Explanatory Notes Relating to the Goods and Services Tax/Harmonized Sales Tax and Excise Levies

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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.

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

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Excise Tax Act

Clause 129
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ETA
68.19

Section 68.19 of the *Excise Tax Act* (the Act) provides for a rebate equal to the amount of tax paid under Part III of the Act in respect of goods purchased or imported by a province. Generally speaking, the rebate is available for goods purchased or imported for the province's own use and not for commercial purposes.

Section 68.19 is amended by modifying existing subsections (1) and (2) and by adding new subsections (1.1) to (1.3) and (3).

Existing subsection 68.19(1) provides that the rebate shall be paid either to the province or to the importer, transferee, manufacturer, producer, wholesaler, jobber or other dealer of the goods, as the case may require, if an application is made within two years of the purchase or importation of the goods. Paragraphs 69.19(1)(a) to (c) list those purposes for which goods are purchased or imported that are not eligible for the rebate.

Subsection 68.19(1) is amended so that the rebate shall be paid to the province by default. Subsection 68.19(1) is also amended to conform to current legislative drafting standards, including by moving the existing two-year limit for rebate applications to new subsection 68.19(1.1).

New subsection 68.19(1.2) allows a province and a particular person that is an importer, transferee, manufacturer, producer, wholesaler, jobber or other dealer to make a joint election in respect of goods that a province imports or purchases. The joint election is required to be made in a form prescribed by the Minister of National Revenue containing information prescribed by the Minister of National Revenue. If such a joint election is made in respect of a purchase or importation of goods, then the particular person, instead of the province, is the person entitled to apply for and be paid the rebate in respect of the purchase or importation, and the amount of the rebate payable by the Minister of National Revenue under subsection 68.19(1) is to be paid to that particular person.

New subsection 68.19(1.3) specifies that only one election under subsection 68.19(1.2) may be made by the province in respect of a particular purchase or importation of goods.

Existing subsection 68.19(2) provides that no rebate under subsection 68.19(1) shall be paid to an importer, transferee, manufacturer, producer, wholesaler, jobber or other dealer in respect of a particular purchase or importation of goods by a province if a reciprocal taxation agreement exists between the province and Canada.

Subsection 68.19(2) is amended consequential to the introduction of the joint election mechanism in new subsection 68.19(1.2). In particular, amended subsection 68.19(2) provides that new subsection 68.19(1.2) does not apply in respect of goods purchased or imported by a province when a reciprocal taxation agreement is in force between the province and Canada. Subsection 68.19(2) is also amended to update an outdated cross-reference to the *Federal-Provincial Fiscal Arrangements Act*.

New subsection 68.19(3) provides that, for greater certainty, subsection 68.2(1) of the Act does not apply in respect of goods for which an application for a payment under subsection 68.19(1) can be made by any person in respect of these goods. Subsection 68.2(1) can provide a rebate where tax under Part III or VI of the Act has been paid in respect of goods that are subsequently resold to a purchaser in circumstances that would have rendered the sale to that purchaser exempt or relieved under certain specific provisions of the Act and if certain conditions are met.

These amendments apply in respect of any goods purchased or imported after 2021.

Clause 130
Financial instrument
ETA
123(1)

Existing subsection 123(1) of the Act contains definitions that are used throughout Part IX of the Act.

The definition “financial instrument” is primarily relevant to the definition “financial service” in subsection 123(1). A financial instrument is anything described in any of paragraphs (a) to (i) of the definition “financial instrument”.

The definition “financial instrument” is amended to add new paragraph (b.1) and to amend paragraph (h).

New paragraph (b.1) describes any right, whether absolute or contingent, to receive, either immediately or in the future, an amount that can reasonably be regarded as all or any part of the capital, of the revenue, or of the income, of a corporation that does not have capital divided into shares. However, paragraph (b.1) does not include a right to receive an amount as a creditor. For example, a contingent right, analogous to those of corporate shareholders, to receive a portion of

a corporation without share capital's income for the year, or a share of the corporation's capital on its dissolution, would constitute a right described by paragraph (b.1).

Existing paragraph (h) describes guarantees, acceptances and indemnities in respect of any financial instrument described in paragraph (a), (b), (d), (e) or (g) of this definition. Paragraph (h) is amended so that it also describes guarantees, acceptances and indemnities in respect of any financial instrument described in new paragraph (b.1).

The amendments to the definition "financial instrument" are deemed to have come into force on August 10, 2022.

