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# **Explanatory Notes Relating to the Goods and Services Tax/Harmonized Sales Tax, Excise Levies and Other Taxes**

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## **Preface**

These explanatory notes describe proposed amendments to the *Excise Tax Act*, the *Excise Act, 2001* and various regulations. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

The Honourable Chrystia Freeland  
Deputy Prime Minister and Minister of Finance

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

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## Excise Tax Act

### Clause 1

#### Definitions

ETA

22(1)

Subsection 22(1) of the *Excise Tax Act* (the Act) defines certain expressions for the purposes of Part III of the Act.

Subsection 22(1) of the Act is amended to add a new definition “licensed manufacturer”. Under this new definition, “licensed manufacturer” has the meaning assigned to that expression by section 42 of the Act, under which it means any manufacturer or producer licensed under Part VI of the Act. Section 54 of the Act sets out rules in respect of licences for manufacturers or producers.

The new definition “licensed manufacturer” is deemed to have come into force on April 1, 2021.

### Clause 2

#### Excise tax on various articles

ETA

23

Section 23 of the Act imposes an excise tax on various goods imported into Canada or manufactured or produced in Canada.

#### Subclauses 2(1) to (4)

#### Consequential amendments

ETA

23

Subsection 23(1) of the Act imposes the excise tax in respect of goods mentioned in Schedule I that are imported or are manufactured or produced in Canada and delivered to a purchaser of those goods, subject to the application of subsections (6) to (8). Subsection 23(1) of the Act is amended to account for the addition of new subsection (8.1) (see commentary below on new subsection (8.1)).

Subsection 23(3.1) of the Act deems a sale to be made between a person manufacturing goods mentioned in Schedule I and another person (other than a manufacturer licensed for the purposes of Part III) if certain conditions are met. Subsection 23(3.1) of the Act is amended to account for the new definition “licensed manufacturer” (see commentary above on subsection 22(1) of the Act).

Subsection 23(4) of the Act imposes the excise tax in respect of goods mentioned in Schedule I that are sold by a licensed wholesaler or are retained for the licensed wholesaler's own use or for rental by the licensed wholesaler to others. Subsection 23(4) of the Act is amended to account for the addition of new subsection (8.1) (see commentary below on new subsection (8.1)).

Paragraphs 23(7)(a) and (b) of the Act provide that the tax imposed under subsection 23(1) is not payable by a manufacturer licensed for the purposes of Part III of the Act if certain conditions are met. Paragraphs 23(7)(a) and (b) of the Act are amended to account for the addition of the new definition "licensed manufacturer" (see commentary above on subsection 22(1) of the Act).

These amendments to section 23 of the Act are deemed to have come into force on April 1, 2021.

### **Subclause 2(5)**

#### **Tax not payable – exports**

ETA

23(8.1)

New subsection 23(8.1) introduces a new rule under which the tax imposed under subsection 23(1) or (4) is not payable in respect of a quantity of fuel that is gasoline, diesel fuel or aviation fuel and that is sold and delivered to a purchaser by a vendor that is either a licensed manufacturer, under the new definition introduced in subsection 22(1), or a licensed wholesaler, if certain conditions are met.

These conditions are set out in new paragraphs 23(8.1)(a) to (f):

- The quantity of fuel is not less than 1,000 litres. This requirement is applied to each quantity of a type of fuel separately.
- The purchaser intends to export the fuel and the fuel is not acquired by the purchaser for consumption, use or resale in Canada before the exportation of the fuel by the purchaser.
- The purchaser certifies, and the vendor reasonably believes, that the purchaser will export the fuel.
- The purchaser exports the fuel as soon after the fuel is delivered to the purchaser as is reasonable having regard to the circumstances surrounding the exportation and, if applicable, to the normal business practice of the purchaser.
- After the fuel is delivered and before the purchaser exports the fuel, the fuel is not further processed, transformed or altered in Canada, except to the extent reasonably necessary or incidental to its transportation.

- The vendor maintains evidence satisfactory to the Minister of National Revenue of the exportation of the fuel by the purchaser.

New subsection 23(8.1) applies in respect of a quantity of fuel that is delivered to a purchaser after March 2021.

### **Clause 3**

#### **Period for assessment**

ETA

298(1)

Existing subsection 298(1) of the Act sets out the limitation periods for assessments (which, as defined in subsection 123(1) of the Act, includes reassessments) of amounts under Part IX of the Act. Existing paragraph 298(1)(a) generally provides that, in the case of an assessment of net tax of a person for a reporting period of the person, an assessment of a person must not be made more than four years after the later of the day on which the return was required to be filed under section 238 of the Act and the day the return was filed.

Subsection 298(1) is amended to add new paragraph 298(1)(a.01), which applies despite paragraph 298(1)(a) and provides an exception to the general four-year limitation period for an assessment of the net tax of a person for a reporting period of the person. Paragraph 298(1)(a.01) provides that, in the case of an assessment of the net tax of the person for a reporting period of the person that is made solely to take into account an amount of tax payable under section 218.01 of the Act, the assessment must not be made more than seven years after the later of the day on or before which the person was required under section 238 to file a return for the period and the day the return was filed.

As a result of the enactment of new 298(1)(a.01), the limitation period for an assessment of a selected listed financial institution of the net tax of the financial institution in respect of an adjustment to the financial institution's net tax made under subsection 225.2(2) of the Act in respect of an amount of tax payable under section 218.01 would be generally aligned with the limitation period provided for by subparagraph 298(1)(d)(i) of the Act for an assessment of the same amount of tax payable under section 218.01 by the financial institution.

The amendment to subsection 298(1) is deemed to have come into force on Announcement Date.

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## Excise Act, 2001

### Clause 4

#### Vaping product licence

EA, 2001

14(1)

Existing subsection 14(1) of the *Excise Act, 2001* (the Act) provides that, subject to regulations, on application, the Minister of National Revenue may issue certain classes of licences. Specifically, paragraph 14(1)(f) provides that a vaping product licence may be issued to a person, authorizing the person to manufacture vaping products.

Existing paragraph 14(1)(f) is amended so that a vaping product licence also authorizes a person to import packaged vaping products for stamping by the person.

This amendment comes into force or is deemed to have come into force on January 1, 2024. For greater certainty, a vaping product licence issued before January 1, 2024 under paragraph 14(1)(f) of the Act to a person who wishes to import packaged vaping products for stamping by the person will additionally authorize such an activity as of that day. The person therefore does not have to re-apply for a new vaping product licence in order to import packaged vaping products for stamping in Canada by the person.

