that for the purposes of determining an input tax credit of a person, new paragraph 188.2(4)(c) does not apply in respect of any property or service acquired, imported or brought into a participating province on or before that day.

Definitions

ETA
188.2(1)

New subsection 188.2(1) of the Act defines the following terms for the purposes of section 188.2.

“cryptoasset”

A cryptoasset is property (as defined in subsection 123(1) of the Act and, as a result, does not include money) that is a digital representation of value and that exists only at a digital address of a publicly distributed ledger (e.g., blockchain). However, a cryptoasset does not include prescribed property. Currently, no property is proposed to be prescribed.

A cryptoasset currently includes, but is not limited to, any property that is a virtual payment instrument (as defined in subsection 123(1)).

“mining activity”

A mining activity means an activity in respect of a cryptoasset that is set out in any of paragraphs (a) to (c) of the definition “mining activity”.

Paragraph (a) describes an activity of validating transactions in respect of a cryptoasset and adding those transactions to the publicly distributed ledger on which the cryptoasset exists at a digital address.

Paragraph (b) describes an activity of maintaining and permitting access to the publicly distributed ledger on which a cryptoasset exists at a digital address.

Paragraph (c) describes an activity of allowing computing resources to be used for the purpose of, or in connection with, performing any of the activities described in paragraph (a) or (b) of the definition in respect of a cryptoasset. As a result, if for example a particular person does not themselves perform activities described by paragraph (a) (i.e., validating cryptoasset transactions and adding those transactions to the cryptoasset's ledger), but allows another person to use the particular person's computing resources so that the other person can perform activities described by paragraph (a), both the particular person and the other person would be performing mining activities in respect of the cryptoasset.

“mining group operator”

A mining group operator is defined in respect of a group of persons (such a group may commonly be referred to as a mining pool). A mining group operator is a particular person that coordinates the performance of mining activities by the group for purposes set out in paragraphs (a) and (b) of the definition “mining group operator”. Paragraph (a) describes the purpose of enabling the particular person or any other member of the group to perform mining activities. Paragraph (b) describes the purposes of sharing with all or part of the group of persons all or part of any fee, reward or payment, or any other form of remuneration, received or generated as a consequence of performing the mining activities of the group.

Acquisition, etc., for mining activities

ETA

188.2(2)

New subsection 188.2(2) of the Act applies where a person acquires, imports or brings into a participating province property or a service for consumption, use or supply in the course of, or in connection with, mining activities of the person. Subsection 188.2(2) provides that, to the extent that the acquisition, importation or bringing into the province of the property or service is for consumption, use or supply in the course of, or in connection with, the person's mining activities, the person is deemed, for purposes of Part IX of the Act, to have acquired, imported or brought into the participating province, as the case may be, the property or service for consumption, use or supply otherwise than in the course of commercial activities of the person. As a consequence, in determining an input tax credit of the person, an amount is not to be included in respect of tax that becomes payable, or that is paid without having become payable, in respect of the property or service to the extent that the person is deemed by subsection 188.2(2) to have acquired, imported or brought into the participating province the property or service for consumption, use or supply otherwise than in the course of commercial activities of the person. The application of subsection 188.2(2) is not dependent on whether or not the person receives a fee, reward or payment, or any other form of remuneration, as a result of performing the mining activities.

However, subsection 188.2(2) does not apply to the acquisition, importation or bringing into a participating province of property or a service for consumption, use or supply in the course of mining activities of the person to the extent that those mining activities are described by subsection 188.2(5).

Use, etc., for mining activities

ETA
188.2(3)

New subsection 188.2(3) applies where a person consumes, uses or supplies property or a service in the course of, or in connection with, mining activities of the person. Subsection 188.2(3) deems, for purposes of Part IX of the Act, the consumption, use or supply of the property or service to be otherwise than in the course of commercial activities of the person. The application of subsection 188.2(3) is not dependent on whether or not the person receives a fee, reward or payment, or any other form of compensation, as a result of performing the mining activity.

However, subsection 188.2(3) does not apply to the consumption, use or supply of the property or service in the course of mining activities of the person to the extent that those mining activities are described by subsection 188.2(5).

Mining activities — remuneration

ETA
188.2(4)

New subsection 188.2(4) of the Act applies where a particular person performs mining activities and as a consequence of performing the mining activities, receives money, property or a service (referred to in subsection 188.2(4) as a “mining payment”) as a fee, reward or payment, or other form of compensation. Where subsection 188.2(4) applies, the rules in paragraphs 188.2(4)(a) to (c) apply to the provision of both the mining activities and the mining payment for the purposes of Part IX of the Act.

Paragraph 188.2(4)(a) deems the provision of the mining activities by the particular person not to be a supply. As a consequence, the particular person would not be required to charge any amount of tax that would otherwise be payable in respect of the mining activities and the other person would not be liable to pay any amount of tax that would otherwise be payable in respect of the mining activities received.

