
Explanatory Notes Relating to the Excise Tax Act

Published by
The Honourable Chrystia Freeland, P.C., M.P.
Deputy Prime Minister and Minister of Finance

May 2022



Department of Finance
Canada

Ministère des Finances
Canada

Preface

These explanatory notes describe proposed amendments to the *Excise Tax Act*. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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Part 2

Excise Tax Act

Clause 52

New housing — assignment of agreement

ETA

192.1

New section 192.1 of the *Excise Tax Act* (the Act) sets out rules that apply for the purposes of Part IX of the Act in respect of an assignment of an agreement of purchase and sale of a single unit residential complex or of a residential condominium unit. Specifically, section 192.1 applies where

- a taxable supply by way sale of a single unit residential complex or of a residential condominium unit is made in Canada under an agreement of purchase and sale (the “original agreement”) entered into with a builder of the complex or unit, and
- another supply by way of assignment of the original agreement is made under another agreement (the “assignment agreement”) by a person other than the builder.

Where section 192.1 applies, the other supply (the assignment) is deemed to be a taxable supply by way of sale of real property that is an interest in the complex or unit.

Additionally, if the assignment agreement indicates in writing that a part of the consideration for the other supply is attributable to the reimbursement of a deposit paid under the original agreement, the consideration for the other supply, as otherwise determined for the purposes of Part IX, is deemed to be reduced by the part of the consideration for the other supply that is solely attributable to the reimbursement of the deposit paid under the original agreement.

This amendment applies in respect of any supply by way of assignment of an agreement of purchase and sale if the supply is made after May 6, 2022.

Clause 53

GST/HST Health Care Rebate

ETA

259

Section 259 of the *Excise Tax Act* (the Act) provides for rebates to hospital authorities and other public service bodies (i.e., charities, qualifying non-profit organizations, municipalities, school authorities, public colleges and universities).

Under the Goods and Services Tax/Harmonized Sales Tax (GST/HST), generally, hospital authorities can claim an 83-per-cent rebate and charities and qualifying non-profit organizations can claim a 50-per-cent rebate of the GST and the federal component of the HST that they pay on inputs used in their exempt supplies. However, instead of the 50-per-cent rebate, the 83-per-

cent rebate is also available to eligible charities and qualifying non-profit organizations providing health care services similar to those traditionally performed in hospitals.

One of the conditions to be eligible for the 83-per-cent rebate is that a charity or qualifying non-profit organization must deliver the health care service with the active involvement of, or on the recommendation of, a physician, or in a geographically remote community, with the active involvement of a nurse practitioner.

Section 259 is amended to replace this condition so that the organization must deliver the health care service with the active involvement of, or on the recommendation of, either a physician or a nurse practitioner, irrespective of their geographical location. In particular, amendments are made to the definitions “facility supply” and “home medical supply” in subsection 259(1).

The amendments to section 259 apply for the purposes of determining a rebate under that section for claim periods ending after April 7, 2022. However, a rebate for the claim period of a person that includes April 7, 2022 is to be determined as if the amendments did not apply in respect of:

- an amount of tax that became payable by the person on or before April 7, 2022;
- an amount that is deemed to have been paid or collected by the person on or before April 7, 2022;
- an amount that is required to be added in determining the person’s net tax as a result of a branch or division of the person becoming a small supplier division on or before April 7, 2022 or as a result of the person ceasing to be a registrant on or before April 7, 2022.

Subclause 53(1) and (2)

Definition “facility supply”

ETA
259(1)

The definition “facility supply” in subsection 259(1) of the Act encompasses certain exempt supplies of property or services as set out in that definition and is relevant for the purposes of clauses 259(4.1)(b)(iii)(B) to (D) of the Act, which specify those activities in respect of which an 83-per-cent rebate of the GST and the federal component of the HST can be claimed by a charity, public institution or qualifying non-profit organization acting in its capacity as a hospital authority (as defined in subsection 123(1) of the Act), “facility operator” or “external supplier” (as those terms are defined in subsection 259(1)).

One of the requirements that a supply must meet to fall under the definition “facility supply” is set out in subparagraph (a)(ii) of that definition. Under that requirement, a medically necessary process of health care of which the supply is a part must reasonably be expected to take place under the active direction or supervision, or with the active involvement, of either a physician acting in the course of the practice of medicine or in certain circumstances, a midwife, a nurse practitioner or a person prescribed by regulations. In the case of a nurse practitioner, clause (a)(ii)(C) currently stipulates a condition that a physician not be readily accessible in the

geographic area in which the process takes place. Clause (a)(ii)(C) is amended to remove this condition.

Subparagraph (a)(iii) of the definition “facility supply” sets out additional requirements that a supply must meet to fall under the definition “facility supply”. These additional requirements apply only in circumstances where the process of health care for an individual is a process of chronic care that requires the individual to stay overnight at a public hospital or qualifying facility (within the meaning of 259(2.1) of the Act). One of the additional requirements is set out in clause (a)(iii)(B) and stipulates that the health care process requires, or is reasonably expected to require, that a physician be at, or be on-call to attend at, the public hospital or qualifying facility at all times when the individual is at the public hospital or qualifying facility. This additional requirement may be fulfilled by a nurse practitioner instead of by a physician on the condition that a physician is not readily accessible in the geographic area in which the process takes place. Clause (a)(iii)(B) is amended to remove this condition.

Subclause 53(3) and (4)

Definition “home medical supply”

ETA
259(1)

The definition “home medical supply” in subsection 259(1) of the Act encompasses certain exempt supplies of property or services as set out in that definition and is relevant for the purposes of clauses 259(4.1)(b)(iii)(B) to (D) of the Act, which specify those activities in respect of which an 83-per-cent rebate of the GST and the federal component of the HST can be claimed by a charity, public institution or qualifying non-profit organization acting in its capacity as a hospital authority (as defined in subsection 123(1) of the Act), “facility operator” or “external supplier” (as those terms are defined in subsection 259(1)).

One of the requirements that a supply must meet to fall under the definition “home medical supply” is set out in subparagraph (a)(ii) of that definition. Under this requirement, a physician acting in the course of the practice of medicine, or a person prescribed by regulations acting in prescribed circumstances, must identify or confirm that it is appropriate for the process of health care, of which the supply is a part, to take place at the individual’s place of residence or lodging. Subparagraph (a)(ii) is amended so that this requirement may also be fulfilled by a nurse practitioner acting in the course of the practice of a nurse practitioner.

Another of the requirements that a supply must meet to fall under the definition “home medical supply” is set out in paragraph (b) of that definition. As part of this requirement, it must be reasonable to expect that the person who is responsible for coordinating the process of health care act either in consultation with, or with reference to instructions given by, a physician acting in the course of the practice of medicine or a prescribed person acting in prescribed circumstances. Paragraph (b) is amended so that this requirement may also be fulfilled if it is reasonable to expect that the person coordinating the process of health care act either in consultation with, or with reference to instructions given by, a nurse practitioner acting in the course of the practice of a nurse practitioner.