### Clause 5

#### Packaging and stamping of vaping products

EA, 2001

158.46

Existing section 158.46 of the Act prohibits a vaping product licensee from entering a vaping product the licensee manufactures into the duty-paid market, unless the product has been packaged and properly stamped by the licensee (including being stamped to indicate that the additional vaping duty has been paid, if applicable) and has the information prescribed by regulations printed on the package. The section is renumbered as subsection 158.46(1) and is amended, and new subsection 158.46(2) is added to impose similar requirements for packaged vaping products that are imported by a licensee for stamping in Canada.

#### Subclause 5(1)

#### Packaging and stamping of vaping products

EA, 2001

158.46(1)

Existing section 158.46 is renumbered as subsection 188.46(1), and existing paragraphs 158.46(1)(c) and (d) are combined into amended paragraphs 158.46(1)(c). Amended paragraph



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158.46(1)(c) now prohibits a vaping product from being entered into the duty-paid market unless, before the end of the month following the month in which the licensee packages the vaping product, the vaping product is stamped by the licensee to indicate that vaping duty has been paid. If the vaping product is to be entered in the duty-paid market of a specified vaping province, the product must also be stamped by the licensee before the end of the month following the month in which the licensee packages the vaping product to indicate that additional vaping duty in respect of that province has been paid.

This amendment applies in respect of vaping products manufactured in Canada that are packaged after 2023.

### **Subclause 5(2)**

#### **Stamping of imported packaged vaping products**

EA, 2001

158.46(2)

New subsection 158.46(2) of the Act prohibits a vaping product licensee from entering a vaping product imported by the licensee into the duty-paid market unless, before the end of the month following the month in which the vaping product is released under the *Customs Act*, the vaping product has been packaged and properly stamped by the licensee (including being stamped to indicate that the additional vaping duty has been paid, if applicable) and has the information prescribed by regulations printed on the package.

This amendment applies in respect of vaping products that are imported into Canada or released under the *Customs Act* after 2023.

### **Clause 6**

#### **Packaging and stamping of imported vaping products**

EA, 2001

158.47(2)

Existing subsection 158.47(1) of the Act prohibits an imported vaping product from being released under the *Customs Act* for entry into the duty-paid market unless the product has been packaged and properly stamped (including being stamped to indicate that the additional vaping duty has been paid, if applicable) and has the information prescribed by regulations printed on the package.

Existing subsection 158.47(2) of the Act provides that the requirements under subsection 158.47(1) do not apply to a vaping product that is imported by a vaping product licensee for further manufacturing, that is imported for re-working or destruction pursuant to an authorization given by the Minister of National Revenue under new subsection 158.53(2) of the Act, or that is imported by an individual for their personal use in quantities within prescribed limits.

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Existing subsection 158.47(2) is amended by adding new paragraph 158.47(2)(a.1) to exempt a packaged vaping product imported by a vaping product licensee for stamping by the licensee from the requirements under subsection 158.47(1).

This amendment applies in respect of vaping products that are imported into Canada or released under the *Customs Act* after 2023.

#### **Clause 7**

##### **Unstamped products to be warehoused**

EA, 2001

158.49

Existing section 158.49 of the Act requires that all packaged vaping products that are not stamped by a vaping product licensee must immediately be entered into the licensee's excise warehouse.

##### **Subclause 7(1)**

###### **Exclusion of vaping product drugs**

EA, 2001

158.49

Existing section 158.49 is amended to exclude vaping product drugs from the requirements in the section. This amendment is deemed to have come into force on October 1, 2022.

##### **Subclause 7(2)**

###### **Unstamped products to be warehoused**

EA, 2001

158.49(1) to (3)

Section 158.49 of the Act, as enacted by subclause 7(1), is renumbered as subsection 158.49(1) and is further amended, and new subsections 158.49 (2) and (3) are added.

Amended subsection 158.59(1) now provides that if vaping products manufactured in Canada are not stamped by a vaping product licensee before the end of the particular month that follows the month in which the vaping product licensee packages the vaping products, then the vaping product licensee must enter the vaping products into its excise warehouse before the end of the particular month.

New subsection 158.49(2) of the Act provides that if a vaping product licensee imports packaged vaping products for stamping but does not stamp the vaping products before the end of the particular month that follows the month in which the vaping products are released under the *Customs Act*, then the vaping product licensee must enter the vaping products into its excise warehouse before the end of the particular month.

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New subsection 158.49(3) of the Act provides exceptions to the requirements in amended subsection 158.49(1) and new subsection 158.49(2), namely that these subsections do not apply in respect of vaping product drugs, or in prescribed circumstances.

These amendments apply in respect of vaping products manufactured in Canada that are packaged after 2023 and in respect of vaping products that are imported into Canada or released under the *Customs Act* after 2023.

#### **Clause 8**

##### **Non-compliant imports**

EA, 2001

158.51(3)

Existing subsections 158.51(1) and (2) of the Act provide that if an imported vaping product intended for the duty-paid market is not properly stamped at the time of importation, then the product must be placed in a sufferance warehouse for stamping. Existing subsection 158.51(3) of the Act provides that subsections 158.51(1) and (2) do not apply in prescribed circumstances.

Subsection 158.51(3) is amended to provide that subsections 158.51(1) and (2) also do not apply in respect of a packaged vaping product that is imported by a vaping product licensee for stamping by the vaping product licensee.

This amendment applies in respect of vaping products that are imported into Canada or released under the *Customs Act* after 2023.

#### **Clause 9**

##### **Imports for stamping — delivery to premises**

EA, 2001

158.511

New section 158.511 of the Act provides that if a vaping product licensee imports a packaged vaping product for stamping by the vaping product licensee, the vaping product licensee has the obligation to deliver the vaping product to its premises for stamping immediately after the vaping product is released under the *Customs Act*.

This amendment applies in respect of vaping products that are imported into Canada or released under the *Customs Act* after 2023.

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**Clause 10****Imposition – vaping duty**

EA, 2001

158.57

Existing section 158.57 of the Act imposes duty on vaping products. The rates of the duty are set out in Schedule 8. Existing paragraph 158.57(a) provides that for vaping products manufactured in Canada, duty is payable by the vaping product licensee that packaged them at the time the products are packaged. Existing paragraph 158.57(b) provides that for imported vaping products, the duty is payable by the importer, owner or other person liable to pay duty under the *Customs Act*.

