
Explanatory Notes Relating to Excise Act, 2001, the Underused Housing Tax Act and Other Related Texts

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Preface

These explanatory notes describe legislative proposals relating to the *Excise Act, 2001*, the *Underused Housing Tax Act* and other related texts. These explanatory notes describe these proposals, clause by clause, for the assistance of Members of Parliament, stakeholders and their professional advisors.

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

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Excise Act, 2001

Clause 93

Definition “responsible”

EA, 2001

2

Section 2 of the *Excise Act, 2001* (the “Act”) defines terms used in the Act. The existing definition “responsible” in section 2 of the Act means, in relation to a person, that the person is responsible for bulk alcohol in accordance with sections 104 to 121 of the Act.

The definition is amended to include a person who is responsible for a cannabis product in accordance with sections 158.17 and 158.18 of the Act or for a vaping product in accordance with sections 158.54 to 158.56 of the Act.

This amendment comes into force on royal assent.

Clause 94

Non-application

EA, 2001

158.01

Existing section 158.01 of the Act specifies those cannabis products to which Part 4.1 of the Act does not apply. Paragraphs 158.01(a) to (c) specify that Part 4.1 does not apply to:

- cannabis products that are produced in Canada by an individual for their personal use and in accordance with the *Cannabis Act*, but only to the extent that those cannabis products are not used in a manner prohibited under that Act;
- cannabis products that are produced in Canada by an individual for their own medical purposes and in accordance with the *Controlled Drugs and Substances Act* or the *Cannabis Act*, but only to the extent that those cannabis products are not used in a manner prohibited under one of those Acts; or
- cannabis products that are produced in Canada by a designated person (being an individual who is authorized under the *Controlled Drugs and Substances Act* or the *Cannabis Act* to produce cannabis for the medical purposes of another individual) for the medical purposes of another individual and in accordance with the *Controlled Drugs and Substances Act* or the *Cannabis Act*, but only to the extent that those cannabis products are not used in a manner prohibited under one of those Acts.

New paragraph 158.01(d) is added to specify that Part 4.1 also does not apply to cannabis products that are in the possession of a holder of a licence referred to in paragraph 8(1)(e) or (f) of the *Cannabis Regulations* (i.e., a licence issued under subsection 62(1) of the *Cannabis Act* that is either a licence for research or a cannabis drug licence) but only to the extent that those cannabis products are used by the holder of the licence in activities that are not prohibited for those cannabis products under the conditions of the license or the *Cannabis Act*.

This amendment comes into force on royal assent.

Clause 95**Packaging and stamping of cannabis**

EA, 2001

158.13

Existing section 158.13 of the Act prohibits a cannabis licensee from entering the cannabis products the licensee produces into the duty-paid market, unless the products have been packaged and properly stamped by the licensee (including being stamped to indicate that the additional cannabis duty has been paid, if applicable) and have information prescribed by regulations printed on the packages, if applicable. Also, the cannabis products are required to be stamped by the licensee at the time of packaging.

Section 158.13 is amended to modify the requirements that cannabis products are packaged and stamped by the same cannabis licensee that is entering the cannabis products into the duty-paid market. Instead, a cannabis licensee may also enter a cannabis product into the duty-paid market that has been packaged by another cannabis licensee. Furthermore, if prescribed conditions are met, a cannabis licensee (i.e., a particular licensee), may also enter cannabis products into the duty-paid market that another cannabis licensee has stamped using a stamp that has been issued to the particular licensee. In all cases, the cannabis licensee that is entering a cannabis product into the duty-paid market must be responsible for the cannabis product immediately before it is stamped.

This amendment comes into force on royal assent.

Clause 96**Duty payable**

EA, 2001

158.19(2) to (4)

Existing section 158.19 of the Act imposes duty on cannabis products produced in Canada. Existing subsection 158.19(1) imposes a flat-rate duty on cannabis products produced in Canada at the time they are packaged. The amount of the flat-rate duty is determined under section 1 of Schedule 7 to the Act. Existing subsection 158.19(2) imposes an ad valorem duty (i.e., a duty based on a percentage of the “dutiable amount” as defined in section 2 of the Act) on packaged cannabis products produced in Canada at the time they are delivered to a purchaser. The amount of the ad valorem duty is determined under section 2 of Schedule 7 to the Act. Subsection 158.13(2) is amended to specify that this ad valorem duty is imposed on cannabis products produced in Canada that are both packaged and stamped at the time of their delivery to a purchaser.