Paragraph 188.2(4)(b) applies where all or part of a mining payment is property or a service. Paragraph 188.2(4)(b) deems the provision of the mining payment by the other person not to be a supply. As a consequence, where the other person provides property or a service as all or part of the fee, reward or payment, or other form of remuneration for mining activities provided by the particular person, the other person would not be required to charge any amount of tax that would otherwise be payable in respect of the mining payment and the particular person would not be liable to pay any amount of tax that would otherwise be payable in respect of the mining payment received.

Paragraph 188.2(4)(c) provides that, in determining an input tax credit of a person that provides the mining payment, no amount is to be included in respect of tax that becomes payable, or that is paid without having become payable, by the person in respect of any property or service acquired, imported or brought into a participating province for consumption, use or supply in the course of the provision of the mining payment.

However, subsection 188.2(4) does not apply to the provision of mining activities, or the provision of a mining payment received as a consequence of performing those mining activities, to the extent that those mining activities are described by subsection 188.2(5).

Exception

ETA

188.2(5)

Subsection 188.2(5) of the Act provides an exception to the rules in subsections 188.2(2) to (4). Subsection 188.2(5) provides that subsections 188.2(2) to (4) do not apply in respect of a mining activity to the extent that the mining activity is performed by a particular person for another person where the other person meets two conditions. The first condition is that the other person is not a mining group operator (as defined in subsection 188.2(1)) in respect of a group of persons that includes the particular person. The second condition is that the identity of the other person is known to the particular person.

For example, consider a case where

- a person that performs a mining activity (“the mining services provider”) acquires electricity for consumption in the course of mining activities in respect of a cryptoasset;
- the mining services provider uses the electricity to make a supply of mining activities (maintaining and permitting access to the cryptoasset’s publicly distributed ledger) to the cryptoasset’s administrator;
- the administrator compensates the mining services provider for the supply of mining assets with units of the cryptoasset;
- the cryptoasset is not a virtual payment instrument and a supply of the cryptoasset is normally a taxable supply for GST/HST purposes;
- the administrator uses telecommunication services that it acquired to provide the crypto asset units to the mining services provider;
- the administrator is not a mining group operator in respect of a group of persons that includes the mining services provider; and
- the mining services provider knows that the administrator is the recipient of its supply of mining activities.

In this case, subsection 188.2(5) would apply to the mining activities. As a result, subsection 188.2(2) would not apply to deem the mining services provider to have acquired the electricity for consumption otherwise than in the course of commercial activities; this may allow the mining services provider to claim an input tax credit in respect of tax payable on the supply of the electricity (depending on if all the conditions for claiming an input tax credit are met). In

addition, paragraph 188.2(4)(a) would not apply to the mining services provider's provision of mining activities and paragraph 188.2(4)(b) would not apply to the administrator's provision of cryptoassets, meaning that they each would remain a taxable supply. Finally, the administrator would not be precluded by paragraph 188.2(4)(c) from, in determining its input tax credits, including tax that became payable, or was paid without having become payable, by it in respect of the telecommunication services that it acquired for use in the course of making the supply of the cryptoasset units.

Clause 4

Large payments

ETA
278

Existing section 278 provides that GST/HST payments or remittances be made to the Receiver General.

Subclause 4(1)

Meaning of electronic payment

ETA
278(0.1)

New subsection 278(0.1) sets out the definition "electronic payment". Electronic payment means any payment or remittance to the Receiver General that is made through electronic services offered by a financial institution as described by paragraphs 278(3)(a) to (d) or by any electronic means specified by the Minister of National Revenue.

This amendment applies in respect of payments and remittances made after 2021.

Subclause 4(2)

Electronic payment

ETA
278(3)

Existing subsection 278(3) provides that GST/HST remittances of \$50,000 or more be made to the account of the Receiver General at a financial institution.

Amended subsection 278(3) imposes a requirement to make payments and remittances to the Receiver General through electronic means where the amount of the remittance or payment exceeds \$10,000, unless the payor or remitter cannot reasonably remit or pay the amount in that manner.

This amendment applies in respect of payments and remittances made after 2021.

Clause 5

Avoidance planning

ETA
285.03

New section 285.03 of the Act introduces a penalty for section 325 avoidance planning.

New section 285.03 is deemed to have come into force on April 19, 2021.

285.03(1) – Definitions

New subsection 285.03(1) of the Act defines the following terms for the purposes of section 285.03.

“Culpable conduct”

Culpable conduct has the same meaning as in subsection 285.1(1) of the Act and means conduct, whether an act or a failure to act, that

- is tantamount to intentional conduct,
- shows an indifference as to whether Part IX of the Act is complied with; or
- shows a wilful, a reckless or a wanton disregard of the law.

“Gross entitlements”

Gross entitlements means, at any time, all amounts to which a person (or another person not dealing at arm’s length with the person) is entitled, either before or after that time and either absolutely or contingently, to receive or obtain in respect of a planning activity (as newly defined in this subsection). The definition “gross entitlements” is relevant for the purpose of computing a penalty under new subsection 285.03(2) for engaging in section 325 avoidance planning.

“Planning activity”

Planning activity has the same meaning as in subsection 285.1(1) and generally includes organizing or creating an arrangement, entity, plan or scheme. It also includes participating (directly or indirectly) in the selling of an interest in, or the promotion of, an arrangement, entity, plan or scheme.