Amended paragraph 158.57(a) now provides that in the case of vaping products manufactured in Canada, the duty is payable by the vaping product licensee that packaged them at the time the products are stamped.

New paragraph 158.57(a.1) provides that in the case of packaged vaping products that are imported by a vaping product licensee for stamping by the vaping product licensee, the duty is payable by the vaping product licensee at the time they are stamped.

Amended paragraph 158.57(b) now provides that in the case of any other imported vaping products, the duty remains payable by the importer, owner or other person liable to pay duty under the *Customs Act*.

These amendments apply in respect of vaping products manufactured in Canada that are packaged after 2023 and in respect of vaping products that are imported into Canada or released under the *Customs Act* after 2023.

**Clause 11****Imposition – additional vaping duty**

EA, 2001

158.58

In addition to the duties imposed under section 158.57 of the Act, existing section 158.58 of the Act imposes a duty in respect of a specified vaping province on vaping products, if applicable. This duty is imposed on the vaping products in circumstances prescribed by regulations in the amount determined in a manner prescribed by regulations.

Existing paragraph 158.58(a) provides that for vaping products manufactured in Canada, duty is payable by the vaping product licensee that packaged them at the time the products are packaged. Existing paragraph 158.58(b) provides that for imported vaping products, the duty is payable by the importer, owner or other person liable to pay duty under the *Customs Act*.

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Amended paragraph 158.58(a) now provides that in the case of vaping products manufactured in Canada, the duty is payable by the vaping product licensee that packaged them at the time the products are stamped.

New paragraph 158.58(a.1) provides that in the case of packaged vaping products that are imported by a vaping product licensee for stamping by the vaping product licensee, the duty is payable by the vaping product licensee at the time they are stamped.

Amended paragraph 158.58(b) now provides that in the case of any other imported vaping products, the duty remains payable by the importer, owner or other person liable to pay duty under the *Customs Act*.

These amendments apply in respect of vaping products manufactured in Canada that are packaged after 2023 and in respect of vaping products that are imported into Canada or released under the *Customs Act* after 2023.

## **Clause 12**

### **Application of *Customs Act***

EA, 2001

158.59

Existing section 158.59 of the Act provides that the duties on imported vaping products imposed under sections 158.57 and 158.58 of the Act must be paid and collected under the *Customs Act* as if they were duties levied under the *Customs Tariff*.

Section 158.59 is amended to clarify that it only applies in circumstances in which duties are imposed under amended paragraphs 158.57(b) and 158.58(b) (see commentary for sections 157.57 and 157.58).

This amendment comes into force or is deemed to have come into force on January 1, 2024.

## **Clause 13**

### **Reporting period – quarterly**

EA, 2001

159.2

Existing section 159.2 of the Act provides that certain qualifying cannabis licensees may have reporting periods that are calendar quarters.

The following amendments to section 159.2 are deemed to have come into force on April 1, 2023.

**Subclause 13(1)****Removal of quarterly period threshold**

EA, 2001

159.2(1) and (2)

Existing subsection 159.2(1) of the Act defines the terms used in section 159.2. The definition “threshold amount” is repealed.

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

Existing subsection 159.2(2) is amended to remove this threshold as a condition for the Minister authorizing a cannabis licensee to have reporting periods that are calendar quarters.

**Subclause 13(2)****Consequential amendment**

EA, 2001

159.2(4)

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

**Subclause 13(3)****Notice of revocation**

EA, 2001

159.2(6) and (7)

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

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

Existing subsections 159.2(6) and (7) are combined so that amended subsection 159.2(6) provides that upon the revocation of an authorization in respect of a cannabis licensee, the

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Minister shall send a notice in writing and shall specify the fiscal month for which the revocation becomes effective and that if a revocation becomes effective before the last day of a calendar quarter, the period beginning on the first day of the calendar quarter and ending immediately before the first day of the fiscal month for which the revocation becomes effective is deemed to be a reporting period of the cannabis licensee.

**Clause 14**

**Contravention of section 158.47**

EA, 2001

233.3

New section 233.3 of the Act provides that if a person who is liable to pay a duty imposed under paragraph 158.57(b) enters vaping products into the duty paid market in contravention of section 158.47 of the Act (i.e., packaging and stamping of imported vaping products), then that person is liable to a penalty equal to the amount determined under Schedule 8 to the Act in respect of the vaping products to which the contravention relates multiplied by 200% (plus an additional 200% if the contravention occurred in a specified vaping province).

This amendment comes into force on royal assent.

**Clause 15**

**Contravention — sections 158.35 and 158.43 to 158.45**

EA, 2001

234.2

Existing section 234.2 of the Act provides that any person that contravenes section 158.35 of the Act (i.e., manufacture of vaping products without a licence), that receives for sale vaping products in contravention of section 158.43 of the Act or that sells or offers to sell vaping products in contravention of section 158.44 or 158.45 of the Act is liable to a penalty equal to the amount determined under Schedule 8 to the Act in respect of the vaping products to which the contravention relates multiplied by 200% (plus an additional 200% if the contravention occurred in a specified vaping province).

Existing section 234.2 is amended to impose a penalty in respect of any contravention of sections 158.35, 158.43, 158.44 or 158.45.

This amendment comes into force on royal assent.

**Clause 16****Contravention of section 158.511**

EA, 2001

249.1

New section 249.1 of the Act provides that any person that contravenes section 158.511 of the Act (see commentary for that section) is liable to a penalty equal to the amount determined under Schedule 8 to the Act in respect of the vaping products to which the contravention relates multiplied by 50% (plus an additional 50% if the contravention occurred in a specified vaping province).

This amendment comes into force on royal assent.

**Financial Services and Financial Institutions (GST/HST) Regulations****Clause 18****Prescribed services — paragraph (r.6)***Financial Services and Financial Institutions (GST/HST) Regulations*

3.2

Services that meet the definition of “financial service” in subsection 123(1) of the *Excise Tax Act* (the Act) are generally exempt under the Goods and Services Tax/Harmonized Sales Tax (GST/HST). A service will meet the definition of “financial service” if it first falls within any of paragraphs (a) to (m) of the definition and is not then excluded by any of paragraphs (n) to (t) of the definition. Paragraph (r.6) of the definition excludes certain services supplied by a payment card network operator in respect of a payment card network (as those terms are defined in section 3 of the *Payment Card Networks Act*). However, paragraph (r.6) does not include a prescribed service.