Existing subsection 158.19(3) provides that only the greater of the flat-rate and ad valorem duties imposed under subsections 158.19(1) and (2) is payable by the cannabis licensee that packaged the cannabis product at the time of its delivery to a purchaser. The lesser of those two duties is relieved. Subsection 158.13(3) is amended to specify that the greater of those duties is payable by the cannabis licensee that is responsible for the cannabis products immediately before they are stamped, at the time of the delivery of the cannabis products to a purchaser.

Existing subsection 158.19(4) provides that if the flat-rate and ad valorem duties imposed under subsections 158.19(1) and (2) are equal, then only the flat-rate duty is payable by the cannabis licensee that packaged the cannabis product at the time of its delivery to a purchaser, and the

cannabis products are relieved of the ad valorem duty. Subsection 158.13(4) is amended to specify that the duty imposed under subsection 158.19(1) is payable by the cannabis licensee that is responsible for the cannabis products immediately before they are stamped, at the time of the delivery of the cannabis products to a purchaser.

These amendments come into force on royal assent.

Clause 97

Duty payable

EA, 2001

158.2(2)

In addition to the duties imposed under existing section 158.19 of the Act, existing subsection 158.2(1) of the Act imposes a duty in respect of a specified province on cannabis products produced in Canada in circumstances prescribed by regulations in the amount determined in a prescribed manner. This additional cannabis duty is payable by the cannabis licensee that packaged the cannabis products at the time they are delivered to a purchaser under existing subsection 158.2(2). The additional cannabis duty applies in respect of the provinces and territories that have entered into an agreement with Canada in respect of the coordination of cannabis taxation.

Subsection 158.2(2) is amended to specify that the duty imposed under subsection 158.19(1) is payable by the cannabis licensee that is responsible for the cannabis products immediately before they are stamped, at the time of the delivery of the cannabis products to a purchaser.

This amendment comes into force on royal assent.

Clause 98

Reporting period – general

EA, 2001

159.1(1)

Existing section 159.1 of the Act determines the reporting period of a person for filing a return under the Act. Subsection 159.1(1) provides that the reporting period of a person is a fiscal month, unless the person has a semi-annual reporting period pursuant to subsection 159.1(2).

Subsection 159.1(1) is amended so that it also does not apply if the person is a cannabis licensee that has a quarterly reporting period pursuant to new section 159.2 (see commentary to that new section).

This amendment is deemed to have come into force on April 1, 2022.

Clause 99

Reporting period – quarterly

EA, 2001

159.2

New section 159.2 of the Act provides that certain qualifying cannabis licensees may have quarterly reporting periods.

New subsection 159.2(1) defines the terms used in new section 159.2.

“calendar quarter”

The new definition “calendar quarter” means a period of three months beginning on the first day of January, April, July or October.

“threshold amount”

The new definition “threshold amount” of a cannabis licensee for a calendar quarter means the amount that is the total of all duties payable under Part 4.1 of the Act by the cannabis licensee, and any person associated with the cannabis licensee, in the immediately preceding four calendar quarters.

New subsection 159.2(2) provides that, despite subsection 159.1(1) of the Act, the Minister of National Revenue may authorize a cannabis licensee to have reporting periods that are calendar quarters, beginning on the first day of a particular calendar quarter, if the threshold amount of the cannabis licensee for the particular calendar quarter does not exceed \$1,000,000.

New subsection 159.2(3) provides that an application made by a cannabis licensee under subsection 159.2(2) is to be made in prescribed form containing prescribed information and is to be filed with the Minister in prescribed manner on or before the last day of the first month of the first calendar quarter for which the authorization is to take effect or before any later day that the Minister may allow.

