

## PART 1

# Draft Digital Services Tax Act

## Enactment of Act

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**1 (1) The *Digital Services Tax Act*, whose text is as follows, is enacted:**

An Act respecting a Digital Services Tax

## Short Title

### Short title

**1** This Act may be cited as the *Digital Services Tax Act*.

## PART 1

# Interpretation and Rules of Application

### Definitions

**2** The following definitions apply in this Act.

**acceptable accounting principles** means

(a) International Financial Reporting Standards; and

(b) other country-specific generally accepted accounting principles relevant for corporations that are traded on a public securities exchange outside Canada and that require two or more entities to prepare consolidated financial statements in a manner similar to International Financial Reporting Standards. (*principes comptables acceptables*)

**assessment** means an assessment or a reassessment under this Act. (*cotisation*)

**bankrupt** has the same meaning as in section 2 of the *Bankruptcy and Insolvency Act*. (*failli*)

**Canadian digital services revenue** means a taxpayer's Canadian digital services revenue determined in accordance with Part 3. (*revenu canadien de services numériques*)

**consolidated financial statements** means financial statements in which the assets, liabilities, income, expenses and cash flows of the members of a group are presented as those of a single economic entity. (*états financiers consolidés*)

**consolidated group** means two or more entities that are required to prepare consolidated financial statements for financial reporting purposes under acceptable accounting principles, or would be so required if equity interests in any of the entities were traded on a public securities exchange, the trading on which requires the use of acceptable accounting principles. (*groupe consolidé*)

**constituent entity**, of a consolidated group, means

(a) any entity of the group that

**(i)** is included in the consolidated financial statements of the group prepared in accordance with acceptable accounting principles, or

**(ii)** if consolidated financial statements are not required to be prepared by the group, or are not prepared in accordance with acceptable accounting principles, would be required to be included in the consolidated financial statements of the group if equity interests in any of the entities in the group were traded on a public securities exchange, the trading on which requires the use of acceptable accounting principles; and

**(b)** any entity that is excluded from the group's consolidated financial statements solely because of size or materiality. (*entité constitutive*)

**digital content** means

**(a)** a digitally encoded text, video, image or sound recording;

**(b)** computer software; or

**(c)** any other thing that is digitally encoded and electronically transmittable,

but does not include a financial instrument. (*contenu numérique*)

**digital interface** means a website, application or any other electronic medium through which data or digital content is collected, viewed, consumed, delivered or interacted with. (*interface numérique*)

**entity** means a person other than an individual. (*entité*)

**financial instrument** means

**(a)** a security that is

**(i)** a share of the capital stock of a corporation,

**(ii)** an income or capital interest in a trust,

**(iii)** a note, bond, debenture or other evidence of indebtedness, or

**(iv)** an interest in a partnership;

**(b)** money and a money market instrument that is a cheque, bill, certificate of deposit or derivative;

**(c)** a property that is a digital representation of value that functions as a medium of exchange and that only exists at a digital address of a publicly distributed ledger, other than property that

**(i)** confers a right, whether immediate or future and whether absolute or contingent, to be exchanged or redeemed for specific property or services or to be converted into specific property or services,

**(ii)** is primarily for use within, or as part of, a gaming platform, an affinity or rewards program or a similar platform or program, or

**(iii)** is property prescribed by regulation;

**(d)** an insurance contract;

**(e)** an annuity contract;

**(f)** a precious metal;

**(g)** a commodity;

**(h)** an interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap or similar agreement;

**(i)** a guarantee, acceptance or indemnity in respect of anything described in paragraph (a), (f), (g) or (h);

**(j)** any interest or right (including a futures or forward contract or option) in a future supply of anything described in any of paragraphs (a) to (i); and

**(k)** any other property prescribed by regulation. (*effet financier*)

**first year of application** means the calendar year that includes the day on which this Act comes into force. (*première année d'application*)

**fiscal year** means

**(a)** in the case of a taxpayer, an accounting period with respect to which the taxpayer prepares its financial statements; and

**(b)** in the case of a consolidated group, an accounting period with respect to which the ultimate parent entity of the group prepares its financial statements. (*exercice*)

**Minister** means the Minister of National Revenue. (*ministre*)

**online marketplace** means a digital interface that allows users to interact with other users and facilitates the supply of property or services, including digital content, between those users, but does not include a digital interface

**(a)** with a single supplier of such property or services; or

**(b)** the main purpose of which is to

**(i)** provide payment services by facilitating the electronic transfer of funds,

**(ii)** make advances, grant credit or lend money, or

**(iii)** facilitate the supply of financial instruments. (*marché en ligne*)

**online search engine** means a digital interface that allows users to search the Web for digital content of multiple unrelated websites. (*moteur de recherche en ligne*)

**online targeted advertisement** means an advertisement – including, for greater certainty, any content that is prominently placed for the purpose of promotion – that

**(a)** consists of digital content;

**(b)** is placed on, or transmitted through, a digital interface; and

**(c)** is targeted at users based on any part of the user data associated with the users. (*publicité en ligne ciblée*)

**person** includes an individual, trust, partnership, corporation and any other body of persons or organization of any kind. (*personne*)

**property** means any property, whether real or personal, movable or immovable, tangible or intangible, corporeal or incorporeal, and includes a right or interest of any kind, a share, a chose in action and, for greater certainty, money. (*bien*)

**regulation** means a regulation made by the Governor in Council under this Act. (*règlement*)

**social media platform** means a digital interface the main purpose of which is to allow users to find and interact with other users or with digital content generated by other users. (*plateforme de médias sociaux*)

**supply** means the provision of property or a service in any manner, including sale, transfer, barter, exchange, licence, rental, lease, gift or disposition. (*fourniture*)

**taxable Canadian digital services revenue** means a taxpayer's taxable Canadian digital services revenue determined in accordance with Part 4. (*revenu canadien de services numériques imposable*)

**taxpayer** means an entity whether or not the entity is liable to pay tax under this Act, but does not include a corporation, commission or association all of the shares, or the capital, of which is held, directly or indirectly, by one or more persons each of whom is His Majesty in right of Canada or of a province. (*contribuable*)

**total consolidated group revenue**, of a consolidated group for a fiscal year, means the revenue reported in the group's consolidated financial statements for the year or, if such statements are not prepared in accordance with acceptable accounting principles or no such statements are prepared, the revenue that would be reported if such statements had been prepared in accordance with International Financial Reporting Standards. However, total consolidated group revenue does not include the revenue of any entity that is not a taxpayer. (*revenu consolidé total du groupe*)

**ultimate parent entity**, of a consolidated group, means a particular constituent entity of the group in respect of which the following conditions are met:

- (a) the particular constituent entity holds directly or indirectly a sufficient interest in one or more constituent entities of the group so that it is required to prepare consolidated financial statements under acceptable accounting principles or would be so required if the equity interests in the particular constituent entity were traded on a public securities exchange, the trading on which requires the use of acceptable accounting principles; and
- (b) no other constituent entity of the group holds, directly or indirectly, an interest, as described in paragraph (a), in the particular constituent entity. (*entité mère ultime*)

**user** means any individual (other than an individual acting in the course of an entity's business) or entity (including an individual acting in the course of the entity's business) that interacts (directly or indirectly in any manner whatever) with a digital interface, but does not include

- (a) the person that operates the digital interface;
- (b) if an entity operates the digital interface and the entity is a constituent entity of a consolidated group, another constituent entity of the group; and
- (c) an employee of an individual or entity described in paragraph (a) or (b) acting in the course of the individual's or entity's business. (*utilisateur*)

**user data** means representations, in any form, of information or concepts generated by, or collected from, a user's interaction (directly or indirectly in any manner whatever) with a digital interface. (*données d'utilisateurs*)

### **Negative or undefined results**

**3** If an amount or number is required under this Act to be determined or calculated by or in accordance with an algebraic formula, it is deemed to be nil if

- (a) the amount or number when so determined or calculated would, in the absence of this section, be a negative amount or number; or
- (b) the result of the formula would be mathematically undefined.

### **Determination of revenue**

**4 (1)** For the purposes of this Act, revenue of a taxpayer is to be determined in accordance with the acceptable accounting principles used in the preparation of the financial statements of the taxpayer, or if such statements are not prepared in accordance with acceptable accounting principles or no such statements are prepared, in accordance with

- (a) in the case of a taxpayer that is a constituent entity of a consolidated group,

(i) the acceptable accounting principles, if any, used in the preparation of the consolidated financial statements of the group, or

(ii) International Financial Reporting Standards; and

(b) in any other case, International Financial Reporting Standards.

### **Currency of revenue – Euro conversion**

(2) For the purposes of Part 2, if total revenue or total consolidated group revenue is expressed in a currency other than Euro, the amount is to be converted from that currency to Euro using a rate of exchange that is acceptable to the Minister.

### **Currency of revenue – Canadian dollar conversion**

(3) For the purposes of Part 3, if an amount of revenue is expressed in a currency other than Canadian dollars, the amount is to be converted from that currency to Canadian dollars using a rate of exchange that is acceptable to the Minister.

### **Short fiscal year – €750 million threshold**

5 For the purposes of this Act, if a fiscal year is less than twelve months, a reference to the amount “€750,000,000” in respect of the year is to be read as a reference to the amount determined by the following formula

$$€750,000,000 \times A \div 365$$

where

A is the number of days in the year.

### **Continuity of consolidated group**

6 For the purposes of this Act, a consolidated group, at any time, is the same consolidated group at another time if at both times, and all times between those times, the ultimate parent entity of the group is the same.

### **Mergers**

7 If, in a calendar year, there is a merger or combination of two or more corporations (each of which is referred to in this section as a “predecessor corporation”) to form one corporate entity (referred to in this section as the “new corporation”),

(a) for the purposes of this Act, subject to paragraphs (b) and (c), the new corporation is deemed to be a separate person from each of the predecessor corporations;

(b) for the purposes of Part 6, the new corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation; and

(c) for the purposes of section 6,

(i) if one of the predecessor corporations, and no other predecessor corporation, is an ultimate parent entity of a consolidated group, the new corporation is deemed to be the same corporation as the ultimate parent entity, or

(ii) if two or more of the predecessor corporations are each an ultimate parent entity of a consolidated group, the new corporation is deemed to be the same corporation as the ultimate parent entity of the consolidated group that had the greatest amount of total consolidated group revenue for a fiscal year of the group that ended in the immediately preceding calendar year.

### **Arm’s length**

8 (1) For the purposes of this Act,

(a) related persons are deemed not to deal with each other at arm’s length; and

(b) it is a question of fact whether persons not related to each other are, at any time, dealing with each other at arm's length.

### **Related persons**

(2) For the purposes of this Act, persons are related to each other if they are related persons within the meaning of subsection 6(2) of the *Excise Act, 2001*.

### **His Majesty**

9 This Act is binding on His Majesty in right of Canada or a province.

## **PART 2**

# **Liability for Tax**

### **Tax payable**

10 (1) Every taxpayer must pay a tax in respect of a particular calendar year (other than the first year of application) equal to 3% of the taxpayer's taxable Canadian digital services revenue for the particular calendar year if

(a) the taxpayer

(i) had total revenue of at least €750,000,000 during a fiscal year of the taxpayer that ended in the immediately preceding calendar year,

(ii) was, at any time in the immediately preceding calendar year, a constituent entity of a consolidated group that had total consolidated group revenue of at least €750,000,000 during a fiscal year of the group that ended in that immediately preceding calendar year, or

(iii) is, at any time in the particular calendar year, a constituent entity of a consolidated group that had total consolidated group revenue of at least €750,000,000 during a fiscal year of the group that ended in the immediately preceding calendar year; and

(b) at least one of the following conditions applies:

(i) the Canadian digital services revenue of the taxpayer for the particular calendar year is greater than \$20,000,000, or

(ii) in respect of any consolidated group of which the taxpayer is a constituent entity at any time in the particular calendar year, the total of all amounts — each of which is the Canadian digital services revenue for the particular calendar year of an entity that is a constituent entity of the group at any time in the particular calendar year — is greater than \$20,000,000.

### **Tax payable for first year of application**

(2) A taxpayer must pay, in respect of the first year of application, a tax equal to 3% of the total of all amounts each of which is the taxpayer's taxable Canadian digital services revenue for a calendar year (for which the conditions in paragraphs (1)(a) and (b) are met) that is 2022, the first year of application, or a calendar year between those years.

## **PART 3**

# **Canadian Digital Services Revenue**

### **Definitions**

11 The following definitions apply in this Part.

**user located in Canada**, at any time, means a user in respect of which it is reasonable to conclude – based on the taxpayer’s user data associated with the user (including any of: the billing, delivery or shipping address, or the phone number area code, most recently provided by the user; global navigation satellite systems data; and Internet Protocol address data) – that the user is

(a) located in Canada at that time, in the case of:

(i) online advertising services revenue that is in respect of an online targeted advertisement for which the targeting is based on the real-time location of users, and

(ii) user data revenue that is based on the real-time location of users; and

(b) normally located in Canada at that time, in any other case. (*utilisateur situé au Canada*)

**user located outside Canada**, at any time, means a user (other than a user located in Canada) in respect of which it is reasonable to conclude – based on the taxpayer’s user data associated with the user (including any of: the billing, delivery or shipping address, or the phone number area code, most recently provided by the user; global navigation satellite systems data; and Internet Protocol address data) – that the user is

(a) located outside Canada at that time, in the case of:

(i) online advertising services revenue that is in respect of an online targeted advertisement for which the targeting is based on the real-time location of users, and

(ii) user data revenue that is based on the real-time location of users; and

(b) normally located outside Canada at that time, in any other case. (*utilisateur situé à l’extérieur du Canada*)

**user of determinable location**, at any time, means a user that is, at that time, a user located in Canada or a user located outside Canada. (*utilisateur dont l’emplacement est déterminable*)

### Basic rule

**12 (1)** A taxpayer’s Canadian digital services revenue for a calendar year is the amount determined by the formula

$$A + B + C + D$$

where

**A** is the amount of the taxpayer’s Canadian online marketplace services revenue for the calendar year as determined in accordance with Division A of this Part;

**B** is the amount of the taxpayer’s Canadian online advertising services revenue for the calendar year as determined in accordance with Division B of this Part;

**C** is the amount of the taxpayer’s Canadian social media services revenue for the calendar year as determined in accordance with Division C of this Part; and

**D** is the amount of the taxpayer’s Canadian user data revenue for the calendar year as determined in accordance with Division D of this Part.

### Election

(2) Despite subsection (1), a taxpayer may elect in respect of a particular calendar year that is before the first year of application (by electing on or before June 30 of the calendar year following the first year of application in the form and manner, and containing the information, prescribed by the Minister) for subsection (1) not to apply in respect of the particular calendar year, and for the taxpayer’s Canadian digital services revenue for the particular calendar year to be determined by the formula

$$A \div B \times C$$

where

- A is the taxpayer's Canadian digital services revenue for the first year of application;
- B is the taxpayer's total revenue for the first year of application; and
- C is the taxpayer's total revenue for the particular calendar year.

**Election – restriction**

(3) A taxpayer cannot elect under subsection (2) in respect of a particular calendar year after 2022 if the taxpayer did not make an election under subsection (2) for a calendar year after 2021 that precedes the particular calendar year and for which the conditions in paragraphs 10(1)(a) and (b) are met.

**DIVISION A**

## Canadian Online Marketplace Services Revenue

**Definition**

**13 (1)** For the purposes of this Part and subject to subsection (2) and Division E, **online marketplace services revenue**, of a taxpayer, means revenue earned by the taxpayer in respect of an online marketplace of the taxpayer (or of another constituent entity of a consolidated group of which the taxpayer is, at the time the revenue is earned, a constituent entity) from

- (a) the provision of access to, or the use of, the online marketplace;
- (b) commissions and other fees from the facilitation of a supply between users of the online marketplace and from services ancillary to the supply;
- (c) the provision of premium services, preferential listing services and other optional enhancements to the basic function, or changes to the standard commercial terms, of the services provided in respect of the online marketplace; and
- (d) sources prescribed by regulation.

**Definition – revenue exclusion**

(2) For the purpose of the definition **online marketplace services revenue** in subsection (1), revenue earned by a taxpayer in respect of an online marketplace does not include revenue

- (a) from the provision of storage or shipping services, to the extent that the revenue reflects a reasonable rate of remuneration for the service;
- (b) earned from a constituent entity of a consolidated group if, at the time the revenue is earned, the taxpayer is a constituent entity of the group; or
- (c) from sources prescribed by regulation.

**Canadian online marketplace services revenue**

**14** A taxpayer's Canadian online marketplace services revenue for a calendar year is the amount determined by the formula

$$A + B + C$$

where

- A** is the total of all amounts each of which is an amount of online marketplace services revenue of the taxpayer for the calendar year that is in respect of a supply, between users of an online marketplace, of a service
- (a) physically performed and received in Canada;
  - (b) in respect of real property situated in Canada; or



(c) in respect of tangible personal property that is normally situated in Canada and that is situated in Canada at the time the service is performed;

**B** is the total of all amounts each of which is an amount, in respect of a supply between users of an online marketplace (other than a supply described in Variable A if the references to “Canada” were read as references to “any place”), determined by the formula

$$D \times E \div 2$$

where

**D** is the taxpayer’s online marketplace services revenue for the calendar year that is in respect of the supply,

**E** is

(a) 2, if each of the supplier and the purchaser in respect of the supply is, at the time of the supply, a user located in Canada,

(b) 1, if only the supplier or only the purchaser in respect of the supply is, at the time of the supply, a user located in Canada, and

(c) nil, in any other case, and

**C** is the total of all amounts each of which is an amount, in respect of an online marketplace, determined by the formula

$$F \times G \div H$$

where

**F** is the taxpayer’s online marketplace services revenue (other than revenue that is in respect of a supply between users) for the calendar year that is in respect of the online marketplace,

**G** is the total number of relevant users in respect of supplies between users of the online marketplace during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer), where the number of relevant users in respect of any supply is

(a) 2, if each of the supplier and the purchaser in respect of the supply is, at the time of the supply, a user located in Canada,

(b) 1, if only the supplier or only the purchaser in respect of the supply is, at the time of the supply, a user located in Canada, and

(c) nil, in any other case, and

**H** is the total number of relevant users in respect of supplies between users of the online marketplace during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer), where the number of relevant users in respect of any supply is

(a) 2, if each of the supplier and the purchaser in respect of the supply is, at the time of the supply, a user of determinable location;

(b) 1, if only the supplier or only the purchaser in respect of the supply is, at the time of the supply, a user of determinable location; or

(c) nil, in any other case.

## DIVISION B

### Canadian Online Advertising Services Revenue

#### Definition

**15 (1)** For the purposes of this Part and subject to subsection (2) and Division E, *online advertising services revenue*, of a taxpayer, means revenue earned by the taxpayer from

- (a) the facilitation through a digital interface of the delivery of an online targeted advertisement;
- (b) the provision of digital space for an online targeted advertisement; and
- (c) sources prescribed by regulation in respect of online targeted advertisements.

**Definition – revenue exclusion**

(2) For the purpose of the definition **online advertising services revenue** in subsection (1), revenue earned by a taxpayer does not include revenue

- (a) described in any of paragraphs 13(1)(a) to (d);
- (b) in respect of an online targeted advertisement to the extent of any payment made by the taxpayer (or by another constituent entity of a consolidated group, if at the time the revenue is earned, the taxpayer is a constituent entity of the group) to another entity if
  - (i) the payment is in respect of the online targeted advertisement, and
  - (ii) the payment would be online advertising services revenue of the other entity, if this section were read without reference to this paragraph or to section 21;
- (c) earned from a constituent entity of a consolidated group if, at the time the revenue is earned, the taxpayer is a constituent entity of the group; or
- (d) from sources prescribed by regulation.