New section 3.2 of the *Financial Services and Financial Institutions (GST/HST) Regulations* specifies which services are prescribed for the purposes of paragraph (r.6).

New section 3.2 applies to a supply of a service for which any consideration becomes due, or is paid without becoming due, after March 28, 2023. It also applies to a supply of a service for which all of the consideration became due, or was paid, before March 29, 2023.

***Subsection 3.2(1)****Definitions*

New subsection 3.2(1) defines terms that are used in section 3.2.



Paragraph 3.2(1)(a) provides that the terms “acquirer”, “issuer”, “payment card”, “payment card network” and “payment card network operator” have the same meanings as in section 3 of the *Payment Card Networks Act*. Section 3 of that Act provides that

- an acquirer is generally a person that enables merchants to accept payments by payment card by providing merchants with access to a payment card network for the transmission or processing of those payments;
- an issuer is generally a person that issues payment cards;
- a payment card is generally a credit or debit card used to access a credit or debit account on terms specified by the issuer, but it does not include a credit card issued for use only with the merchants identified on the card;
- a payment card network is generally an electronic payment system that is used to accept, transmit or process transactions made by payment card for money, goods or services and to transfer information and funds among the network’s participants; and
- a payment card network operator is generally a person that operates or manages a payment card network, including by establishing standards and procedures for the acceptance, transmission or processing of payment transactions and by facilitating the electronic transfer of information and funds.

Paragraph 3.2(1)(b) provides that the term “payment services provider” has the same meaning as in section 2 of the *Retail Payment Activities Act*. Section 2 of that Act provides that a payment services provider is generally a person that performs payment functions as a service or business activity that is not incidental to another service or business activity.

### ***Subsection 3.2(2)***

#### ***Prescribed services***

New subsection 3.2(2) determines which services are prescribed for the purposes of paragraph (r.6) of the definition “financial service” in subsection 123(1) of the Act. Subsection 3.2(2) generally describes a service that is supplied or rendered by a payment card network operator and either

- the payment card network operator is also an issuer or an acquirer and the service is supplied or rendered in its capacity as issuer or acquirer rather than in its capacity of payment card network operator (these situations are described in paragraphs 3.2(2)(a) and (b) and subparagraphs 3.2(2)(c)(i) and (ii)); or

- the service is supplied by the payment card network operator to the acquirer in respect of a payment card transaction, in the circumstance where the payment card network operator receives an amount to cover the face value of the transaction from the issuer in respect of the transaction, and then pays this amount to the acquirer (this situation is described in subparagraph 3.2(2)(c)(iii)).

Specifically, a service is prescribed for the purposes of paragraph (r.6) of the definition “financial service” in subsection 123(1) of the Act if it described by any of paragraph 3.2(2)(a), (b) or (c).

Paragraph 3.2(2)(a) generally applies where a person is both a payment card network operator and an acquirer and supplies a service in its capacity as an acquirer rather than as a payment card network operator. Specifically, paragraph 3.2(2)(a) describes a service that meets all the following conditions:

- the service is supplied by a payment card network operator;
- the service enables a merchant to accept payments by payment card; and
- this enabling of the merchant occurs by providing either the merchant, or a payment service provider engaged by the merchant, with access to a payment card network for the transmission or processing of the payments.

Paragraph 3.2(2)(b) generally applies where a person is both a payment card network operator and an issuer of a payment card and supplies a service in its capacity as an issuer rather than as a payment card network operator. Specifically, paragraph 3.2(2)(b) describes a service that meets all the following conditions:

- the service is supplied by a payment card network operator that is also an issuer of a payment card;
- the service is supplied by the payment card network operator in its capacity as the issuer of the payment card; and
- the service is rendered to the holder of the payment card.

Paragraph 3.2(2)(c) describes a service that is in respect of the settlement of a transaction made by payment card and that is supplied by a payment card network operator in circumstances described by any of subparagraph 3.2(2)(c)(i), (ii) or (iii).

Generally, subparagraph 3.2(2)(c)(i) applies in the case of a debit card transaction. It describes a circumstance where the supply of the service in respect of the settlement of the transaction made by payment card meets all the following conditions:

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- the supply is made by a payment card network operator that is also an acquirer;
  - the supply is made by the payment card network operator in its capacity as the acquirer for the transaction rather than as a payment card network operator; and
  - the supply is made to the issuer of the payment card.

Subparagraph 3.2(2)(c)(ii) describes a circumstance where the supply of the service in respect of the settlement of the transaction made by payment card meets all the following conditions:

- the supply is made by a payment card network operator that is also the issuer of the payment card;
- the supply is made by the payment card network operator in its capacity as the payment card issuer rather than as a payment card network operator; and
- the supply is made to the acquirer for the transaction.

Generally, subparagraph 3.2(2)(c)(iii) applies where an amount to cover the face value of a transaction made by payment card transaction, rather than being paid directly from the issuer of the payment card to the acquirer for the transaction, is instead paid by the issuer to a payment card network operator and the amount is then paid by the payment card network operator to the acquirer. Subparagraph 3.2(2)(c)(iii) applies to the service that the payment card network operator is supplying to the acquirer in paying this amount in order to settle the transaction.

Specifically, subparagraph 3.2(2)(c)(iii) describes a circumstance where the supply of the service in respect of the settlement of the transaction made by payment card meets all the following conditions:

- the supply is made by a payment card network operator to the acquirer for the transaction;
- the supply is for an amount of consideration that is equal to the amount of a fee that meets two conditions;
  - the first condition is that the fee is payable by the payment card network operator to the issuer of the payment card; and
  - the second condition is that the fee is in respect of the settlement of the transaction.

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## Amalgamations and Windings-Up Continuation (GST/HST) Regulations

### Clause 20

#### Amalgamations and windings-up

##### *Amalgamations and Windings-Up Continuation (GST/HST) Regulations*

##### Schedule

Paragraphs 271(b) and 272(a) of the Act provide that, for prescribed purposes, a new successor corporation is deemed to be the same corporation as, and a continuation of, a predecessor merged, amalgamated or wound-up corporation. Section 2 of the *Amalgamations and Windings-Up Continuation (GST/HST) Regulations* (the Regulations) provides that the “prescribed purposes”, referred to in paragraphs 271(b) and 272(a) means for the purpose of applying any provision of that Act set out in the Schedule to the Regulations.