“Section 325 avoidance planning”

Section 325 avoidance planning is the planning activity in respect of which the penalty in new subsection 285.03(2) applies. This is planning activity that involves the removal of property of a person with the intention of rendering all or a portion of a current or future tax liability debt of the person uncollectible, while attempting to circumvent the application section 325 and the joint and several, and solidary liability in respect of that tax debt. Such planning means planning

activity in respect of a transaction or series of transactions that the person knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct, has as one of its main purposes the reduction of a transferee's joint and several, or solidary, liability under section 325 for:

- an amount payable or remittable under Part IX of the Act by a transferor; or
- an amount that would be payable or remittable by the transferor if not for a transaction or a series of transaction in which an amount, that is or may be relevant in determining any obligations or entitlements under Part IX of the Act of a person that dealt at arm's length with the transferor or transferee immediately before the transaction or series of transactions, is used directly or indirectly to provide a tax benefit for the transferor.

“Tax benefit”

Tax benefit has the same meaning as in subsection 285.1(1) and means a reduction, avoidance or deferral of tax, net tax or other amount payable under Part IX of the Act or an increase in a refund or rebate under that Part.

“Transaction”

Transaction includes an arrangement or event.

285.03(2) – Penalty

New subsection 285.03(2) provides for a penalty for a person who engages in, participates in, assents to or acquiesces in section 325 avoidance planning. The penalty is equal to the lesser of

- 50% of the amount payable or remittable under Part IX of the Act, the joint and several, or solidary, liability for which was sought to be avoided through the planning; and
- the total of \$100,000 and the person's gross entitlements at the time at which the notice of assessment of the penalty is sent to the person in respect of the planning.

285.03(3) – Clerical or secretarial services

Subsection 285.03(3) provides that the penalty in subsection 285.03(2) does not apply to a person solely because the person provided clerical services or secretarial services with respect to the section 325 avoidance planning.

Clause 6**Inspection**ETA
288

Existing section 288 of the Act provides that a person authorized by the Minister of National Revenue may, for purposes related to the administration or enforcement of Part IX of the Act, inspect, audit or examine documents, property or processes of any person and, to this end, at reasonable times, enter any premises or place of business and require persons therein to provide reasonable assistance and answer all proper questions. If the premises are a dwelling-house, entry may be made only upon the consent of the occupant or under the authority of a warrant. A warrant may be issued where consent is refused and a judge is satisfied that entry should be authorized to the particular premises for purposes relating to the administration and enforcement of Part IX. Alternatively, a judge may order, among other things, the occupant to provide reasonable access to the authorized person to any document or property that is or should be kept in the dwelling house.

Subsection 288(1) is amended by adding paragraphs (c) and (d).

Similar to existing subsection 288(1), new paragraph 288(1)(c) requires that authorized persons be given all reasonable assistance and that all their proper questions relating to the administration or enforcement of Part IX be answered. Paragraph 288(1)(c) sets out that a person will be required to provide this assistance, as well as to answer these questions with respect to the administration or enforcement of Part IX.

Paragraph 288(1)(c) further sets out a requirement for any person to attend with the authorized person at a place designated by the authorized person, or by video-conference or another form of electronic communication, and sets out the requirement to answer questions orally.

Paragraph 288(1)(c) also sets out that authorized persons may require that questions be answered in writing, in any form that they specify. For example, authorized persons may require answers to be provided in electronic form, such as by way of an electronic spreadsheet or table. They may also require that questions be answered by means of an organizational chart, or by another similar form of presentation.

New paragraph 288(1)(d) sets out that authorized persons may require a person to give the authorized person all reasonable assistance with anything the authorized person is authorized to do under the Act.

Section 288 is also amended by updating cross-references in subsection 288(2) and paragraph 288(3)(a) consequential to the amendments made to subsection 288(1) and to generally update the wording in accordance with current legislative drafting standards.

This amendment comes into force on royal assent.

Clause 7**Period for assessment**

ETA

298(1)(e)

Existing 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, 285.02 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 285.03 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 8**Tax liability re transfers not at arm's length**

ETA

325

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

Section 325 is amended by adding new subsection 325(0.1) and by replacing existing subsection 325(5).

These amendments are deemed to have come into force on April 19, 2021.

Subclause 8(1)**Definitions**

ETA

325(0.1)

Consequential on the introduction of the section 325 anti-avoidance rules in new subsection 325(5) and the section 325 avoidance planning penalty in new section 285.03 of the Act, section 325 is amended by adding new subsection 325(0.1), which contains definitions that apply in section 325. The existing definition "property" is moved from subsection 325(5) to new subsection 325(0.1). Subsection 325(0.1) also provides that a "transaction" includes an arrangement or event.

Subclause 8(2)**Anti-avoidance rules**

ETA

325(5)

The amount that a person is liable to pay in respect of the transfer of property from a non-arm's length tax debtor is determined under subsection 325(1). The Minister of National Revenue may assess the person for such a liability under subsection 325(2).