**Canadian online advertising services revenue**

**16** A taxpayer’s Canadian online advertising services revenue for a calendar year is the amount determined by the formula

$$A + B$$

where

- A** is the total of all amounts each of which is an amount of online advertising services revenue of the taxpayer for the calendar year that is directly attributable to an instance of a display of an online targeted advertisement to a user, or an instance of a user’s interaction with an online targeted advertisement, if the user is a user located in Canada at the time of the display or interaction, and
- B** is the total of all amounts each of which is an amount, in respect of an online targeted advertisement (other than an advertisement for which revenue of the taxpayer is directly attributable to an instance of a display of the advertisement to a user, or directly attributable to an instance of a user’s interaction with the advertisement, if the user is of determinable location at the time of the display or interaction), determined by the formula

$$C \times D \div E$$

where

- C** is the taxpayer’s online advertising services revenue for the calendar year that is in respect of the online targeted advertisement,
- D** is the number of times during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer) that the online targeted advertisement is displayed to a user that is, at the time of display, a user located in Canada, and
- E** is the number of times during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer) that the online targeted advertisement is displayed to a user that is, at the time of display, a user of determinable location.

## DIVISION C

# Canadian Social Media Services Revenue

### Definition

**17 (1)** For the purposes of this Part and subject to subsection (2) and Division E, **social media services revenue**, of a taxpayer, means revenue earned by the taxpayer in respect of a social media platform of the taxpayer (or of another constituent entity of a consolidated group of which the taxpayer is, at the time the revenue is earned, a constituent entity) from

- (a) the provision of access to, or the use of, the social media platform;
- (b) the provision of premium services and other optional enhancements to the basic function, or changes to the standard commercial terms, of the services provided in respect of the social media platform;
- (c) the facilitation of an interaction between users, or between a user and digital content generated by other users, on the social media platform; and
- (d) sources prescribed by regulation.

### Definition – revenue exclusion

**(2)** For the purpose of the definition **social media services revenue** in subsection (1), revenue earned by a taxpayer in respect of a social media platform does not include revenue

- (a) described in any of paragraphs 13(1)(a) to (d) and 15(1)(a) to (c);
- (b) from the provision of private communication services consisting of video calls, voice calls, emails and instant messaging, if the sole purpose of the platform is to provide such services;
- (c) earned from a constituent entity of a consolidated group if, at the time the revenue is earned, the taxpayer is a constituent entity of the group; or
- (d) from sources prescribed by regulation.

### Canadian social media services revenue

**18** A taxpayer's Canadian social media services revenue for a calendar year is the total of all amounts each of which is an amount, in respect of a social media platform, determined by the formula

$$A \times B \div C$$

where

- A** is the taxpayer's social media services revenue for the calendar year that is in respect of the social media platform;
- B** is the total number of social media accounts on the social media platform that are accessed at any time during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer) by a user that is, at that time, a user located in Canada; and
- C** is the total number of social media accounts on the social media platform that are accessed at any time during the calendar year (or, in the case of a taxpayer to which section 21 applies, during the in-scope period of the taxpayer) by a user that is, at that time, a user of determinable location.

## DIVISION D

### Canadian User Data Revenue

#### Definition

**19 (1)** For the purposes of this Part and subject to subsection (2) and Division E, **user data revenue**, of a taxpayer, means revenue earned by the taxpayer in respect of user data collected from a user by the taxpayer (or collected from a user by another constituent entity of a consolidated group of which the taxpayer is, at the time the taxpayer obtains access to the data, a constituent entity) from

- (a) if the user data is collected from an online marketplace, a social media platform or an online search engine
  - (i) the sale of the user data, and
  - (ii) the granting of access to the user data; and
- (b) sources prescribed by regulation.

#### Definition — revenue exclusion

**(2)** For the purpose of the definition **user data revenue** in subsection (1), revenue earned by a taxpayer in respect of user data does not include revenue

- (a) described in any of paragraphs 13(1)(a) to (d), 15(1)(a) to (c) and 17(1)(a) to (d);
- (b) earned from a constituent entity of a consolidated group if, at the time the revenue is earned, the taxpayer is a constituent entity of the group; or
- (c) from sources prescribed by regulation.

#### Canadian user data revenue

**20** A taxpayer's Canadian user data revenue for a calendar year is the amount determined by the formula

$$A + B$$

where

- A** is the total of all amounts each of which is an amount of the taxpayer's user data revenue for the calendar year that is in respect of the user data of a single user that is, at the time the user data is collected, a user located in Canada; and
- B** is the total of all amounts each of which is an amount in respect of a set of user data of multiple users, determined by the formula

$$C \times D \div E$$

where

- C** is the taxpayer's user data revenue (other than revenue that is in respect of the user data of a single user that is, at the time the user data is collected, a user of determinable location) for the calendar year that is in respect of the set of user data,
- D** is the number of users to which the set of user data relates that are, at the time the user data is collected, a user located in Canada, and
- E** is the number of users to which the set of user data relates that are, at the time the user data is collected, a user of determinable location.

## DIVISION E

# Rules Relating to Computation of Canadian Digital Services Revenue

### Revenue of new constituent entities

**21 (1)** If a taxpayer meets the condition described in subparagraph 10(1)(a)(iii) for a particular calendar year, and does not meet the conditions described in subparagraph 10(1)(a)(i) or (ii) for the particular calendar year, then online marketplace services revenue, online advertising services revenue, social media services revenue and user data revenue of the taxpayer for the particular calendar year do not include revenue earned by the taxpayer before the first moment in the particular calendar year that the taxpayer becomes a constituent entity of a consolidated group described in subparagraph 10(1)(a)(iii).

### Definition — in-scope period

**(2)** If subsection (1) applies to a taxpayer for a particular calendar year, for the purposes of this Part, the *in-scope period*, of the taxpayer, means the period during the particular calendar year beginning at the first moment in the particular calendar year that the taxpayer becomes a constituent entity of a consolidated group described in subparagraph 10(1)(a)(iii) and ending at the last moment of December 31.

### Attribution of activity

**22** Revenue of a particular constituent entity of a consolidated group is deemed to be Canadian digital services revenue of the particular entity if the revenue

- (a) is in respect of another constituent entity's provision of a service or selling or granting of access to user data; and
- (b) would be Canadian digital services revenue of that other entity if the revenue were earned by the other entity.

## PART 4

# Taxable Canadian Digital Services Revenue

### Definitions

**23** The following definitions apply in this Part.

*relevant interval*, of a taxpayer in a calendar year, means any period from one relevant time of the taxpayer in the year to the next relevant time of the taxpayer in the year. (*intervalle pertinent*)

*relevant time*, of a particular taxpayer in a calendar year, means

- (a) the first moment of
  - (i) the in-scope period of the taxpayer if section 21 applies to the taxpayer for the calendar year, or
  - (ii) January 1 of the year in any other case;
- (b) the last moment of December 31 of the year;
- (c) any time between the time described in paragraph (a) and the time described in paragraph (b) at which the particular taxpayer becomes, or ceases to be, a constituent entity of a consolidated group; and
- (d) any time between the time described in paragraph (a) and the time described in paragraph (b) at which
  - (i) the particular taxpayer is a constituent entity of a consolidated group, and
  - (ii) any other taxpayer becomes, or ceases to be, a constituent entity of the group (*moment pertinent*).

### Computation — taxable Canadian digital services revenue

**24** A particular taxpayer's taxable Canadian digital services revenue for a calendar year is the amount determined by the formula

$$A - B$$

where

**A** is the particular taxpayer's Canadian digital services revenue for the calendar year; and

**B** is

(a) if the particular taxpayer is not, at any time in the calendar year, a constituent entity of a consolidated group, \$20,000,000, and

(b) in any other case, the total of all amounts each of which is an amount in respect of a relevant interval of the particular taxpayer in the calendar year determined by the formula

$$\$20,000,000 \times (C \div 365) \times (D \div E)$$

where

**C** is the number of days in the relevant interval,

**D** is the particular taxpayer's Canadian digital services revenue for the calendar year, and

**E** is

(i) if the particular taxpayer is a constituent entity of a consolidated group in the relevant interval, the total of all amounts each of which is the Canadian digital services revenue for the calendar year of any taxpayer that is a constituent entity of the consolidated group in the relevant interval (or, if the taxpayer does not determine all those amounts, nil), and

(ii) in any other case, the amount determined for D.

## PART 5

### Miscellaneous

#### DIVISION A

#### Trustees and Receivers

##### Definitions

**25** The following definitions apply in this Division.

**bankruptcy day**, of a taxpayer, means a day on which a trustee becomes the trustee in bankruptcy of the taxpayer. (*jour de la faillite*)

**bankruptcy period**, of a taxpayer in respect of a bankruptcy day, means the period during a calendar year (for which the taxpayer meets the thresholds described in subparagraph 10(1)(a)(i) or (ii) and paragraph 10(1)(b)) beginning on the day after the bankruptcy day and ending on the earlier of the day on which the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act* and December 31 of the year. (*période de faillite*)

**bankrupt year**, of a taxpayer in respect of a bankruptcy day, means any calendar year (for which the taxpayer meets the thresholds described in subparagraph 10(1)(a)(i) or (ii) and paragraph 10(1)(b)) between the calendar year in which the bankruptcy day occurs and the calendar year in which the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act*. (*année de faillite*)

**business** includes a part of a business. (*entreprise*)

**pre-bankruptcy period**, of a taxpayer in respect of a bankruptcy day, means the period during a calendar year (for which the taxpayer meets the thresholds described in subparagraph 10(1)(a)(i) or (ii) and paragraph 10(1)(b)) beginning on January 1 of the year and ending on the bankruptcy day. (*période de pré-faillite*)

**pre-cease period**, of a taxpayer in respect of a receivership day, means the period during a particular calendar year (for which the taxpayer meets the thresholds described in subparagraph 10(1)(a)(i) or (ii) and paragraph 10(1)(b)) after the year in which the receivership day occurs beginning on January 1 of the particular calendar year and ending on the day on which the receiver ceases to act as receiver of the taxpayer. (*période antérieure à la cessation*)

**pre-discharge period**, of a taxpayer in respect of a bankruptcy day, means the period during a particular calendar year (for which the taxpayer meets the thresholds described in subparagraph 10(1)(a)(i) or (ii) and paragraph 10(1)(b)) after the year in which the bankruptcy day occurs beginning on January 1 of the particular calendar year and ending on the day on which the discharge of the trustee is granted under the *Bankruptcy and Insolvency Act*. (*période antérieure à la libération*)

**pre-receivership period**, of a taxpayer in respect of a receivership day, means the period during a calendar year (for which the taxpayer meets the thresholds described in subparagraph 10(1)(a)(i) or (ii) and paragraph 10(1)(b)) beginning on January 1 of the year and ending on the receivership day. (*période antérieure à la mise sous séquestre*)

**receiver** means a person that

- (a) under the authority of a debenture, bond or other debt security, of a court order or of an Act of Parliament or of the legislature of a province, is empowered to operate or manage a business or a property of another person;
- (b) is appointed by a trustee under a trust deed in respect of a debt security to exercise the authority of the trustee to manage or operate a business or a property of the debtor under the debt security;
- (c) is appointed by a bank or an authorized foreign bank, as those terms are defined in section 2 of the *Bank Act*, to act as an agent or mandatary of the bank in the exercise of the authority of the bank under subsection 426(3) of that Act in respect of property of another person; or
- (d) is appointed as a liquidator to liquidate the assets of a corporation or to wind up the affairs of a corporation.

It includes a person that is appointed to exercise the authority of a creditor under a debenture, bond or other debt security to operate or manage a business or a property of another person, but, if a person is appointed to exercise the authority of a creditor under a debenture, bond or other debt security to operate or manage a business or a property of another person, it does not include that creditor. (*séquestre*)

**receivership day**, of a taxpayer, means the earliest day on which a receiver,

- (a) is vested with authority to manage, operate, liquidate or wind up any business or property, or to manage and care for the affairs and assets of the taxpayer, and
- (b) is in possession of or controls and manages the affairs and assets of the taxpayer. (*jour de mise sous séquestre*)

**receivership period**, of a taxpayer in respect of a receivership day, means the period during a calendar year (for which the taxpayer meets the thresholds described in subparagraph 10(1)(a)(i) or (ii) and paragraph 10(1)(b)) beginning on the day after the receivership day and ending on the earlier of the day on which the receiver ceases to act as receiver of the taxpayer and December 31 of the year. (*période de mise sous séquestre*)

**relevant assets** of a receiver means the part of the properties, businesses, affairs or assets of a person to which the receiver's authority relates. (*actif pertinent*)

**year in receivership**, of a taxpayer in respect of a receivership day, means any calendar year (for which the taxpayer meets the thresholds described in subparagraph 10(1)(a)(i) or (ii) and paragraph 10(1)(b)) between the calendar year in which the receivership day occurs and the calendar year in which the receiver ceases to act as receiver of the taxpayer. (*année sous séquestre*)

### **Trustee as agent**

**26** Where a taxpayer has become a bankrupt, and a trustee becomes the trustee in bankruptcy of the taxpayer, the trustee is deemed to be the agent of the bankrupt for all purposes of this Act and any revenue of the trustee from carrying on the business of the bankrupt is revenue of the bankrupt and not of the trustee.

### **Tax payable for bankruptcy**

**27 (1)** If during a particular calendar year there is a bankruptcy day of a taxpayer,

- (a)** section 10 does not apply in respect of the particular calendar year, any bankrupt year or a calendar year, if any, during which the pre-discharge period occurs;
- (b)** the taxpayer must pay a tax in respect of the pre-bankruptcy period equal to 3% of the taxpayer's taxable Canadian digital services revenue for the pre-bankruptcy period calculated in accordance with section 31;
- (c)** subject to subsection (2), the trustee, and not the taxpayer, must pay a tax in respect of each of the bankruptcy period and the pre-discharge period, if any, equal to 3% of the taxpayer's taxable Canadian digital services revenue for the period calculated in accordance with section 31; and
- (d)** subject to subsection (2), the trustee, and not the taxpayer, must pay a tax in respect of any bankrupt year equal to 3% of the taxpayer's taxable Canadian digital services revenue for the year.

### **Trustee – exception**

**(2)** A trustee is not liable for the payment of any amount for which a receiver is liable under section 29.

### **Filing and payment**

**28 (1)** If section 27 applies in respect of a bankruptcy day of a taxpayer during a particular calendar year,

- (a)** sections 46 and 50 do not apply to the taxpayer in respect of the particular calendar year, any bankrupt year or a calendar year, if any, during which the pre-discharge period occurs;
- (b)** subject to subsection (2), the trustee must file all returns – in the form and manner, and containing the information, prescribed by the Minister – in respect of any year or period described in paragraph 27(1)(c) or (d) for which the trustee is liable to pay tax greater than nil, and pay the tax payable in respect of the year or period, on or before the day that is 90 days after the last day of the year or period; and
- (c)** subject to subsection (2), the trustee must, unless the Minister waives in writing the requirement, file any return that is required to be filed by the taxpayer in respect of a calendar year immediately preceding the particular calendar year or in respect of the pre-bankruptcy period – in the form and manner, and containing the information, prescribed by the Minister – on or before the day that is 90 days after the bankruptcy day.

### **Trustee – exception**

**(2)** If there is a receiver with authority in respect of any business, property, affairs or assets of a taxpayer referred to in subsection (1), the trustee is not required to include in any return any information that the receiver is required under section 30 to include in a return.

### **Tax payable for receivership**

**29** If during a particular calendar year there is a receivership day of a taxpayer,

- (a)** if the receiver is a receiver-manager,
  - (i)** section 10 does not apply in respect of the particular calendar year, any year in receivership or a calendar year, if any, during which the pre-cease period occurs,
  - (ii)** the taxpayer must pay a tax in respect of the pre-receivership period equal to 3% of the taxpayer's taxable Canadian digital services revenue for the pre-receivership period calculated in accordance with section 31,



(iii) the receiver-manager, and not the taxpayer, must pay a tax in respect of each of the receivership period and the pre-cess period, if any, equal to 3% of the taxpayer's taxable Canadian digital services revenue for the period calculated in accordance with section 31, and

(iv) the receiver-manager, and not the taxpayer, must pay a tax in respect of any year in receivership equal to 3% of the taxpayer's taxable Canadian digital services revenue for the year; and

(b) in any other case,

(i) the receiver must pay a tax in respect of

(A) each of the receivership period and the pre-cess period, if any, equal to 3% of the portion of the taxpayer's Canadian digital services revenue for the period (calculated in accordance with section 31) that is online marketplace services revenue, online advertising services revenue, social media services revenue and user data revenue earned by the taxpayer for the period that can reasonably be considered to relate to the relevant assets of the receiver, and

(B) any year in receivership, equal to 3% of the portion of the taxpayer's Canadian digital services revenue for the year that is online marketplace services revenue, online advertising services revenue, social media services revenue and user data revenue earned by the taxpayer for the year that can reasonably be considered to relate to the relevant assets of the receiver, and

(ii) for the purpose of section 10, the taxpayer's taxable Canadian digital services revenue in respect of the particular calendar year, any years in receivership and a calendar year, if any, during which the pre-cess period occurs is calculated as if online marketplace services revenue, online advertising services revenue, social media services revenue and user data revenue of the taxpayer for the year do not include revenue that is included in the portion of Canadian digital services revenue described in clause (b)(i)(A) or (B).

### **Filing and payment**

**30** If section 29 applies in respect of a receivership day of a taxpayer during a particular calendar year,

(a) if the receiver is a receiver-manager,

(i) sections 46 and 50 do not apply to the taxpayer in respect of the particular calendar year, any year in receivership or a calendar year, if any, during which the pre-cess period occurs,

(ii) the receiver-manager must file all returns – in the form and manner, and containing the information, prescribed by the Minister – in respect of any year or period described in subparagraphs 29(a)(iii) and (iv) for which the receiver-manager is liable to pay tax greater than nil, and pay the tax payable in respect of the year or period, on or before the day that is 90 days after the last day of the year or period, and

(iii) the receiver-manager must, unless the Minister waives in writing the requirement, file any return that is required to be filed by the taxpayer in respect of a calendar year immediately preceding the particular calendar year or in respect of the pre-receivership period – in the form and manner, and containing the information, prescribed by the Minister – on or before the day that is 90 days after the receivership day; and

(b) in any other case, the receiver must file all returns – in the form and manner, and containing the information, prescribed by the Minister – in respect of any year or period described in subparagraph 29(b)(i) for which the receiver is liable to pay tax greater than nil, and pay the tax payable in respect of the year or period, on or before the day that is 90 days after the last day of the year or period.

### **Non-calendar year periods**

**31** For the purposes of sections 27 and 29, a taxpayer's taxable Canadian digital services revenue, or Canadian digital services revenue, as the case may be, for a pre-bankruptcy period, bankruptcy period, pre-discharge period, pre-receivership period, receivership period or pre-cess period is the taxable Canadian digital services revenue, or Canadian digital services revenue, as the case may be, of the taxpayer, calculated in accordance with Parts 3 and 4, where

- (a) all references in Parts 3 and 4 to “calendar year” (except in variables D and E in section 24) are replaced with references to the “pre-bankruptcy period”, “bankruptcy period”, “pre-discharge period”, “pre-receivership period”, “receivership period” or “pre-cease period”;
- (b) all references in Parts 3 and 4 to “year” (except in variables D and E in section 24) are replaced with references to “period”;
- (c) for the definition of *relevant time* in section 23
  - (i) paragraph (a) of that definition is replaced with “the first moment of the first day of the period”, and
  - (ii) paragraph (b) of that definition is replaced with “the last moment of the last day of the period”;
- (d) paragraph (a) of variable B in section 24 does not apply; and
- (e) subsections 12(2) and (3) do not apply.

