Explanatory Notes Relating to the Goods and Services Tax/Harmonized Sales Tax, Excise Levies, the Underused Housing Tax and Part 1 of the *Greenhouse Gas Pollution Pricing Act*

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The Honourable Chrystia Freeland
Deputy Prime Minister and Minister of Finance

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Preface

These explanatory notes describe proposed amendments to the *Excise Tax Act*, the *Excise Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Greenhouse Gas Pollution Pricing Act* and related 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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Part 3 – Amendments to the *Excise Tax Act*, the *Excise Act*, the *Excise Act, 2001*, the *Underused Housing Tax Act*, the *Greenhouse Gas Pollution Pricing Act* and Other Related Texts

Division 1 – *Excise Tax Act* (GST/HST)

Clause 112
Face masks and face shields
ETA
Sch. VI, Pt. II.1

Sections 2 to 5 of Part II.1 of Schedule VI to the *Excise Tax Act* describe supplies of certain face masks or respirators and face shields that were temporarily zero-rated in response to the COVID-19 pandemic.

Sections 2 to 5 of Part II.1 of Schedule VI are repealed.

This amendment applies to supplies made after April 2024.

Division 2 – *Excise Act*, *Excise Act, 2001* and Other Related Texts (Alcohol, Tobacco and Vaping Products)

Excise Act

Clause 113
Adjustment – 2024 and 2025
EA
170.2

Section 170.2 of the *Excise Act* (the Act) sets out the manner in which the rates of duty on beer or malt liquor are adjusted according to the Consumer Price Index on April 1 of each inflationary adjusted year.

New subsection 170.2(2.2) provides that, in respect of the inflationary adjusted year that is 2024, the rates of duty on beer or malt liquor are adjusted on April 1, 2024 by a factor of 1.02.

New subsection 170.2(2.3) provides that, in respect of the inflationary adjusted year that is 2025, the rates of duty on beer or malt liquor are adjusted on April 1, 2025 by a factor that is the lesser of 1.02 and the Consumer Price Index.

These amendments are deemed to have come into force on April 1, 2024.

Clauses 114 to 116
Duty on Canadian Beer
EA
Sch., Pt. II.1

Part II.1 of the schedule to the Act sets out the rates of duty on the first 75,000 hectolitres of beer and malt liquor produced in Canada per year by a licensed brewer under section 170.1 of the Act. The rates of duty vary based on the production volume of the licensed brewer. The rates also vary depending on the absolute ethyl alcohol volume of the beer or malt liquor being produced.

Subclause 114(1)
Duty on Canadian Beer – 2024 and 2025
EA
Sch., Pt. II.1, s. 1

Paragraphs 1(a) to (c) of Part II.1 of the schedule to the Act are amended to reduce the rate of duty on the first 2,000 hectolitres of beer and malt liquor produced in Canada per year by a licensed brewer under section 170.1 of the Act by 50%, from 10% of the regular rate to 5% of the regular rate.

This amendment is deemed to have come into force on April 1, 2024.

Subclause 114(2)
Duty on Canadian Beer – 2026 and after
EA
Sch., Pt. II.1, s. 1

Paragraphs 1(a) to (c) of Part II.1 of the schedule to the Act are amended to reverse the reduction of the rate of duty on the first 2,000 hectolitres of beer and malt liquor produced in Canada per year by a licensed brewer under section 170.1 of the Act that comes into effect on April 1, 2024.

This amendment comes into force on April 1, 2026.

Subclause 115(1)
Duty on Canadian Beer – 2024 and 2025
EA
Sch., Pt. II.1, s. 2

Paragraphs 2(a) to (c) of Part II.1 of the schedule to the Act are amended to reduce the rate of duty for a quantity of 2,001 to 5,000 hectolitres of beer and malt liquor produced in Canada per year by a licensed brewer under section 170.1 of the Act by 50%, from 20% of the regular rate to 10% of the regular rate.

This amendment is deemed to have come into force on April 1, 2024.

Subclause 115(2)
Duty on Canadian Beer – 2026 and after
EA
Sch., Pt. II.1, s. 2

Paragraphs 2(a) to (c) of Part II.1 of the schedule to the Act are amended to reverse the reduction of the rate of duty for a quantity of 2,001 to 5,000 hectolitres of beer and malt liquor produced in Canada per year by a licensed brewer under section 170.1 of the Act that comes into effect on April 1, 2024.

This amendment comes into force on April 1, 2026.

Subclause 116(1)
Duty on Canadian Beer – 2024 and 2025
EA
Sch., Pt. II.1, s. 3

Paragraphs 3(a) to (c) of Part II.1 of the schedule to the Act are amended to reduce the rate of duty for a quantity of 5,001 to 15,000 hectolitres of beer and malt liquor produced in Canada per year by a licensed brewer under section 170.1 of the Act by 50%, from 40% of the regular rate to 20% of the regular rate.

This amendment is deemed to have come into force on April 1, 2024.

Subclause 116(2)
Duty on Canadian Beer – 2026 and after
EA
Sch., Pt. II.1, s. 3

Paragraphs 3(a) to (c) of Part II.1 of the schedule to the Act are amended to reverse the reduction of the rate of duty for a quantity of 5,001 to 15,000 hectolitres of beer and malt liquor produced in Canada per year by a licensed brewer under section 170.1 of the Act that comes into effect on April 1, 2024.

This amendment comes into force on April 1, 2026.

Excise Act, 2001

Clause 117
No warehousing of tobacco without markings
EA, 2001
38

Existing subsection 38(1) of the *Excise Act, 2001* (the Act) prohibits anyone from entering a container of manufactured tobacco (including cigarettes) or cigars into an excise warehouse unless the container has tobacco markings and other prescribed information printed on it or affixed to it.

Existing subsection 38(3) provides that a container of manufactured tobacco does not require tobacco markings if the brand of the tobacco is not commonly sold in Canada and is prescribed by regulations.

Existing subsection 38(4) generally provides that a container of cigarettes of a particular brand does not require tobacco markings if the cigarettes are prescribed by regulations, if cigarettes are both sold in Canada and exported under the particular brand name and if the prescribed cigarettes are of a type or formulation that has never been sold in Canada.