Subsection 325(1) applies in situations where

- there has been a non-arm's length transfer of property, and
- the transferor had a pre-existing tax liability or a tax liability that arose in the reporting period of the transfer.

If these conditions are met, the transferee is jointly and severally, or solidarily liable in respect of amounts payable or remittable by the transferor under Part IX of the Act, to the extent that the fair market value of the property transferred exceeded the value of the consideration given for the property at the time of the transfer.

New subsection 325(5) introduces new anti-avoidance rules to address planning which seeks to circumvent the application of section 325.

New paragraph 325(5)(a) addresses planning that attempts to circumvent the application of section 325 by avoiding the requirement that property be transferred between persons that do not deal at arm's length. This paragraph deems, for the purposes of section 325, a transferor and transferee of property to not be dealing at arm's length at all times in a transaction or series of transactions involving the transfer if

- at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, the transferor and transferee do not deal at arm's length, and
- it is reasonable to conclude that one of the purposes of undertaking or arranging the transaction or series of transactions is to avoid joint and several, or solidary liability of the transferee and transferor for an amount payable or remittable under Part IX of the Act.

New paragraph 325(5)(b) addresses planning that attempts to circumvent the application of section 325 by avoiding the requirement that the transferor have an existing tax debt owing in or in respect of the reporting period in which the property is transferred, or any preceding reporting period. This new paragraph provides that an amount that the transferor is liable to pay under Part IX of the Act (including, for greater certainty, an amount that the transferor is liable to pay under section 325, regardless of whether the Minister has made an assessment under subsection 325(2)

for that amount) is deemed to have become payable in the reporting period in which the property was transferred, if it is reasonable to conclude that one of the purposes for the transfer of property is to avoid the payment of future tax debt by the transferor or transferee.

New paragraph 325(5)(c) addresses planning that attempts to effectively avoid section 325 through a transaction or series of transactions that reduce the fair market value of consideration given for the property transferred in order to render all or a portion of a tax debt of the transferor uncollectible.

In applying section 325, element A of the formula in paragraph 325(1)(d) is intended to limit the joint and several, or solidary liability in respect of any tax liability of the transferor for the reporting period in which the transfer took place, or any preceding reporting period. Element A limits the joint and several, or solidary nature of the transferor's tax liability to the extent that, at the time of the transfer, the fair market value of the transferred property exceeds the fair market value of the consideration received.

New paragraph (5)(c) ensures that the fair market value of consideration given for the transferred property remains relevant in determining the extent to which joint and several, or solidary liability applies under section 325, including

- at the time that the consideration was given, and
- throughout the period that begins immediately before and ends immediately after the transaction or series of transactions that includes the transfer of property.

For this purpose, paragraph (5)(c) deems the amount determined under element A in paragraph 325(1)(d) to be the greater of

- the amount otherwise determined for element A without reference to this new anti-avoidance rule, and
- the amount by which the fair market value of the property at the time of the transfer exceeds the lowest fair market value of the consideration (that is held by the transferor) given for the property at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions (in determining this amount, any part of the consideration that is in a form that is cancelled or extinguished during the period is excluded).

For greater certainty, the reference to consideration that is in a form that is cancelled or extinguished in the description of element B in the formula in subparagraph (5)(c)(ii) is intended to ensure an appropriate extension of the joint and several, or solidary liability in situations where property given as consideration (for example, a promissory note) is subsequently cancelled or extinguished for proceeds below the fair market value at the time it is given.

Clause 9**Evidence**

ETA
335

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

Subclause 9(1)**Date electronic notice sent**

ETA
335(10.1)

Although for security reasons a notice of assessment is not itself to be conveyed electronically to a person, existing subsection 335(10.1) provides that a notice or other communication will be, for the purposes of Part IX, deemed to be sent by the Minister of National Revenue and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person's most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person's secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Consequential on the introduction of new subsection (10.2), subsection (10.1) is amended to limit its application to notices or other communications sent electronically by the Minister to a person that do not refer to the business number of a person.

This amendment comes into force on royal assent.

Subclause 9(2)**Date electronic notice sent – business account**

ETA
335(10.2)

New subsection 335(10.2) changes the default method of correspondence for persons that use the CRA's My Business Account service.

Subsection (10.2) provides that a notice or other communication that refers to the business number of a person is presumed to be sent and received by the person on the date that it is posted in the secure electronic account in respect of the business number of a person. With at least 30

days notice, a person may request in the prescribed manner that notices or other communications making reference to the business number of a person be sent by mail.

This amendment comes into force on royal assent.

Air Travellers Security Charge Act

Clause 10

Large payments

ATSCA

20

Existing section 20 of the *Air Travellers Security Charge Act* (the Act) provides that every person required under the Act to pay \$50,000 or more in a single payment to the Receiver General is required to make the payment at a financial institution.

Section 20 is replaced by subsections 20(1) and 20(2).

New subsection 20(1) sets out the definition “electronic payment”. Electronic payment means any payment to the Receiver General that is made through electronic services offered by a financial institution as described by paragraphs 20(2)(a) to (d) or by any electronic means specified by the Minister.