### **Certificates for receivers**

**32 (1)** Every receiver that controls property of a taxpayer that is required to pay any amount under this Act must, before distributing the property to any person, obtain a certificate from the Minister certifying that the following amounts have been paid or that security for the payment of them has, in accordance with this Act, been accepted by the Minister:

- (a) all amounts that are payable by the taxpayer or the receiver (in that capacity) under this Act in respect of any calendar year or period preceding the calendar year or period during which the distribution is made; and
- (b) all amounts that can reasonably be expected to become payable under this Act by the taxpayer or the receiver (in that capacity) in respect of the calendar year or period during which the distribution is made, or any previous calendar year or period.

### **Liability for failure to obtain certificate**

**(2)** Any receiver that distributes property without obtaining a certificate in respect of the amounts referred to in subsection (1) is personally liable for the payment of those amounts to the extent of the value of the property so distributed.

## **DIVISION B**

### **Partnerships**

#### **Partnerships**

**33 (1)** For the purposes of this Act, anything done by a person as a member of a partnership is deemed to have been done by the partnership in the course of the partnership’s activities and not to have been done by the person.

#### **Joint and several or solidary liability**

**(2)** A partnership and each member or former member (each of which is referred to in this subsection as the “member”) of the partnership (other than a member that is a limited partner and is not a general partner) are jointly and severally, or solidarily, liable for

- (a) the payment of all amounts that are required to be paid by the partnership under this Act before or during the period during which the member is a member of the partnership or, if the member was a member of the partnership at the time the partnership was dissolved, after the dissolution of the partnership, except that
  - (i) the member is liable for the payment of amounts that become payable before the period only to the extent of the property that is regarded as property of the partnership under the relevant laws of general application to partnerships in force in a province or other jurisdiction, and

(ii) the payment by the partnership or by any member of the partnership of an amount in respect of the liability discharges their liability to the extent of that amount; and

(b) all other obligations under this Act that arose before or during that period for which the partnership is liable or, if the member was a member of the partnership at the time the partnership was dissolved, the obligations that arose upon or as a consequence of the dissolution.

## DIVISION C

### Anti-Avoidance

#### Definitions

**34 (1)** The following definitions apply in this Division.

**tax benefit** means a reduction, avoidance or deferral of tax or other amount payable under this Act or an increase in a refund of tax or other amount under this Act. (*avantage fiscal*)

**tax consequences** to a person means the amount of tax or other amount payable by, or refundable to, the person under this Act, or any other amount that is relevant for the purposes of computing that amount. (*attribut fiscal*)

**transaction** includes an arrangement or event. (*opération*)

#### General anti-avoidance rule

(2) If a transaction is an avoidance transaction, the tax consequences to a person are to be determined as is reasonable in the circumstances in order to deny a tax benefit that, in the absence of this section, would result, directly or indirectly, from that transaction or from a series of transactions that includes that transaction.

#### Avoidance transaction

(3) An avoidance transaction means any transaction

(a) that, in the absence of this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit; or

(b) that is part of a series of transactions, which series, in the absence of this section, would result, directly or indirectly, in a tax benefit, unless the transaction may reasonably be considered to have been undertaken or arranged primarily for *bona fide* purposes other than to obtain the tax benefit.

#### Application of subsection (2)

(4) Subsection (2) applies to a transaction only if it may reasonably be considered that the transaction

(a) would, if this Act were read without reference to this section, result directly or indirectly in a misuse of the provisions of any one or more of

(i) this Act,

(ii) the *Digital Services Tax Regulations*, or

(iii) any other enactment that is relevant in computing tax or any other amount payable by or refundable to a person under this Act or in determining any amount that is relevant for the purposes of that computation; or

(b) would result directly or indirectly in an abuse having regard to those provisions, other than this section, read as a whole.

### **Determination of tax consequences**

**(5)** Without restricting the generality of subsection (2) and despite any other enactment, in determining the tax consequences to a person as is reasonable in the circumstances in order to deny a tax benefit that would, in the absence of this section, result directly or indirectly from an avoidance transaction

**(a)** any deduction, exemption or exclusion in computing Canadian digital services revenue, taxable Canadian digital services revenue or tax payable or any part thereof may be allowed or disallowed in whole or in part;

**(b)** any such deduction, exemption or exclusion, any revenue or other amount or part thereof may be allocated to any person;

**(c)** the nature of any payment or other amount may be recharacterized; and

**(d)** the tax effects that would otherwise result from the application of other provisions of this Act may be ignored.

### **Request for adjustments**

**(6)** If, with respect to a transaction, a notice of assessment involving the application of subsection (2) with respect to the transaction has been sent to a person, then any person (other than a person to whom such a notice has been sent) is entitled, within 180 days after the day of sending of the notice, to request in writing that the Minister make an assessment applying subsection (2) with respect to that transaction.

### **Exception**

**(7)** Despite any other provision of this Act, the tax consequences to any person, following the application of this section, are only to be determined through a notice of assessment involving the application of this section.

### **Duties of Minister**

**(8)** On receipt of a request by a person under subsection (6), the Minister must, without delay, consider the request and, despite subsection 71(1), assess the person. However, an assessment may be made under this subsection only to the extent that it may reasonably be regarded as relating to the transaction referred to in subsection (6).

### **Series of transactions**

**35** For the purposes of this Division, a series of transactions is deemed to include any related transactions completed in contemplation of the series.

## **PART 6**

# **General Provisions, Administration and Enforcement**

### **Definitions**

**36 (1)** The following definitions apply in this Part.

**Agency** means the Canada Revenue Agency continued by subsection 4(1) of the *Canada Revenue Agency Act*. (*Agence*)

**bank** means a *bank* as defined in section 2 of the *Bank Act* or an *authorized foreign bank*, as defined in that section, that is not subject to the restrictions and requirements referred to in subsection 524(2) of that Act. (*banque*)

**Commissioner** means, except in sections 39, 105 and 122, the Commissioner of Revenue appointed under section 25 of the *Canada Revenue Agency Act*. (*commissaire*)

**judge**, in respect of any matter, means a judge of a superior court having jurisdiction in the province in which the matter arises or a judge of the Federal Court. (*juge*)

**official** means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of, His Majesty in right of Canada or a province, or a person who was formerly so employed, who formerly occupied such a position or who formerly was so engaged. (*fonctionnaire*)

**record** means any material on which representations, in any form, of information or concepts are recorded or marked and that is capable of being read or understood by an individual or a computer system or other device. (*registre*)

### **Person resident in Canada**

**(2)** For the purposes of this Part, a person is deemed to be resident in Canada at any time

**(a)** in the case of a corporation, if the corporation is

**(i)** incorporated in Canada and not continued elsewhere; or

**(ii)** continued in Canada;

**(b)** in the case of a partnership, an unincorporated society, a club, an association or organization, or a branch thereof, if the member or participant, or a majority of the members or participants, having management and control thereof is or are resident in Canada at that time;

**(c)** in the case of a labour union, if it is carrying on activities as such in Canada and has a local union or branch in Canada at that time; or

**(d)** in the case of an individual, if the individual is deemed under any of paragraphs 250(1)(a) to (f) of the *Income Tax Act* to be resident in Canada at that time.

### **Administration or enforcement**

**(3)** For greater certainty, a reference in this Part to the administration or enforcement of this Act includes the collection of any amount payable under this Act.

## **DIVISION A**

### **Duties of Minister**

#### **Minister's duty**

**37** The Minister must administer and enforce this Act and the Commissioner may exercise the powers and perform the duties of the Minister under this Act.

#### **Staff**

**38 (1)** The persons that are necessary to administer and enforce this Act are to be appointed, employed or engaged in the manner authorized by law.

#### **Delegation of powers**

**(2)** The Minister may authorize any person employed or engaged by the Agency, or who occupies a position of responsibility in the Agency, to exercise powers or perform duties of the Minister, including any judicial or quasi-judicial power or duty of the Minister, under this Act.

#### **Administration of oaths**

**39** Any person, if so designated by the Minister, may administer oaths and take and receive affidavits, declarations and affirmations for the purposes of, or incidental to, the administration or enforcement of this Act, and every person so designated has for those purposes all the powers of a commissioner for administering oaths or taking affidavits.

### **Waiving the filing of documents**

**40** Where any provision of this Act or a regulation requires a person to file a form or other document (other than a return or an election) or to provide information, prescribed by the Minister, the Minister may waive the requirement, but at the Minister's request the person must provide the document or information by the date set out in the request.

## **DIVISION B**

### **Registration**

#### **Requirement to register**

**41 (1)** A taxpayer must apply to register under this Act on or before the earliest of

- (a)** January 31 of the year following the particular calendar year that is the first year of application, if the taxpayer
  - (i)** has Canadian digital services revenue greater than nil for the particular calendar year, or for any previous calendar year after 2021, and
  - (ii)** would meet the conditions described in paragraphs 10(1)(a) and (b) in respect of a calendar year for which subparagraph (i) is satisfied, if the references to "\$20,000,000" in paragraph 10(1)(b) were read as references to "\$10,000,000"; and
- (b)** January 31 of the year following a particular calendar year that is after the first year of application, if the taxpayer
  - (i)** has Canadian digital services revenue greater than nil for the particular calendar year, and
  - (ii)** would meet the conditions described in paragraphs 10(1)(a) and (b) in respect of the particular calendar year if the references to "\$20,000,000" in paragraph 10(1)(b) were read as references to "\$10,000,000".

#### **Waiving requirement under subsection (1)**

**(2)** The Minister may waive a taxpayer's requirement under subsection (1), but at the Minister's request the taxpayer must apply to register by the date set out in the request.

#### **Application to register**

**42 (1)** An application for registration under this Division is to be made in the form and manner, and containing the information, prescribed by the Minister.

#### **Notification**

**(2)** The Minister may register any taxpayer that applies for registration under this Act and, if the Minister does so, the Minister must notify the taxpayer of the effective date of the registration and of the registration number assigned to the taxpayer.

#### **De-registration**

**43 (1)** The Minister may, upon request by a taxpayer, de-register the taxpayer at any time if the Minister is satisfied that the taxpayer would not have met the conditions described in paragraphs 10(1)(a) and (b) — in respect of any of the three calendar years immediately preceding that time — if the references to "\$20,000,000" in paragraph 10(1)(b) were read as references to "\$10,000,000".

#### **Consequences of de-registration**

**(2)** A taxpayer that is, at a particular time, de-registered under subsection (1) is deemed for the purpose of applying subsection 41(1) at any time subsequent to the particular time

- (a)** not to have applied for registration prior to the particular time; and

(b) not to have met the conditions referred to in paragraph 41(1)(b) before the particular time.

### **Notification**

(3) If the Minister de-registers a taxpayer under this section, the Minister must notify the taxpayer of the de-registration and the effective date of the de-registration.

### **Security**

44 The Minister may require a taxpayer that is required to apply to register under this Act to give and maintain security, in an amount determined by the Minister and subject to any terms and conditions that the Minister may specify, for the payment of any amount that is or may become payable by the taxpayer under this Act.

### **Notice of intent**

45 (1) If the Minister has reason to believe that a taxpayer that is not registered under this Act is required to apply to register and has failed to apply to register as and when required, the Minister may send a notice in writing (in this section referred to as a “notice of intent”) to the taxpayer that the Minister proposes to register the taxpayer under this Act.

### **Notice of intent — requirement to register**

(2) Upon receipt of a notice of intent, a taxpayer must apply to register under this Act or establish to the satisfaction of the Minister that the taxpayer is not required to apply to register under this Act.

### **Notice of intent — notification of registration**

(3) If, after 60 days after the particular day on which a notice of intent was sent by the Minister to a taxpayer, the taxpayer has not applied to register under this Act and the Minister is not satisfied that the taxpayer is not required to apply to register, the Minister may register the taxpayer and, upon doing so, must notify the taxpayer of the effective date of the registration and of the registration number assigned to the taxpayer.

## **DIVISION C**

### **Returns**

#### **Requirement to file a return**

46 A taxpayer must file a return – in the form and manner, and containing the information, prescribed by the Minister – for a particular calendar year, on or before June 30 of the following calendar year, if

(a) the particular calendar year is the first year of application, and the taxpayer

(i) has Canadian digital services revenue greater than nil for the particular calendar year, or for any previous calendar year after 2021, and

(ii) meets the conditions described in paragraphs 10(1)(a) and (b) in respect of a calendar year for which subparagraph (i) is satisfied; or

(b) the particular calendar year is a calendar year that is after the first year of application, and the taxpayer

(i) has Canadian digital services revenue greater than nil for the particular calendar year, and

(ii) meets the conditions described in paragraphs 10(1)(a) and (b) in respect of the particular calendar year.

#### **Election – designated entity**

47 (1) A taxpayer that is a constituent entity of a consolidated group at any time in a particular calendar year (other than a taxpayer that is a constituent entity of more than one consolidated group during the particular calendar year) may jointly elect, in respect of the particular calendar year, with one or more other constituent entities of the group (including a particular constituent entity) to designate under this subsection the particular constituent entity (referred to in this

Act as the “designated entity”) by electing on or before June 30 of the following calendar year in the form and manner, and containing the information, prescribed by the Minister.

### **Election – consequences**

**(2)** If a taxpayer elects an entity to be designated under subsection (1) in respect of a calendar year

- (a)** the designated entity must act on behalf of the taxpayer for the purposes of this Part in respect of the year;
- (b)** any action taken by the designated entity on behalf of the taxpayer for the purposes of this Part in respect of the year is deemed to have been performed by the taxpayer; and
- (c)** the Minister must direct to the designated entity and the taxpayer any communication for the purposes of this Part as it applies to the taxpayer in respect of the year.

### **Application for registration – designated entity**

**(3)** If a taxpayer elects an entity to be designated under subsection (1) in respect of a particular calendar year and the designated entity is not registered under this Act, the designated entity must, at the time of the election, apply to register under this Act in the form and manner, and containing the information, prescribed by the Minister.

### **Extension of time**

**48 (1)** The Minister may at any time extend the time for filing a return, form or other document, providing information, or making an election under this Act.

### **Effect of extension**

**(2)** If the Minister extends the time within which a person is required to file a return, form or other document, provide information or make an election under subsection (1),

- (a)** the return, form or other document must be filed, the information must be provided or the election must be made within the time so extended; and
- (b)** any penalty payable under section 85 in respect of the return must be calculated as though the return were required to be filed on the day on which the extended time expires.

### **Demand for return**

**49** The Minister may, on demand sent by the Minister, require a taxpayer to file, within any reasonable time that may be stipulated in the demand, a return under this Act for any calendar year that is designated in the demand.

## **DIVISION D**

## **Payments**

### **Payments**

**50** The tax payable under this Act by a taxpayer in respect of a calendar year must be paid on or before June 30 of the following calendar year.

### **Manner and form of payments**

**51** Every person who is required under this Act to pay tax or any other amount must make the payment to the account of the Receiver General of Canada in the manner and form prescribed by the Minister.

### **Assessment of another constituent entity**

**52 (1)** The Minister may assess a particular constituent entity of a consolidated group in respect of tax and other amounts payable under this Act by another constituent entity of the group. If such an assessment is made, the particular constituent entity is jointly and severally, or solidarily, liable with the other constituent entity to pay the amount



assessed and this Part applies to the particular constituent entity in respect of the amount assessed with any modifications that the circumstances require.

### **Limitation**

**(2)** Subsection (1) does not limit the liability of the other constituent entity under any other provision of this Act or of the particular constituent entity for the interest that the particular constituent entity is liable to pay under this Act on an assessment in respect of the amount that the particular constituent entity is liable to pay because of that subsection.

### **Rules applicable**

**(3)** If a particular constituent entity of a consolidated group and another constituent entity of the group have, because of subsection (1), become jointly and severally, or solidarily, liable in respect of part or all of the liability of the other constituent entity under this Act, the following rules apply:

**(a)** a payment by the particular constituent entity on account of the particular constituent entity's liability must, to the extent of the payment, discharge the joint liability; and

**(b)** a payment by the other constituent entity on account of the other constituent entity's liability only discharges the particular constituent entity's liability to the extent that the payment operates to reduce that liability to an amount less than the amount of which the particular constituent entity was, because of subsection (1), made jointly and severally, or solidarily, liable.

### **Meaning of transaction**

**53 (1)** In this section and section 88, a **transaction** includes an arrangement or event.

### **Tax liability — property transferred not at arm's length**

**(2)** If at any time a person transfers property, either directly or indirectly, by means of a trust or by any other means, to another person with which the transferor was not, at that time, dealing at arm's length, the transferee and transferor are jointly and severally, or solidarily, liable to pay under this Act an amount equal to the lesser of

**(a)** the amount determined by the formula

$$A - (B - C)$$

where

**A** is the amount, if any, by which the fair market value of the property at that time exceeds the fair market value at that time of the consideration given by the transferee for the transfer of the property,

**B** is the total of all amounts, if any, the transferee was assessed under paragraph 97.44(1)(b) of the *Customs Act*, subsection 325(2) of the *Excise Tax Act*, subsection 160(2) of the *Income Tax Act*, subsection 297(3) of the *Excise Act, 2001*, subsection 161(1) of the *Greenhouse Gas Pollution Pricing Act*, subsection 80(3) of the *Underused Housing Tax Act* or subsection 150(4) of the *Select Luxury Items Tax Act* in respect of the property, and

**C** is the amount paid by the transferor in respect of the amount determined for variable B; and

**(b)** the total of all amounts each of which is

**(i)** an amount that the transferor is liable to pay under this Act in respect of

**(A)** the calendar year that includes that time, or

**(B)** any preceding calendar year, or

**(ii)** interest or penalties (other than amounts included in subparagraph (i)) for which the transferor is liable at that time.

### **Limitation**

**(3)** Subsection (2) does not limit the liability of the transferor under any other provision of this Act or of the transferee for the interest that the transferee is liable to pay under this Act on an assessment in respect of the amount that the transferee is liable to pay because of that subsection.

### **Fair market value of undivided interest or right**

**(4)** For the purposes of this section, the fair market value at any time of an undivided interest in, or for civil law an undivided right in, a property that is expressed as a proportionate interest or right in that property is deemed to be equal to the same proportion of the fair market value of that property at that time.

### **Assessment**

**(5)** Despite subsection 71(1), the Minister may at any time assess a transferee in respect of any amount payable because of this section and this Part applies with any modifications that the circumstances require.

### **Rules applicable**

**(6)** If a transferor and transferee have, because of subsection (2), become jointly and severally, or solidarily, liable in respect of part or all of the liability of the transferor under this Act, the following rules apply:

- (a)** a payment by the transferee on account of the transferee's liability must, to the extent of the payment, discharge the joint liability; and
- (b)** a payment by the transferor on account of the transferor's liability only discharges the transferee's liability to the extent that the payment operates to reduce the transferor's liability to an amount less than the amount in respect of which the transferee was, because of subsection (2), made jointly and severally, or solidarily, liable.