The Schedule to the Regulations is amended to add subsections 177(1.1) and (1.11) of the Act to the list of provisions set out in the Schedule. As a result, these subsections, which generally allow an agent or a billing agent to elect with a supplier to account for tax in respect of a supply made by the supplier, are each now a prescribed purpose referred to in paragraphs 271(b) and 272(a). This means that, for the purpose of determining if a particular corporation is a party to an election made under subsection 177(1.1)

- if the particular corporation was formed from the merger or amalgamation of two or more predecessor corporations any of which were at the time of the merger or amalgamation a party to a joint election made under subsection 177(1.1) with another person, the particular corporation is deemed to be the same corporation as, and a continuation of, the predecessor corporations and to have made the joint election with the other person; and
- if the particular corporation wound-up a subsidiary corporation that was at the time of the merger or amalgamation a party to a joint election made under subsection 177(1.1), the particular corporation is deemed to be the same corporation as, and a continuation of, the subsidiary corporation and to have made the joint election with the other person.

The amendment to the Schedule to the Regulations is deemed to have come into force on Announcement Date.

## **Returning Persons Exemption Regulations**

### **Clause 22**

#### **Vaping products –importation exception**

*Returning Persons Exemption Regulations*

3

*Returning Persons Exemption Regulations* outline certain requirements that are necessary for a person to benefit from the exemptions from customs duties listed under heading No. 98.04 of the Schedule to the *Customs Tariff* (i.e., personal exemptions for returning persons). Existing paragraph 3(2)(b) is amended to provide that the exemption does not apply to vaping products (other than a vaping product drug as defined in section 2 of the *Excise Act, 2001*) imported by a person who has not attained 18 years of age.

This amendment comes into force on royal assent.

## **Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations**

### **Clause 24**

#### **Definitions**

*Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*

16

Existing subsection 16(1) of the *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations* (the Regulations) contains definitions that apply in Part 2 of the Regulations.

Subsection 16(1) is amended to modify the existing definition “plan merger”.

Existing definition “plan merger” in subsection 16(1) of the Regulations means the merger or combination of two or more predecessors to form one continuing plan (as those terms are defined in this subsection), in such a manner that the merger or combination satisfies the conditions in paragraphs (a), (b) and (c) of the definition. Existing paragraph (c) requires that the merger or combination is otherwise than as a result of the acquisition of property of a trust, corporation or partnership by another trust, corporation or partnership, pursuant to the purchase of that property by the other trust, corporation or partnership or as a result of the distribution of that property to the other trust, corporation or partnership on the winding-up of the trust, corporation or partnership.

The definition “plan merger” is amended by repealing paragraph (c). As a result, “plan merger” now means the merger or combination of two or more predecessors to form one continuing plan,

in such a manner that the merger or combination satisfies the conditions in paragraphs (a) and (b) of the definition.

The amendment to the definition “plan merger” applies in respect of any reporting period of a person that ends after Announcement Date.

## **Clause 25**

### **Determination of percentage**

#### *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*

#### 24(2)

Existing subsection 24(2) of the Regulations applies to an insurer that is not a bank or credit union (as those terms are defined in subsection 123(1) of the Act) or an investment plan (as defined in subsection 1(1) of the Regulations). Subsection 24(2) contains rules governing the determination of such a financial institution’s percentage for a particular period (as defined in subsection 16(1) of the Regulations) and for a particular participating province (as defined in subsection 123(1) of the Act). This percentage is determined by the formula element A divided by element B. Element B is currently the total of

- the financial institution’s net premiums for the particular period in respect of the insurance of risk in respect of property situated in Canada; and
- the financial institution’s net premiums for the particular period in respect of the insurance of risk in respect of persons resident in Canada;

that are included in computing its income for the purposes of Part I of the *Income Tax Act* (or that would be included if the financial institution were an insurance corporation (as defined in subsection 248(1) of the *Income Tax Act*).

Element B is amended to remove the reference to “situated in Canada” and the reference to “resident in Canada”. As a result, element B is now the total of

- the financial institution’s net premiums for the particular period in respect of the insurance of risk in respect of property; and
- the financial institution’s net premiums for the particular period in respect of the insurance of risk in respect of persons;

that are included in computing its income for the purposes of Part I of the *Income Tax Act* (or that would be included if the financial institution were an insurance corporation).

This would mean, for example, that element B would now include the net premiums in respect of a life insurance policy (that is not a group policy) in respect of an individual that was resident in Canada at the time the policy was entered into but is now non-resident.

It should be noted that subsection 24(3) generally provides that elements A and B of the formula in subsection 24(2) do not include net premiums in respect of supplies of insurance that would be zero-rated as a result of section 2 of Part IX of Schedule VI of the Act.

The amendments to subsection 24(2) apply in respect of any reporting period of a person that ends after Announcement Date.

## **Clause 26**

### **Investor percentage**

#### *Selected Listed Financial Institutions Attribution Method (GST/HST) Regulations*

#### 28(d)

Existing section 28 of the Regulations determines the investor percentage for a participating province of an investor that holds units of an investee (an investment plan or a series of an investment plan). Where subsection 52(3) or (4) of the Regulations applies, the investor would be required to provide this investor percentage to the investee. The investee would then use this investor percentage in determining, in the case of an investee that is an investment plan, its own percentage for the participating province under section 31 or 32 of the Regulations, or, in the case of an investee that is a series of an investment plan, its own percentage for the series for the participating province under section 29 or 30 of the Regulations. An investor percentage for a participating province of an investor is determined by one of paragraphs 28(a), (b), (c), (d) or (e). Paragraph 28(d) currently applies to an investor that is a qualifying small investment plan (as determined by subsection 7(2) of the Regulations) and that is not a selected listed financial institution (as determined by subsection 225.2(1) of the Act).

Paragraph 28(d) is amended so that it would also apply to the following investors:

- an investor that is a qualifying private investment plan (as determined by subsection 7(3) of the Regulations) and that is not a selected listed financial institution;
- an investor that is not a selected listed financial institution by operation of section 11 of the Regulations (i.e., a provincial investment plan); and
- an investor that is not a selected listed financial institution by operation of section 12 of the Regulations (i.e., a stratified investment plan all the series of which are provincial series (as those terms are defined in subsection 1(1) of the Regulations)).