New subsection 159.2(4) provides that an authorization under subsection 159.2(2) is deemed to be revoked at the beginning of a calendar quarter if the threshold amount of the cannabis licensee for the calendar quarter exceeds \$1,000,000.

New subsection 159.2(5) provides that the Minister may revoke an authorization under subsection 159.2(2) in respect of a cannabis licensee if the cannabis licensee requests in writing that the Minister do so, if the cannabis licensee fails to comply with the Act or if the Minister considers that the authorization is no longer required.

New subsection 159.2(6) provides that upon the revocation of an authorization under subsection 159.2(5), the Minister shall send a notice in writing and shall specify the fiscal month for which the revocation becomes effective.

New subsection 159.2(7) provides that, if a revocation under subsection 159.2(4) or (5) becomes effective before the last day of a calendar quarter, the period beginning on the first day of the calendar quarter and ending immediately before the first day of the fiscal month for which the revocation becomes effective is deemed to be a reporting period of the cannabis licensee.

These amendments are deemed to have come into force on April 1, 2022.

Clause 100

Contravention of section 158.02, 158.1, 158.11 or 158.12

EA, 2001

234.1

Existing section 234.1 of the Act provides that any person that contravenes section 158.02 of the Act (production of cannabis products without a licence), that receives for sale cannabis products in contravention of section 158.1 of the Act (prohibition regarding cannabis products for sale, etc.) or that sells or offers to sell cannabis products in contravention of section 158.11 (selling

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

Section 234.1 is amended so that a person that commits any contravention of section 158.02, 158.1, 158.11 or 158.12 of the Act is liable to a penalty.

This amendment comes into force on royal assent.

Clause 101

Regulations – Governor in Council

EA, 2001

304(1)(n.1)

Existing section 304 of the Act provides authority to the Governor in Council to make regulations to carry out the purposes and provisions of the Act.

New paragraph 304(1)(n.1) is added to provide authority to the Governor in Council to make regulations respecting the packaging or stamping, and entry into the duty-paid market, by a cannabis licensee of cannabis products that are owned or produced by another cannabis licensee, subject to an authorization of the Minister and any conditions that the Minister considers appropriate, and prescribing joint and several, or solidary, liability or penalties in respect of those cannabis products.

This amendment comes into force on royal assent.

Budget Implementation Act, 2022, No. 1

Clause 102

Budget Implementation Act, 2022, No. 1

128

Section 128 of the *Budget Implementation Act, 2022, No. 1* sets out the transitional rules for the provisions of Division 1 of Part 3 of that Act, which relate to the taxation of vaping products. Under those existing transitional rules, starting January 1, 2023, duties apply under section 158.6 of the *Excise Act, 2001* in respect of vaping products that are taken for use by the person that is responsible for the products, and under section 158.61 of that Act in respect of vaping products that cannot be accounted for by the person that is responsible for the products. Generally, the person that is responsible for vaping products is the manufacturer or importer of the vaping products. Under the current transitional rules, a manufacturer or importer of vaping products could be held liable for these duties under section 158.6 or 158.61 for unstamped vaping products that were legally sold during the transitional period between October 1, 2022 and January 1, 2023.

Those transitional rules in section 128 are therefore amended to provide that the duties for vaping products that are taken for use or that cannot be accounted for do not apply at all (even after the end of the transitional period) in respect of unstamped vaping products manufactured in Canada that are packaged before October 1, 2022, or in respect of unstamped vaping products that are imported before October 1, 2022.

Storage of Goods Regulations

Clause 103

Storage of Goods Regulations

3

The *Storage of Goods Regulations* outline the conditions and time limits concerning the storage of goods in a customs office. The amendment to these Regulations is consequential to the addition of new Part 4.2 of the *Excise Act, 2001* relating to vaping products.

Existing subsection 3(4) of these Regulations provides a time limit of 14 days for certain goods (including tobacco products) to be removed from a customs office before the goods are forfeited. Subsection 3(4) is amended so that it also applies in respect of vaping products.

This amendment is deemed to have come into force on October 1, 2022.