Clause 131
Exclusion of interest and dividend
ETA
149(4)

Existing subsection 149(4) of the Act provides a rule for the purposes of determining whether a person is a financial institution throughout a taxation year of the person under the *de minimis* tests in paragraphs 149(1)(b) and (c). It provides that interest and dividend income from a corporation that is related to a person (within the meaning of subsection 126(2) of the Act) is not to be included in

- the person's "financial revenue" for a taxation year of the person for the purpose of paragraph 149(1)(b); and

- the person's income for a taxation year that is derived from interest, fees or other charges with respect to the making of an advance, the lending of money, the granting of credit, or credit card operations, for the purpose of paragraph 149(1)(c).

Where, for example, a particular corporation is controlled by a person that is an individual, a trust or another corporation, subsection 149(4) will allow the person to exclude interest and dividends received from the particular corporation, as subsection 126(2) provides that such a person would be related to the particular corporation (through adoption of the related person rules in subsections 251(2) to (6) of the *Income Tax Act*). However, if the particular corporation were controlled by a partnership, subsection 149(4) would not allow the partnership to exclude interest and dividends received from the particular corporation, as subsection 126(2) does not make a partnership related to a corporation that it controls.

Subsection 149(4) is amended to allow partnerships to benefit from the rule. Subsection 149(4) now provides that interest and dividend income from a particular corporation is not to be included in a partnership's "financial revenue" for a taxation year of the person for the purpose of paragraph 149(1)(b) and is not to be included in the partnership's income for a taxation year

that is derived from interest, fees or other charges with respect to the making of an advance, the lending of money, the granting of credit, or credit card operations, for the purpose of paragraph 149(1)(c), where the particular corporation is controlled by a person described in subparagraph 149(4)(a)(i), (ii) or (iii), or by a combination of such persons. Subparagraph (i) describes the partnership itself. Subparagraph (ii) describes another corporation controlled by the partnership. Subparagraph (iii) describes another corporation related to a third corporation controlled by the partnership.

The amendment to subsection 149(4) applies to taxation years that begin after August 9, 2022.

Clause 132
Election for exempt supplies
ETA
150

Section 150 of the Act entitles two corporations that are members of the same closely related group that includes a listed financial institution to make an election to treat certain supplies between them as exempt supplies of financial services (as those terms are defined in subsection 123(1) of the Act).

Section 150 is amended to modify paragraph 150(4)(c) and add new subsection 150(4.1) in order to clarify the limitation period to file a valid revocation of an election made between two corporations under subsection 150(1).

The amendments to section 150 are deemed to have come into force on August 10, 2022.

Subclause 132(1)
Effect of election
ETA
150(4)

Subsection 150(4) of the Act provides that an election made by members of a closely related group under subsection 150(1) is effective for the period beginning on the day specified in the election and ending on the earliest of the three days specified in paragraphs 150(4)(a), (b) and (c). Existing paragraph 150(4)(c) stipulates a day that is both

- specified by the members in a revocation in prescribed form containing prescribed information filed jointly by the members in prescribed manner; and

- at least 365 days after the day that is specified in the election as the first day on which it is effective.

Subsection 150(4) is amended to remove the requirements that the revocation be made in prescribed form containing prescribed information and be filed jointly by the members in prescribed manner. These requirements are instead moved to new subsection 150(4.1), which also contains additional requirements for making a valid revocation.

Subclause 132(2)
Form of revocation
ETA
150(4.1)

New subsection 150(4.1) of the Act specifies the requirements that must be met in order to make a valid revocation of an election made by two members of a closely related group under subsection 150(1). Specifically, the revocation must comply with each of paragraphs 150(4.1)(a), (b) and (c).

Paragraph 150(4.1)(a) requires that the revocation be made jointly by the members in prescribed form containing prescribed information.

Paragraph 150(4.1)(b) requires that the revocation specify the day on which the revocation is to become effective.

Paragraph 150(4.1)(c) requires that the revocation be filed with the Minister of National Revenue on or before

- the particular day that is the first day on or before which either of the two members is required to file a return under Division V for its reporting period that includes the day specified in the revocation; or

- any day after the particular day that the Minister of National Revenue may allow.