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As a result, these investors will determine their investor percentage for a participating province using paragraph 28(d) rather than, as is currently the case, paragraph 28(e).

The amendments to paragraph 28(d) apply in respect of any reporting period of a person that ends after Announcement Date.

## **Regulations Respecting Excise Licences and Registrations**

### **Clause 28**

#### **Security**

##### *Regulations Respecting Excise Licences and Registrations*

5

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

Existing section 5 of the Regulations provides the requirements for posting security under the *Excise Act, 2001* (the Act). Existing subsection 5(1) sets out the amount of security to be provided by an applicant for the purposes of paragraph 23(3)(b) of the Act.

Existing subsection 5(1) is amended to provide a separate amount of security for a cannabis licensee, depending on the licensee's reporting period. If the licensee is authorized to have quarterly reporting periods, then the amount of security would be one-third of the amount of duty referred to in paragraph 160(b) of the Act, up to a maximum amount of \$5 million. In any other case (i.e., if a licensee has monthly reporting periods), the amount of security would be the amount of duty referred to in paragraph 160(b) of the Act, up to a maximum amount of \$5 million.

The amendment is deemed to have come into force on April 1, 2023.



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## **Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations**

### **Clauses 30 to 36**

#### **Stamping and marking of vaping products**

*Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations*

3.6, 3.7, 3.8 and 4(4)

The *Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations* (the Regulations) provide rules relating to the stamping, marking and labelling of tobacco, cannabis and vaping products under the *Excise Act, 2001* (the Act).

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

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

New paragraph references 158.46(1)(b) and 2(a) are inserted in existing section 3.6 to reflect changes made to section 158.46 of the Act (see commentary for that subsection).

This amendment comes into force or is deemed to have come into force on January 1, 2024.

Section 3.6 is further amended to require that the following information must also appear on the package:

- the volume in millilitres of the vaping substance in liquid form, and the weight in grams of the vaping substance in solid form, contained in each vaping device or immediate container in the package and the number of vaping devices and immediate containers in the package.

This further amendment to section 3.6 comes into force on the day that is six months after the first day of the month following the month in which the amendment receives royal assent.

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

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

Section 3.7 is amended to require that the following information must appear on a package of vaping products that is imported and entered into the duty-paid market:

- if the vaping product was imported by a vaping product licensee, the licensee's name and address or vaping product licence number;
- if the vaping product was imported by a person other than a vaping product licensee, the person's name and address; and
- the volume in millilitres of the vaping substance in liquid form, and the weight in grams of the vaping substance in solid form, contained in each vaping device or immediate container in the package and the number of vaping devices and immediate containers in the package.

The amendments to section 3.7 come into force on the day that is six months after the first day of the month following the month in which these amendments receive royal assent.

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

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

New paragraph references 158.46(1)(b) and (2)(a) are inserted in existing section 3.8 to reflect changes made to section 158.46 of the Act (see commentary for that section).

This amendment comes into force or is deemed to have come into force on January 1, 2024.

Existing section 4 of the Regulations provides rules for determining who, other than a tobacco, cannabis or vaping product licensee, may handle excise stamps that have not been affixed to a tobacco, cannabis or vaping product.

Existing subsection 4(4) of the Regulations specifies that, for the purpose of paragraph 158.38(2)(d) of the Act, the following persons are prescribed persons that may possess vaping excise stamps that have not been affixed to a vaping product:

- a person that transports a vaping excise stamp on behalf of the person that lawfully produced the vaping excise stamp or the person to which the vaping excise stamp is issued; and
- a person that has in their possession vaping excise stamps for the purpose of applying adhesive to the stamps on behalf the vaping product licensee to which the vaping excise stamps are issued.

Existing subsection 4(4) is amended to provide that a person that has in their possession vaping excise stamps for the purpose of applying adhesive to the stamps on behalf of *any* person (i.e., including a vaping product licensee or a prescribed person) to which the vaping excise stamps are issued is a prescribed person for the purpose of paragraph 158.38(2)(d) of the Act.

This amendment is deemed to have come into force on June 23, 2022.

## **Select Luxury Items Tax Regulations**

### **Clause 37**

#### **Select Luxury Items Tax Regulations**

##### *Select Luxury Items Tax Regulations*

1 to 10

### **Section 1**

#### *Definition of Act*

Section 1 would define “Act” for the purposes of the *Select Luxury Items Tax Regulations* (the Regulations). “Act” is defined as the *Select Luxury Items Tax Act*.

### **Part 1 – Prescribed Aircraft and Vessels**

### **Section 2**

#### *Exclusion from subject aircraft – agreements before 2022*

Section 2 would prescribe an aircraft for the purposes of paragraph (g) of the definition of subject aircraft in section 2(1) of the Act. An aircraft prescribed under paragraph (g) of the definition of subject aircraft is excluded from the definition of subject aircraft.

Section 2 provides that, for an aircraft to be a prescribed aircraft under paragraph (g), ownership of the aircraft must be transferred to a purchaser from a vendor by way of sale under an

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agreement in writing (sale agreement) and must meet the additional conditions set out in paragraphs (a) through (f) of section 2.

- The conditions in paragraph (a) are met when either the conditions in subparagraph (i) or (ii) are met. Subparagraph (a)(i) is met if the purchaser entered into the sale agreement before 2022. Subparagraph (a)(ii) is met if the purchaser entered into the sale agreement after 2021 and also entered into another agreement in writing before 2022 with the vendor in respect of the aircraft. Under this other agreement, the purchaser must have: paid a deposit in respect of the aircraft to the vendor before 2022; agreed to enter into the sale agreement; and agreed to forfeit the deposit if the purchaser fails to enter into the sale agreement.
- Paragraph (b) requires that the sale agreement was entered into between the purchaser and the vendor in the course of the vendor's business of offering aircraft for sale.
- Paragraph (c) requires that the aircraft is delivered or made available in Canada in relation to the sale agreement.
- Paragraph (d) requires that possession of the aircraft is transferred to the purchaser under the sale agreement at a particular time. This particular time is then referenced in the condition in paragraphs (e) and (f).
- Paragraph (e) requires that the vendor be a registered vendor in respect of subject aircraft at the particular time referenced in paragraph (d).
- Paragraph (f) requires that the purchaser is neither registered, nor required to be registered as a vendor in respect of subject aircraft at, or any time before, the particular time referenced in paragraph (d).