### **Anti-avoidance rules**

**(7)** For the purposes of subsections (1) to (6), if a person (referred to in this section as the "transferor") has transferred property either directly or indirectly, by means of a trust or by any other means whatever to another person (referred to in this section as the "transferee") in a transaction or as part of a series of transactions, the following rules apply:

- (a)** the transferor is deemed to not be dealing at arm's length with the transferee at all times in the transaction or series of transactions if
  - (i)** the transferor and the transferee do not deal at arm's length 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, and
  - (ii)** 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 the transferor under this section for an amount payable under this Act;
- (b)** an amount that the transferor is liable to pay under this Act (including, for greater certainty, an amount that the transferor is liable to pay under this section, regardless of whether the Minister has made an assessment under subsection (5) in respect of that amount) is deemed to have become payable in the calendar year in which the property was transferred, if it is reasonable to conclude that one of the purposes of the transfer of the property is to avoid the payment of a future amount payable under this Act by the transferor or transferee; and
- (c)** the amount determined for A in paragraph (2)(a) is deemed to be the greater of
  - (i)** the amount otherwise determined for A in paragraph (2)(a) without reference to this paragraph, and
  - (ii)** the amount determined by the formula

$$A - B$$

where

**A** is the fair market value of the property at the time of the transfer, and

**B** is

**(A)** 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, or

**(B)** if the consideration is in a form that is cancelled or extinguished during the period referred to in clause (A),

**(I)** the amount that is the lowest of the amount determined in clause (A) and the fair market value during the period of any property, other than property that is cancelled or extinguished during the period, that is substituted for the consideration referred to in clause (A), or

**(II)** if there is no property that is substituted for the consideration referred to in clause (A), other than property cancelled or extinguished during the period, nil.

### **Payment in Canadian dollars**

**54 (1)** Every person that is required under this Act to pay an amount to the Receiver General of Canada must pay the amount in Canadian dollars.

### **Exception**

**(2)** The Minister may, at any time, waive the requirement under subsection (1) and accept a currency other than Canadian dollars. If such a waiver is granted, the amount is to be converted from Canadian dollars to that currency using a rate of exchange that is acceptable to the Minister.

### **Meaning of electronic payment**

**55 (1)** In this section, *electronic payment* means any payment to the Receiver General of Canada that is made through electronic services offered by a person described in any of paragraphs (2)(a) to (d) or by any electronic means specified by the Minister.

### **Electronic payment**

**(2)** Every person that is required under this Act to pay an amount to the Receiver General of Canada must, if the amount is \$10,000 or more, make the payment by way of electronic payment, unless the person cannot reasonably pay the amount in that manner, to the account of the Receiver General of Canada at or through

**(a)** a bank;

**(b)** a credit union;

**(c)** a corporation authorized under the laws of Canada or a province to carry on the business of offering its services as a trustee to the public; or

**(d)** a corporation that is authorized under the laws of Canada or a province to accept deposits from the public and that carries on the business of lending money on the security of real property or immovables or investing in indebtedness on the security of mortgages on real property or hypothecs on immovables.

### **Small amounts owing by a person**

**56 (1)** If, at any time, the total of all unpaid amounts owing by a person to the Receiver General of Canada under this Act does not exceed \$2.00, the amount owing by the person is deemed to be nil.

### **Small amounts payable to a person**

**(2)** If, at any time, the total of all amounts payable by the Minister to a person under this Act does not exceed \$2.00, the Minister may apply those amounts against any amount owing, at that time, by the person to His Majesty in right of Canada. However, if the person, at that time, does not owe any amount to His Majesty in right of Canada, those amounts payable are deemed to be nil.

## DIVISION E

### Interest

#### **Compound interest**

**57 (1)** If a person fails to pay an amount to the Receiver General of Canada as and when required under this Act, the person must pay to the Receiver General of Canada interest on the amount. The interest must be compounded daily at the rate prescribed by regulation and computed for the period beginning on the first day after the day on or before which the amount was required to be paid and ending on the day on which the amount is paid.

#### **Payment of interest that is compounded**

**(2)** For the purposes of subsection (1), interest that is compounded on a particular day on an unpaid amount of a person is deemed to be required to be paid by the person to the Receiver General of Canada at the end of the particular day, and, if the person has not paid the interest so computed by the end of the day after the particular day, the interest must be added to the unpaid amount at the end of the particular day.

#### **Period when interest not payable**

**(3)** If the Minister has served a demand that a person pay on or before a specified date all amounts payable by the person under this Act on the date of the demand, and the person pays the amount demanded on or before the specified date, the Minister must waive any interest that would otherwise apply in respect of the amount demanded for the period beginning on the first day following the date of the demand and ending on the day of payment.

#### **Interest and penalty amounts of \$25 or less**

**(4)** If, at any time, a person pays an amount not less than the total of all amounts, other than interest and penalty, owing at that time to His Majesty in right of Canada under this Act in respect of a calendar year and the total amount of interest and penalty payable by the person under this Act in respect of the year is not more than \$25, the Minister may cancel the interest and penalty.

#### **Waiving or cancelling interest**

**58 (1)** The Minister may, on or before the day that is 10 calendar years after the end of a particular calendar year, or on application by a person on or before that day, waive, cancel or reduce any amount otherwise payable under this Act that is interest payable by the person on an amount that is required to be paid by the person in respect of the particular calendar year, and despite subsection 71(1), any assessment of the interest payable by the person may be made that is necessary to take into account the waiver, cancellation or reduction of the interest.

#### **Interest where amounts waived or cancelled**

**(2)** If a person has paid an amount of interest and the Minister waives, cancels or reduces any portion of that amount under subsection (1), the Minister must refund the portion of the amount and pay interest at the rate prescribed by regulation on the portion of the amount beginning on the day that is 30 days after the day on which the Minister received a request in a manner satisfactory to the Minister to apply that subsection (or, if there is no such request, on the day the Minister waives, cancels or reduces the portion of the amount) and ending on the day on which the portion of the amount is paid as a refund or applied against another amount owed by the person to His Majesty in right of Canada.

## DIVISION F

### Administrative Charge under the Financial Administration Act

#### **Dishonoured instruments**

**59** For the purposes of this Act and section 155.1 of the *Financial Administration Act*, any charge that is payable at any time by a person under the *Financial Administration Act* in respect of an instrument tendered in payment or settlement of an amount that is payable under this Act is deemed to be an amount that is payable by the person at that time under this Act. In addition, Part II of the *Interest and Administrative Charges Regulations* does not apply to the charge and

any debt under subsection 155.1(3) of the *Financial Administration Act* in respect of the charge is deemed to be extinguished at the time the total of the amount and any applicable interest under this Act is paid.

## **DIVISION G**

### **Refunds**

#### **Statutory recovery rights**

**60** Except as specifically provided under this Act or the *Financial Administration Act*, no person has a right to recover any money paid to His Majesty in right of Canada as or on account of, or that has been taken into account by His Majesty in right of Canada as, an amount payable under this Act.

#### **Refund — payment in error**

**61 (1)** If a person, otherwise than because of an assessment, has paid any moneys in error to His Majesty in right of Canada, whether by reason of mistake of fact or law or otherwise, and the moneys have been taken into account by His Majesty in right of Canada as taxes, penalties, interest or other amounts under this Act, then an amount equal to the amount of the moneys must, subject to this Act, be refunded to the person if the person applies for the refund of the amount within two years after the day on which the moneys were paid.

#### **Form and contents of application**

**(2)** An application under subsection (1) must be made in the form and manner, and containing the information, prescribed by the Minister.

#### **Determination**

**(3)** On receipt of an application under subsection (1), the Minister must, without delay, consider the application and determine the amount of the refund, if any, payable to the applicant.

#### **Minister not bound**

**(4)** In considering an application under subsection (1), the Minister is not bound by any application or information supplied by or on behalf of any person.

#### **Notice and payment**

**(5)** After considering an application under subsection (1), the Minister must

- (a)** send to the applicant a notice of the determination made under subsection (3); and
- (b)** pay to the applicant the amount of the refund, if any, payable to the applicant.

#### **Objections and appeals**

**(6)** For the purposes of Divisions J and K and subsections 68(5), 122(7) and (13), a determination under subsection (3) is deemed to be an assessment.

#### **Interest on payment**

**(7)** If an amount is paid to an applicant under subsection (5), the Minister must pay interest, at the rate prescribed by regulation, to the applicant on the amount for the period of time beginning on the day that is 30 days after the day on which the application was received (or deemed received under subsection 68(4)) by the Minister and ending on the day on which the amount is paid.

#### **Determination valid and binding**

**(8)** A determination under subsection (3), subject to being varied or vacated on an objection or appeal under this Act and subject to an assessment, is deemed to be valid and binding despite any irregularity, informality, error, defect or omission in the notice of the determination or in any proceeding under this Act relating to the determination.

### **Restriction — application to other debts**

**62** Instead of paying a refund to a person that might otherwise be paid under this Act, the Minister may, where the person is, or is about to become, liable to make any payment to His Majesty in right of Canada or of a province, apply the amount of the refund to that liability and notify the person of that action.

### **Restriction — unfulfilled filing requirements**

**63** The Minister must not, in respect of a person, refund, repay, apply to other debts or set off amounts under this Act until the person has filed with the Minister all returns and other records of which the Minister has knowledge that are required to be filed under this Act, the *Income Tax Act*, the *Excise Tax Act*, the *Excise Act 2001*, the *Air Travellers Security Charge Act*, the *Greenhouse Gas Pollution Pricing Act*, the *Underused Housing Tax Act* and the *Select Luxury Items Tax Act*.

### **Restriction — trustees**

**64** If a trustee is appointed under the *Bankruptcy and Insolvency Act* to act in the administration of the estate of a bankrupt, a refund under this Act that the bankrupt was entitled to claim before the appointment must not be paid after the appointment unless all returns required under this Act to be filed before the appointment have been filed and all amounts required under this Act to be paid by the bankrupt have been paid.

### **Overpayment of refund or interest**

**65** If an amount is paid to, or applied to a liability of, a person as a refund or as interest under this Act and the person is not entitled to the refund or interest, or the amount paid or applied exceeds the refund or interest to which the person is entitled, despite subsection 71(1) the Minister may at any time assess the person, and the person must pay to the Receiver General of Canada an amount equal to the refund, interest or excess on the day the refund, interest or excess, as the case may be, is paid to, or applied to a liability of, the person.

## **DIVISION H**

### **Records and Information**

#### **Keeping records**

**66 (1)** A person must keep all records that are necessary to determine whether the person has complied with this Act and, if the person is or was a constituent entity of a consolidated group, all of that person's records that are necessary to determine whether other entities of the group have complied with this Act.

#### **Minister may specify information**

**(2)** The Minister may specify the form that a record is to take and any information that the record must contain.

#### **Electronic records**

**(3)** Every person required under this section to keep a record that does so electronically must ensure that all equipment and software necessary to make the record intelligible are available during the retention period required for the record.

#### **General period for retention**

**(4)** Subject to subsection (5), every person that is required to keep records must retain them for a period of eight years after the end of the calendar year to which they relate or for any other period that may be prescribed by regulation.

#### **Exception – general period for retention**

**(5)** If, for a calendar year, a person has not filed a return as and when required by section 46 and subsequently files a return for the year, then the person must retain the records that are required by this section to be kept and that relate to the year for a period of eight years after the day the return is filed.

### **Inadequate records**

**(6)** If a person fails to keep adequate records for the purposes of this Act, the Minister may require the person to keep any records that the Minister may specify, and the person must keep the records specified by the Minister.

### **Objection or appeal**

**(7)** If a person that is required under this section to keep records serves a notice of objection, or is a party to an appeal or reference, under this Act, the person must retain every record that pertains to the subject matter of the objection, appeal or reference until the objection, appeal or reference is finally disposed of.

### **Demand by Minister**

**(8)** If the Minister is of the opinion that it is necessary for the administration or enforcement of this Act, the Minister may, by a demand served personally, sent by confirmed delivery service, or sent electronically, require any person to keep records and to retain those records for any period that is specified in the demand, and the person must comply with the demand.

### **Permission for earlier disposal**

**(9)** A person that is required under this section to keep records may dispose of them before the expiry of the period during which they are required to be kept if permission for their disposal is given by the Minister.

### **Requirement to provide information or records**

**67 (1)** Subject to subsection (2), but despite any other provision of this Act, the Minister may – for any purpose related to the administration or enforcement of this Act by notice served personally, sent by confirmed delivery service, or sent electronically – require that any person provide the Minister, within such reasonable time as is stipulated in the notice, with any information or record.

### **Unnamed persons**

**(2)** The Minister must not impose on any person (in this section referred to as a “third party”) a requirement to provide information or any record relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under subsection (3).

### **Judicial authorization**

**(3)** A judge of the Federal Court may, on application by the Minister and subject to any conditions that the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection (1) relating to an unnamed person, or more than one unnamed person (in this subsection referred to as the “group”), if the judge is satisfied by information on oath that

**(a)** the person or group is ascertainable; and

**(b)** the requirement is made to verify compliance by the person, or persons in the group, with any obligation under this Act.

### **Time period not to count**

**(4)** If a person is sent or served with a notice of requirement under subsection (1), the period of time between the day on which an application for judicial review in respect of the requirement is made and the day on which the application is finally disposed of is not to be counted in the computation of the period of time within which an assessment of the person may be made under subsection 71(1).

## DIVISION I

### Assessments

#### **Assessment**

**68 (1)** The Minister may assess a person for any tax or other amount payable by the person under this Act and may, despite any previous assessment covering, in whole or in part, the same matter, vary the assessment, reassess the person assessed or make any additional assessments that the circumstances require.

#### **Liability not affected**

**(2)** The liability of a person to pay an amount under this Act is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

#### **Minister not bound**

**(3)** The Minister is not bound by any return, application or information provided by or on behalf of any person and may make an assessment despite any return, application or information provided or not provided.

#### **Determination of refunds**

**(4)** In making an assessment under subsection (1), the Minister may determine whether a refund under section 61 is payable to the person being assessed. If the Minister makes such a determination, the person is deemed to have made an application under section 61 within 2 years after the day on which the moneys were paid, and the Minister is deemed to have received the application on the date of the notice of assessment.

#### **Irregularities**

**(5)** No assessment is to be vacated or varied on an appeal by reason only of an irregularity, informality, error, defect or omission by any person in the observance of any directory provision of this Act.

#### **Notice of assessment**

**69 (1)** After making an assessment under this Act, the Minister must send to the person assessed a notice of the assessment.

#### **Payment of remainder**

**(2)** If the Minister has assessed a person for an amount, any portion of that amount remaining unpaid is payable to the Receiver General of Canada as of the date of the notice of assessment.

#### **Payment by Minister on assessment**

**70** Subject to subsections 73(11), 83(2) and 91(2), if an assessment of a person in respect of a particular calendar year establishes that the person has paid an amount in excess of the amount determined on that assessment to be payable in respect of the particular calendar year by the person, the Minister must pay to the person a refund of the amount of the excess together with interest, at the rate prescribed by regulation, on the amount of the excess for the period beginning on the day that is the later of July 30 of the following calendar year and the day the excess was paid, and ending on the day on which the refund is paid.

#### **Limitation period for assessments**

**71 (1)** Subject to subsections (2) to (5) and (10), no assessment in respect of any tax or other amount payable by a person under this Act is permitted more than seven years after the day on which the return to which the tax or other amount payable relates was filed under section 46.

#### **Exception — objection or appeal**

**(2)** An assessment in respect of any tax or other amount payable by a person under this Act may be made at any time if the assessment is made



- (a) to give effect to a decision on an objection or appeal;
- (b) with the written consent of an appellant to dispose of an appeal; or
- (c) to give effect to an alternative basis or argument advanced by the Minister under subsection (5).

**Exception — neglect or fraud**

(3) An assessment in respect of any matter may be made at any time if the person to be assessed has, or the person filing a return has, in respect of that matter,

- (a) made a misrepresentation that is attributable to neglect, carelessness or wilful default; or
- (b) committed fraud in filing a return or an application for a refund or in supplying any information under this Act.

**Exception — other period**

(4) If, in making an assessment, the Minister determines that a person has paid in respect of any matter an amount in respect of a particular calendar year that was in fact payable in respect of another calendar year, the Minister may at any time make an assessment for that other calendar year in respect of that matter.

**Alternative basis or argument**

(5) The Minister may advance an alternative basis or argument in support of an assessment of a person, or in support of all or any portion of the total amount determined on assessment to be payable by a person under this Act, at any time after the period otherwise limited by subsection (1) for making the assessment unless, on an appeal under this Act,

- (a) there is relevant evidence that the person is no longer able to adduce without leave of the court; and
- (b) it is not appropriate in the circumstances for the court to order that the evidence be adduced.

**Limitation — alternative basis or argument**

(6) If a reassessment of a person is made that gives effect to an alternative basis or argument advanced by the Minister under subsection (5) in support of a particular assessment of the person, the Minister is not to reassess for an amount that is greater than the total amount of the particular assessment.

**Exception — alternative basis or argument**

(7) Subsection (6) does not apply to any portion of an amount determined on reassessment that the Minister would, if this Act were read without reference to subsection (5), be entitled to reassess under this Act at any time after the period otherwise limited by subsection (1) for making the reassessment.

**Filing waiver**

(8) A person may, within the time otherwise limited by subsection (1) for an assessment, waive the application of that subsection by filing with the Minister a waiver in the form and manner prescribed by the Minister specifying the period for which, and the matter in respect of which, the person waives the application of that subsection.

**Revoking waiver**

(9) Any person that has filed a waiver may revoke it by filing with the Minister a notice of revocation of the waiver in the form and manner prescribed by the Minister. The waiver remains in effect for 180 days after the notice is filed.

**Exception — waiver**

(10) An assessment in respect of any matter specified in a waiver filed under subsection (8) may be made at any time within the period specified in the waiver unless the waiver has been revoked under subsection (9), in which case an assessment may be made at any time during the 180 days that the waiver remains in effect.

### **Assessment deemed valid and binding**

**72** An assessment is, subject to being varied or vacated on an objection or appeal under this Act and subject to a re-assessment, deemed to be valid and binding despite any irregularity, informality, error, defect or omission in the assessment or in any proceeding under this Act relating to the assessment.

## **DIVISION J**

### **Objections to Assessment**

#### **Objections to assessment**

**73 (1)** A person that has been assessed and that objects to the assessment may, within 90 days after the date of the notice of the assessment, file with the Minister a notice of objection in the form and manner prescribed by the Minister setting out the reasons for the objection and all relevant facts.

#### **Issue to be decided**

**(2)** A notice of objection must

- (a)** reasonably describe each issue to be decided;
- (b)** specify in respect of each issue the relief sought, expressed as the change in any amount that is relevant for the purposes of the assessment; and
- (c)** provide the facts and reasons relied on by the person in respect of each issue.

#### **Late compliance**

**(3)** Despite subsection (2), if a notice of objection does not include the information required under paragraph (2)(b) or (c) in respect of an issue to be decided that is described in the notice, the Minister may request that the person provide the information, and that paragraph is deemed to be complied with in respect of the issue if, within 60 days after the request is made, the person submits the information in writing to the Minister.

#### **Limitation on objections**

**(4)** Despite subsection (1), if a person has filed a notice of objection to an assessment (in this section referred to as the “earlier assessment”) and the Minister makes a particular assessment under subsection (8) as a result of the notice of objection, the person may object to the particular assessment in respect of an issue only

- (a)** if the person complied with subsection (2) in the notice with respect to that issue; and
- (b)** with respect to the relief sought in respect of that issue as specified by the person in the notice.

#### **Application of limitations**

**(5)** If a particular assessment is made under subsection (8) pursuant to an objection made by a person to an earlier assessment, subsection (4) does not limit the right of the person to object to the particular assessment in respect of an issue that was part of the particular assessment and not part of the earlier assessment.

#### **Limitation on objections**

**(6)** Despite subsection (1), no objection may be made by a person in respect of an issue for which the right of objection has been waived by the person.

#### **Acceptance of objection**

**(7)** The Minister may accept a notice of objection even if it was not filed in the form and manner prescribed by the Minister.

### **Consideration of objection**

**(8)** On receipt of a notice of objection, the Minister must, without delay, reconsider the assessment and vacate, confirm or vary it or make a reassessment.

### **Waiving reconsideration**

**(9)** If, in a notice of objection, a person that wishes to appeal directly to the Tax Court of Canada requests the Minister not to reconsider the assessment objected to, the Minister may confirm the assessment without reconsideration.