Subsection 38(3) is amended to replace the requirement of prescribing the brands of manufactured tobacco through the regulatory process with an authorization for the Minister of National Revenue to specify the brands of manufactured tobacco that qualify for exemption from the marking requirement under subsection 34(1) of the Act.

Subsection 38(4) is amended to replace the requirement for prescribing cigarettes through the regulatory process with an authorization for the Minister to specify the cigarettes that qualify for exemption from the marking requirement under subsection 34(1).

These amendments come into force on the first day of the month following the month that includes the day on which the Act enacting these amendments receives royal assent.

Clause 118
Duty Relieved
EA, 2001
58

Existing subsection 58(1) of the Act provides that the special duty on exported tobacco products imposed under subsection 56(1) of the Act is relieved on a tobacco product of a particular brand if certain conditions are met, including that the tobacco product is of a brand that is prescribed by regulations.

Existing subsection 58(2) generally provides that the special duty on exported tobacco products imposed under subsection 56(1) of the Act is relieved on cigarettes of a particular brand if the cigarettes are prescribed by regulations, if cigarettes are both sold in Canada and exported under the particular brand name and if the prescribed cigarettes are of a type or formulation that has never been sold in Canada.

Subsection 58(1) is amended to replace the requirement for prescribing the brands of tobacco products through the regulatory process with an authorization for the Minister of National Revenue to specify the brands of tobacco products that qualify for exemption from the special duty under subsection 56(1).

Subsection 58(2) is amended to replace the requirement of prescribing the cigarettes through the regulatory process with an authorization for the Minister to specify the cigarettes that qualify for exemption from the special duty under subsection 56(1).

These amendments come into force on the first day of the month following the month that includes the day on which the Act enacting these amendments receives royal assent.

Clause 119
Definition “adjustment day”
EA, 2001
58.1

Section 58.1 of the Act defines terms used in Part 3.1 of the Act regarding the cigarette inventory tax. The existing definition “adjustment day” in section 58.1 defines the date on which a cigarette inventory tax is imposed.

The definition “adjustment day” is amended by adding April 17, 2024 as an adjustment day. This amendment has the effect of imposing a tax on taxed cigarettes (as defined in section 58.1) held in inventory on April 17, 2024.

This amendment is deemed to have come into force on April 17, 2024.

Clause 120
Imposition of tax – 2024 increase
EA, 2001
58.2(1.2)

Existing section 58.2 of the Act imposes a tax on taxed cigarettes (as defined in section 58.1 of the Act) held in inventory at a particular time when tobacco duty rates are increased.

Section 58.2 is amended by adding new subsection 58.2(1.2), which imposes a tax on inventories of taxed cigarettes held at the beginning of April 17, 2024 at a rate of $0.02 per cigarette.

This amendment is deemed to have come into force on April 17, 2024.

Clause 121
Returns
EA, 2001
58.5(1)

Existing subsection 58.5(1) of the Act requires every person liable to pay an inventory tax under Part 3.1 of the Act to file a return with the Minister of National Revenue on or before the date set out in that subsection.

Subsection 58.5(1) is amended to provide for a deadline of June 30, 2024 for filing a return in the case of a tax imposed on April 17, 2024 under new subsection 58.2(1.2) of the Act.

This amendment is deemed to have come into force on April 17, 2024.

Clause 122
Payment
EA, 2001
58.6(1)

Existing subsection 58.6(1) of the Act requires every person liable to pay an inventory tax under Part 3.1 of the Act to pay the total amount owing to the Receiver General on or before the date set out in that subsection.

Subsection 58.6(1) is amended to provide for a deadline of June 30, 2024 for paying an amount owing in the case of a tax imposed on April 17, 2024 under new subsection 58.2(1.2) of the Act.

This amendment is deemed to have come into force on April 17, 2024.

Clause 123
Adjustment – 2024 and 2025
EA, 2001
123.1

Section 123.1 of the Act sets out the manner in which the rates of duty applicable in respect of a litre of absolute ethyl alcohol or in respect of a litre of spirits are adjusted according to the Consumer Price Index on April 1 of each inflationary adjusted year.

New subsection 123.1(2.2) provides that, in respect of the inflationary adjusted year that is 2024, the rates of duty applicable in respect of a litre of absolute ethyl alcohol or in respect of a litre of spirits are adjusted on April 1, 2024 by a factor of 1.02.

New subsection 123.1(2.3) provides that, in respect of the inflationary adjusted year that is 2025, the rates of duty applicable in respect of a litre of absolute ethyl alcohol or in respect of a litre of spirits are adjusted on April 1, 2025 by a factor that is the lesser of 1.02 and the Consumer Price Index.

These amendments are deemed to have come into force on April 1, 2024.

Clause 124
Adjustment – 2024 and 2025
EA, 2001
135.1

Section 135.1 of the Act sets out the manner in which the rates of duty applicable in respect of a litre of wine are adjusted according to the Consumer Price Index on April 1 of each inflationary adjusted year.

New subsection 135.1(2.2) provides that, in respect of the inflationary adjusted year that is 2024, the rates of duty applicable in respect of a litre of wine are adjusted on April 1, 2024 by a factor of 1.02.

New subsection 135.1(2.3) provides that, in respect of the inflationary adjusted year that is 2025, the rates of duty applicable in respect of a litre of wine are adjusted on April 1, 2025 by a factor that is the lesser of 1.02 and the Consumer Price Index.

These amendments are deemed to have come into force on April 1, 2024.

Clause 125
Confidentiality
EA, 2001
211(6)

Existing section 211 of the Act provides for the confidentiality of information obtained by the Minister of National Revenue in the administration or enforcement of the Act that reveals, directly or indirectly, the identity of a person. This information cannot be used or communicated unless specifically authorized by one or more of the exceptions contained in the section.

Subparagraph 211(6)(e)(x) is amended by adding that an official may share confidential information with an official solely for the purpose of administering or enforcing the *Tobacco and Vaping Products Act*.

This amendment comes into force on royal assent.