Regulations Respecting Excise Licenses and Registrations

Clauses 104 to 108

Regulations Respecting Excise Licenses and Registrations

2, 4, 5, 10, 12

The *Regulations Respecting Excise Licenses and Registrations* (the Regulations) provide the requirements for applicants wishing to produce and distribute spirits, wine, tobacco, cannabis or vaping products. The Regulations require that certain conditions be met in order to obtain and maintain a licence or registration.

Existing subsection 2(2) of the Regulations provides that an applicant is eligible for a licence (other than a duty-free shop licence) if, among other things, they have not failed in the last five years to comply with an Act of Parliament, (other than the *Excise Act, 2001*), or of the legislature of a province or territory respecting the taxation of, or controls on, alcohol, tobacco or vaping products or any regulations made under it. Subparagraph 2(2)(b)(i) is amended to also refer to an Act of Parliament, (other than the *Excise Act, 2001*), or of the legislature of a province or territory respecting the taxation of, or controls on, cannabis products or any regulations made under it.

Existing section 4 of the Regulations sets out the duration of a licence under the *Excise Act, 2001*. This section is amended to specify that a cannabis licence issued to a person is valid for up to five years from the date it becomes valid, but is no longer valid from the date that the licence or permit issued to the person under subsection 62(1) of the *Cannabis Act* expires. The duration of a vaping product licence is up to three years and the duration of any other licence is up to two years.

Existing section 5 of the Regulations provides the requirements for posting security under the Act. Subsection 5(2) sets out the types of security that are acceptable for the purposes of paragraph 23(3)(b) of the *Excise Act, 2001*. Paragraph 5(2)(a) is amended to remove cash and add a bank draft. Similarly, paragraph 5(2)(c) is amended to remove a Government of Canada bond and add a Canada Post money order.

Existing section 10 of the Regulations provides conditions that must be met when a licence or registration is suspended. Existing subsection 10(1) is amended to add the following grounds for the suspension of a licence or a registration:

- the licensee or registrant fails to meet the requirements of section 2, 3, 6, 7 or 13 of the Regulations;
- the licensee or registrant fails to meet the conditions of the licence or registration;
- the licensee or registrant is bankrupt;
- the licensee or registrant ceases to carry on the business for which the licence or registration was issued;
- the licensee or registrant fails to comply with any Act of Parliament, (other than the *Excise Act, 2001*), or of the legislature of a province or territory or territory respecting the taxation of or controls of alcohol, tobacco products, cannabis products or vaping products, or any regulations made under it; or
- the licensee or registrant acts to defraud His Majesty.

Existing section 12 of the Regulations provides conditions that must be met when a licence or registration is cancelled. Paragraph 12(1)(e) provides that a ground for cancelling a licence or a registration is the failure to comply with any Act of Parliament, (other than the Act), or of the legislature of a province or territory respecting the taxation of, or controls, on alcohol, tobacco products or vaping products, or any regulations made under it. Paragraph 12(1)(e) of the Regulations is amended to also provide that a ground for cancelling a licence or a registration is the failure to comply with any Act of Parliament, (other than the Act), or of the legislature of a province respecting the taxation of, or controls, on cannabis products, or any regulations made under it.

These amendments come into force on royal assent.

Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations

Clauses 109 to 111

Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations

1, 3.6 to 3.9, 5.1

The *Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations* (the Regulations) provide rules relating to the stamping, marking and labelling of tobacco, cannabis and vaping products.

The existing definition “case” in section 1 of the Regulations, when referring to tobacco products, means a corrugated cardboard box in which packages or cartons of tobacco products are packed, primarily for the purpose of transport and protection against damage. This definition is amended to specify that “case”, when referring to vaping products, means a corrugated cardboard box in which packages of vaping products are packed, primarily for the purpose of transport and protection against damage.

New section 3.6 of the Regulations provides that, for the purpose of paragraph 158.46(b) of the *Excise Act, 2001*, a package of vaping products that is manufactured by a vaping product licensee and that is entered into the duty-paid market must have the following information printed on it:

- the vaping product licensee’s name and address;
- the vaping product licensee’s licence number; or
- if the vaping products are packaged by the vaping product licensee for another person, the person’s name and the address of their principal place of business.