### **Notice of decision**

**(10)** After reconsidering an assessment under subsection (8) or confirming an assessment under subsection (9), the Minister must, in writing, notify the person objecting to the assessment of the Minister's decision.

### **Payment by Minister on objection**

**(11)** If the variation of an assessment for a particular calendar year as a result of an objection establishes that a person has paid an amount in excess of the amount determined on that assessment to be payable by the person, the Minister must pay to the person a refund of the amount of the excess together with interest, at the rate prescribed by regulation, on the amount of the excess for the period beginning on the day that is the later of July 30 of the following calendar year and the day the excess was paid, and ending on the day on which the refund is paid.

### **Extension of time by Minister**

**74 (1)** If no objection to an assessment is filed under section 73 within the time limited by this Act, a person may make an application to the Minister to extend the time for filing a notice of objection and the Minister may grant the application.

### **Contents of application**

**(2)** An application under subsection (1) must set out the reasons for which the notice of objection was not filed within the time limited by this Act for doing so.

### **How application made**

**(3)** An application under subsection (1) must be made to the Assistant Commissioner of the Appeals Branch of the Agency, in the form and manner prescribed by the Minister and must be accompanied by a copy of the notice of objection.

### **Defect in application**

**(4)** The Minister may accept an application under subsection (1) even though it was not made in accordance with subsection (3).

### **Duties of Minister**

**(5)** On receipt of an application under subsection (1), the Minister must, without delay, consider the application and grant or refuse it, and, in writing, notify the person of the decision.

### **Date of objection if application granted**

**(6)** If an application under subsection (1) is granted, the notice of objection is deemed to have been filed on the day of the decision of the Minister.

### **Conditions for grant of application**

**(7)** No application may be granted under this section unless

- (a)** the application is made within one year after the expiry of the time limited by this Act for objecting; and
- (b)** the person demonstrates that

- (i) within the time limited by this Act for objecting, the person
  - (A) was unable to act or to give a mandate to act in their name, or
  - (B) had a *bona fide* intention to object to the assessment,
- (ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and
- (iii) the application was made as soon as circumstances permitted it to be made.

## DIVISION K

### Appeal

#### **Extension of time by Tax Court of Canada**

**75 (1)** A person that has made an application under section 74 may apply to the Tax Court of Canada to have the application granted after either

- (a) the Minister has refused the application; or
- (b) 90 days have elapsed after the application was made and the Minister has not notified the person of the Minister's decision.

#### **When application may not be made**

**(2)** No application may be made under subsection (1) after the expiry of 30 days after the day on which notification of the decision referred to in subsection 74(5) was sent to the person.

#### **How application made**

**(3)** An application under subsection (1) must be made by filing in the Registry of the Tax Court of Canada, in accordance with the *Tax Court of Canada Act*, the documents referred to in subsection 74(3) and the notification, if any, referred to in subsection 74(5).

#### **Copy to the Commissioner**

**(4)** The Tax Court of Canada must send a copy of the application received under subsection (3) to the Commissioner.

#### **Powers of Tax Court of Canada**

**(5)** The Tax Court of Canada may dispose of an application received under subsection (3) by dismissing or granting it and, in granting it, the Court may impose any terms that it considers just or order that the notice of objection be deemed to be a valid objection as of the date of the order.

#### **When application to be granted**

**(6)** No application is to be granted by the Tax Court of Canada under this section unless

- (a) the application under subsection 74(1) is made within one year after the expiry of the time limited by this Act for objecting; and
- (b) the person demonstrates that
  - (i) within the time limited by this Act for objecting, the person
    - (A) was unable to act or to give a mandate to act in their name, or
    - (B) had a *bona fide* intention to object to the assessment,

(ii) given the reasons set out in the application under this section and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application under subsection 74(1) was made as soon as circumstances permitted it to be made.

### **Appeal to Tax Court of Canada**

**76 (1)** Subject to subsection (2), a person that has filed a notice of objection to an assessment may appeal to the Tax Court of Canada to have the assessment varied or vacated, or a reassessment made, after either

(a) the Minister has confirmed the assessment or has reassessed; or

(b) 180 days have elapsed after the filing of the notice of objection and the Minister has not notified the person that the Minister has vacated or confirmed the assessment or has reassessed.

### **No appeal**

**(2)** No appeal under subsection (1) may be instituted after the expiry of 90 days after notice that the Minister has reassessed or confirmed the assessment is sent to the person under subsection 73(10).

### **Amendment of appeal**

**(3)** The Tax Court of Canada may, on any terms that it sees fit, authorize a person that has instituted an appeal in respect of a matter to amend the appeal to include any further assessment in respect of the matter that the person is entitled under this section to appeal.

### **Extension of time to appeal**

**77 (1)** If no appeal to the Tax Court of Canada under section 76 has been instituted within the time limited by that section for doing so, a person may make an application to the Tax Court of Canada for an order extending the time within which an appeal may be instituted, and the Court may make an order extending the time for appealing and may impose any terms that it considers just.

### **Contents of application**

**(2)** An application under subsection (1) must set out the reasons why the appeal was not instituted within the time limited by section 76 for doing so.

### **How application made**

**(3)** An application under subsection (1) must be made by filing in the Registry of the Tax Court of Canada, in accordance with the *Tax Court of Canada Act*, the application and the notice of appeal.

### **Copy to Deputy Attorney General of Canada**

**(4)** The Tax Court of Canada must send a copy of the application under subsection (1) to the office of the Deputy Attorney General of Canada.

### **When order to be made**

**(5)** No order may be made under this section unless

(a) the application under subsection (1) is made within one year after the expiry of the time limited by section 76 for appealing; and

(b) the person demonstrates that

(i) within the time limited by section 76 for appealing, the person

(A) was unable to act or to give a mandate to act in their name, or

(B) had a *bona fide* intention to appeal,

- (ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,
- (iii) the application was made as soon as circumstances permitted it to be made, and
- (iv) there are reasonable grounds for the appeal.

### **Limitation on appeals to the Tax Court of Canada**

**78 (1)** Despite section 76, if a person has filed a notice of objection to an assessment, the person may appeal to the Tax Court of Canada to have the assessment vacated, or a reassessment made, only with respect to

- (a) an issue in respect of which the person has complied with subsection 73(2) in the notice and the relief sought in respect of the issue as specified by the person in the notice; or
- (b) an issue described in subsection 73(5), if the person was not required to file a notice of objection to the assessment that gave rise to the issue.

### **No appeal if waiver**

**(2)** Despite section 76, a person may not appeal to the Tax Court of Canada to have an assessment vacated or varied in respect of an issue for which the right of objection or appeal has been waived by the person.

### **Institution of appeals**

**79** An appeal to the Tax Court of Canada under this Act must be instituted in accordance with the *Tax Court of Canada Act*.

### **Disposition of appeal**

**80 (1)** The Tax Court of Canada may dispose of an appeal from an assessment by

- (a) dismissing it; or
- (b) allowing it and
  - (i) vacating the assessment,
  - (ii) varying the assessment, or
  - (iii) referring the assessment back to the Minister for reconsideration and reassessment.

### **Partial disposition of appeal**

**(2)** If an appeal raises more than one issue, the Tax Court of Canada may, with the consent in writing of the parties to the appeal, dispose of a particular issue by

- (a) dismissing the appeal with respect to the particular issue; or
- (b) allowing the appeal with respect to the particular issue and
  - (i) varying the assessment, or
  - (ii) referring the assessment back to the Minister for reconsideration and reassessment.

### **Disposal of remaining issues**

**(3)** If a particular issue has been disposed of under subsection (2), the appeal with respect to the remaining issues may continue.

### **Appeal to Federal Court of Appeal**

**(4)** If the Tax Court of Canada has disposed of a particular issue under subsection (2), the parties to the appeal may, in accordance with the provisions of the *Tax Court of Canada Act* or the *Federal Courts Act*, as they relate to appeals from decisions of the Tax Court of Canada, appeal the disposition to the Federal Court of Appeal as if it were a final judgment of the Tax Court of Canada.

### **References to Tax Court of Canada**

**81 (1)** The Minister and a person may agree that a question arising under this Act, in respect of any assessment or proposed assessment of the person, should be determined by the Tax Court of Canada.

### **Time during consideration not to count**

**(2)** For the purposes of making an assessment, filing a notice of objection to an assessment or instituting an appeal from an assessment, the time between the day on which proceedings are instituted in the Tax Court of Canada to have a question determined under subsection (1) and the day on which the question is finally determined must not be counted in the computation of

- (a)** the seven-year period referred to in subsection 71(1);
- (b)** the period within which a notice of objection to an assessment may be filed under section 73; or
- (c)** the period within which an appeal may be instituted under section 76.

### **Reference of common questions to Tax Court**

**82 (1)** If the Minister is of the opinion that a question arising out of one and the same transaction or occurrence, or series of transactions or occurrences, is common to assessments or proposed assessments in respect of two or more persons, the Minister may apply to the Tax Court of Canada for a determination of the question.

### **Contents of application**

**(2)** An application under subsection (1) must set out

- (a)** the question in respect of which the Minister requests a determination;
- (b)** the names of the persons that the Minister seeks to have bound by the determination; and
- (c)** the facts and reasons on which the Minister relies and on which the Minister based or intends to base assessments of each person named in the application.

### **Service**

**(3)** A copy of the application under subsection (1) must be served by the Minister on each of the persons named in the application and on any other person that, in the opinion of the Tax Court of Canada, is likely to be affected by the determination of the question.

### **Determination of question by Tax Court**

**(4)** If the Tax Court of Canada is satisfied that a determination of a question set out in an application under subsection (1) will affect assessments or proposed assessments in respect of two or more persons that have been served with a copy of the application, the Tax Court of Canada may make an order naming the persons in respect of whom the question will be determined and may

- (a)** if none of the persons named in the order has appealed from such an assessment, proceed to determine the question in any manner that it considers appropriate; or
- (b)** if one or more of the persons named in the order has or have appealed, make any order that it considers appropriate joining a party or parties to that appeal or those appeals and proceed to determine the question in any manner that it considers appropriate.

### **Determination final and conclusive**

**(5)** Subject to subsection (6), if a question set out in an application under subsection (1) is determined by the Tax Court of Canada, the determination is final and conclusive for the purposes of any assessments of persons named in an order by the Court under subsection (4).

### **Appeal**

**(6)** If a question set out in an application under subsection (1) is determined by the Tax Court of Canada, the Minister or any of the persons that have been served with a copy of the application and that are named in an order of the Court under subsection (4) may, in accordance with the provisions of this Act, the *Tax Court of Canada Act* or the *Federal Courts Act*, as they relate to appeals from decisions of the Tax Court of Canada, appeal from the determination.

### **Parties to appeal**

**(7)** The parties that are bound by a determination under subsection (4) are parties to any appeal from the determination.

### **Time during consideration not counted**

**(8)** For the purpose of making an assessment of a person, filing a notice of objection to an assessment or instituting an appeal from an assessment, the periods described in subsection (9) must not be counted in the computation of

- (a)** the seven-year period referred to in subsection 71(1);
- (b)** the period within which a notice of objection to an assessment may be filed under section 73; or
- (c)** the period within which an appeal may be instituted under section 76.

### **Excluded periods**

**(9)** The period that is not to be counted in the computation of the periods described in paragraphs (8)(a) to (c) is the time between the day on which an application that is made under this section is served on a person under subsection (3) and

- (a)** in the case of a person named in an order of the Tax Court of Canada under subsection (4), the day on which the determination becomes final and conclusive and not subject to any appeal; or
- (b)** in the case of any other person, the day on which the person is served with a notice that the person has not been named in an order of the Tax Court of Canada under subsection (4).

### **Payment by the Minister on appeal**

**83 (1)** If the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada has, on the disposition of an appeal in respect of taxes, interest or a penalty payable under this Act by a person, referred an assessment back to the Minister for reconsideration and reassessment, or varied or vacated an assessment, the Minister must, without delay, whether or not an appeal from the decision of the Court has been or may be instituted,

- (a)** where the assessment has been referred back to the Minister, reconsider the assessment and make a reassessment in accordance with the decision of the Court, unless otherwise directed in writing by the person; and
- (b)** refund any overpayment resulting from the variation, vacation or reassessment;

and the Minister may repay any tax, interest or penalties or surrender any security accepted therefore by the Minister to that person or any other person who has filed another objection or instituted another appeal if, having regard to the reasons given on the disposition of the appeal, the Minister is satisfied that it would be just and equitable to do so, but for greater certainty, the Minister may, in accordance with the provisions of this Act, the *Tax Court of Canada Act*, the *Federal Courts Act* or the *Supreme Court Act* as they relate to appeals from decisions of the Tax Court of Canada or the Federal Court of Appeal, appeal from the decision of the Court despite any variation or vacation of any assessment by the Court or any reassessment made by the Minister under paragraph (a).



### **Interest on refund**

**(2)** If a refund is made under subsection (1) in respect of an assessment for a particular calendar year, interest at the rate prescribed by regulation must be paid for the period beginning on the day that is the later of July 30 of the following calendar year and the day on which the overpayment referred to in subsection (1) was paid, and ending on the day on which the refund is paid.

## **DIVISION L**

### **Penalties**

#### **Failure to register when required**

**84** A taxpayer that does not apply to register as and when required under section 41 is liable to a penalty of \$20,000 for each of

- (a)** the calendar year in which it was required to apply to register;
- (b)** the calendar year in which it registers (or is registered under section 45) provided the year is different from the year in paragraph (a); and
- (c)** the calendar years, if any, between the years in paragraphs (a) and (b).

#### **Failure to file a return when required**

**85 (1)** A taxpayer that fails to file a return in respect of a calendar year as and when required under section 46 is liable to a penalty equal to the total of

- (a)** an amount equal to 5% of the taxpayer's tax payable under this Act in respect of the year that was unpaid when the return was required to be filed; and
- (b)** the amount obtained when 1% of the taxpayer's tax payable under this Act in respect of the year that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding 12, from the day on which the return was required to be filed to the day on which the return is filed.

#### **Repeated failure to file — conditions**

**(2)** Subsection (3) applies to a taxpayer in respect of a calendar year, if the taxpayer

- (a)** fails to file a return in respect of the year as and when required by section 46;
- (b)** fails to comply with a demand sent under section 49 for a return in respect of the year; and
- (c)** was, before the time of the failure referred to in paragraph (a), liable to a penalty under subsection (1) for a return in respect of any of the three preceding calendar years.

#### **Repeated failure to file — penalty**

**(3)** If subsection (2) applies to a taxpayer in respect of a calendar year, the taxpayer is liable to a penalty equal to the total of

- (a)** an amount equal to 10% of the taxpayer's tax payable under this Act in respect of the year that was unpaid when the return was required to be filed; and
- (b)** the amount obtained when 2% of the taxpayer's tax payable under this Act in respect of the year that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding 20, from the day on which the return was required to be filed to the day on which the return is filed.

### **False statements or omissions**

**(4)** A person who knowingly, or under circumstances amounting to gross negligence, makes or participates in, assents to, or acquiesces in the making of, a false statement or omission in a return, application, form, certificate, statement, document, invoice, record or answer (each of which is in this subsection referred to as a “return”) is liable to a penalty equal to the greater of \$5,000 and 25% of the total of

**(a)** if the false statement or omission is relevant to the determination of an amount payable under this Act by the person, the amount, if any, by which

**(i)** the amount payable

exceeds

**(ii)** the amount that would be payable by the person if the amount payable were determined on the basis of the information provided in the return; and

**(b)** if the false statement or omission is relevant to the determination of a refund or any other payment that may be obtained under this Act, the amount, if any, by which

**(i)** the amount that would be the refund or other payment payable to the person if the refund or other payment were determined on the basis of the information provided in the return

exceeds

**(ii)** the amount of the refund or other payment payable to the person.

### **Failure to provide information**

**86** A person that fails to provide any information or record as and when required under this Act, or as prescribed by regulation, is liable to a penalty of \$2,500 for each such failure, in addition to any other penalty under this Act unless, in the case of any information or record required in respect of another person under subsection 67(1) or section 104, a reasonable effort was made by the person to obtain the information or record.

### **Unreasonable appeal**

**87** If the Tax Court of Canada disposes of an appeal by a person in respect of an amount payable under this Act or if such an appeal has been discontinued or dismissed without trial, the Court may, on the application of the Minister and whether or not the Court awards costs, order the person to pay to the Receiver General of Canada an amount not exceeding 10% of any part of the amount that was in controversy in respect of which the Court determines that there were no reasonable grounds for the appeal, if in the opinion of the Court one of the main purposes for instituting or maintaining any part of the appeal was to defer the payment of any amount payable under this Act.

### **Section 53 avoidance planning**

**88 (1)** The following definitions apply in this section.

**planning activity** includes

**(a)** organizing or creating, or assisting in the organization or creation of, an arrangement, an entity, a plan or a scheme; and

**(b)** participating, directly or indirectly, in the selling of an interest in, or the promotion of, an arrangement, an entity, a plan, a property or a scheme. (*activité de planification*)

**section 53 avoidance planning** by a transferor or a transferee, means planning activity in respect of a transaction or series of transactions that

**(a)** is, or is part of, a section 53 avoidance transaction; and

**(b)** one of the purposes of the transaction or series of transactions is to

**(i)** reduce a transferee's joint and several, or solidary, liability for tax owing under this Act by the transferor, or

**(ii)** reduce the transferor or transferee's ability to pay any amount owing, or that may become owing, under this Act. (*planification d'évitement en vertu de l'article 53*)

**section 53 avoidance transaction** means a transaction or series of transactions, in respect of which,

**(a)** the conditions in paragraph 53(7)(a) or (b) are met; or

**(b)** if subsection 53(7) applied to the transaction or series of transactions, the amount determined under subparagraph 53(7)(c)(ii) would exceed the amount determined under subparagraph 53(7)(c)(i). (*opération d'évitement en vertu de l'article 53*)

**transferee** refers to "transferee" as used in subsections 53(2) and (7). (*bénéficiaire du transfert*)

**transferor** refers to "transferor" as used in subsections 53(2) and (7). (*auteur du transfert*)

### **Section 53 avoidance penalty**

**(2)** Every transferor or transferee that engages in, participates in, assents to or acquiesces in planning activity that the transferor or transferee, as the case may be, knows is section 53 avoidance planning, or would reasonably be expected to know is section 53 avoidance planning, but for circumstances amounting to gross negligence, is liable to a penalty that is the lesser of

**(a)** 50% of the amount payable under this Act (determined without reference to this subsection), the joint and several, or solidary liability for which was sought to be avoided through the planning; and

**(b)** \$100,000.

### **General penalty**

**89** A person who fails to comply with any provision of this Act, or the regulations made under this Act, for which no other penalty is specified in this Act is liable to a penalty of \$2,500.

### **Payment of penalties**

**90** If a person is required to pay a penalty under this Act, the person is required to pay the penalty,

**(a)** in the case of a penalty payable under section 84, on the day on which the taxpayer was required to apply to register;

**(b)** in the case of a penalty payable under section 85, on the day on which the taxpayer was required to file the return; and

**(c)** in any other case, on the day on which the notice of original assessment of the penalty was sent.

### **Waiving or cancelling penalties**

**91 (1)** The Minister may, on or before the day that is 10 calendar years after the end of a calendar year in which a penalty became payable under this Act by a person, or on application by the person on or before that day, waive or cancel all or any portion of that penalty, and despite subsection 71(1), any assessment of the penalty payable by the person may be made that is necessary to take into account the waiver or cancellation of the penalty.