Clause 126
Rate of duty on cigarettes
EA, 2001
Sch. 1, par. 1(a)

Schedule 1 to the Act specifies the rates of duty imposed under section 42 of the Act on tobacco products.

Section 1 of Schedule 1 sets out the rate for cigarettes. Paragraph 1(a) is amended to increase the rate to $0.92883 (from $0.82883) for each five cigarettes or fraction of five cigarettes contained in any package (e.g., the new duty rate will be $37.15 per carton of 200 cigarettes).

This amendment is deemed to have come into force on April 17, 2024.

Clause 127
Rate of duty on tobacco sticks
EA, 2001
Sch. 1, par. 2(a)

Schedule 1 to the Act specifies the rates of duty imposed under section 42 of the Act on tobacco products.

Section 2 of Schedule 1 sets out the rate for tobacco sticks. Paragraph 2(a) is amended to increase the rate to $0.18576 (from $0.16576) per stick.

This amendment is deemed to have come into force on April 17, 2024.

Clause 128
Rate of duty on manufactured tobacco other than cigarettes and tobacco sticks
EA, 2001
Sch. 1, par. 3(a)

Schedule 1 to the Act specifies the rates of duty imposed under section 42 of the Act on tobacco products.

Section 3 of Schedule 1 sets out the rate for manufactured tobacco other than cigarettes and tobacco sticks. Paragraph 3(a) is amended to increase the rate to $11.61031 (from $10.36032) per 50 grams or fraction of 50 grams contained in any package.

This amendment is deemed to have come into force on April 17, 2024.

Clause 129
Rate of duty on cigars
EA, 2001
Sch. 1, par. 4(a)

Schedule 1 to the Act specifies the rates of duty imposed under section 42 of the Act on tobacco products.

Section 4 of Schedule 1 sets out the rate for cigars. Paragraph 4(a) is amended to increase the rate to $40.43121 (from $36.07829) per 1,000 cigars.

This amendment is deemed to have come into force on April 17, 2024.

Clause 130
Additional duty on cigars
EA, 2001
Sch. 2

Schedule 2 to the Act sets out the rates of additional duty on cigars imposed under section 43 of the Act.

The additional duty on cigars is the greater of the specific rate set out in paragraph (a) of Schedule 2 and the amount obtained by multiplying the percentage set out in paragraph (b) of Schedule 2 by the sale price or duty-paid value, as the case may be.

Subparagraph (a)(i) of Schedule 2 is amended to increase the specific rate for the additional duty on cigars to $0.14533 (from $0.12968) per cigar.

This amendment is deemed to have come into force on April 17, 2024.

Clause 131
Duty on vaping substances in devices or containers
EA, 2001
Sch. 8, s. 1

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 amounts of related fines and penalties.

Section 1 of Schedule 8 specifies the duty imposed on vaping products that are vaping devices that contain vaping substances or that are vaping substances in immediate containers.

Paragraph 1(a) is amended to increase the rate to $1.12 (from $1.00) per 2 ml, or fraction thereof, for the first 10 ml of vaping liquid, and $1.12 (from $1.00) per 10 ml, or fraction thereof, for volumes beyond that.

Paragraph 1(b) is amended to increase the rate to $1.12 (from $1.00) per 2 g, or fraction thereof, for the first 10 g of vaping solid, and $1.12 (from $1.00) per 10 g, or fraction thereof, for weight beyond that.

These amendments come into force or are deemed to have come into force on July 1, 2024.

Clause 132
Duty on vaping substances not in devices or containers
EA, 2001
Sch. 8, s. 2

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 amounts of related fines and penalties.

Section 2 of Schedule 8 specifies the duty imposed on vaping products that are vaping substances not in any vaping device or immediate container.

Paragraph 2(a) is amended to increase the rate to $1.12 (from $1.00) per 2 ml, or fraction thereof, for the first 10 ml of vaping liquid, and $1.12 (from $1.00) per 10 ml, or fraction thereof, for volumes beyond that.

Paragraph 2(b) is amended to increase the rate to $1.12 (from $1.00) per 2 g, or fraction thereof, for the first 10 g of vaping solid, and $1.12 (from $1.00) per 10 g, or fraction thereof, for weight beyond that.

These amendments come into force or are deemed to have come into force on July 1, 2024.

Regulations Relieving Special Duty on Certain Tobacco Products

Clause 133
Regulations Relieving Special Duty on Certain Tobacco Products

The *Regulations Relieving Special Duty on Certain Tobacco Products* (the Regulations) set out the brands of tobacco products and the cigarettes that qualify, under section 58 of the *Excise Act, 2001* (the Act), for exemption from the special duty imposed under subsection 56(1) of the Act.

The Regulations are being repealed as a result of amendments to section 58 of the Act (see the description of those amendments).

These amendments come into force on the first day of the month following the month that includes the day on which these amendments are enacted or made.

Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations

Clause 134
Prescribed Person
Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations
4.01

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.

Existing section 4.01 of the Regulations is amended by renumbering subsection 4.01(2) as 4.01(3) and by adding a new subsection 4.01(2). New subsection 4.01(2) provides that if the Minister of National Revenue holds security that a person has provided in respect of tobacco excise stamps under subsection 25.1(3) of the *Excise Act, 2001* at any time in a particular calendar month and the person is not a tobacco licensee throughout the calendar month, then the person must file with the Minister an information return in respect of any tobacco excise stamps issued to that person. Pursuant to existing subsection 4.01(3), this information return must be made in prescribed form containing prescribed information and be filed in prescribed manner on or before the last day of the first month following the particular calendar month.

These amendments come into force on the first day of the month following the month that includes the day on which these amendments are enacted or made.

Regulations Respecting Prescribed Brands of Manufactured Tobacco and Prescribed Cigarettes

Clause 135

Regulations Respecting Prescribed Brands of Manufactured Tobacco and Prescribed Cigarettes

The *Regulations Respecting Prescribed Brands of Manufactured Tobacco and Prescribed Cigarettes* (the Regulations) set out the brands of manufactured tobacco and the cigarettes that qualify, under subsections 38(3) or (4) of the *Excise Act, 2001* (the Act), for exemption from the marking requirements under subsection 38(1) of the Act.