While the requirements in paragraphs 150(4.1)(a) and (b) were previously contained in paragraph 150(4)(c), the requirement in paragraph 150(4.1)(c) is new and it generally limits the ability of parties to an election made under subsection 150(1) to make a retroactive revocation of that election. For example, consider two corporations that have made a valid election under subsection 150(1) that is effective from July 1, 2015 and now wish to make a revocation of this election with a specified effective date of May 15, 2025. If the first corporation’s reporting period is a fiscal year ending on March 31 and if the second corporation’s reporting period is a calendar month, then paragraph 150(4.1)(c) requires that the revocation be filed by June 30, 2025 (unless the Minister of National Revenue allows the revocation to be filed on a later day). June 30, 2025 is the deadline for filing the revocation since it is the first day on or before which any of the two corporations is required to file a return under Division V for the reporting period of the corporation that includes May 15, 2025. (This is because the second corporation must file its

return for its reporting period that includes May 15, 2025 (i.e., its May 1-May 31, 2025 reporting period) by June 30, 2025.) If the two corporations do not file this revocation with the Minister of National Revenue until a later date (e.g., September 15, 2025) and if the Minister of National Revenue were not to allow the revocation to be filed on or after that later date, the revocation would not be a valid revocation and the election under subsection 150(1) would remain in force after May 15, 2025.

Clause 133
Election for nil consideration
ETA
156

Section 156 of the Act allows certain members of a qualifying group of closely-related corporations and/or Canadian partnerships (as those terms are defined in subsection 156(1)) to elect under subsection 156(2) to treat certain supplies between them as having been made for nil consideration. In order to make the election, the members generally need to be resident in Canada and engaged exclusively in commercial activities. The effect is that electing members need not account for otherwise fully recoverable tax on those supplies.

Currently a qualifying group is limited to a group of corporations, a group of Canadian partnerships or a group of Canadian partnerships and corporations.

Section 156 is amended to expand the concept of qualifying group to allow a group of corporations and partnerships, each closely related to the other under subsection 156(1.1), to constitute a qualifying group, even if a partnership in the group has a member that is a corporation or a partnership that is not resident in Canada. However, the amendments would not change the existing requirement that any member of a qualifying group making an election under subsection 156(2) must be a corporation resident in Canada or a partnership, each member of which is resident in Canada.

Section 156 is also amended in respect of the definition “temporary member” in subsection 156(1) and in respect of subsection 156(2.1).

Subclauses 133(1) to (7)
Definitions
ETA
156(1)

Existing subsection 156(1) of the Act provides definitions that apply for the purposes of section 156. The amendments to subsection 156(1) delete the definition “Canadian partnership”, amend the existing definitions “qualifying group”, “qualifying member” and “temporary member” and add a new definition “specified partnership”.

The amendments to the definition “temporary member” in subsection 156(1) are deemed to have come into force on August 9, 2022. The other amendments to subsection 156(1) are deemed to have come into force on August 10, 2022.

“Canadian partnership”

The existing definition “Canadian partnership” means a partnership each member of which is a corporation or a partnership and is resident in Canada.

The definition “Canadian partnership” is repealed. The repeal is consequential to the addition of new definition “specified partnership” and changes in wording to the definition “qualifying member”.

“qualifying group”

The existing definition “qualifying group” refers to a group whose members are entitled to make an election under subsection 156(2) if they qualify as “specified members”. A qualifying group means a group of persons described by either paragraph (a) or (b) of the definition.

Paragraph (b) describes a group comprised of Canadian partnerships, or of Canadian partnerships and corporations, that are all closely related to one another, according to the rules set out in subsections 156(1.1) and 156(1.2).

Paragraph (b) is amended so that it now describes a group consisting of specified partnerships, or of specified partnerships and corporations, that are all closely related to one another, according to the rules set out in subsections 156(1.1) and 156(1.2). The amendment broadens the scope of the definition “qualifying group” as a specified partnership may now be a member of a qualifying group even if some or all of the members of the partnership are not resident in Canada (i.e., even if the specified partnership would not meet the existing test of being a “Canadian partnership”).

“qualifying member”

The existing definition “qualifying member” means a registrant (as defined in subsection 123(1) of the Act) that is a corporation resident in Canada or a Canadian partnership and that meets the conditions contained in paragraphs (a) to (c) of the definition.

The definition “qualifying member” is amended to replace the requirement that the registrant be a corporation resident in Canada or a Canadian partnership with a requirement that the registrant be a corporation resident in Canada or a specified partnership, each member of which is resident in Canada. The amendment is consequential to the repeal of the definition “Canadian partnership” and the addition of new definition “specified partnership”.

"temporary member"

Existing definition "temporary member" in subsection 156(1) refers to a particular corporation that exists to receive a transfer of property from an existing corporation as part of a transaction undertaken to comply with the requirements of paragraph 55(3)(b) of the *Income Tax Act* (a "butterfly" transaction). To be a temporary member, the particular corporation must meet all the requirements in paragraphs (a) to (h) of the definition.

Paragraphs (f) and (h) of the definition "temporary member" are amended as follows.