New subsection 20(2) imposes a requirement to make payments to the Receiver General through electronic means where the amount of the payment exceeds \$10,000, unless the payor cannot reasonably pay the amount in that manner.

These amendments apply in respect of payments made after 2021.

Clause 11

Inspection

ATSCA

70

Existing section 70 of the Act allows that a person authorized by the Minister of National Revenue to do so may, for the purposes of the administration or enforcement of the Act, inspect, audit or examine records, property or processes in order to determine whether a person is in compliance with the Act. The authorized person may enter any premises or place of business and require persons to offer reasonable assistance. However, if the premises sought to be entered are a dwelling house, the consent of the occupant or a warrant issued by a judge is required.

Subsection 70(2) is amended to ensure that a person authorized by the Minister to do so may, for the purposes of the administration or enforcement of the Act, inspect, audit or examine records, property, premises or processes in order to determine whether a person is in compliance with this Act at all reasonable times.

Subsection 70(2) is further amended by requiring that authorized persons be given all reasonable assistance and that all their proper questions be answered. Paragraph 70(2)(b) is amended to make clear that a person will be required to provide this assistance, as well as to answer these questions with respect to the administration or enforcement of the Act.

Paragraph 70(2)(b) is amended by setting out a requirement for any person to attend with the authorized person at a place designated by the authorized person, or by video-conference or another form of electronic communication, and sets out the requirement to answer questions orally. Paragraph 70(2)(b) further sets out that authorized persons may require that questions be answered in writing, in any form that they specify. For example, authorized persons may require answers to be provided in electronic form, such as by way of an electronic spreadsheet or table. They may also require that questions be answered by means of an organizational chart, or by another similar form of presentation.

Subsection 70(2) is amended by adding paragraph 70(2)(c). New paragraph 70(2)(c) sets out that authorized persons may require a person to give the authorized person all reasonable assistance with anything the authorized person is authorized to do under the Act.

Section 70 is also amended by updating cross-references in subsection 70(3) and paragraph 70(4)(a) consequential to the amendments made to subsection 70(2) and to generally update the wording in accordance with current legislative drafting standards.

This amendment comes into force on royal assent.

Clause 12

Evidence

ATSCA

83

Existing section 83 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of the Act.

Subclause 12(1)

Date electronic notice sent

ATSCA

83(9.1)

Although for security reasons a notice of assessment is not itself to be conveyed electronically to a person, existing section 83(9.1) provides that a notice or other communication will be, for the

purposes of the Act, deemed to be sent by the Minister of National Revenue and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person's most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person's secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Consequential on the introduction of new subsection (9.2), subsection (9.1) is amended to limit its application to notices or other communications sent electronically by the Minister to a person that do not refer to the business number of a person.

This amendment comes into force on royal assent.

Subclause 12(2)

Date electronic notice sent – business account

ATSCA
83(9.2)

New subsection 83(9.2) changes the default method of correspondence for persons that use the CRA's My Business Account service.

Subsection (9.2) provides that a notice or other communication that refers to the business number of a person is presumed to be sent and received by the person on the date that it is posted in the secure electronic account in respect of the business number of a person. With at least 30 days notice, a person may request in the prescribed manner that notices or other communications making reference to the business number of a person be sent by mail.

This amendment comes into force on royal assent.

Excise Act, 2001

Clause 13

Large payments

EA, 2001
163

Existing section 163 provides that every person required under the *Excise Act, 2001* (the Act) to pay \$50,000 or more in a single payment to the Receiver General is required to make the payment at a financial institution. Existing section 163 is replaced by subsections 163(1) and 163(2).

New subsection 163(1) sets out the definition "electronic payment". Electronic payment means any payment to the Receiver General that is made through electronic services offered by a

financial institution as described by paragraphs 163(2)(a) to (e) or by any electronic means specified by the Minister.

New subsection 163(2) imposes a requirement to make payments to the Receiver General through electronic means where the amount of the payment exceeds \$10,000, unless the payor cannot reasonably pay the amount in that manner.

These amendments apply in respect of payments made after 2021.

Clause 14

Inspection

EA, 2001
260

Existing section 260 of the Act allows that an officer may, for the purposes of the administration or enforcement of the Act, inspect, audit or examine records, property, premises or processes in order to determine whether a person is in compliance with the Act. The officer may enter any premises or place of business and require persons to offer reasonable assistance. However, if the premises sought to be entered are a dwelling house, the consent of the occupant or a warrant issued by a judge is required.

Subsection 260(2) is amended to ensure that an officer may, for the purposes of the administration or enforcement of the Act, inspect, audit or examine records, property, premises or processes in order to determine whether a person is in compliance with the Act at all reasonable times.

Paragraph 260(2)(c) is amended by requiring that officers be given all reasonable assistance and that all their proper questions be answered. Paragraph 260(2)(c) sets out that a person will be required to provide this assistance, as well as to answer these questions with respect to the administration or enforcement of this Act.