The Regulations are being repealed as a result of amendments to subsections 38(3) and (4) of the Act (see the description of those amendments).

These amendments come into force on the first day of the month following the month that includes the day on which these amendments are enacted or made.

Division 3 – *Underused Housing Tax Act* and *Underused Housing Tax Regulations*

Underused Housing Tax Act

Clause 136
Definitions
UHTA
2

Existing section 2 of the *Underused Housing Tax Act* (the Act) defines terms that are used in the Act.

Subclause 136(1)
Definition "excluded owner"
UHTA
2

The definition "excluded owner" in section 2 of the Act contains a list of persons. An excluded owner of a residential property on December 31 of a calendar year is not required to file a return under subsection 7(1) of the Act or to pay tax under subsection 6(3) of the Act in respect of the residential property for the calendar year.

The definition "excluded owner" is amended to include a trustee of a trust that is a specified Canadian trust, a partner of a partnership that is a specified Canadian partnership (see commentary on the amendments to the definitions "specified Canadian trust" and "specified Canadian partnership" below), a specified Canadian corporation and a Canadian corporation all or substantially all of the shares of which are owned or controlled by one or more of certain trusts and corporations.

The structure of the definition "excluded owner" in section 2 is also consequentially amended to be consistent with new section 4.1 of the Act, which generally establishes that the Act applies to a person that is an owner of a residential property in more than one capacity as if the person were a separate person for each of those capacities (see commentary on new section 4.1 below).

These amendments are deemed to have come into force on January 1, 2023.

Subclause 136(2)
Definition “ownership percentage”
UHTA
2

The definition “ownership percentage” in section 2 of the Act contains the mechanism to determine the percentage of the ownership in respect of the residential property in respect of a particular owner for a calendar year.

The definition “ownership percentage” is amended consequentially to new section 4.1 of the Act. Section 4.1 generally establishes that the Act applies to a person that is an owner of a residential property in more than one capacity as if the person were a separate person for each of those capacities (see commentary on new section 4.1 below).

If the land registration system (or other similar system applicable where the residential property is located) does not indicate a percentage of the ownership in respect of the residential property for each capacity in respect of which the Act applies to a particular person as a separate person under section 4.1, and if the particular person indicates a particular percentage in their return and the Minister of National Revenue is satisfied that it reasonably reflects the particular person’s percentage of the ownership in respect of the residential property for the particular capacity for which the particular person is filing the return, the particular percentage will be regarded as the particular person’s ownership percentage in respect of the property for the calendar year for that capacity of ownership.

The definition is also amended so that, if an owner owns a residential property jointly with other owners, and the jointly owned portion of ownership is less than 100%, the amended definition clarifies that the percentage reflective of their joint ownership would be divided evenly amongst the joint owners in determining the “ownership percentage” of each of the joint owners.

Where the percentages of the ownership, in respect of a residential property, listed in the land registry system or other similar system applicable where the residential property is located do not equate to 100%, any owners of the property listed in the registry or system that are not tied to a specific percentage listed in the registry or system would be allocated an equal share of the remaining percentage.

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

Subclause 136(3)
Definition "owner"
UHTA
2

Under existing paragraph (e) of the definition "owner" in section 2 of the Act, an owner of a residential property generally does not include a person that gives continuous possession of land on which the residential property is situated to a life lease holder or long-term lease holder. That paragraph is amended to make a correction by replacing the expression "all of the land" with "the land" for greater consistency with other instances of the same expression in the Act and is also amended to generally update the wording in accordance with current legislative drafting standards.

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

Subclauses 136(4) and (5)
Definitions "specified Canadian partnership" and "specified Canadian trust"
UHTA
2

As a consequence of changes to and restructuring of the definition "excluded owner" (see commentary on the definition "excluded owner" above), the definitions "specified Canadian partnership" and "specified Canadian trust" in section 2 of the Act are amended to reflect those changes. Under amended paragraph (a) of the definition "specified Canadian partnership", a partnership is a specified Canadian partnership if each of its members is

- a person referred to in paragraph (c) of the definition "excluded owner" in section 2;
- a trust referred to in paragraph (a) of that definition; or
- another specified Canadian partnership.

Similarly, under amended paragraph (a) of the definition "specified Canadian trust", a trust is a specified Canadian trust if each beneficiary having a beneficial interest in the residential property is

- a person referred to in paragraph (c) of the definition "excluded owner" in section 2;
- another trust referred to in paragraph (a) of that definition; or
- a specified Canadian partnership.

These amendments are deemed to have come into force on January 1, 2023.

Clause 137
Owner – multiple capacities
UHTA
4.1

New section 4.1 of the Act establishes that, where a person is an owner of a residential property in more than one capacity, the person is treated as if they were a separate person for each capacity. In particular, section 4.1 states that the Act applies to the person as if the person were a separate person in respect of each partnership for which the person is an owner of the residential property in their capacity as a partner of the partnership, each trust for which the person is an owner of the residential property in the person's capacity as trustee of the trust, and all other capacities in which the person is an owner of the residential property.

For example, an individual, who is not a citizen or permanent resident of Canada and who is an owner of a residential property both in their capacity as an individual and in their capacity as a trustee of a specified Canadian trust, may be an excluded owner in their capacity as trustee of the specified Canadian trust, but not in their capacity as an individual. This individual would only be required to file a return in their capacity as an individual and pay the underused housing tax (if an exclusion is not available) on the ownership percentage in their capacity as an individual.

New section 4.1 is deemed to have come into force on January 1, 2022.

Clause 138
Application of tax
UHTA
6

Existing section 6 of the Act sets out rules that apply for the purposes of establishing an owner's liability for tax under the Act, including circumstances where the tax would not be payable by an owner.

Subclause 138(1)
Tax payable
UHTA
6(3)

Existing subsection 6(3) of the Act is the charging provision for the tax. Under this subsection, subject to other provisions of the Act, every person that is, on December 31 of a calendar year, an owner of a residential property (other than an excluded owner as defined under section 2 of the Act) is required to pay to His Majesty in right of Canada tax in respect of the residential property for the calendar year in the amount determined by a formula.