Existing paragraph (f) requires that the particular corporation receive a supply of property made in contemplation of a distribution (within the meaning assigned by subsection 55(1) of the *Income Tax Act*) that is made in the course of a reorganization described in subparagraph 55(3)(b)(i) of the *Income Tax Act*. Furthermore, that supply must be from a "distributing corporation" referred to in subparagraph 55(3)(b)(i) of the *Income Tax Act* that is a qualifying member of a qualifying group (as those terms are defined in this subsection) of which the particular corporation is also a member.

Paragraph (f) is amended to remove the requirement that the reorganization be one described in subparagraph 55(3)(b)(i) of the *Income Tax Act* and instead adds conditions limiting the type of property that can be included in the supply that the particular corporation receives and generally requiring that the consumption, use or supply of the property before and after the supply be exclusively in the course of commercial activities.

Specifically, amended paragraph (f) now requires that the particular corporation receive a supply of property that meets the conditions described in subparagraphs (f)(i), (ii) and (iii).

Subparagraph (f)(i) requires that the supply be made by another corporation that is a qualifying member of a qualifying group of which the particular corporation is a member and that the supply be made in contemplation of a distribution that is made in the course of a reorganization whereby the shares of the particular corporation are to be transferred upon the distribution to one or more other corporations (referred to as "transferee corporations").

Subparagraph (f)(ii) requires that the supplied property includes property that is neither a financial instrument (as defined in subsection 123(1)) nor property having a nominal value.

Subparagraph (f)(iii) requires that all or substantially all of the supplied property (excluding any of the supplied property that is a financial instrument or property having a nominal value)

- was last manufactured, produced, acquired or imported by the other corporation for consumption, use or supply exclusively in its commercial activities;

- is not consumed, used or supplied by the particular corporation otherwise than in the course of its commercial activities; and

- may reasonably be expected to be consumed, used or supplied, within 12 months from the time the supply to the particular corporation is made, by the transferee corporations exclusively in the course of their commercial activities.

Existing paragraph (h) requires that the shares of the particular corporation are transferred on the distribution referred to in paragraph (f) of the definition.

Paragraph (h) is amended to add the requirement that the transfer of shares of the particular corporation, upon the distribution referred to in paragraph (f), must be to the "transferee corporations" (as referred to in paragraph (f)) in respect of the distribution.

"specified partnership"

The new definition "specified partnership" means a partnership each member of which is a corporation or a partnership. Specified partnership is used in the definitions "qualifying group" and "qualifying member" in this subsection, as well as in subsections 156(1.1) and (1.2).

Subclauses 133(8) to (13)
Closely related persons
ETA
156(1.1)

Existing subsection 156(1.1) of the Act contains rules for determining whether two Canadian partnerships, or a Canadian partnership and a corporation, are closely related for the purposes of section 156.

Subsection 156(1.1) is amended to replace all references to "Canadian partnership" with "specified partnership". The amendments are consequential to the repeal of the definition "Canadian partnership" and the addition of new definition "specified partnership". The amendments to this subsection, and the related consequential amendments to subsection 156(1.2), have no effect on the application of the rules for determining whether two persons are closely related for the purposes of section 156.

The amendments to subsection 156(1.1) are deemed to have come into force on August 10, 2022.

Subclause 133(14)
Persons closely related to the same person
ETA
156(1.2)

Existing subsection 156(1.2) of the Act provides that two persons are closely related to each other for the purposes of section 156 if they are each closely related under subsection 156(1.1) to the same corporation or partnership, or if they would be so related to that partnership if each member of that partnership were resident in Canada.

Subsection 156(1.2) is amended to remove the words "or would be so related if each member of that partnership were resident in Canada". The reference is no longer needed as a result of amendments to subsection 156(1.1) that replace references to "Canadian partnership" with "specified partnership". Subsection 156(1.2) now provides that two persons are closely related to each other for the purposes of section 156 if they are each closely related under subsection 156(1.1) to the same corporation or specified partnership.

The amendments to subsection 156(1.2) are deemed to have come into force on August 10, 2022.

Subclause 133(15)
Non-application
ETA
156(2.1)

Subsection 156(2.1) of the Act provides exceptions from the application of an election under section 156.

Existing paragraph 156(2.1)(c) applies only to supplies where the recipient is a temporary member (as defined in subsection 156(1)). It provides that, in the case of these supplies, the election applies only to supplies received by the temporary member that are made in the contemplation of a distribution made in the course of a reorganization described in subparagraph 55(3)(b)(i) of the *Income Tax Act*.