New section 3.7 of the Regulations provides that, for the purpose of paragraph 158.47(1)(a) of the *Excise Act, 2001*, a package of vaping products that is imported and that is entered into the duty-paid market must have the following information printed on it:

- the name and address of the manufacturer that packaged the vaping products;
- if the vaping product was imported by a vaping product licensee, the licensee’s name and address or vaping product licence number; or
- if the vaping product was imported by a person other than a vaping product licensee, the person’s name and address.

New section 3.8 of the Regulations provides that, for the purpose of paragraph 158.46(b) of the *Excise Act, 2001* and of paragraph 158.47(1)(a) of that Act, a case of vaping products must have the following information printed on it:

- the number of packages in the case; and
- the volume of the vaping substance in liquid form, and the weight of the vaping substance in solid form, contained in each package.

New section 3.9 of the Regulations provides that, for the purpose subsections 158.5(1) and (2) of the *Excise Act, 2001*, a container of vaping products that is entered into an excise warehouse, or a container of imported vaping products that is delivered to an accredited representative or a customs bonded warehouse, must have the following information printed on it or affixed to it:

- for containers of vaping products manufactured in Canada, the information set out in new section 3.6 of the Regulations; and
- for containers of imported vaping products, the information set out in new section 3.7 of the Regulations.

The amendment to the definition “case” in section 1 of the Regulations and new sections 3.6 to 3.9 of the Regulations are deemed to have come into force on October 1, 2022.

New section 5.1 of the Regulations provides the requirements for service agreements between cannabis licensees in respect of cannabis products. New section 5.1 comes into force on royal assent.

The new definition “service agreement” in new subsection 5.1(1) of the Regulations means an agreement, containing information that is specified by the Minister of National Revenue, between a particular cannabis licensee (other than a cannabis licensee that is a producer of cannabis products solely because of their packaging of cannabis products) and another cannabis

licensee under which the other cannabis licensee is to package, or affix a cannabis excise stamp to, cannabis products for the particular cannabis licensee.

New subsection 5.1(2) of the Regulations provides that a service agreement is an authorized service agreement from the effective date of its authorization under new subsection 5.1(5) until the effective date of the revocation of the authorization of the service agreement under new subsection 5.1(8) (see the commentary for those new subsections).

New subsection 5.1(3) of the Regulations provides that a cannabis licensee that is a party to a service agreement may apply to the Minister of National Revenue to have the service agreement authorized by the Minister.

New subsection 5.1(4) of the Regulations provides that an application for the authorization of a service agreement by the Minister of National Revenue must be made in prescribed form containing prescribed information, must include a copy of the service agreement and must be filed with the Minister on or before the day that is 60 days before the proposed effective date of the authorization of the service agreement or any later day that the Minister may allow.

New subsections 5.1(5) to (8) of the Regulations provides the manner in which the Minister of National Revenue must consider an application for the authorization of a service agreement. Subsection 5.1(5) of the Regulations provides that the Minister must, with all due dispatch, consider the application, authorize or refuse to authorize the service agreement, and notify the applicant of the decision and, if applicable, the effective date of the authorization. Subsection 5.1(6) of the Regulations allows the Minister to, at any time, specify conditions in respect of an authorized service agreement. Subsection 5.1(7) of the Regulations requires a party to an authorized service agreement to notify the Minister in writing without delay of the agreement's termination and of any amendment to the agreement. Under that subsection, if the agreement is to be amended then the party must also make an application under subsection 5.1(3) for an authorization of the amended agreement. Under subsection 5.1(8) of the Regulations, the Minister may revoke the authorization of a service agreement if the Minister is of the opinion that a party to the agreement is in contravention of the agreement or of a condition imposed by the Minister under subsection 5.1(6) or if the Minister is of the opinion that the agreement is, or is to be, no longer in effect. If the Minister does revoke the authorization of the service agreement, the Minister must send a notice of revocation to the parties with the revocation date.

New subsections 5.1(9) and (10) of the Regulations set out the effects of an authorized service agreement.