Subsection 6(3) is amended to clarify that the determination of whether a person is excluded from the application of that subsection by virtue of being an excluded owner is to be made in relation to a particular residential property and the particular capacity in which the person is the owner of that property (see commentary on new section 4.1 of the Act above). For example, a person may be an excluded owner of a residential property in one capacity, but may not be an excluded owner of another residential property or of the same residential property in another capacity.

These amendments come into force on royal assent.

Subclause 138(2)
Consequential amendments
UHTA
6(7)

Existing subsection 6(7) of the Act sets out exclusions where tax under subsection 6(3) is not payable by a person in respect of a residential property for a calendar year.

Paragraphs 6(7)(a) and (b) are repealed. The existing exclusions available to specified Canadian corporations, partners of specified Canadian partnerships, and trustees of specified Canadian trusts, are not required because, effective January 1, 2023, these persons are included in the definition "excluded owner" of a residential property and excluded owners are not required to pay tax under subsection 6(3).

This amendment is deemed to have come into force on January 1, 2023.

Subclause 138(3)
Primary place of residence
UHTA
6(8)

Existing subsection 6(8) of the Act provides that no tax is payable under subsection 6(3) by an individual in respect of a residential property for a calendar year if a dwelling unit that is part of the residential property is, for the calendar year, the primary place of residence of the individual or the individual's spouse or common-law partner, or a child of the individual or the individual's spouse or common-law partner who occupies the residential property for the purposes of authorized study at a designated learning institution (as defined in section 211.1 of the *Immigration and Refugee Protection Regulations*).

Paragraph 6(8)(b) is amended to clarify that a child of the individual seeking the exclusion, or of the individual's spouse or common-law partner, need only occupy a dwelling unit that is part of the residential property, not the entire residential property.

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

Clause 139
Return required
UHTA
7(1)

Existing subsection 7(1) of the Act imposes a requirement on an owner (other than an excluded owner as defined in section 2 of the Act) of one or more residential properties in Canada to file a return in respect of each residential property they own for a calendar year.

Subsection 7(1) is amended to clarify that the determination of whether a person is excluded from the application of that subsection by virtue of being an excluded owner is to be made in relation to a particular residential property (and the particular capacity in which the person is the owner of that property; see commentary on new section 4.1 of the Act above). For example, a person may be an excluded owner of a residential property in one capacity, but may not be an excluded owner of another residential property or of the same residential property in another capacity.

These amendments come into force on royal assent.

Clause 140
Confidential information
UHTA
32(1), (6) and (7)

Existing section 32 of the Act provides for the confidentiality of information obtained by the Minister of National Revenue in the administration or enforcement of the Act that reveals, directly or indirectly, the identity of a person. This information may not be used or communicated unless specifically authorized under one or more of the exceptions contained in the section.

Existing subsection 32(6) enables disclosure of confidential information to a person for purposes of the administration or enforcement of the Act, the federal or provincial formulation or evaluation of fiscal policy and various other specified federal or provincial government operations. This subsection incorporates by reference, with necessary modifications, subsection 211(6) of the *Excise Act, 2001*. Existing subsection 32(7) provides a related restriction on the provision of confidential information under subsection 32(6).

Section 32 is amended to correct a cross-reference in the definition “confidential information” in subsection 32(1) and to replace subsections 32(6) and (7) with an amended subsection 32(6) to provide greater clarity on how subsections 211(6) and (6.1) of the *Excise Act, 2001* are

incorporated by reference to provide for and restrict the disclosure of confidential information under the Act.

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

Clause 141
Failure to file
UHTA
47

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

Subclause 141(1)
Failure to file
UHTA
47(1)

Existing subsection 47(1) of the Act provides that the amount of the penalty is equal to the greater of two amounts: (1) a minimum penalty amount; and (2) an increasing penalty amount. The minimum penalty amount is $5,000 if the person is an individual, and $10,000 if the person is not an individual.

Subsection 47(1) is amended to reduce the minimum non-filing penalty per property to $1,000 if the person is an individual, and $2,000 if the person is not an individual.

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

Subclause 141(2)
Failure to file
UHTA
47(2)

Existing subsection 47(2) of the Act provides that, if a person fails to file a return in respect of a residential property for a particular calendar year by December 31 of the following calendar year, in calculating the increasing penalty amount, the tax calculated under section 6 of the Act in respect of the residential property for the particular calendar year is to be determined without reference to paragraphs 6(7)(c) to (f) and subsections 6(8) and (9). The excluded references contain exemptions from payment of the tax.

Subsection 47(2) is amended to add a reference to paragraph 2(3)(a) of the *Underused Housing Tax Regulations*, which provides for an exemption for eligible vacation properties, to the list of

exemptions that must be excluded from the calculation of the tax under section 6 for the purposes of the calculation of the increasing penalty amount.

These amendments apply in respect of returns for the 2023 and subsequent calendar years.

Clause 142
Inspections
UHTA
62

Existing section 62 of the Act provides that a person authorized by the Minister of National Revenue to do so may, for the purposes of the administration or enforcement of the Act, inspect, audit or examine records, property, premises or processes in order to determine whether a person is in compliance with the Act. The person may enter any premises or place of business and require persons to offer all reasonable assistance. However, if the premises sought to be entered is a dwelling house, the consent of the occupant or a warrant issued by a judge is required.

Subsection 62(2) is amended to ensure that a person authorized by the Minister to do so may, for the purposes of the administration or enforcement of the Act, inspect, audit or examine records, property, premises or processes in order to determine whether a person is in compliance with the Act at all reasonable times.

Paragraph 62(2)(b) is amended by requiring that authorized persons be given all reasonable assistance and that all their proper questions be answered. Paragraph 62(2)(b) sets out that a person will be required to provide this assistance, as well as to answer these questions with respect to the administration or enforcement of the Act.