Paragraph 260(2)(c) further sets out a requirement for any person to attend with the officer at a place designated by the officer, or by video-conference or another form of electronic communication, and sets out the requirement to answer questions orally. Paragraph 260(2)(c) sets out that officers may require that questions be answered in writing, in any form that they specify. For example, officers may require answers to be provided in electronic form, such as by way of an electronic spreadsheet or table. They may also require that questions be answered by means of an organizational chart, or by another similar form of presentation.

Subsection 260(2) is amended by adding paragraph (g).

New paragraph 260(2)(g) sets out that officers may require a person to give the officers all reasonable assistance with anything the officers are authorized to do under this Act.

Section 260 is also amended by updating cross-references in subsection 260(3) and paragraph 260(4)(a) consequential to the amendments made to subsection 260(2) and to generally update the wording in accordance with current legislative drafting standards.

This amendment comes into force on royal assent.

Clause 15

Liability re transfers not at arm's length

EA, 2001
297

Existing section 297 of the Act provides rules under which a transferee of property may be liable for unpaid duties of the transferor when the two parties are not dealing at arm's length.

Section 297 is amended by adding new subsection 297(0.1) and by replacing existing subsection 297(6).

These amendments are deemed to have come into force on April 19, 2021.

Subclause 15(1)

Definitions

EA, 2001
297(0.1)

Consequential on the introduction of the section 297 anti-avoidance rules in new subsection 297(6), section 297 is amended by adding new subsection 297(0.1), which contains definitions that apply in section 297. The existing definitions "common-law partner" and "common-law partnership" are moved from subsection 297(6) to new subsection 297(0.1). Subsection 297(0.1) also provides that a "transaction" includes an arrangement or event.

Subclause 15(2)

Anti-avoidance rules

EA, 2001
297(6)

The amount that a person is liable to pay in respect of the transfer of property from a non-arm's length tax debtor is determined under subsection 297(1). The Minister of National Revenue may assess the person for such a liability under subsection 297(3).

Subsection 297(1) applies in situations where

- there has been a non-arm's length transfer of property, and
- the transferor had a pre-existing tax liability or a tax liability that arose in the reporting period of the transfer.

If these conditions are met, the transferee is jointly and severally, or solidarily liable in respect of amounts payable by the transferor under the Act, to the extent that the fair market value of the property transferred exceeded the value of the consideration given for the property at the time of the transfer.

New subsection 297(6) introduces new anti-avoidance rules to address planning which seeks to circumvent the application of section 297.

New paragraph 297(6)(a) addresses planning that attempts to circumvent the application of section 297 by avoiding the requirement that property be transferred between persons that do not deal at arm's length. This paragraph deems, for the purposes of section 297, a transferor and transferee of property to not be dealing at arm's length at all times in a transaction or series of transactions involving the transfer if

- at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, the transferor and transferee do not deal at arm's length, and
- it is reasonable to conclude that one of the purposes of undertaking or arranging the transaction or series of transactions is to avoid joint and several, or solidarily liability of the transferee and transferor for an amount payable under the Act.

New paragraph 297(6)(b) addresses planning that attempts to circumvent the application of section 297 by avoiding the requirement that the transferor have an existing tax debt owing in or in respect of the reporting period in which the property is transferred, or any preceding reporting period. This new paragraph provides that an amount that the transferor is liable to pay under the Act (including, for greater certainty, an amount that the transferor is liable to pay under section 297, regardless of whether the Minister has made an assessment under subsection 297(3) for that amount) is deemed to have become payable in the reporting period in which the property was transferred, if it is reasonable to conclude that one of the purposes for the transfer of property is to avoid the payment of future tax debt by the transferor or transferee.

New paragraph 297(6)(c) addresses planning that attempts to effectively avoid section 297 through a transaction or series of transactions that reduce the fair market value of consideration given for the property transferred in order to render all or a portion of a tax debt of the transferor uncollectible.

In applying section 297, element A of the formula in paragraph 297(1)(d) is intended to limit the joint and several, or solidarily liability in respect of any tax liability of the transferor for the reporting period in which the transfer took place, or any preceding reporting period. Element A limits the joint and several, or solidarily nature of the transferor's tax liability to the extent that, at the time of the transfer, the fair market value of the transferred property exceeds the fair market value of the consideration received.

New paragraph (6)(c) ensures that the fair market value of consideration given for the transferred property remains relevant in determining the extent to which joint and several, or solidary liability applies under section 297, including

- at the time that the consideration was given, and
- throughout the period that begins immediately before and ends immediately after the transaction or series of transactions that includes the transfer of property.

For this purpose, paragraph (6)(c) deems the amount determined under element A in paragraph 297(1)(d) to be the greater of

- the amount otherwise determined for element A without reference to this new anti-avoidance rule, and
- the amount by which the fair market value of the property at the time of the transfer exceeds the lowest fair market value of the consideration (that is held by the transferor) given for the property at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions (in determining this amount, any part of the consideration that is in a form that is cancelled or extinguished during the period is excluded).

For greater certainty, the reference to consideration that is in a form that is cancelled or extinguished in the description of element B in the formula in subparagraph (6)(c)(ii) is intended to ensure an appropriate extension of the joint and several, or solidary liability in situations where property given as consideration (for example, a promissory note) is subsequently cancelled or extinguished for proceeds below the fair market value at the time it is given.