Consequential amendments are made to paragraph 156(2.1)(c) to reflect amendments to paragraph (f) of the definition "temporary member" in subsection 156(1). As a result, paragraph 156(2.1)(c) no longer refers to a supply of property being made in the contemplation of a distribution made in the course of a reorganization described in subparagraph 55(3)(b)(i) of the *Income Tax Act*. Paragraph 156(2.1)(c) now provides that, where the recipient of a supply is a temporary member, the election does not apply to a supply of property that does not meet the conditions set out in paragraph (f) of the definition "temporary member".

The amendment to paragraph 156(2.1)(c) applies in respect of any supply made on or after August 9, 2022.

Clause 134
Permitted deduction
ETA
217

Existing definition "permitted deduction" in section 217 of the Act describes the amounts that can be deducted by a qualifying taxpayer (as described in subsection 217.1(1) of the Act) in determining an amount of qualifying consideration or of an external charge (as those terms are defined in section 217), or in determining an internal charge under subsection 217.1(4). A permitted deduction of a qualifying taxpayer for a specified year (as defined in section 217) of the qualifying taxpayer means an amount that is included in any of paragraphs (a) through (m) of this definition in respect of the specified year.

The definition "permitted deduction" is amended to add new paragraph (k.2) and to make consequential amendments to paragraph (k) in order to clarify the definition in respect of supplies made to a qualifying taxpayer that are deemed to be supplies of financial services by subsection 150(1) of the Act.

Existing paragraph (k) describes an amount that is consideration for a supply of a specified non-arm's length supply (as defined in section 217). However, paragraph (k) excludes interest referred to in paragraph (g), dividends referred to in paragraph (h) and consideration referred to in paragraph (k.1). Further, only the portion of the consideration that does not represent loading (e.g., only the portion that is clearly and fundamentally financial in nature) is a permitted deduction under paragraph (k).

A consequential amendment is made to paragraph (k) as a result of the addition of new paragraph (k.2). In addition to excluding the amounts referred to in paragraphs (g), (h) and (k.1), paragraph (k) is amended to exclude consideration referred to in new paragraph (k.2).

New paragraph (k. 2) describes an amount that is consideration (other than interest referred to in paragraph (g) or dividends referred to in paragraph (h)) for a supply made to a qualifying taxpayer by another person where all of the following conditions are met:

- the supply is deemed by subsection 150(1) to be a supply of a financial service; and

- the other person is a qualifying taxpayer throughout each specified year of the other person during which the other person makes an outlay, or incurs an expense, outside Canada (including an amount described in subsection 217.1(2)) for the purpose of making the supply.

The amendments to “permitted deduction” apply to any specified year of a person that ends after November 16, 2005. However, a transitional rule applies for the purposes of applying the amendments to the specified year of a person that includes November 17, 2005. In this case, paragraph (k) of the amended definition “permitted deduction” should be read without reference to the term “loading” (as defined in section 217) for an amount of consideration for a specified non-arm’s length supply referred to in that paragraph that becomes due, or is paid without having become due, before November 17, 2005. As a result, if any amount of consideration for a specified non-arm’s length supply becomes due, or is paid without having become due, after November 16, 2005, the amended definition “permitted deduction” should continue to be read with reference to the term “loading”.

A further transitional measure applies if

- in assessing under section 296 of the Act the tax payable by a qualifying taxpayer under Division IV of Part IX of the Act for a particular specified year of the qualifying taxpayer, an amount was taken into consideration as an external charge or as qualifying consideration for the particular specified year; and

- as a result of the application of these amendments to the definition “permitted deduction”, the amount or part of the amount is not qualifying consideration for any specified year of the qualifying taxpayer and is not an external charge for any specified year of the qualifying taxpayer for which an election under subsection 217.2(1) is in effect.

This transitional measure allows the qualifying taxpayer to request that the Minister of National Revenue assess, reassess, or make an additional assessment of, the net tax to take into account the effect of these amendments to the definition “permitted deduction”. This request must be made in writing and be made within one year after the day on which these amendments to the definition “permitted deduction” receive royal assent. If a request is made, the Minister of National Revenue must then, with all due dispatch, consider the request and under section 296 assess, reassess or, make an additional assessment of, the tax payable by the qualifying taxpayer under Division IV of Part IX of the Act for the particular specified year of the qualifying taxpayer, as well as any interest, penalty or other obligation of the qualifying taxpayer. However, this assessment, reassessment or additional assessment is solely for the purpose of taking into account that the amount or the part of the amount, as the case may be, is not qualifying consideration or an external charge for the particular specified year.

Clause 135
Reporting institution
ETA
273.2(2)

Existing section 273.2 of the Act requires a reporting institution to file an information return for a fiscal year of the institution with the Minister of National Revenue.