Paragraph 62(2)(b) further sets out a requirement for any person to attend with the authorized person at a place designated by the authorized person, or by video-conference or another form of electronic communication, and sets out the requirement to answer questions orally. Paragraph 62(2)(b) sets out that authorized persons may require that questions be answered in writing, in any form that they specify. For example, authorized persons may require answers to be provided in electronic form, such as by way of an electronic spreadsheet or table. They may also require that questions be answered by means of an organizational chart, or by another similar form of presentation.

Subsection 62(2) is amended by adding paragraph (c). New paragraph 62(2)(c) sets out that authorized persons may require a person to give the authorized person all reasonable assistance with anything the authorized person is authorized to do under the Act.

Section 62 is also amended by updating cross-references in subsection 62(3) and paragraph 62(4)(a) consequential to the amendments made to subsection 62(2) and to generally update the wording in accordance with current legislative drafting standards.

These amendments come into force on royal assent.

Clause 143
Tax liability – transfers not at arm's length
UHTA
80

Existing section 80 of the Act provides rules under which a transferee of property may be liable for unpaid tax of the transferor when the two parties are not dealing at arm's length.

Section 80 is amended by adding new subsections 80(0.1) and (6).

These amendments come into force on royal assent.

Subclause 143(1)
Definition "transaction"
UHTA
80(0.1)

Consequential to the introduction of the section 80 anti-avoidance rules in new subsection 80(6) of the Act, section 80 is amended by adding new subsection 80(0.1). Subsection 80(0.1) provides that, in section 80, a "transaction" includes an arrangement or event.

Subclause 143(2)
Anti-avoidance rules
UHTA
80(6)

The amount that a person is liable to pay in respect of the transfer of property from a non-arm's length tax debtor is determined under existing subsection 80(1) of the Act. The Minister of National Revenue may assess the person for such a liability under existing subsection 80(3).

Subsection 80(1) applies in situations where

- there has been a non-arm's length transfer of property; and
- the transferor had a pre-existing tax liability or a tax liability that arose in the calendar year of the transfer.

If these conditions are met, the transferee is jointly and severally or solidarily liable in respect of amounts payable by the transferor under the Act, to the extent that the fair market value of the property transferred exceeded the value of the consideration given for the property at the time of the transfer.

New subsection 80(6) introduces new anti-avoidance rules to address planning which seeks to circumvent the application of section 80.

New paragraph 80(6)(a) addresses planning that attempts to circumvent the application of section 80 by avoiding the requirement that property be transferred between persons that do not deal at arm's length. This paragraph deems, for the purposes of section 80, a transferor and transferee of property to not be dealing at arm's length at all times in a transaction or series of transactions involving the transfer if

- at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions, the transferor and transferee do not deal at arm's length; and
- it is reasonable to conclude that one of the purposes of undertaking or arranging the transaction or series of transactions is to avoid joint and several, or solidary, liability of the transferee and transferor for an amount payable under the Act.

New paragraph 80(6)(b) addresses planning that attempts to circumvent the application of section 80 by avoiding the requirement that the transferor have an existing tax debt owing in or in respect of the calendar year in which the property is transferred, or any preceding calendar year. This new paragraph provides that an amount that the transferor is liable to pay under the Act (including, for greater certainty, an amount that the transferor is liable to pay under section 80, regardless of whether the Minister has made an assessment under subsection 80(3) for that amount) is deemed to have become payable in the calendar year in which the property was transferred, if it is reasonable to conclude that one of the purposes for the transfer of property is to avoid the payment of future tax debt by the transferor or transferee.

New paragraph 80(6)(c) addresses planning that attempts to effectively avoid section 80 through a transaction or series of transactions that reduce the fair market value of consideration given for the property transferred in order to render all or a portion of a tax debt of the transferor uncollectible.

In applying section 80, element A of the formula in paragraph 80(1)(d) is intended to limit the joint and several, or solidary, liability in respect of any tax liability of the transferor for the calendar year in which the transfer took place, or any preceding calendar year. Element A limits the joint and several, or solidary, nature of the transferor's tax liability to the extent that, at the

time of the transfer, the fair market value of the transferred property exceeds the fair market value of the consideration received.

New paragraph 80(6)(c) ensures that the fair market value of consideration given for the transferred property remains relevant in determining the extent to which joint and several, or solidary, liability applies under section 80, including

- at the time that the consideration was given; and
- throughout the period that begins immediately before and ends immediately after the transaction or series of transactions that includes the transfer of property.

For this purpose, paragraph 80(6)(c) deems the amount determined under element A in paragraph 80(1)(d) to be the greater of

- the amount otherwise determined for element A without reference to this new anti-avoidance rule; and
- the amount by which the fair market value of the property at the time of the transfer exceeds the lowest fair market value of the consideration (that is held by the transferor) given for the property at any time during the period beginning immediately prior to the transaction or series of transactions and ending immediately after the transaction or series of transactions (in determining this amount, any part of the consideration that is in a form that is cancelled or extinguished during the period is excluded).

For greater certainty, the reference to consideration that is in a form that is cancelled or extinguished in the description of element B in the formula in subparagraph 80(6)(c)(ii) is intended to ensure an appropriate extension of the joint and several, or solidary, liability in situations where property given as consideration (for example, a promissory note) is subsequently cancelled or extinguished for proceeds below the fair market value at the time it is given.

Clause 144
Date electronic notice sent
UHTA
83(11)

Existing subsection 83(11) of the Act provides that, for the purposes of the Act, a notice or other communication will be presumed to be sent by the Minister of National Revenue and received by a person on the date that an electronic message (informing the person that a notice or other communication is available in their secure electronic account) is sent to the person's most recent electronic address.

A notice or other communication is presumed to be made available if it is posted by the Minister in the person's secure electronic account, the person has authorized that notices or other communications may be made available in this manner and the person has not revoked their authorization in a manner specified by the Minister.

Consequential on the introduction of new subsection 83(11.1), subsection 83(11) is amended to limit its application to notices or other communications sent electronically by the Minister to a person that do not refer to the business number of a person.

New subsection 83(11.1) changes the default method of correspondence for persons that use the Canada Revenue Agency's My Business Account service.