Clause 16

Evidence

EA, 2001
301

Existing section 301 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of the Act.

Subclause 16(1)

Date electronic notice sent

EA, 2001
301(9.1)

Although for security reasons a notice of assessment is not itself to be conveyed electronically to a person, existing section 301(9.1) provides that a notice or other communication will be, for the purposes of the Act, deemed to be sent by the Minister of National Revenue and received by a person on the date that an electronic message (informing the person that a notice or other

communication is available in their secure electronic account) is sent to the person's most recent electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person's secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Consequential on the introduction of new subsection (9.2), subsection (9.1) is amended to limit its application to notices or other communications sent electronically by the Minister to a person that do not refer to the business number of a person.

This amendment comes into force on royal assent.

Subclause 16(2)

Date electronic notice sent – business account

EA, 2001
301(9.2)

New subsection 301(9.2) changes the default method of correspondence for persons that use the CRA's My Business Account service.

Subsection (9.2) provides that a notice or other communication that refers to the business number of a person is presumed to be sent and received by the person on the date that it is posted in the secure electronic account in respect of the business number of a person. With at least 30 days notice, a person may request in the prescribed manner that notices or other communications making reference to the business number of a person be sent by mail.

This amendment comes into force on royal assent.

Greenhouse Gas Pollution Pricing Act

Clause 17

Large payments

GGPPA
86

Existing section 86 provides that every person required under Part 1 of the *Greenhouse Gas Pollution Pricing Act* (the Act) to pay \$50,000 or more in a single payment to the Receiver General is required to pay the amount at a financial institution. Existing section 86 is replaced by subsections 86(1) and 86(2).

New subsection 86(1) sets out the definition "electronic payment". Electronic payment means any payment to the Receiver General that is made through electronic services offered by a

financial institution as described by paragraphs 86(2)(a) to (d) or by any electronic means specified by the Minister.

New subsection 86(2) imposes a requirement to make payments to the Receiver General through electronic means where the amount of the payment exceeds \$10,000, unless the payor cannot reasonably pay the amount in that manner.

These amendments apply in respect of payments made after 2021.

Clause 18

Inspection

GGPPA

141

Existing section 141 of the Act allows that a person authorized by the Minister of National Revenue to do so may, for the purposes of the administration or enforcement of Part 1 of the Act, inspect, audit or examine records, property, premises or processes in order to determine whether a person is in compliance with this Part. The person may enter any premises or place of business and require persons to offer reasonable assistance. However, if the premises sought to be entered are a dwelling house, the consent of the occupant or a warrant issued by a judge is required.

Subsection 141(2) is amended to ensure that a person authorized by the Minister to do so may, for the purposes of the administration or enforcement of Part 1, inspect, audit or examine records, property, premises or processes in order to determine whether a person is in compliance with that Part at all reasonable times.

Paragraph 141(2)(b) is amended by requiring that authorized persons be given all reasonable assistance and that all their proper questions be answered. Paragraph 141(2)(b) sets out that a person will be required to provide this assistance, as well as to answer these questions with respect to the administration or enforcement of Part 1.

Paragraph 141(2)(b) further sets out a requirement for any person to attend with the authorized person at a place designated by the authorized person, or by video-conference or another form of electronic communication, and sets out the requirement to answer questions orally. Paragraph 141(2)(b) sets out that authorized persons may require that questions be answered in writing, in any form that they specify. For example, authorized persons may require answers to be provided in electronic form, such as by way of an electronic spreadsheet or table. They may also require that questions be answered by means of an organizational chart, or by another similar form of presentation.

Subsection 141(2) is amended by adding paragraph (c).

New paragraph 141(2)(c) sets out that authorized persons may require a person to give the authorized person all reasonable assistance with anything the authorized person is authorized to do under Part 1.

Section 141 is also amended by updating cross-references in subsection 141(3) and paragraph 141(4)(a) consequential to the amendments made to subsection 141(2) and to generally update the wording in accordance with current legislative drafting standards.

This amendment comes into force on royal assent.

Clause 19

Charge liability – transfers not at arm’s length

GGPPA

161

Existing section 161 of the Act provides rules under which a transferee of property may be liable for unpaid charges of the transferor when the two parties are not dealing at arm’s length.

Section 161 is amended by adding new subsection 161(0.1) and by replacing existing subsection 161(6).

These amendments are deemed to have come into force on April 19, 2021.

Subclause 19(1)

Meaning of transaction

GGPPA

161(0.1)

Consequential on the introduction of the section 161 anti-avoidance rules in new subsection 161(6), section 161 is amended by adding new subsection 161(0.1), which provides that a “transaction” includes an arrangement or event.

Subclause 19(2)

Anti-avoidance rules

GGPPA

161(6)

The amount that a person is liable to pay in respect of the transfer of property from a non-arm’s length charge debtor is determined under subsection 161(1). The Minister of National Revenue may assess the person for such a liability under subsection 161(3).

Subsection 161(1) applies in situations where

- there has been a non-arm’s length transfer of property, and
- the transferor had a pre-existing charge liability or a charge liability that arose in the reporting period of the transfer.