### ***Section 3***

#### ***Exclusion from subject vessel – agreements before 2022***

Section 3 would prescribe a vessel for the purposes of paragraph (h) of the definition of subject vessel in section 2(1) of the Act. A vessel prescribed under paragraph (h) of the definition of subject vessel is excluded from the definition of subject vessel.

Section 3 provides that, for a vessel to be a prescribed vessel under paragraph (h), ownership of the vessel must be transferred to a purchaser from a vendor by way of sale under an agreement in writing (sale agreement) and must meet the additional conditions set out in paragraphs (a) through (f) of section 3.

- The conditions in paragraph (a) are met when either the conditions in subparagraph (i) or (ii) are met. Subparagraph (a)(i) is met if the purchaser entered into the sale agreement before 2022. Subparagraph (a)(ii) is met if the purchaser entered into the sale agreement after 2021 and also entered into another agreement in writing before 2022 with the vendor in respect of the vessel. Under this other agreement, the purchaser must have: paid a deposit in respect of the vessel to the vendor before 2022; agreed to enter into the sale agreement; and agreed to forfeit the deposit if the purchaser fails to enter into the sale agreement.
- Paragraph (b) requires that the sale agreement was entered into between the purchaser and the vendor in the course of the vendor's business of offering vessels for sale.
- Paragraph (c) requires that the vessel is delivered or made available in Canada in relation to the sale agreement.
- Paragraph (d) requires that possession of the vessel is transferred to the purchaser under the sale agreement at a particular time. This particular time is then referenced in the condition in paragraphs (e) and (f).
- Paragraph (e) requires that the vendor be a registered vendor in respect of subject vessels at the particular time referenced in paragraph (d).
- Paragraph (f) requires that the purchaser is neither registered, nor required to be registered as a vendor in respect of subject vessels at, or any time before, the particular time referenced in paragraph (d).

#### ***Section 4***

##### ***Partial ownership***

Section 4 would provide rules that apply for the purposes of sections 2 and 3. Under section 4, a transfer of ownership occurs even if only partial ownership is transferred to the purchaser and the vendor retains partial ownership. Section 4 also provides that, for the purposes of sections 2 and 3, a transfer of ownership occurs even if only partial ownership is transferred to the purchaser and the vendor transfers partial ownership to any third person, for example if the vendor sells a partial interest of an aircraft or vessel to two different persons.

#### ***Part 2 – Sale of Partial Ownership***

##### ***Section 5***

##### ***Prescribed circumstances – taxable amount***

Subsection 18(7) of the Act provides that the taxable amount for a subject item is, in circumstances prescribed by regulation, determined in a manner prescribed by regulation.

Section 5 sets out certain circumstances for determining the taxable amount when a sale of partial ownership of a subject item occurs.

Subsection 5(2) provides rules for determining the taxable amount where a vendor sells only partial ownership of a subject item to a purchaser. In such cases (subject to subsection 5(3)), the taxable amount of the subject item is to be determined under this subsection for the purposes of section 18 of the Act and for the purposes of determining under section 34 of the Act the amount of tax payable under section 18 of the Act.

The taxable amount is determined by the formula A plus B. Element A of the formula is the greater of the value of the consideration for the sale of the subject item and the retail value of the subject item (as determined under section 16 of the Act) at the time at which the sale is completed. Element B is the total of all amounts, each of which is the greater of the value of the consideration for, and the fair market value of, an improvement in respect of the subject item that is provided by the vendor, or a person that does not deal at arm's length with the vendor, in connection with the sale of the subject item, but only to the extent that the amount is not included in the determination of A.

Subsection 5(3) provides rules for determining the taxable amount where the following circumstances exist:

- a particular sale of only partial ownership of a subject item between a vendor and purchaser is completed at a particular time (the particular sale); and
- another sale of only partial ownership of the subject item between the vendor and a purchaser is completed at or after the particular time (the other sale).

In such cases, the taxable amount of the subject item in respect of the other sale is equal to zero if the conditions in paragraph (a) and (b) are met.

Paragraph (a) is met if the taxable amount of the subject item in respect of the particular sale is determined under subsection 5(2). Paragraph (b) is met if, before the particular time (i.e., the time that the particular sale is completed), the vendor entered into an agreement in writing for the particular sale and an agreement in writing for the other sale. Paragraph (b) does not require that the particular sale and the other sale be made under separate agreements.

### ***Part 3 – Exportation***

#### ***Section 6***

##### ***Prescribed circumstances – aircraft (exemption certificate)***

Subsection 36(3) of the Act provides that, if prescribed circumstances exist, an exemption certificate applies in respect of a sale of a subject item. Subsection 6(1) would provide that the

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circumstances detailed in this section are prescribed circumstances for the purposes of subsection 36(3) of the Act. This section would only apply to subject aircraft.

Subsection 6(2) provides that, subject to subsection 6(3), an exemption certificate applies in respect of a sale of a subject aircraft by a vendor to a purchaser if the conditions in paragraphs (a) to (e) are met.

- Paragraph (a) requires that the vendor is a registered vendor in respect of subject aircraft at the particular time at which the sale is completed (the particular time).
- Paragraph (b) requires that the certificate be made in prescribed form containing prescribed information.
- Paragraph (c) requires that the certificate include the requirements set out in subparagraphs (i) through (iii).
  - Subparagraph (i) requires that the certificate include the identification number of the subject aircraft.
  - Subparagraph (ii) requires that the certificate include a declaration by the purchaser that all the conditions set out in clauses (A) through (D) are met.
    - Clause A requires the purchaser to declare that the subject aircraft is to be exported as soon after the particular time as is reasonable having regard to the circumstances surrounding the exportation, the sale, and, if applicable, the normal business practice of the purchaser and vendor.
    - Clause B requires the purchaser to declare that the subject aircraft is not to be used in Canada at any time before the exportation except to the extent reasonably necessary or incidental to its manufacture, offering for sale, transportation or exportation.
    - Clause C requires the purchaser to declare that the subject aircraft is not to be registered with the Government of Canada or a province before the exportation except if the registration is done solely for a purpose incidental to its manufacture, offering for sale, transportation or exportation.
    - Clause D requires the purchaser to declare that it is neither registered, nor required to be registered, as a vendor in respect of subject aircraft at the particular time.