For the purposes of section 273.2, a person, other than a prescribed person or a person of a prescribed class, is a reporting institution throughout a fiscal year of the person if the person meets the conditions described in each of paragraphs 273.2(2)(a), (b) and (c). The condition in paragraph 273.2(2)(c) is that the total of all amounts, each of which is an amount included in calculating the person's income (or, in the case of an individual, business income) for income tax purposes for the last taxation year of the person that ends in the fiscal year, exceeds $1 million (determined on a prorated basis for short taxation years).

Paragraph 273.2(2)(c) is amended to increase the income threshold for persons to qualify as reporting institutions from $1 million to $2 million.

This amendment applies in respect of fiscal years of a person that end after August 9, 2022.

Clause 136
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 paragraph 298(1)(a.01), the limitation period for an assessment of the net tax of a selected listed 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) 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 August 4, 2023.

Clause 137
Psychotherapy and counselling therapy services
ETA
Schedule V, Part II

Part II of Schedule V to the Act sets out the health care services that are exempt under the Goods and Services Tax/Harmonized Sales Tax (GST/HST).

Subclause 137(1)
Practitioner
ETA
Schedule V, Part II, section 1

Section 1 of Part II of Schedule V to the Act contains definitions referred to in that Part, which enumerates health care related supplies that are exempt for the purposes of the GST/HST.

The definition "practitioner" in section 1 of Part II of Schedule V to the Act lists the types of health care professionals who are not required to charge tax in respect of supplies of health care services itemized in sections 7 and 7.1 of Part II of Schedule V to the Act.

The definition "practitioner" is amended to add those persons practicing the profession of psychotherapy and counselling therapy to the list.

This amendment comes into force on royal assent.

Subclause 137(2)
Psychotherapy and counselling therapy services
ETA
Schedule V, Part II, section 7

Existing section 7 of Part II of Schedule V to the Act lists the services of health care practitioners whose supplies are exempt in all provinces from the GST/HST even when made in a province that does not cover the services under its own provincial health care plan.

The amendment adds psychotherapy services (under new paragraph (j.1)) and counselling therapy services (under new paragraph (j.2)) to the list of exempt health care services in section 7.

This amendment comes into force on royal assent.

Financial Services and Financial Institutions (GST/HST) Regulations

Clause 138
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* (the 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) of the Regulations provides that in section 3.2 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.

Subsection 3.2(2)
Prescribed services

New subsection 3.2(2) of the Regulations 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), (b) and (c)); 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 paragraph 3.2(2)(d)).

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 paragraphs 3.2(2)(a) to (d).

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 that is also an acquirer;

- the service is supplied by the payment card network operator in its capacity as the acquirer for a transaction made by payment card; and

- the service is supplied either to

    - a person (generally, a merchant) that accepted the payment card used for the transaction, or

    - a payment service provider (as defined in section 2 of the *Retail Payment Activities Act*) engaged by that person. Section 2 of the *Retail Payment Activities Act* provides that a payment service 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.

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 either subparagraph 3.2(2)(c)(i) or subparagraph 3.2(2)(c)(ii).

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:

- 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 issuer of the payment card rather than as a payment card network operator; and
- the supply is made to the acquirer for the transaction.

Generally, paragraph 3.2(2)(d) 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. Paragraph 3.2(2)(d) 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, paragraph 3.2(2)(d) 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 in respect of the settlement of a transaction made by payment card;
- the supply is made by a payment card network operator to the acquirer for the transaction;
- the supply consists of paying to the acquirer the amount charged to the payment card in respect of the transaction; and
- the issuer of the payment card supplies a service, in respect of the settlement of the same transaction, of paying to the payment card network operator the amount charged to the payment card in respect of the transaction.

It should be noted that a payment card network operator or an issuer of a payment card may make a supply of a service of paying the amount charged to a payment card in respect of a transaction made by payment card, even if the recipient of the supply does not receive the entire amount due to the operator or issuer deducting a fee for this service from the amount paid.

Clause 139
Prescribed person — paragraph 149(5)(g) of the Act
Financial Services and Financial Institutions (GST/HST) Regulations
4.2

Existing section 4.1 of the Regulations, as made by section 6 of the *Regulations Amending Various GST/HST Regulations, No. 11*, provides that an employee life and health trust (within the meaning assigned by subsection 144.1(2) of the *Income Tax Act*) is a prescribed person for the purposes of paragraph 149(5)(g) of the Act.

As a housekeeping amendment to provide for proper numbering of provisions, section 4.1, as made by section 6 of the *Regulations Amending Various GST/HST Regulations, No. 11*, is renumbered as section 4.2 of the Regulations.