Subsection 83(11.1) provides that a notice or other communication that refers to the business number of a person is presumed to be sent to and received by the person on the date that it is posted in the secure electronic account (My Business Account) in respect of the business number. With at least 30 days' notice, a person may request in a manner specified by the Minister that notices or other communications making reference to the business number be sent by mail.

This amendment comes into force on royal assent.

Underused Housing Tax Regulations

Clause 145
Definition “residential property”
Underused Housing Tax Regulations
1.1

New section 1.1 of the *Underused Housing Tax Regulations* (the Regulations) has the effect of excluding a residential condominium unit that is part of a building containing four or more residential condominium units from the definition “residential property” in section 2 of the *Underused Housing Tax Act* (the Act) if two conditions are satisfied.

The first condition is that the person is the owner of all or substantially all of the residential condominium units in the building. The second condition is that all or substantially all of the residential condominium units in the building of which the person is the owner are held by the person for the purpose of providing individuals with continuous occupancy of a residential condominium unit as a place of residence or lodging for a period of at least one month.

Whether or not a particular property is considered to be “residential property” is relevant in determining if certain obligations exist in respect of the particular property (e.g., to pay tax under section 6 of the Act or to file a return under section 7 of the Act).

This amendment is deemed to have come into force on December 31, 2022.

Clause 146
Prescribed areas and conditions
Underused Housing Tax Regulations
2

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

Subclauses 146(1) and (2)
Prescribed Areas
Underused Housing Tax Regulations
2(2)

Existing subsection 2(2) of the Regulations prescribes the following areas:

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

Paragraphs 2(2)(a) and (b) are amended to clarify that, for the 2022 calendar year, the above determination of whether an area is a prescribed area is to be made with reference to the census for 2021 as published by Statistics Canada. For 2023 and subsequent calendar years, that determination will continue to be made with reference to the last census published by Statistics Canada before the calendar year.

Subclauses 146(3) and (4)
Prescribed Conditions
Underused Housing Tax Regulations
2(3)

Existing subsection 2(3) of the Regulations sets out a condition for the purposes of paragraph 6(7)(m) of the Act.

Subsection 2(3) is amended by moving the existing condition to new paragraph 2(3)(a) and by adding a new condition in new paragraph 2(3)(b). For the purposes of paragraph 6(7)(m) of the Act, residential property will be included under that paragraph if it is located in an area prescribed by subsection 2(2) and meets either the condition set out in paragraph 2(3)(a) or the condition set out in paragraph 2(3)(b).

The new condition set out in paragraph 2(3)(b) in respect of a particular residential property for a calendar year is that a person referred to as the "operator" (i.e. the person referred to in subsection 6(7) of the Act or another person that is related to that person) carries on business in Canada and the particular residential property is held during the calendar year primarily to provide a place of residence or lodging to an individual at a location at which the individual is required to be in the performance of the individual's duties as:

- an officer or employee of the operator;
- a contractor, or an employee of the contractor, engaged by the operator to render services at that location to the operator; or
- a subcontractor, or an employee of the subcontractor, engaged by such a contractor to render services at that location that are acquired by the contractor for the purpose of supplying services to the operator.

This amendment applies to the 2023 and subsequent calendar years.

Subsection 2(3) is further amended by modifying the condition set out in paragraph 2(3)(a). Amended paragraph (2)(3)(a) requires that all of the following three conditions set out in subparagraphs 2(3)(a)(i) to (iii) be met for the overall condition set out in paragraph 2(3)(a) to be satisfied in respect of a particular residential property for a calendar year:

- New subparagraph (a)(i) sets out the existing condition, previously set out in paragraph (a), that the particular residential property is used as a place of residence or lodging by the person or the person's spouse or common-law partner for at least 28 days during the calendar year.
- The condition in new subparagraph (a)(ii) requires that the person indicates that no tax is payable in respect of the particular residential property under paragraph (a) and paragraph 6(7)(m) of the Act in the return filed under the Act by the person for the particular residential property and for the calendar year.
- The condition in new subparagraph (a)(iii) requires that neither the person nor the person's spouse or common law partner indicates that no tax is payable in respect of any residential property other than the particular residential property under paragraph (a) and paragraph 6(7)(m) of the Act in a return filed under the Act by the person or the person's spouse or common law partner for the calendar year.

This amendment applies to the 2024 and subsequent calendar years.

Division 4 – *Greenhouse Gas Pollution Pricing Act* (Part 1)

Clause 147
Confidential information
GGPPA
107

Existing section 107 of the *Greenhouse Gas Pollution Pricing Act* (the Act) provides for the confidentiality of information obtained by the Minister of National Revenue in the administration or enforcement of the Act that reveals, directly or indirectly, the identity of a person. This information may not be used or communicated unless specifically authorized under one or more of the exceptions contained in the section.

Existing subsection 107(6) enables disclosure of confidential information to a person for purposes of the administration or enforcement of the Act, the federal or provincial formulation or evaluation of fiscal policy and various other specified federal or provincial government operations. This subsection incorporates by reference, with necessary modifications, subsection 211(6) of the *Excise Act, 2001*. Existing subsection 107(7) provides a related restriction on the provision of confidential information under subsection 107(6).

Section 107 is amended to correct a cross-reference in the definition "confidential information" in subsection 107(1) and to replace subsections 107(6) and (7) with an amended subsection 107(6) to provide greater clarity on how subsections 211(6) and (6.1) of the *Excise Act, 2001* are incorporated by reference to provide for and restrict the disclosure of confidential information under the Act.

This amendment comes into force on the date on which this Act receives royal assent.

Subclause 147(2)
Disclosure of confidential information
GGPPA
107(6) and (7)

Existing subsections 107(6) and (7) of the Act are replaced with an amended subsection 107(6) to improve the clarity of the incorporation by reference of certain provisions of the *Excise Act, 2001*. Under the amendments of this subclause, the rule contained in existing paragraph 107(6)(a) is now moved into new subsection 107(7).

As a result, new subsection 107(6) deals comprehensively with the incorporation by reference rules and subsection 107(7) sets out the other permissive information sharing rules. New subsection 107(7) enables an official to provide confidential information to another official for certain purposes set out in new paragraphs 107(7)(a) to (c).