### **Refund of amount waived or cancelled**

**(2)** If a person has paid an amount of penalty and the Minister waives or cancels any portion of that amount under subsection (1), the Minister must refund the portion of the amount and pay interest at the rate prescribed by regulation on the portion of the amount beginning on the day that is 30 days after the day on which the Minister received a request in a manner satisfactory to the Minister to apply that subsection (or, if there is no such request, on the day the Minister

waives or cancels the portion of the amount) and ending on the day on which the portion of the amount is paid as a refund or applied against another amount owed by the person to His Majesty in right of Canada.

## **DIVISION M**

### **Offences and Punishment**

#### **Failure to file or comply**

**92 (1)** A person that fails to file a return as and when required under this Act or that fails to comply with an obligation under subsection 66(6) or (8) or section 67, or an order made under section 97, is guilty of an offence and, in addition to any penalty otherwise provided under this Act, is liable on summary conviction to a fine of not less than \$2,000 and not more than \$40,000.

#### **Saving**

**(2)** A person that is convicted of an offence under subsection (1) for a failure to comply with a provision of this Act is not liable to a penalty imposed under this Act for the same failure, unless a notice of assessment for the penalty was issued before the information or complaint giving rise to the conviction was laid or made.

#### **Offences for false or deceptive statement**

**93 (1)** A person commits an offence that

**(a)** makes, or participates in, assents to or acquiesces in the making of, a false or deceptive statement in a return, application, form, certificate, statement, document, invoice, record or answer filed or made as required under this Act;

**(b)** for the purposes of evading payment of any amount payable under this Act, or obtaining a refund or other payment payable under this Act to which the person is not entitled,

**(i)** destroys, alters, mutilates, conceals or otherwise disposes of any records of a person, or

**(ii)** makes, or assents to or acquiesces in the making of, a false or deceptive entry, or omits, or assents to or acquiesces in the omission, to enter a material particular in the records of a person;

**(c)** intentionally, in any manner, evades or attempts to evade compliance with this Act or payment of an amount payable under this Act;

**(d)** intentionally, in any manner, obtains or attempts to obtain a refund or other payment payable under this Act to which the person is not entitled; or

**(e)** conspires with any person to commit an offence described in any of paragraphs (a) to (d).

#### **Punishment**

**(2)** A person that commits an offence under subsection (1) is guilty of an offence punishable on summary conviction and, in addition to any penalty otherwise provided under this Act, is liable to a fine of not less than 50%, and not more than 200%, of the amount payable that was sought to be evaded, or of the refund or other payment sought, or, if the amount that was sought to be evaded cannot be ascertained, a fine of not less than \$2,000 and not more than \$40,000.

#### **Prosecution on indictment**

**(3)** A person that is charged with an offence described in subsection (1) may, at the election of Attorney General of Canada, be prosecuted on indictment and, if convicted, is, in addition to any penalty otherwise provided for under this Act, liable to a fine of not less than 100%, and not more than 200%, of the amount payable that was sought to be evaded, or of the refund or other payment sought, or, if the amount that was sought to be evaded cannot be ascertained, a fine of not less than \$5,000 and not more than \$100,000.

### **Penalty on conviction**

**(4)** A person that is convicted of an offence under subsection (1) is not liable to a penalty imposed under this Act for the same evasion or attempt unless a notice of assessment for that penalty was issued before the information or complaint giving rise to the conviction was laid or made.

### **Stay of appeal**

**(5)** If, in any appeal under this Act, substantially the same facts are at issue as those that are at issue in a prosecution under this section, the Minister may file a stay of proceedings with the Tax Court of Canada and, upon that filing, the proceedings before the Tax Court of Canada are stayed pending a final determination of the outcome of the prosecution.

### **Failure to pay tax**

**94** A person that intentionally fails to pay tax as and when required under this Act is guilty of an offence punishable on summary conviction and, in addition to any penalty or interest otherwise provided for under this Act, is liable to a fine not exceeding 20% of the amount of the tax that should have been paid.

### **Offence — confidential information**

**95 (1)** A person is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 if the person

- (a)** contravenes subsection 108(2); or
- (b)** knowingly contravenes an order made under subsection 108(7).

### **Offence — confidential information**

**(2)** A person to whom confidential information has been provided for a particular purpose under subsection 108(6) and that for any other purpose knowingly uses, provides to any person, allows the provision to any person of, or allows any person access to, that information is guilty of an offence and is liable on summary conviction to a fine not exceeding \$5,000.

### **Definitions**

**(3)** In subsection (2), **confidential information** has the same meaning as in subsection 108(1).

### **General offence**

**96** A person who fails to comply with any provision of this Act, or the regulations made under this Act, for which no other offence is specified in this Act is guilty of an offence punishable on summary conviction and is liable to a fine of not more than \$100,000.

### **Compliance orders**

**97** If a person is convicted by a court of an offence for a failure to comply with a provision of this Act, the court may make any order that it deems appropriate to enforce compliance with the provision.

### **Officers of corporations, etc.**

**98** If a person other than an individual commits an offence under this Act, every officer, director or representative of the person who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and is guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the person has been prosecuted or convicted.

### **Power to decrease punishment**

**99** Despite the *Criminal Code* or any other law, the court does not have the power to impose less than the minimum fine fixed under this Act in any prosecution or proceeding under this Act.

### **Information or complaint**

**100 (1)** An information or complaint under this Act may be laid or made by any official of the Agency, by a member of the Royal Canadian Mounted Police or by any person authorized to do so by the Minister and, if an information or complaint purports to have been laid or made under this Act, it is deemed to have been laid or made by a person so authorized by the Minister and is not to be called in question for lack of authority of the informant or complainant, except by the Minister or a person acting for the Minister or for His Majesty in right of Canada.

### **Two or more offences**

**(2)** An information or complaint in respect of an offence under this Act may be for one or more offences, and no information, complaint, warrant, conviction or other proceeding in a prosecution under this Act is objectionable or insufficient by reason of the fact that it relates to two or more offences.

### **Territorial jurisdiction**

**(3)** An information or complaint in respect of an offence under this Act may be heard, tried or determined by any court having territorial jurisdiction where the accused is resident, carrying on a commercial activity, found, apprehended or in custody, despite that the matter of the information or complaint did not arise within that territorial jurisdiction.

### **Limitation of prosecutions**

**(4)** No proceeding by way of summary conviction in respect of an offence under this Act, may be instituted more than eight years after the day on which the subject matter of the proceeding arose, unless the prosecutor and the defendant agree that it may be instituted after the eight years.

## **DIVISION N**

### **Inspections**

#### **Authorized person**

**101 (1)** A person authorized by the Minister (in this section referred to as an “authorized person”) to do so may, at all reasonable times, for any purpose related to the administration or enforcement of this Act, inspect, audit or examine the records, processes, property or premises of a particular person that may be relevant in determining the obligations of the particular person, or any other person, under this Act and whether the particular person, or any such other person, is in compliance with this Act.

#### **Powers of authorized person**

**(2)** Subject to subsection (3), an authorized person may, at all reasonable times, for any purpose related to the administration or enforcement of this Act

**(a)** enter any place in which the authorized person reasonably believes that the particular person keeps or should keep records, carries on any activity to which this Act applies or does anything in relation to that activity;

**(b)** require any individual to give the authorized person all reasonable assistance, to answer all proper questions relating to the administration or enforcement of this Act and

**(i)** to attend with the authorized person at a place designated by the authorized person, or by video-conference or by another form of electronic communication, and to answer the questions orally, and

**(ii)** to answer the questions in writing, in any form specified by the authorized person; and

**(c)** require any person to give the authorized person all reasonable assistance with anything the authorized person is authorized to do under this Act.

### **Prior authorization**

**(3)** If any place referred to in subsection (2) is a dwelling-house, an authorized person may not enter that dwelling-house without the consent of the occupant, except under the authority of a warrant issued under subsection (4).

### **Warrant to enter dwelling-house**

**(4)** A judge may issue a warrant authorizing a person to enter a dwelling-house subject to the conditions specified in the warrant if, on *ex parte* application by the Minister, a judge is satisfied by information on oath that

- (a)** there are reasonable grounds to believe that the dwelling-house is a place referred to in subsection (2);
- (b)** entry into the dwelling-house is necessary for any purpose related to the administration or enforcement of this Act; and
- (c)** entry into the dwelling-house has been, or there are reasonable grounds to believe that entry will be, refused.

### **Orders if entry not authorized**

**(5)** If a judge is not satisfied that entry into a dwelling-house is necessary for any purpose related to the administration or enforcement of this Act, the judge may, to the extent that access was or may be expected to be refused and that a record or property is or may be expected to be kept in the dwelling-house,

- (a)** order the occupant of the dwelling-house to provide a person with reasonable access to any record or property that is or should be kept in the dwelling-house; and
- (b)** make any other order that is appropriate in the circumstances to carry out the purposes of this Act.

### **Definition of dwelling-house**

**(6)** In this section, ***dwelling-house*** means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence, and includes

- (a)** a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered and enclosed passageway; and
- (b)** a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence.

### **Compliance order**

**102 (1)** On application by the Minister, a judge may, despite section 97, order a person to provide any access, assistance, information or record sought by the Minister under section 67 or 101 if the judge is satisfied that the person was required under section 67 or 101 to provide the access, assistance, information or record and did not do so.

### **Notice required**

**(2)** An application under subsection (1) must not be heard before the end of five clear days after the day on which the notice of application is served on the person against whom the order is sought.

### **Judge may impose conditions**

**(3)** The judge making an order under subsection (1) may impose any conditions in respect of the order that the judge considers appropriate.

### **Contempt of court**

**(4)** If a person fails or refuses to comply with an order under subsection (1), a judge may find the person in contempt of court and the person is subject to the processes and the punishments of the court to which the judge is appointed.

## **Appeal**

(5) An order by a judge under subsection (1) may be appealed to a court having appellate jurisdiction over decisions of the court to which the judge is appointed. An appeal does not suspend the execution of the order unless it is so ordered by a judge of the court to which the appeal is made.

## **Time period not to count**

(6) If an application is commenced by the Minister under subsection (1) to order a person to provide any access, assistance, information, or document, the period of time between the day on which the person files a notice of appearance, or otherwise opposes the application, and the day on which the application is finally disposed of is not to be counted in the computation of the period of time within which an assessment may be made under subsection 71(1).

## **Search warrants**

**103 (1)** A judge may, on *ex parte* application by the Minister, issue a warrant authorizing any person named in the warrant to enter and search any building, receptacle or place for any record or thing that may afford evidence of the commission of an offence under this Act and to seize the record or thing and, as soon as is practicable, bring it before, or make a report in respect of the record or thing to, the judge or, if that judge is unable to act, another judge of the same court, to be dealt with by the judge in accordance with this section.

## **Evidence on oath**

(2) An application under subsection (1) must be supported by information on oath establishing the facts on which the application is based.

## **Issue of warrants**

(3) A judge may issue a warrant under subsection (1) if the judge is satisfied that there are reasonable grounds to believe that

- (a) an offence under this Act has been committed;
- (b) a record or thing that may afford evidence of the commission of the offence is likely to be found; and
- (c) the building, receptacle or place specified in the application is likely to contain a record or thing referred to in paragraph (b).

## **Contents of warrant**

(4) A warrant issued under subsection (1) must refer to the offence for which it is issued, identify the building, receptacle or place to be searched and the person that is alleged to have committed the offence, and it must be reasonably specific as to any record or thing to be searched for and seized.

## **Seizure**

(5) Any person that executes a warrant issued under subsection (1) may seize, in addition to the record or thing referred to in that subsection, any other record or thing that the person believes on reasonable grounds affords evidence of the commission of an offence under this Act and must, as soon as is practicable, bring the record or thing before, or make a report in respect of the record or thing to, the judge that issued the warrant or, if that judge is unable to act, another judge of the same court, to be dealt with by the judge in accordance with this section.

## **Retention**

(6) Subject to subsection (7), if any record or thing seized under subsection (1) or (5) is brought before a judge or a report in respect of the record or thing is made to a judge, the judge must, unless the Minister waives retention, order that the record or thing be retained by the Minister and the Minister must take reasonable care to ensure that it is preserved until the conclusion of any investigation into the offence in relation to which the record or thing was seized or until it is required to be produced for the purposes of a criminal proceeding.



### **Return of records or things seized**

**(7)** If any record or thing seized under subsection (1) or (5) is brought before a judge or a report in respect of the record or thing is made to a judge, the judge may, on the judge's own motion or on application by a person with an interest in the record or thing on three clear days notice of application to the Deputy Attorney General of Canada, order that the record or thing be returned to the person from which the record or thing was seized or to the person that is otherwise legally entitled to the record or thing, if the judge is satisfied that the record or thing

- (a)** will not be required for an investigation or a criminal proceeding; or
- (b)** was not seized in accordance with the warrant or this section.

### **Access and copies**

**(8)** The person from which any record or thing is seized under this section is entitled, at all reasonable times and subject to any reasonable conditions that may be imposed by the Minister, to inspect the record or thing and, in the case of a document, to obtain one copy of the record at the expense of the Minister.

### **Definition of foreign-based information or record**

**104 (1)** For the purposes of this section, *foreign-based information or record* means any information or record that is available or located outside Canada and that may be relevant to the administration or enforcement of this Act.

### **Requirement to provide foreign-based information**

**(2)** Despite any other provision of this Act, the Minister may, by notice served personally, sent by confirmed delivery service or sent electronically, require a person resident in Canada or a non-resident person that carries on business in Canada to provide any foreign-based information or record.

### **Content of notice**

**(3)** A notice referred to in subsection (2) must set out

- (a)** a reasonable period of time of not less than 90 days for the provision of the information or record;
- (b)** a description of the information or record being sought; and
- (c)** the consequences under subsection (8) to the person of the failure to provide the information or record being sought within the period of time set out in the notice.

### **Review by judge**

**(4)** If a person is served or sent a notice of a requirement under subsection (2), the person may, within 90 days after the day on which the notice was served or sent, apply to a judge for a review of the requirement.

### **Powers on review**

**(5)** On hearing an application under subsection (4) in respect of a requirement, a judge may

- (a)** confirm the requirement;
- (b)** vary the requirement if the judge is satisfied that it is appropriate to do so in the circumstances; or
- (c)** set aside the requirement if the judge is satisfied that it is unreasonable.

### **Related person**

**(6)** For the purposes of subsection (5), a requirement to provide information or a record is not to be considered unreasonable because the information or record is under the control of, or available to, a non-resident person that is not controlled by the person on which the notice of the requirement under subsection (2) is served, or to which that notice is sent, if that person is related to the non-resident person.

### **Time during consideration not to count**

(7) The period of time between the day on which an application for review of a requirement is made pursuant to subsection (4) and the day the review is decided must not be counted in the computation of

- (a) the period of time set out in the notice of the requirement; and
- (b) the period of time within which an assessment may be made under section 71.

### **Consequence of failure**

(8) If a person fails to comply substantially with a notice served or sent under subsection (2) and if the requirement is not set aside under subsection (5), any court having jurisdiction in a civil proceeding relating to the administration or enforcement of this Act must, on motion of the Minister, prohibit the introduction by that person (or by another constituent entity of a consolidated group of which the person is, at any time between the time the notice was served or sent under subsection (2) and the time the motion is heard, a constituent entity) of any foreign-based information or record covered by that notice.

### **Inquiry**

**105 (1)** The Minister may, for any purpose related to the administration or enforcement of this Act, authorize any person, whether or not the person is an official of the Agency, to make any inquiry that the Minister may deem necessary with reference to anything relating to the administration or enforcement of this Act.

### **Appointment of hearing officer**

(2) If the Minister, under subsection (1), authorizes a person to make an inquiry, the Minister must forthwith apply to the Tax Court of Canada for an order appointing a hearing officer before whom the inquiry will be held.

### **Powers of hearing officer**

(3) For the purposes of an inquiry authorized under subsection (1), a hearing officer appointed under subsection (2) in relation to the inquiry has all the powers conferred on a commissioner by sections 4 and 5 of the *Inquiries Act* and that may be conferred on a commissioner under section 11 of that Act.

### **When powers to be exercised**

(4) A hearing officer appointed under subsection (2) in relation to an inquiry must exercise the powers conferred on a commissioner by section 4 of the *Inquiries Act* in relation to any persons that the person authorized to make the inquiry considers appropriate for the conduct of the inquiry. However, the hearing officer is not to exercise the power to punish any person unless, on application by the hearing officer, a judge, including a judge of a county court, certifies that the power may be exercised in the matter disclosed in the application and the applicant has given to the person in respect of whom the power is proposed to be exercised 24 hours notice of the hearing of the application, or any shorter notice that the judge considers reasonable.

### **Rights of witnesses**

(5) Any person who gives evidence in an inquiry authorized under subsection (1) is entitled to be represented by counsel and, on request made by the person to the Minister, to receive a transcript of that evidence.

### **Rights of person investigated**

(6) Any person whose affairs are investigated in the course of an inquiry authorized under subsection (1) is entitled to be present and to be represented by counsel throughout the inquiry unless the hearing officer appointed under subsection (2), on application by the Minister or a person giving evidence, orders otherwise in relation to the whole or any part of the inquiry, on the ground that the presence of the person and the person's counsel, or either of them, would be prejudicial to the effective conduct of the inquiry.

### **Copies**

**106** If any record is seized, inspected, audited, examined or provided under any of sections 67, 101 to 103 and 105, the person by whom it is seized, inspected, audited or examined or to whom it is provided or any official of the Agency may

make or cause to be made one or more copies of it and, in the case of an electronic record, make or cause to be made a print-out of the electronic record, and any record purporting to be certified by the Minister or an authorized person to be a copy of the record, or to be a print-out of an electronic record, made under this section is evidence of the nature and content of the original record and has the same probative force as the original record would have if it were proven in the ordinary way.

### **Compliance**

**107** A person must, unless the person is unable to do so, do everything the person is required to do under any of sections 67, 101 to 104 and 106 and no person is to, physically or otherwise, do or attempt to do any of the following:

- (a) interfere with, hinder or molest any official doing anything the official is authorized to do under this Act; or
- (b) prevent any official from doing anything the official is authorized to do under this Act.

## **DIVISION O**

### **Confidentiality of Information**

#### **Definitions**

**108 (1)** The following definitions apply in this section.

**authorized person** means a person who is engaged or employed, or who was formerly engaged or employed, by or on behalf of His Majesty in right of Canada to assist in carrying out the provisions of this Act. (*personne autorisée*)

**confidential information** means information of any kind and in any form that relates to one or more persons and that is

- (a) obtained by or on behalf of the Minister for the purposes of this Act, or
- (b) prepared from information referred to in paragraph (a),

but does not include information that does not directly or indirectly reveal the identity of the person to whom it relates. (*renseignement confidentiel*)

**court of appeal** has the same meaning as in section 2 of the *Criminal Code*. (*cour d'appel*)

#### **Provision of confidential information**

**(2)** Except as authorized under this section, an official must not knowingly

- (a) provide, or allow to be provided, to any person any confidential information;
- (b) allow any person to have access to any confidential information; or
- (c) use any confidential information other than in the course of the administration or enforcement of this Act.

#### **Confidential information evidence not compellable**

**(3)** Despite any other Act of Parliament or other law, no official is required, in connection with any legal proceedings, to give or produce evidence relating to any confidential information.

#### **Communications — proceedings**

**(4)** Subsections (2) and (3) do not apply in respect of

- (a) criminal proceedings, either by indictment or on summary conviction, that have been commenced by the laying of an information or the preferring of an indictment, under an Act of Parliament;

**(b)** any legal proceedings relating to the administration or enforcement of this Act, the *Canada Pension Plan*, the *Employment Insurance Act* or any other Act of Parliament or law of a province that provides for the payment of a tax or duty, before a court of record, including a court of record in a jurisdiction outside Canada; or

**(c)** any legal proceedings under an international agreement relating to trade before

**(i)** a court of record, including a court of record in a jurisdiction outside Canada,

**(ii)** an international organization, or

**(iii)** a dispute settlement panel or an appellate body created under an international agreement relating to trade.

#### **Authorized provision of confidential information**

**(5)** The Minister may provide appropriate persons with any confidential information that may reasonably be regarded as necessary solely for a purpose relating to the life, health or safety of an individual.