Joint Venture (GST/HST) Regulations

Clause 140
Prescribed Activity
Joint Venture (GST/HST) Regulations
3

Subsection 3(1) of the *Joint Venture (GST/HST) Regulations* provides that the activities that are prescribed for the purposes of subsection 273(1) of the *Excise Tax Act* (the Act) are the activities that are described in paragraphs 3(1)(a) to (p). Subsection 3(1) is amended to add new paragraph (q), which describes a new activity – being the operation of a pipeline, rail terminal or truck terminal used for the transportation of oil, natural gas or related or ancillary products – that is added to the list of activities that are prescribed for the purposes of subsection 273(1) of the Act.

This amendment is deemed to have come into force on January 1, 1991.

Input Tax Credit Information (GST/HST) Regulations

Clause 141
Definition “intermediary”
Input Tax Credit Information (GST/HST) Regulations
2

Section 2 of the *Input Tax Credit Information (GST/HST) Regulations* (the Regulations) contains definitions that apply in the Regulations, including the definition of “intermediary”. The definition of “intermediary” in section 2 is amended to allow billing agents to be treated as intermediaries for purposes of the input tax credit information rules.

This amendment is deemed to have come into force on April 20, 2021.

Clause 142
Prescribed Information
Input Tax Credit Information (GST/HST) Regulations
3

Section 3 of the Regulations prescribes information that registrants must obtain and retain in order to support their input tax credit claims. These information requirements are graduated, with progressively more information required when the amount paid or payable in respect of a supply equals or exceeds threshold amounts. Section 3 is amended to increase these threshold amounts to $100 (from $30) and $500 (from $150).

This amendment is deemed to have come into force on April 20, 2021.

Coordinating Amendments – Excise Tax Act

Clause 143
Bill C-56
ETA
256.2

The Goods and Services Tax/Harmonized Sales Tax (GST/HST) applies to new residential rental property. The tax applies when it is acquired by a landlord from a person who has constructed the property. Alternatively, if the person who has constructed the property is also the landlord, the tax must be self-assessed upon the later of when construction of the property is substantially completed and a unit is first occupied.

Section 256.2 of the *Excise Tax Act* (the Act) provides for a partial rebate of the GST (or federal component of the HST) paid (the GST Rental Rebate).

Clause 2 of Bill C-56, the *Affordable Housing and Groceries Act*, which is currently before Parliament, would amend section 256.2 to introduce a temporary 100-per cent GST rental housing rebate for purpose-built rental housing (the Enhanced GST Rental Rebate).

Clause 143 adds new subsection 256.2(2.1) to the Act. Subsection 256.2(2.1) provides that, if certain conditions are met, a person that is a cooperative housing corporation will qualify for the Enhanced GST Rental Rebate by deeming that person, for the purposes of applying section 255 of the Act and subsections 256.2(3) and (5), not to be a cooperative housing corporation.

New subsection 256.2(2.1) applies in respect of a taxable supply to the person of property that is prescribed for the purposes of new subsection 256.2(3.1) (i.e., purpose-built rental housing) if the taxable supply and the property meet the conditions described in paragraph 256.2(3.1)(a) or (b) and if prescribed conditions are met. Currently, no property or conditions are prescribed.

This amendment would be deemed to have come into force on September 14, 2023 if Bill C-56 receives royal assent.

Clause 144
Bill C-323
ETA
Schedule V, Part II

Clause 144 provides coordinating amendments related to Bill C-323 (the other Act), *An Act to amend the Excise Tax Act (mental health services)*, which is currently before Parliament and addresses the same subject matter as clause 137 (see clause 137 for more information) in this Act.

Clause 137 is very similar to Clause 1 of the other Act but replaces the expression "mental health counselling" found in the other Act with the expression "counselling therapy", an expression that better aligns with provincial legislation.

In general, clause 144 provides that if this Act receives royal assent, then the other Act is deemed never to have produced its effects, whether the other Act receives royal assent before or after this Act.

Part 4 - Amendments to the Excise Act, 2001 and to Related Legislation

Excise Act, 2001

Clause 145
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) 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 146
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 146(1)
Packaging and stamping of vaping products
EA, 2001
158.46(1)

Existing paragraphs 158.46(c) and (d) of the Act are combined into amended paragraphs 158.46(c). Amended paragraph 158.46(c) now prohibits a vaping product from being entered into the duty-paid market unless, before the end of the second calendar 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 second calendar 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 146(2)
Stamping of imported packaged vaping products
EA, 2001
158.46(2)

Section 158.46 of the Act is renumbered as subsection 158.46(1) and new subsection 158.46(2) is added. Subsection 158.46(2) prohibits a vaping product licensee from entering a vaping product imported by the licensee into the duty-paid market unless the vaping product is packaged with the information prescribed by regulations printed on the package and, before the end of the second calendar month following the month in which the vaping product is released under the *Customs Act*, the vaping product has been properly stamped by the licensee (including being stamped to indicate that the additional vaping duty has been paid, if applicable).