New paragraph 107(7)(a) provides that an official may provide any confidential information to an official of the Department of the Environment solely for the purposes of Part 2 of the Act or the formulation or evaluation of greenhouse gas pollution pricing policy. This is the same rule that was previously located in existing paragraph 107(6)(a).

New paragraph 107(7)(b) provides that an official may provide any confidential information relating to His Majesty in right of a province to an official of a department or agency of the government of Canada. The paragraph applies if His Majesty in right of the province or an agent of His Majesty in right of the province is not in compliance with Part 1 of the Act or has stated that it will not comply with Part 1 of the Act. The information may be provided solely for the purposes of the evaluation of, or the formulation of a response to, the non-compliance or statement.

New paragraph 107(7)(c) provides that an official may provide any confidential information relating to an agent of His Majesty in right of a province to an official of a department or agency of the government of Canada. The paragraph applies if the agent or His Majesty in right of the province is not in compliance with Part 1 of the Act or has stated that it will not comply with Part 1 of the Act. The information may be provided solely for the purposes of the evaluation of, or the formulation of a response to, the non-compliance or statement.

These amendments come into force on the date on which this Act receives royal assent.

Subclause 147(3)
Public disclosure by representative of government entity
GGPPA
107(9)

Existing paragraph 107(9)(a) of the Act provides that a representative of a government entity may, in connection with a program, activity or service provided or undertaken by the government entity, make available to the public the business number of, and the name of (including any trade name or other name used by), the holder of a business number, if a representative of the government entity was provided with that information under paragraph 107(6)(b).

Paragraph 107(9)(a) is amended consequentially to the amendments to subsections 107(6) and (7) (see commentary on the amendments to those subsections above) so that a representative of the government entity may, in connection with a program, activity or service provided or undertaken by the government entity, make available to the public the business number of, and the name of (including any trade name or other name used by), the holder of a business number, if they were provided with that information under new subsection 107(6).

This amendment comes into force on the date on which this Act receives royal assent.

Subclause 147(4)
Public disclosure – province or agent non-compliance
GGPPA
107(9.1) and (9.2)

New subsection 107(9.1) of the Act provides that the Minister of National Revenue may communicate or otherwise make available to the public, in any manner that the Minister considers appropriate, confidential information relating to a person that is His Majesty in right of a province or an agent of His Majesty in right of a province if two conditions are satisfied.

The first condition can be satisfied by meeting the requirements in either paragraph 107(9.1)(a) or (b), as applicable. Paragraph (a) applies if the person is His Majesty in right of a province and the requirements under that paragraph are satisfied if it is the case that:

- the person is not in compliance with Part 1 of the Act or has publicly stated that it will not comply with Part 1 of the Act; or
- an agent of His Majesty in right of the province is not in compliance with Part 1 of the Act or has publicly stated that it will not comply with Part 1 of the Act.

Alternatively, the first condition can be satisfied by meeting requirements of paragraph 107(9.1)(b). Paragraph (b) applies if the person is an agent of His Majesty in right of a province and the requirements under that paragraph are satisfied if it is the case that:

- the person is not in compliance with Part 1 of the Act or has publicly stated that it will not comply with Part 1 of the Act; or
- His Majesty in right of the province is not in compliance with Part 1 of the Act or has publicly stated that it will not comply with Part 1 of the Act.

The second condition is set out under paragraph 107(9.1)(c) and it is satisfied if the confidential information relates to:

- a registration status of, or the status of an application for registration by, the person under Part 1 of the Act;
- a return that is filed, or required to be filed, by the person under Part 1 of the Act, including information that is contained in the return or that could reasonably be expected to be contained in the return;
- an amount that is payable under Part 1 of the Act by or to the person, including a charge, rebate, net charge, penalty or amount of interest;

- a projection or estimation of an amount that is, or that could reasonably be expected to be, payable under Part 1 of the Act by or to the person, including a charge, rebate, net charge, penalty or amount of interest;
- an amount that is assessed under Part 1 of the Act in relation to the person;
- the extent to which an amount referred to in any of subparagraphs (iii) to (v) has or has not been paid;
- an amount that is paid under Part 1 of the Act by or to the person;
- a quantity of fuel or combustible waste that is delivered, imported, brought into a listed province, used or otherwise quantified for purposes of Part 1 of the Act;
- a projection or estimation of a quantity of fuel or combustible waste that could reasonably be expected to be delivered, imported, brought into a listed province, used or otherwise quantified for purposes of Part 1 of the Act;
- a step that is, or is not, taken or contemplated by the Minister of National Revenue in the administration or enforcement of Part 1 of the Act relating to the person, including information relating to the collection of an amount, an assessment, an objection to an assessment, an audit or an appeal or legal proceeding;
- a step that is or is not taken by the person in relation to its compliance or non-compliance with Part 1 of the Act, including information relating to the collection of an amount, an assessment, an objection to an assessment, an audit or an appeal or legal proceeding; or
- a declaration or representation made by the person relating to anything set out in subparagraphs 107(9.1)(c)(i) to (xi).

New subsection 107(9.2) provides that information relating to His Majesty in right of a province or an agent of His Majesty in right of a province that is communicated, or otherwise made available to the public, by the Minister under subsection 107(9.1) is deemed not to be confidential information for the purposes of sections 107 and 134 of the Act (see commentary on the amendment to subsection 134(2) below).

These modifications come into force on the date on which this Act receives royal assent.

Clause 148
Offence – confidential information
GGPPA
134(2)

Existing subsection 134(2) of the Act provides that every person to whom confidential information has been provided for a particular purpose under subsection 107(6) of the Act and that for any other purpose knowingly uses, provides to any person, allows the provision to any person of, or allows any person access to, that information is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months, or to both.

Subsection 134(2) is amended consequentially to the amendments to subsections 107(6) and (7) (see commentary on the amendments to those subsections above) so that it refers to confidential information that has been provided for a particular purpose under subsection 107(6) or (7).

This amendment comes into force on the date on which this Act receives royal assent.