#### **Disclosure of confidential information**

**(6)** An official may

**(a)** provide to a person any confidential information that may reasonably be regarded as necessary for the purpose of

**(i)** the administration or enforcement of this Act, solely for that purpose, or

**(ii)** determining any liability or obligation of the person or any refund or other payment to which the person is or may become entitled under this Act;

**(b)** provide, allow to be provided, or allow inspection of or access to any confidential information to or by

**(i)** any person, or any person within a class of persons, that the Minister may authorize, subject to any conditions that the Minister may specify, or

**(ii)** any person otherwise legally entitled to the information because of an Act of Parliament, solely for the purposes for which that person is entitled to the information;

**(c)** provide confidential information

**(i)** to an official of the Department of Finance solely for the purposes of the administration of a federal-provincial agreement made under the *Federal-Provincial Fiscal Arrangements Act*,

**(ii)** to an official solely for the purpose of the formulation, evaluation or implementation of a fiscal or trade policy or for the purposes of the administration or enforcement of any Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty or an international agreement relating to trade,

**(iii)** to an official solely for the purposes of the negotiation or implementation of an international agreement relating to trade, a tax treaty or an agreement for the exchange of information for tax purposes,

**(iv)** to an official as to the name, address, occupation, size or type of business of a person, solely for the purposes of enabling that department or agency to obtain statistical data for research and analysis,

**(v)** to an official solely for the purposes of setting off, against any sum of money that may be payable by His Majesty in right of Canada, a debt due to

**(A)** His Majesty in right of Canada, or

**(B)** His Majesty in right of a province on account of taxes payable to the province if an agreement exists between Canada and the province under which Canada is authorized to collect taxes on behalf of the province, or

- (vi) to an official solely for the purposes of section 7.1 of the *Federal-Provincial Fiscal Arrangements Act*;
- (d) provide confidential information to an official or any person employed by or representing the government of a foreign state, an international organization established by the governments of states, a community of states, or an institution of any such government or organization, in accordance with an international convention, agreement or other written arrangement relating to trade between the Government of Canada or an institution of the Government of Canada and the government of the foreign state, the organization, the community or the institution, solely for the purposes set out in that arrangement;
- (e) provide confidential information, or allow the inspection of or access to confidential information, solely for the purposes of a provision contained in a tax treaty or in a listed international agreement (each as defined in subsection 248(1) of the *Income Tax Act*);
- (f) provide confidential information solely for the purposes of sections 23 to 25 of the *Financial Administration Act*;
- (g) use confidential information to compile information in a form that does not directly or indirectly reveal the identity of the person to whom the information relates;
- (h) use, or provide to any person, confidential information solely for a purpose relating to the supervision, evaluation or discipline of an authorized person by His Majesty in right of Canada in respect of a period during which the authorized person was employed by or engaged by or on behalf of His Majesty in right of Canada to assist in the administration or enforcement of this Act, to the extent that the information is relevant for that purpose;
- (i) provide access to records of confidential information to the Librarian and Archivist of Canada or a person acting on behalf of or under the direction of the Librarian and Archivist, solely for the purposes of section 12 of the *Library and Archives of Canada Act*, and transfer such records to the care and control of such persons solely for the purposes of section 13 of that Act;
- (j) use confidential information relating to a person to provide information to that person;
- (k) provide confidential information to a police officer, within the meaning assigned by subsection 462.48(17) of the *Criminal Code*, solely for the purpose of investigating whether an offence has been committed under the *Criminal Code*, or the laying of an information or the preferring of an indictment, if
  - (i) that information can reasonably be regarded as being relevant for the purpose of ascertaining the circumstances in which an offence under the *Criminal Code* may have been committed, or the identity of the person or persons who may have committed an offence, with respect to an official, or with respect to any person related to that official,
  - (ii) the official was or is engaged in the administration or enforcement of this Act, and
  - (iii) the offence can reasonably be considered to be related to that administration or enforcement; and
- (l) provide information to a law enforcement officer of an appropriate police organization in the circumstances described in subsection 211(6.4) of the *Excise Act, 2001*.

**Measures to prevent unauthorized use or disclosure**

- (7) The person presiding at a legal proceeding relating to the supervision, evaluation or discipline of an authorized person may order any measures that are necessary to ensure that confidential information is not used or provided to any person for any purpose not relating to that proceeding, including
- (a) holding a hearing *in camera*;
  - (b) banning the publication of the information;
  - (c) concealing the identity of the person to whom the information relates; and

(d) sealing the records of the proceeding.

#### **Disclosure to person or on consent**

(8) An official may provide confidential information relating to a person

(a) to that person; and

(b) with the consent of that person, to any other person.

#### **Appeal from order or direction**

(9) An order or direction that is made in the course of or in connection with any legal proceedings and that requires an official to give or produce evidence relating to any confidential information may, by notice served on all interested parties, be appealed forthwith by the Minister or by the person against whom the order or direction is made to

(a) the court of appeal of the province in which the order or direction is made, in the case of an order or direction made by a court or other tribunal established under the laws of the province, whether or not that court or tribunal is exercising a jurisdiction conferred by the laws of Canada; or

(b) the Federal Court of Appeal, in the case of an order or direction made by a court or other tribunal established under the laws of Canada.

#### **Disposition of appeal**

(10) The court to which an appeal is taken under subsection (9) may allow the appeal and quash the order or direction appealed from or dismiss the appeal, and the rules of practice and procedure from time to time governing appeals to the courts apply, with such modifications as the circumstances require, to an appeal instituted under that subsection.

#### **Stay**

(11) An appeal instituted under subsection (9) stays the operation of the order or direction appealed from until judgment is pronounced.

## **DIVISION P**

### **Collection**

#### **Definitions**

**109 (1)** The following definitions apply in this section.

**action** means an action to collect a tax debt of a person and includes a proceeding in a court and anything done by the Minister under any of sections 112 to 117. (*action*)

**legal representative** of a person means a trustee in bankruptcy, an assignee, a liquidator, a curator, a receiver of any kind, a trustee, an heir, an administrator, an executor, a liquidator of a succession, a committee, or any other like person, administering, winding up, controlling or otherwise dealing in a representative or fiduciary capacity with any property, business, commercial activity or estate or succession that belongs or belonged to, or that is or was held for the benefit of, the person or the person's estate or succession. (*représentant légal*)

**tax debt** means any amount payable by a person under this Act. (*dette fiscale*)

#### **Debts to His Majesty**

(2) A tax debt is a debt due to His Majesty in right of Canada and is recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided under this Act.

### **Court proceedings**

**(3)** The Minister may not commence a proceeding in a court to collect a tax debt of a person in respect of an amount that may be assessed under this Act unless when the proceeding is commenced the person has been assessed for that amount.

### **No actions after limitation period**

**(4)** The Minister may not commence an action to collect a tax debt after the end of the limitation period for the collection of the tax debt.

### **Limitation period**

**(5)** The limitation period for the collection of a tax debt of a person

**(a)** begins

**(i)** if a notice of assessment in respect of the tax debt, or a notice referred to in subsection 118(1) in respect of the tax debt, is sent to or served on the person, on the day that is 90 days after the day on which the last one of those notices is sent or served, and

**(ii)** if no notice referred to in subparagraph (i) in respect of the tax debt was sent or served, on the earliest day on which the Minister can commence an action to collect that tax debt; and

**(b)** ends, subject to subsection (9), on the day that is 10 years after the day on which it begins.

### **Limitation period restarted**

**(6)** The limitation period described in subsection (5) for the collection of a tax debt of a person restarts (and ends, subject to subsection (9), on the day that is 10 years after the day on which it restarts) on any day, before it would otherwise end, on which

**(a)** the person acknowledges the tax debt in accordance with subsection (7);

**(b)** all or part of the tax debt is reduced by the application of a refund under section 62;

**(c)** the Minister commences an action to collect the tax debt; or

**(d)** the Minister assesses, under this Act, another person in respect of the tax debt.

### **Acknowledgement of tax debts**

**(7)** A person acknowledges a tax debt if the person

**(a)** promises, in writing, to pay the tax debt;

**(b)** makes a written acknowledgement of the tax debt, whether or not a promise to pay can be inferred from the acknowledgement and whether or not it contains a refusal to pay; or

**(c)** makes a payment, including a purported payment by way of a negotiable instrument that is dishonoured, on account of the tax debt.

### **Agent or mandatary or legal representative**

**(8)** For the purposes of this section, an acknowledgement made by a person's agent or mandatary or legal representative has the same effect as if it were made by the person.

### **Extension of limitation period**

**(9)** In computing the day on which a limitation period ends, there must be added the number of days on which one or more of the following is the case:

- (a) the Minister has postponed the collection action against the person under subsection (11) in respect of the tax debt;
- (b) the Minister has accepted and holds security in lieu of payment of the tax debt;
- (c) if the person was resident in Canada on the applicable date described in paragraph (5)(a) in respect of the tax debt, the person is non-resident;
- (d) the Minister may not, because of any of subsections 110(2) to (5), take any of the actions described in subsection 110(1) in respect of the tax debt; or
- (e) an action that the Minister may otherwise take in respect of the tax debt is restricted or not permitted under any provision of the *Bankruptcy and Insolvency Act*, of the *Companies' Creditors Arrangement Act* or of the *Farm Debt Mediation Act*.

### **Assessment before collection**

**(10)** The Minister may not take any collection action under sections 112 to 117 in respect of any amount payable by a person that may be assessed under this Act, other than interest under section 57, unless the amount has been or may be assessed.

### **Minister may postpone collection**

**(11)** The Minister may, subject to any terms and conditions that the Minister may stipulate, postpone collection action against a person in respect of all or any part of any amount assessed that is the subject of a dispute between the Minister and the person.

### **Interest on judgments**

**(12)** If a judgment is obtained for any amount payable under this Act, including a certificate registered under section 112, the provisions of this Act under which interest is payable for a failure to pay an amount apply, with any modifications that the circumstances require, to the failure to pay the judgment debt and the interest is recoverable in the same manner as the judgment debt.

### **Litigation costs**

**(13)** If an amount is payable by a person to His Majesty in right of Canada because of an order, judgment or award of a court in respect of the costs of litigation relating to a matter to which this Act applies, sections 112 to 118 apply to the amount as if it were payable under this Act.

### **Collection restrictions**

**110 (1)** If a person is liable for the payment of an amount under this Act, the Minister must not, for the purpose of collecting the amount, take any of the following actions until the end of 90 days after the date of a notice of assessment issued under this Act in respect of the amount:

- (a) commence legal proceedings in a court;
- (b) certify the amount under section 112;
- (c) require a person to make a payment under subsection 113(1);
- (d) require an institution (within the meaning assigned by subsection 113(2)) or a person to make a payment under subsection 113(2);
- (e) require a person to turn over moneys under subsection 116(1); or
- (f) give a notice, issue a certificate or make a direction under subsection 117(1).



### **No action after service of notice of objection**

**(2)** If a person has served a notice of objection under this Act to an assessment of an amount payable under this Act, the Minister must not, for the purpose of collecting the amount in controversy, take any of the actions described in subsection (1) until the end of 90 days after the date of the notice to the person that the Minister has confirmed or varied the assessment.

### **No action after appealing to Tax Court of Canada**

**(3)** If a person has appealed to the Tax Court of Canada from an assessment of an amount payable under this Act, the Minister must not, for the purpose of collecting the amount in controversy, take any of the actions described in subsection (1) before the earlier of the day on which a copy of the decision of the Court is mailed to the person and the day on which the person discontinues the appeal.

### **No action pending determination by Tax Court**

**(4)** If a person has agreed under subsection 81(1) that a question should be determined by the Tax Court of Canada, or if a person is served with a copy of an application made under subsection 82(1) to that Court for the determination of a question, the Minister must not take any of the actions described in subsection (1) for the purpose of collecting that part of an amount assessed, the liability for payment of which could be affected by the determination of the question, before the day on which the question is determined by the Court.

### **Action after judgment**

**(5)** Despite any other provision of this section, if a person has served a notice of objection under this Act to an assessment or has appealed to the Tax Court of Canada from an assessment and agrees in writing with the Minister to delay proceedings on the objection or appeal, as the case may be, until judgment has been given in another action before the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada in which the issue is the same, or substantially the same, as that raised in the objection or appeal of the person, the Minister may take any of the actions described in subsection (1) for the purpose of collecting the amount assessed, or a part of it, determined in a manner consistent with the judgment of the Court in the other action at any time after the Minister notifies the person in writing that the judgment has been given by the Court in the other action.

### **Collection of large amounts**

**(6)** Despite subsections (1) to (5), if, at any time, the total of all amounts that a person has been assessed under this Act and that remain unpaid exceeds \$1,000,000, the Minister may collect up to 50% of the total.

### **Security**

**111 (1)** The Minister may, if the Minister considers it advisable, accept security in an amount and a form satisfactory to the Minister for the payment of any amount that is or may become payable under this Act.

### **Surrender of excess security**

**(2)** If a person that has given security, or on whose behalf security has been given, under this section requests in writing that the Minister surrender the security or any part of it, the Minister must surrender the security to the extent that its value exceeds, at the time the request is received by the Minister, the amount that is sought to be secured.

### **Additional security**

**(3)** The adequacy of security furnished by or on behalf of a person under subsection (1) is to be determined by the Minister and the Minister may require additional security to be given or maintained from time to time by or on behalf of the person where the Minister determines that the security that has been given or maintained is no longer adequate.

### **Certificates**

**112 (1)** Any amount payable by a person (in this section referred to as the “debtor”) under this Act that has not been paid as and when required under this Act may be certified by the Minister as an amount payable by the debtor.

### **Registration in court**

**(2)** On production to the Federal Court, a certificate made under subsection (1) in respect of a debtor is to be registered in the Court and, when so registered, has the same effect, and all proceedings may be taken on the certificate, as if it were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest on the amount as provided under this Act to the day of payment and, for the purposes of those proceedings, the certificate is deemed to be a judgment of the Court against the debtor for a debt due to His Majesty in right of Canada and enforceable as such.

### **Costs**

**(3)** All reasonable costs and charges incurred or paid for the registration in the Federal Court of a certificate made under subsection (1), or in respect of any proceedings taken to collect the amount certified, are recoverable in like manner as if they had been included in the amount certified in the certificate when it was registered.

### **Charge on property**

**(4)** A document issued by the Federal Court evidencing a registered certificate in respect of a debtor, a writ of that Court issued pursuant to the certificate or any notification of the document or writ (which document, writ or notification is in this section referred to as a “memorial”) may be filed, registered or otherwise recorded for the purpose of creating a charge, lien or priority on, or a binding interest in, property in a province, or any interest in, or for civil law any right in, such property, held by the debtor, in the same manner as a document evidencing

**(a)** a judgment of the superior court of the province against a person for a debt owing by the person, or

**(b)** an amount payable or required to be remitted by a person in the province in respect of a debt owing to His Majesty in right of the province

may be filed, registered or otherwise recorded in accordance with the law of the province to create a charge, lien or priority on, or a binding interest in, the property or interest.

### **Creation of charge**

**(5)** If a memorial has been filed, registered or otherwise recorded under subsection (4),

**(a)** a charge, lien or priority is created on, or a binding interest is created in, property in the province, or any interest in, or for civil law any right in, such property, held by the debtor, or

**(b)** such property, or interest or right in the property, is otherwise bound,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b), and the charge, lien, priority or binding interest created is subordinate to any charge, lien, priority or binding interest in respect of which all steps necessary to make it effective against other creditors were taken before the time the memorial was filed, registered or otherwise recorded.

### **Proceedings in respect of memorial**

**(6)** If a memorial is filed, registered or otherwise recorded in a province under subsection (4), proceedings may be taken in the province in respect of the memorial, including proceedings

**(a)** to enforce payment of the amount evidenced by the memorial, interest on the amount and all costs and charges paid or incurred in respect of

**(i)** the filing, registration or other recording of the memorial, and

**(ii)** proceedings taken to collect the amount,

**(b)** to renew or otherwise prolong the effectiveness of the filing, registration or other recording of the memorial,

**(c)** to cancel or withdraw the memorial wholly or in respect of any of the property, or interests or rights, affected by the memorial, or

**(d)** to postpone the effectiveness of the filing, registration or other recording of the memorial in favour of any right, charge, lien or priority that has been or is intended to be filed, registered or otherwise recorded in respect of any property, or interest or rights, affected by the memorial,

in the same manner and to the same extent as if the memorial were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b), except that, if in any such proceeding or as a condition precedent to any such proceeding, any order, consent or ruling is required under the law of the province to be made or given by the superior court of the province or by a judge or official of the court, a similar order, consent or ruling may be made or given by the Federal Court or by a judge or official of the Federal Court and, when so made or given, has the same effect for the purposes of the proceeding as if it were made or given by the superior court of the province or by a judge or official of the court.

### **Presentation of documents**

#### **(7) If**

**(a)** a memorial is presented for filing, registration or other recording under subsection (4), or a document relating to the memorial is presented for filing, registration or other recording for the purpose of any proceeding described in subsection (6), to any official in the land registry system, personal property or movable property registry system, or other registry system, of a province, or

**(b)** access is sought to any person, place or thing in a province to make the filing, registration or other recording,

the memorial or document must be accepted for filing, registration or other recording or the access must be granted, as the case may be, in the same manner and to the same extent as if the memorial or document relating to the memorial were a document evidencing a judgment referred to in paragraph (4)(a) or an amount referred to in paragraph (4)(b) for the purpose of a like proceeding, except that, if the memorial or document is issued by the Federal Court or signed or certified by a judge or official of the Court, any affidavit, declaration or other evidence required under the law of the province to be provided with or to accompany the memorial or document in the proceedings is deemed to have been provided with or to have accompanied the memorial or document as so required.

### **Prohibition — sale, etc., without consent**

**(8)** Despite any other law of Canada or law of a province, a sheriff or other person must not, without the written consent of the Minister, sell or otherwise dispose of any property or publish any notice or otherwise advertise in respect of any sale or other disposition of any property pursuant to any process issued or charge, lien, priority or binding interest created in any proceeding to collect an amount certified in a certificate made under subsection (1), interest on the amount or costs. However, if that consent is subsequently given, any property that would have been affected by that process, charge, lien, priority or binding interest if the Minister's consent had been given at the time the process was issued or the charge, lien, priority or binding interest was created, as the case may be, is to be bound, seized, attached, charged or otherwise affected as it would be if that consent had been given at the time that process was issued or the charge, lien, priority or binding interest was created, as the case may be.

### **Completion of notices, etc.**

**(9)** If information required to be set out by any sheriff or other person in a minute, notice or document required to be completed for any purpose cannot, because of subsection (8), be so set out without the written consent of the Minister, the sheriff or other person must complete the minute, notice or document to the extent possible without that information and, when that consent of the Minister is given, a further minute, notice or document setting out all the information must be completed for the same purpose, and the sheriff or other person, having complied with this subsection, is deemed to have complied with the Act, regulation or rule requiring the information to be set out in the minute, notice or document.

### **Application for order**

**(10)** A sheriff or other person who is unable, because of subsection (8) or (9), to comply with any law or rule of court is bound by any order made by a judge of the Federal Court, on an *ex parte* application by the Minister, for the purpose of giving effect to the proceeding, charge, lien, priority or binding interest.