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

Clause 147
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) 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 subsection 158.53(2) of the Act, or that is imported by an individual for their personal use in quantities within prescribed limits.

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 148
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 148(1)
Exclusion of vaping product drugs
EA, 2001
158.49

Existing section 158.49 of the Act 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 148(2)
Unstamped products to be warehoused
EA, 2001
158.49(1) to (3)

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

Amended subsection 158.49(1) now provides that if vaping products manufactured in Canada are not stamped by a vaping product licensee before the end of the particular calendar month that is the second calendar month following the calendar 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 calendar month.

New subsection 158.49(2) 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 calendar month that is the second calendar month following the calendar 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 calendar month.

New subsection 158.49(3) 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 149
Vaping product markings — exports and accredited representatives
EA, 2001
158.5

Existing section 158.5 of the Act requires that, in certain circumstances, containers of vaping products have vaping products markings and other prescribed information printed on them or affixed to them.

Section 158.5 is amended by adding new subsection 158.5(1.1), which provides that, subject to subsection 158.5(4), no one is allowed to remove a container of vaping products that are not stamped from the premises of a vaping product license for export or for delivery to an accredited representative unless the container has vaping product markings and other prescribed information printed on it. Existing subsection 158.5(4) provides that a container of vaping products does not require vaping product markings if prescribed circumstances exist.

This amendment applies 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 150
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) 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 151
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.

Clause 152
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 to the Act. 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 153
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*.

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 154
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 158.57 and 158.58).

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

Clause 155
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 155(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 because it is no longer used as a result of amendments to subsection 159.2(2).

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 of National Revenue authorizing a cannabis licensee to have reporting periods that are calendar quarters.

Subclause 155(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. Consequential to the amendments to subsection 159.2(2), subsection 159.2(4) is repealed.

Subclause 155(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 of National Revenue shall send a notice in writing and shall specify the fiscal month for which the revocation becomes effective.

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

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 Minister of National Revenue 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 156
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) of the Act 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 157
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 158
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.

Clause 159
Cross-references
EA, 2001
Schedule 8

Schedule 8 to the Act provides rules for determining the amount of duty imposed on vaping products under various sections of the Act as well as the amount of certain fines and penalties relating to vaping products. The heading to Schedule 8 lists the provisions of the Act that reference that Schedule. That list is updated to reflect the addition of provisions to the Act that reference Schedule 8.

This amendment comes into force on royal assent.

Returning Persons Exemption Regulations

Clause 160
Vaping products — importation exception
Returning Persons Exemption Regulations
3

The *Returning Persons Exemption Regulations* (the 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) of the Regulations 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.

Regulations Respecting Excise Licences and Registrations

Clause 161
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.

Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations

Clauses 162 to 167
Stamping and marking of vaping products
Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations
3.6, 3.7, 3.8, 4(4), 5.01 and 8(1)

The *Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations* (the Regulations) provide rules relating to the stamping, marking and labelling of tobacco, cannabis and vaping products 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 references to paragraphs 158.46(1)(b) and (2)(a) of the Act are inserted in existing section 3.6 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.

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:

- 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 the 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) of the Act 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) 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 of 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.

Existing section 5.1 of the Regulations, as enacted by section 122 of the *Budget Implementation Act, 2022, No. 1*, sets out the prescribed limit on the amount of vaping products that a person may import into Canada for their personal use. The section is renumbered as section 5.01 and that section is repositioned immediately after section 5 of the Regulations.

Existing section 8 of the Regulations set out the requirements with respect to the marking of containers of vaping products that are not stamped. Subsection 8(1) provides that for the purposes of subsection 158.5(1) of the Act, the required marking for vaping products manufactured in Canada is set out in Schedule 7 to the Regulations, and the required marking for imported vaping products is set out in Schedule 8 to the Regulations. Subsection 8(2) requires that the markings must be printed or affixed to the vaping product container in a conspicuous manner and in accordance with the specifications set out in the appropriate schedule.

Subsection 8(1) is amended to also refer to new subsection 158.5(1.1) of the Act, so that the required markings for the purposes of that subsection are those that are set out in Schedule 7 to the Regulations (see commentary for that section).

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