If these conditions are met, the transferee is jointly and severally, or solidarily liable in respect of amounts payable by the transferor under Part 1 of the Act, to the extent that the fair market value

of the property transferred exceeded the value of the consideration given for the property at the time of the transfer.

New subsection 161(6) introduces new anti-avoidance rules to address planning which seeks to circumvent the application of section 161.

New paragraph 161(6)(a) addresses planning that attempts to circumvent the application of section 161 by avoiding the requirement that property be transferred between persons that do not deal at arm's length. This paragraph deems, for the purposes of section 161, a transferor and transferee of property to not be dealing at arm's length at all times in a transaction or series of transactions involving the transfer if

- at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, the transferor and transferee do not deal at arm's length, and
- it is reasonable to conclude that one of the purposes of undertaking or arranging the transaction or series of transactions is to avoid joint and several, or solidary liability of the transferee and transferor for an amount payable under Part 1 of the Act.

New paragraph 161(6)(b) addresses planning that attempts to circumvent the application of section 161 by avoiding the requirement that the transferor have an existing charge debt owing in or in respect of the reporting period in which the property is transferred, or any preceding reporting period. This new paragraph provides that an amount that the transferor is liable to pay under Part 1 (including, for greater certainty, an amount that the transferor is liable to pay under section 161, regardless of whether the Minister has made an assessment under subsection 161(3) for that amount) is deemed to have become payable in the reporting period in which the property was transferred, if it is reasonable to conclude that one of the purposes for the transfer of property is to avoid the payment of future charge debt by the transferor or transferee.

New paragraph 161(6)(c) addresses planning that attempts to effectively avoid section 161 through a transaction or series of transactions that reduce the fair market value of consideration given for the property transferred in order to render all or a portion of a charge debt of the transferor uncollectible.

In applying section 161, element A of the formula in paragraph 161(1)(d) is intended to limit the joint and several, or solidary liability in respect of any charge liability of the transferor for the reporting period in which the transfer took place, or any preceding reporting period. Element A limits the joint and several, or solidary nature of the transferor's charge liability to the extent that, at the time of the transfer, the fair market value of the transferred property exceeds the fair market value of the consideration received.

New paragraph (6)(c) ensures that the fair market value of consideration given for the transferred property remains relevant in determining the extent to which joint and several, or solidary liability applies under section 161, including

- at the time that the consideration was given, and
- throughout the period that begins immediately before and ends immediately after the transaction or series of transactions that includes the transfer of property.

For this purpose, paragraph (6)(c) deems the amount determined under element A in paragraph 161(1)(d) to be the greater of

- the amount otherwise determined for element A without reference to this new anti-avoidance rule, and
- the amount by which the fair market value of the property at the time of the transfer exceeds the lowest fair market value of the consideration (that is held by the transferor) given for the property at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions (in determining this amount, any part of the consideration that is in a form that is cancelled or extinguished during the period is excluded).

For greater certainty, the reference to consideration that is in a form that is cancelled or extinguished in the description of element B in the formula in subparagraph (6)(c)(ii) is intended to ensure an appropriate extension of the joint and several, or solidary liability in situations where property given as consideration (for example, a promissory note) is subsequently cancelled or extinguished for proceeds below the fair market value at the time it is given.

Clause 20

Evidence

GGPPA
164

Existing section 164 of the Act provides a number of evidentiary and procedural rules dealing with the administration and enforcement of Part 1 of the Act.

Subclause 20(1)

Date electronic notice sent

GGPPA
164(12)

Existing subsection 164(12) provides that a notice or other communication will be, for the purposes of this Part, deemed to be sent by the Minister of National Revenue and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person's most recent

electronic address. A notice or other communication is considered to be made available if it is posted by the Minister in the person's secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Consequential on the introduction of new subsection (12.1), subsection (12) is amended to limit its application to notices or other communications sent electronically by the Minister to a person that do not refer to the business number of a person.

This amendment comes into force on royal assent.

Subclause 20(2)

GGPPA
164(12.1)

New subsection 164(12.1) changes the default method of correspondence for persons that use the CRA's My Business Account service.

Subsection (12.2) provides that a notice or other communication that refers to the business number of a person is presumed to be sent and received by the person on the date that it is posted in the secure electronic account in respect of the business number of a person. With at least 30 days notice, a person may request in the prescribed manner that notices or other communications making reference to the business number of a person be sent by mail.

This amendment comes into force on royal assent.

Electronic Filing and Provision of Information (GST/HST) Regulations

Clause 21

Prescribed person

Electronic Filing and Provision of Information (GST/HST) Regulations
2(a)

Existing section 2 of the *Electronic Filing and Provision of Information (GST/HST) Regulations* lists the prescribed persons required under subsection 278.1(2.1) of the *Excise Tax Act* to file their returns electronically.

Paragraph 2(a) of the Regulations is amended to remove the existing requirement that the person's threshold amount as determined under subsection 249(1) of the Act exceed \$1,500,000.

This amendment applies in respect of reporting periods that begin after 2021.