### **Deemed security**

**(11)** If a charge, lien, priority or binding interest created under subsection (5) by filing, registering or otherwise recording a memorial under subsection (4) is registered in accordance with subsection 87(1) of the *Bankruptcy and Insolvency Act*, it is deemed

**(a)** to be a claim that is secured by a security and that, subject to subsection 87(2) of that Act, ranks as a secured claim under that Act; and

**(b)** to also be a claim referred to in paragraph 86(2)(a) of that Act.

### **Details in certificates and memorials**

**(12)** Despite any other law of Canada or of a province, in any certificate made under subsection (1) in respect of a debtor, any memorial evidencing a certificate or any writ or document issued for the purpose of collecting an amount certified, it is sufficient for all purposes

**(a)** to set out, as the amount payable by the debtor, the total of amounts payable by the debtor without setting out the separate amounts making up that total; and

**(b)** to refer to the rate of interest to be charged on the separate amounts making up the amount payable in general terms as interest at the rate prescribed by regulation applicable from time to time on amounts payable to the Receiver General of Canada, without indicating the specific rates of interest to be charged on each of the separate amounts or to be charged for any period.

### **Garnishment**

**113 (1)** If the Minister has knowledge or suspects that a person is, or will be within one year, liable to make a payment to another person who is liable to pay an amount under this Act (in this section referred to as a “debtor”), the Minister may, by notice in writing, require the person to pay without delay, if the money is immediately payable, and in any other case, as and when the money becomes payable, the money otherwise payable to the debtor in whole or in part to the Receiver General of Canada on account of the debtor’s liability under this Act.

### **Garnishment of loans or advances**

**(2)** Without limiting the generality of subsection (1), if the Minister has knowledge or suspects that within 90 days

**(a)** a bank, credit union, trust company or other similar person (in this section referred to as an “institution”) will loan or advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by, a debtor that is indebted to the institution and that has granted security in respect of the indebtedness, or

**(b)** a person, other than an institution, will loan or advance money to, or make a payment on behalf of, a debtor who the Minister knows or suspects

**(i)** is employed by, or is engaged in providing services or property to, that person or was or will be, within 90 days, so employed or engaged, or

**(ii)** if that person is a corporation, is not dealing at arm’s length with that person,

the Minister may, by notice in writing, require the institution or person, as the case may be, to pay in whole or in part to the Receiver General of Canada on account of the debtor’s liability under this Act the money that would otherwise be so loaned, advanced or paid.

### **Effect of receipt**

**(3)** A receipt issued by the Minister for money paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

### **Effect of requirement**

**(4)** If the Minister has, under this section, required a person to pay to the Receiver General of Canada on account of the liability under this Act of a debtor money otherwise payable by the person to the debtor as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the requirement applies to all such payments to be made by the person to the debtor until the liability under this Act is satisfied and operates to require payments to the Receiver General of Canada out of each such payment of any amount that is stipulated by the Minister in a notice in writing.

### **Failure to comply**

**(5)** A person who fails to comply with a requirement under subsection (1) or (4) is liable to pay to His Majesty in right of Canada an amount equal to the amount that the person was required under that subsection to pay to the Receiver General of Canada.

### **Other failures to comply**

**(6)** An institution or person that fails to comply with a requirement under subsection (2) with respect to money to be loaned, advanced or paid is liable to pay to His Majesty in right of Canada an amount equal to the lesser of

**(a)** the total of money so loaned, advanced or paid; and

**(b)** the amount that the institution or person was required under that subsection to pay to the Receiver General of Canada.

### **Assessment**

**(7)** The Minister may assess any person for any amount payable under this section by the person to the Receiver General of Canada and, if the Minister sends a notice of assessment, sections 56 and 68 to 83 apply with any modifications that the circumstances require.

### **Time limit**

**(8)** An assessment of an amount payable under this section by a person to the Receiver General of Canada is not to be made more than four years after the person receives the notice from the Minister requiring the payment.

### **Effect of payment as required**

**(9)** If an amount that would otherwise have been advanced, loaned or paid to or on behalf of a debtor is paid by a person to the Receiver General of Canada in accordance with a notice from the Minister issued under this section, or with an assessment under subsection (7), the person is deemed for all purposes to have advanced, loaned or paid the amount to or on behalf of the debtor.

### **Recovery by deduction or set-off**

**114** If a person is indebted to His Majesty in right of Canada under this Act, the Minister may require the retention by way of deduction or set-off of any amount that the Minister may specify out of any amount that may be or become payable to that person by His Majesty in right of Canada.

### **Acquisition of debtor's property**

**115** For the purpose of collecting debts owed by a person to His Majesty in right of Canada under this Act, the Minister may purchase or otherwise acquire any interest in, or for civil law any right in, the person's property that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption and may dispose of any interest or right so acquired in any manner that the Minister considers reasonable.

### **Money seized from debtor**

**116 (1)** If the Minister has knowledge or suspects that a person is holding money that was seized by a police officer, in the course of administering or enforcing the criminal law of Canada, from another person who is liable to pay any amount under this Act (in this section referred to as the "debtor") and that is restorable to the debtor, the Minister may in writing require the person to turn over the money otherwise restorable to the debtor, in whole or in part, to the Receiver General of Canada on account of the debtor's liability under this Act.

### **Receipt of Minister**

(2) A receipt issued by the Minister for money turned over as required under this section is a good and sufficient discharge of the requirement to restore the money to the debtor to the extent of the amount so turned over.

### **Seizure if failure to pay**

**117 (1)** If a person fails to pay an amount as required under this Act, the Minister may in writing give 30 days notice to the person, addressed to their latest known address, of the Minister's intention to direct that the person's good and chattels, or moveable property, be seized and disposed of. If the person fails to make the payment before the expiry of the 30 days, the Minister may issue a certificate of the failure and direct that the person's goods and chattels, or movable property, be seized.

### **Disposition**

(2) Property that has been seized under subsection (1) must be kept for 10 days at the expense and risk of the owner. If the owner does not pay the amount due together with all expenses within the 10 days, the Minister may dispose of the property in a manner that the Minister considers appropriate in the circumstances.

### **Proceeds of disposition**

(3) Any surplus resulting from a disposition, after deduction of the amount owing and all expenses, must be paid or returned to the owner of the property seized.

### **Exemptions from seizure**

(4) Goods and chattels, or moveable property, of any person in default that would be exempt from seizure under a writ of execution issued by a superior court of the province in which the seizure is made is exempt from seizure under this section.

### **Person leaving Canada**

**118 (1)** If the Minister suspects that a person has left or is about to leave Canada, the Minister may, before the day otherwise fixed for payment, by notice to the person served personally or sent by confirmed delivery service addressed to their latest known address, demand payment of any amount for which the person is liable under this Act or would be so liable if the time for payment had arrived, and the amount must be paid without delay despite any other provision of this Act.

### **Seizure**

(2) If a person fails to pay an amount required under subsection (1), the Minister may direct that goods and chattels, or movable property, of the person be seized, and subsections 117(2) to (4) apply, with any modifications that the circumstances require.

### **Authorization to proceed without delay**

**119 (1)** Despite section 110, if, on *ex parte* application by the Minister, a judge is satisfied that there are reasonable grounds to believe that the collection of all or any part of an amount assessed in respect of a person would be jeopardized by a delay in its collection, the judge must, on any terms that the judge considers reasonable in the circumstances, authorize the Minister to, without delay, take any of the actions described in sections 112 to 117 in respect of that amount.

### **Notice of assessment not sent**

(2) An authorization under subsection (1) in respect of an amount assessed in respect of a person may be granted by a judge despite that a notice of assessment in respect of that amount has not been sent to the person at or before the time the application is made where the judge is satisfied that the receipt of the notice of assessment by the person would likely further jeopardize the collection of the amount, and for the purposes of sections 109, 112, 113, 114, 116 and 117, the amount in respect of which an authorization is so granted shall be deemed to be an amount payable under this Act.

### **Affidavits**

(3) Statements contained in an affidavit of a person filed in the context of an application under this section may be based on belief in which case it must include the grounds for that belief.

### **Service of authorization and notice of assessment**

(4) An authorization granted under this section in respect of a person must be served by the Minister on the person within 72 hours after it is granted, except if the judge orders the authorization to be served at some other time specified in the authorization, and, where a notice of assessment has not been sent to the person at or before the time of the application, a notice of assessment for the assessed period must be served on the person together with the authorization.

### **How service effected**

(5) For the purposes of subsection (4), service on a person must be effected by

- (a) personal service on the person; or
- (b) service in accordance with the directions, if any, of a judge.

### **Application to judge for direction**

(6) If service on a person cannot reasonably be effected as and when required under this section, the Minister may, as soon as practicable, apply to a judge for further direction.

### **Review of authorization**

(7) If a judge of a court has granted an authorization under this section in respect of a person, the person may, on six clear days notice to the Deputy Attorney General of Canada, apply to a judge of the court to review the authorization.

### **Limitation period for review application**

(8) An application under subsection (7) to review an authorization must be made

- (a) within 30 days after the day on which the authorization was served on the person in accordance with this section; or
- (b) within any further time that a judge may allow, on being satisfied that the application was made as soon as practicable.

### **Hearing in camera**

(9) An application under subsection (7) may, on the application of the person, be heard *in camera*, if the person establishes to the satisfaction of the judge that the circumstances of the case justify *in camera* proceedings.

### **Disposition of application**

(10) On an application under subsection (7), the judge must determine the question summarily and may confirm, vary or set aside the authorization and make any other order that the judge considers appropriate.

### **Directions**

(11) If any question arises as to the course to be followed in connection with anything done or being done under this section and there is no relevant direction in this section, a judge may give any direction with regard to the course to be followed that, in the opinion of the judge, is appropriate.

### **No appeal from review order**

(12) No appeal lies from an order of a judge made under subsection (10).

## DIVISION Q

### Evidence and Procedure

#### Service

**120 (1)** If the Minister is authorized or required to serve, issue or send a notice or other document on or to a person that

- (a) is a partnership, the notice or document may be addressed to the name of the partnership;
- (b) is a union, the notice or document may be addressed to the name of the union;
- (c) is a society, club, association, organization or other body, the notice or document may be addressed to the name of the body; and
- (d) carries on business under a name or style other than the name of the person, the notice or document may be addressed to the name or style under which the person carries on business.

#### Personal service

**(2)** If the Minister is authorized or required to serve, issue or send a notice or other document on or to a person that carries on a business, the notice or document is deemed to have been validly served, issued or sent if it is

- (a) if the person is a partnership, served personally on one of the partners or left with an adult person employed at the place of business of the partnership; or
- (b) left with an adult person employed at the place of business of the person.

#### Timing of receipt

**121 (1)** For the purposes of this Act and subject to subsection (2), anything sent by confirmed delivery service or first class mail is deemed to have been received by the person to which it was sent on the day it was mailed or sent.

#### Timing of payment

**(2)** A person that is required under this Act to pay an amount is deemed not to have paid it until it is received by the Receiver General of Canada.

#### Proof of sending or service by mail

**122 (1)** If, under this Act, provision is made for sending by confirmed delivery service a request for information, a notice or a demand, then an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the sending and of the request, notice or demand if the affidavit sets out that

- (a) the official has knowledge of the facts in the particular case;
- (b) the request, notice or demand was sent by confirmed delivery service on a specified day to a specified person and address; and
- (c) the official identifies as exhibits attached to the affidavit a true copy of the request, notice or demand and
  - (i) if the request, notice or demand was sent by registered or certified mail, the post office certificate of registration of the letter or a true copy of the relevant portion of the certificate, and
  - (ii) in any other case, the record that the document has been sent or a true copy of the relevant portion of the record.



### **Proof of personal service**

**(2)** If, under this Act, provision is made for personal service of a request for information, a notice or a demand, then an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the personal service and of the request, notice or demand if the affidavit sets out that

- (a)** the official has knowledge of the facts in the particular case;
- (b)** the request, notice or demand was served personally on a named day on the person to which it was directed; and
- (c)** the official identifies as an exhibit attached to the affidavit a true copy of the request, notice or demand.

### **Proof of electronic delivery**

**(3)** If, under this Act, provision is made for sending a notice to a person electronically, then an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, is evidence of the sending and of the notice if the affidavit sets out that

- (a)** the official has knowledge of the facts in the particular case;
- (b)** the notice was sent electronically to the person on a named day; and
- (c)** the official identifies as exhibits attached to the affidavit copies of
  - (i)** an electronic message confirming that the notice has been sent to the person, and
  - (ii)** the notice.

### **Proof of failure to comply**

**(4)** If, under this Act, a person is required to file a return or make an application, a statement, an answer or a certificate, then an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the official has charge of the appropriate records and that, after a careful examination and search of the records, the official has been unable to find in a given case that the return, application, statement, answer or certificate has been made by that person, is evidence that in that case the person did not make the return, application, statement, answer or certificate.

### **Proof of time of compliance**

**(5)** If, under this Act, a person is required to file a return or make an application, a statement, an answer or a certificate, then an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the official has charge of the appropriate records and that, after a careful examination of the records, the official has found that the return, application, statement, answer or certificate was filed or made on a particular day, is evidence that it was filed or made on that day.

### **Proof of documents**

**(6)** An affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the official has charge of the appropriate records and that a document attached to the affidavit is a document or true copy of a document, or a printout of an electronic document, made by or on behalf of the Minister or a person exercising the powers of the Minister or by or on behalf of a person, is evidence of the nature and contents of the document.

### **Proof of no appeal**

**(7)** An affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the official has charge of the appropriate records and has knowledge of the practice of the Agency and that an examination of the records shows that a notice of assessment was mailed or otherwise sent to a person on a particular day under this Act and that, after a careful examination and search of the records, the official has been unable to find that a notice of objection or of appeal from the assessment was received within the time allowed, is evidence of the statements contained in the affidavit.

### **Presumption**

**(8)** If evidence is offered under this section by an affidavit from which it appears that the person making the affidavit is an official of the Agency, it is not necessary to prove the signature of the person or that the person is such an official, nor is it necessary to prove the signature or official character of the person before whom the affidavit was sworn.

### **Proof of documents**

**(9)** Every document purporting to have been executed under or in the course of the administration or enforcement of this Act over the name in writing of the Minister, the Commissioner or an official authorized to exercise the powers or perform the duties of the Minister under this Act is deemed to be a document signed, made and issued by the Minister, the Commissioner or the official, unless it has been called into question by the Minister or a person acting for the Minister or for His Majesty in right of Canada.

### **Mailing or sending date**

**(10)** For the purposes of this Act, if a notice or demand that the Minister is required or authorized under this Act to send to a person is mailed, or sent electronically, to the person, the day of mailing or sending, as the case may be, is presumed to be the date of the notice or demand.

### **Date electronic notice sent**

**(11)** For the purposes of this Act, if a notice or other communication in respect of a person, other than a notice or other communication that refers to the business number of a person, is made available in electronic format such that it can be read or perceived by a person or a computer system or other similar device, the notice or other communication is presumed to be sent to the person and received by the person on the date that an electronic message is sent, to the electronic address most recently provided before that date by the person to the Minister for the purposes of this subsection, informing the person that a notice or other communication requiring the person's immediate attention is available in the person's secure electronic account. 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 and the person has authorized that notices or other communications may be made available in this manner and has not before that date revoked that authorization in a manner specified by the Minister.

### **Date electronic notice sent – business account**

**(12)** For the purposes of this Act, a notice or other communication in respect of a person that is made available in electronic format such that it can be read or perceived by a person or computer system or other similar device and that refers to the business number of a person is presumed to be sent to the person and received by the person on the date that it is posted by the Minister in the secure electronic account in respect of the business number of the person, unless the person has requested, at least 30 days before that date, in a manner specified by the Minister, that such notices or other communications be sent by mail.

### **Date of assessment**

**(13)** If a notice of assessment has been sent by the Minister as required under this Act, the assessment is deemed to have been made on the day of sending of the notice of assessment.

### **Proof of return — prosecutions**

**(14)** In a prosecution for an offence under this Act, the production of a return, an application, a certificate, a statement or an answer required under this Act, purporting to have been filed or delivered by or on behalf of the person charged with the offence or to have been made or signed by or on behalf of that person, is evidence that the return, application, certificate, statement or answer was filed or delivered by or on behalf of that person or was made or signed by or on behalf of that person.

### **Proof of return — production of returns, etc.**

**(15)** In a proceeding under this Act, the production of a return, an application, a certificate, a statement or an answer required under this Act, purporting to have been filed, delivered, made or signed by or on behalf of a person, is evidence that the return, application, certificate, statement or answer was filed, delivered, made or signed by or on behalf of that person.

## **Evidence**

**(16)** In a prosecution for an offence under this Act, an affidavit of an official of the Agency, sworn before a commissioner or other person authorized to take affidavits, setting out that the official has charge of the appropriate records and that an examination of the records shows that an amount required under this Act to be paid to the Receiver General of Canada has not been received by the Receiver General of Canada, is evidence of the statements contained in the affidavit.

## **PART 7**

# **Regulations**

## **Regulations**

**123 (1)** The Governor in Council may make regulations

- (a)** prescribing anything that, by this Act, is to be prescribed, determined or regulated by regulation;
- (b)** prescribing the evidence required to establish facts relevant to assessments under this Act;
- (c)** requiring any class of persons to make information returns respecting any class of information required in connection with the administration or enforcement of this Act; and
- (d)** generally to carry out the purposes and provisions of this Act.

## **Effect**

**(2)** A regulation made under this Act shall have effect from the date it is published in the *Canada Gazette* or at such time thereafter as may be specified in the regulation, unless the regulation provides otherwise and

- (a)** has a relieving effect only;
- (b)** corrects an ambiguous or deficient enactment that was not in accordance with the objects of this Act or the *Digital Services Tax Regulations*;
- (c)** is consequential on an amendment to this Act that is applicable before the date the regulation is published in the *Canada Gazette*; or
- (d)** gives effect to a budgetary or other public announcement, in which case the regulation shall not, except if paragraph (a), (b) or (c) applies, have effect before the date the announcement was made.

## **Coming into Force**

**(2)** Subsection 1 comes into force on the day that is fixed by order of the Governor in Council, but not earlier than January 1, 2024. In fixing such day, the Governor in Council must consider:

- (a)** the intent of the October 8, 2021 Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy; and
- (b)** Canada's preference for a multilateral approach to addressing the tax challenges arising from the digitalization of the economy and the status of international negotiations and implementation in respect of such an approach.

## PART 2

# Draft Digital Services Tax Regulations

## Making of Regulations

### **Making**

**2** The *Digital Services Tax Regulations* are made as follows:

Digital Services Tax Regulations

## Interpretation

### **Definitions**

**1** The following definitions apply in these Regulations.

**Act** means the *Digital Services Tax Act*. (*Loi*)

**quarter** means any period of three consecutive months beginning on January 1, April 1, July 1 or October 1. (*trimestre*)

## Prescribed Rates of Interest

### **Interest to be paid to the Receiver General**

**2 (1)** For the purposes of every provision of the Act that requires interest at a prescribed rate to be paid to the Receiver General of Canada, the prescribed rate in effect during any particular quarter is the total of

(a) the rate that is the simple arithmetic mean, expressed as a percentage per year and rounded to the next higher whole percentage if the mean is not a whole percentage, of all amounts each of which is the average equivalent yield, expressed as a percentage per year, of Government of Canada Treasury Bills that mature approximately three months after their date of issue and that are sold at auctions of Government of Canada Treasury Bills during the first month of the quarter preceding the particular quarter; and

(b) 4%.

### **Interest to be paid by the Minister**

**(2)** For the purposes of every provision of the Act that requires interest at a prescribed rate to be paid or applied on an amount payable by the Minister to a person, the prescribed rate in effect during any particular quarter is the rate determined under paragraph (1)(a) in respect of the particular quarter.