- Subparagraph (iii) requires that the certificate include an acknowledgment by the purchaser that the purchaser is assuming liability to pay any amount of tax in respect of the subject aircraft that is or may become payable by the purchaser under this Act.
- Paragraph (d) requires that the purchaser provide, in a manner satisfactory to the Minister, the certificate to the vendor.
- Paragraph (e) requires that the vendor retain the certificate.

Subsection 6(3) provides additional rules for when an aircraft is sold by a vendor to more than one purchaser. If an aircraft is sold by a vendor to more than one purchaser, an exemption certificate applies in respect of the sale only if an exemption certificate would apply in respect of each purchaser in accordance with subsection 6(2). For example, if an aircraft is sold by a vendor to three purchasers (A, B, and C), each purchaser must provide an exemption certificate consistent with the conditions set out in subsection 6(2) in order for an exemption certificate to apply for purposes of determining whether tax is payable under the Act in respect of each sale. If purchaser A and B provided exemption certificates consistent with subsection 6(2) but purchaser C did not, then no exemption certificate would apply in respect of the sales to A, B or C.

## ***Section 7***

### ***Prescribed circumstances – aircraft (tax not payable)***

Section 33 of the Act provides that tax is not payable in prescribed circumstances. Subsection 7(1) would provide that the circumstances set out in this section are prescribed circumstances for the purposes of section 33 of the Act.

Subsection 7(2) provides that tax under section 18 of the Act in respect of a sale of a subject aircraft by a vendor to a purchaser is not payable if the conditions set out in paragraphs (a) to (e) are met.

- Paragraph (a) requires that the vendor be a registered vendor in respect of subject aircraft at the particular time at which the sale is completed (the particular time).
- Paragraph (b) requires that the purchaser is neither registered, nor required to be registered, as a vendor in respect of subject aircraft at the particular time.
- Paragraph (c) requires that an exemption certificate does not apply in respect of the sale in accordance with section 36 of the Act.
- Paragraph (d) requires that the aircraft meet the conditions set out in subparagraphs (i) to (iii):



- Subparagraph (i) is met if the aircraft is to be exported as soon after the particular time as is reasonable, having regard to the circumstances surrounding the exportation, the sale, and, if applicable, the normal business practice of the purchaser and vendor.
  - Subparagraph (ii) is met if the aircraft is not to be used in Canada at any time before the exportation except to the extent reasonably necessary or incidental to its manufacture, offering for sale, transportation or exportation.
  - Subparagraph (iii) is met if the aircraft is not to be registered with the Government of Canada or a province before the exportation except if the registration is done solely for a purpose incidental to its manufacture, offering for sale, transportation or exportation.
- Paragraph (e) requires that the vendor maintain evidence satisfactory to the Minister of the exportation of the aircraft by the purchaser.

If the conditions detailed in subsection 7(2) are not met, then tax is payable in accordance with provisions of the Act.

#### ***Part 4 – Miscellaneous***

##### ***Section 8***

###### ***Information return – prescribed person***

Subsection 59(1) of the Act requires that a person (other than a prescribed person) must file an information return in respect of a reporting period of the person if certain conditions are met. Section 8 prescribes persons for whom the obligation in subsection 59(1) would not apply. It provides that a person is a prescribed person for a reporting period of the person if the conditions in paragraphs (a) and (b) are met.

Paragraph (a) requires that the person is a registered vendor in respect of subject vehicles throughout the reporting period.

Paragraph (b) requires that the person is not otherwise registered, or required to be registered, under Division 5 of the Act at any time during the reporting period. For example, if a person is a registered vendor in respect of both subject aircraft and subject vehicles during a reporting period, the person is not a prescribed person for the purposes of section 8 in respect of the information return for that reporting period.

## ***Section 9***

### ***General penalty – prescribed provision***

Section 119 of the Act provides for a general penalty for failure to comply with any provision of the Act for which no other penalty is specified. Paragraph 119(a) provides that, in the case of a prescribed provision, the general penalty is \$100. Section 9 would set out that subsection 71(2) is a prescribed provision for the purposes of paragraph 119(a) of the Act; consequently, failure to comply with subsection 71(2) results in a penalty of \$100.

Subsection 71(2) of the Act requires that every person who must pay an amount greater than or equal to \$10,000 to the Receiver General must do so by way of electronic payment unless the person cannot reasonably pay the amount in that manner.

## ***Part 5 – Transitional Relief – Agreements Before 2022***

### ***Section 10***

#### ***Prescribed circumstances***

Section 33 of the Act provides that tax is not payable in prescribed circumstances. Section 10 would provide that, for the purposes of section 33 of the Act, the circumstances set out in subsections (2) to (4) are prescribed circumstances (i.e., that tax is not payable in those circumstances).

Subsection 10(2) provides that tax is not payable under section 18 or 29 of the Act in respect of a subject item that is sold by a vendor to a purchaser if:

- the purchaser entered into an agreement in writing before 2022 with the vendor for the sale of the subject item in the course of the vendor's business of offering for sale that type of subject item.

Subsection 10(3) provides that tax under section 20 of the Act in respect of a subject item that is imported is not payable if the conditions set out in paragraphs (a) and (b) are met.

- Paragraph (a) requires that the importer entered into an agreement in writing before 2022 with a vendor for the transfer of ownership of the subject item to the importer by way of sale.
- Paragraph (b) requires that the agreement was entered into in the course of the vendor's business of offering for sale that type of subject item.

Subsection 10(4) provides that tax under section 26 of the Act in respect of a subject item (in this case, a subject aircraft or a subject vessel) that is used in Canada at a particular time is not payable if the conditions set out in paragraphs (a) to (c) are met.

- Paragraph (a) requires that a person entered into an agreement in writing before 2022 with a vendor for the transfer of ownership of the subject item to the person by way of sale.
- Paragraph (b) requires that the agreement was entered into in the course of the vendor's business of offering for sale that type of subject item.
- Paragraph (c) requires that the person is an owner of the subject item at the particular time (i.e., the time that the subject item is used in Canada).

*Coming into force*

Aside from section 5 of the Regulations, the Regulations are deemed to have come into force on September 1, 2022. Section 5 of the Regulations is deemed to have come into force on the day after Announcement Date.