New subsection 5.1(9) of the Regulations has the effect of allowing a party to an authorized service agreement to possess cannabis excise stamps that have been issued to the other party in the agreement. In particular, it provides that, for the purposes of paragraph 158.05(2)(c) of the *Excise Act, 2001* (unlawful possession of cannabis excise stamps), a prescribed person is a particular cannabis licensee that is a party to an authorized service agreement and that has in their possession cannabis excise stamps that

- are issued to the other cannabis licensee that is a party to the authorized service agreement; and
- are to be affixed to a packaged cannabis product by the particular cannabis licensee in accordance with the authorized service agreement and in accordance with applicable

conditions (if any) in respect of the agreement specified by the Minister under new subsection 5.1(6) (see the commentary for that new subsection).

New subsection 5.1(10) of the Regulations has the effect of allowing a party to an authorized service agreement to enter into the duty-paid market a cannabis product that has been stamped by the other party to the agreement, provided that all of the other requirement for entry in to the duty-paid market set out in the *Excise Act, 2001* are met. In particular, it provides that, for the purposes of new subparagraphs 158.13(c)(ii) and (d)(ii) of that Act (see the commentary for those new subparagraphs), a prescribed condition is that the cannabis product is stamped by the other cannabis licensee in accordance with the authorized service agreement and in accordance with applicable conditions (if any) in respect of the agreement specified by the Minister under new subsection 5.1(6) (see the commentary for that new subsection).

Excise Duties on Cannabis Regulations

Clauses 112

Excise Duties on Cannabis Regulations
8 and 9

The *Excise Duties on Cannabis Regulations* (the Regulations) contain regulations that relate to the framework for the excise duties on cannabis imposed under the *Excise Act, 2001*.

Existing section 8 of the Regulations prescribes the specified provinces for the purposes of section 218.1 of the *Excise Act, 2001*. Section 218.1 provides that any person that contravenes section 158.11 of that Act (selling unstamped cannabis) or 158.12 of that Act (sale or distribution by a licensee) is guilty of an offence and is liable to a fine or imprisonment or both. Amended section 8 provides that Ontario, Saskatchewan, Alberta and Nunavut are prescribed specified provinces for the purposes of section 218.1.

Existing section 9 of the Regulations prescribes the specified provinces for the purposes of section 233.1 of the *Excise Act, 2001*. Section 233.1 provides that a cannabis licensee that contravenes section 158.13 of that Act (packaging and stamping of cannabis) is liable to a penalty. Amended section 9 provides that Ontario, Saskatchewan, Alberta and Nunavut are prescribed specified provinces for the purposes of section 233.1.

These amendments come into force on royal assent.

Underused Housing Tax Act

Clause 113

Definitions

UHTA

2

Existing section 2 of the *Underused Housing Tax Act* (the “Act”) contains definitions that are used in the Act.

The definition “specified Canadian partnership” in section 2 is used in subsection 6(7) of the Act. Paragraphs (a) to (n) of subsection 6(7) set out a number of exclusions where tax under subsection 6(3) of the Act is not payable by a person in respect of a residential property (as defined in section 2) for a calendar year.

Under the exclusion set out in paragraph 6(7)(a), tax is not payable by a person in respect of a residential property for a calendar year if the person is an owner (as defined in section 2) of the residential property solely in their capacity as a partner of a partnership that is a specified Canadian partnership in respect of the calendar year.

Under the existing definition “specified Canadian partnership”, a partnership is a specified Canadian partnership in respect of a calendar year if each member of the partnership is, on December 31 of the calendar year, an excluded owner or a specified Canadian corporation (as those terms are defined in section 2).

Under the existing definition “excluded owner” in section 2, an individual who is a citizen or permanent resident (as those terms are defined in section 2) is an excluded owner, except to the extent the individual is an owner of residential property in their capacity as a partner of a partnership. As a result, such a partner would disqualify a partnership of which it is a member from being a specified Canadian partnership.

To ensure that a partner who is a citizen or permanent resident does not preclude a partnership from being a specified Canadian partnership, this clause amends paragraph (a) of the definition “specified Canadian partnership” to add to the types of eligible members of a specified Canadian partnership, a member of the partnership that would be, on December 31 of the calendar year, an excluded owner if paragraph (b) of the definition “excluded owner” were read without reference to the words “or as a partner of a partnership”.

This clause also makes a housekeeping amendment to the French version of the Act by adding a missing reference to “une administration hospitalière” (i.e., “a hospital authority”) in paragraph (f) of the definition “propriétaire exclu” (i.e., “excluded owner”) in section 2 of the Act.

These amendments are deemed to have come into force on January 1, 2022.

Clause 114

Tax not payable

UHTA

6(7)

Paragraphs (a) to (n) of subsection 6(7) of the Act set out a number of exclusions where tax under subsection 6(3) of the Act is not payable by a person in respect of a residential property (as defined in section 2 of the Act) for a calendar year.

This clause amends paragraph 6(7)(l) to correct the time at which construction of a residential property must be substantially completed in order to qualify under that paragraph for an exclusion from the payment of tax. Specifically, the reference to the residential property being

substantially completed “after March” of a calendar year is replaced by a reference to the residential property being substantially completed “in January, February or March” of a calendar year.

This amendment is deemed to have come into force on January 1, 2022.

Clause 115
Failure to file

UHTA
47(1)

Existing subsection 47(1) of the Act imposes a penalty on any person that fails to file a return for a residential property for a calendar year as and when required under section 7 of the Act.

As a housekeeping amendment to provide for proper cross-referencing of provisions within the Act, this clause amends subsection 47(1) to update the reference to section 7 in that subsection to a reference to Part 4 of the Act.

This amendment is deemed to have come into force on January 1, 2022.

Underused Housing Tax Regulations

Clause 116
Making of Regulations

Underused Housing Tax Regulations

This clause makes the *Underused Housing Tax Regulations* (the “Regulations”) under the Act. These Regulations implement the underused housing tax exemption for vacation/recreational properties that was announced in Economic and Fiscal Update 2021 on December 14, 2021 and give the Minister of National Revenue the authority to require individuals to provide their social insurance number, where applicable, in underused housing tax returns.

Definitions, Prescribed Areas, Prescribed Condition

UHTR

2

Under paragraph (m) of subsection 6(7) of the Act, tax is not payable by a person in respect of a residential property (as defined in section 2 of the Act) for a calendar year if the residential property is located in a prescribed area and prescribed conditions, if any, are met. Section 2 of the Regulations prescribe areas and a condition for the purposes of that paragraph.

Subsection 2(2) prescribes the followings areas:

- an area that is, as determined in the last census published by Statistics Canada before the calendar year, neither within a census metropolitan area (as defined in subsection 2(1) of the Regulations) nor within a specified census agglomeration (as defined in subsection 2(1)), and
- an area that is, as determined in the last census published by Statistics Canada before the calendar year, within a census metropolitan area or specified census agglomeration, and not within a population centre (as defined in subsection 2(1)).

Subsection 2(3) prescribes a condition for a calendar year and in respect of a person that is an owner of a residential property (as those terms are defined in section 2 of the Act) located in an area referred to in subsection 2(2). The prescribed condition is that the residential property is used as a place of residence or lodging by the owner or the owner's spouse or common-law partner for at least 28 days during the calendar year.

Social Insurance Number

UHTR

3

Section 3 of the Regulations gives the Minister of National Revenue the authority to require an individual to provide their Social Insurance Number in any return filed under the Act.

Clause 117

Coming into force

This clause provides that section 1, subsection 2(1) and section 3 of the *Underused Housing Tax Regulations*, as made by clause 116, come into force or are deemed to come into force on December 31, 2022 and that subsections 2(2) and (3) of the Regulations, as made by clause 116, apply to 2022 and subsequent calendar years.

This clause also deems the *Underused Housing Tax Regulations*, as made by clause 116, to have been made under section 84 of the *Underused Housing Tax Act*. Since these Regulations are being enacted by Parliament, this clause also confirms that procedural steps under the *Statutory Instruments Act* are deemed to have been made.