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# **Explanatory Notes Relating to the Income Tax Act, the Excise Act, 2001 and the Excise Tax Act**

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Published by  
The Honourable James M. Flaherty, P.C., M.P.  
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## Explanatory Notes

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## Preface

These explanatory notes describe proposed amendments to the *Income Tax Act*, the *Excise Act, 2001* and the *Excise Tax Act* to implement certain tax measures included in the Budget announced on June 6, 2011. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

The Honourable James M. Flaherty, P.C., M.P.  
Minister of Finance

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These explanatory notes are provided to assist in an understanding of the relevant amendments. The 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 1**  
**Amendments to the Income Tax Act**  
**Income Tax Act**

**Clause 2**

**Registered Disability Savings Plans**

ITA  
146.4

Budget 2011 announced a measure to provide beneficiaries with a shortened life expectancy with greater flexibility to access their savings in a Registered Disability Savings Plan (RDSP) by allowing them to make withdrawals without requiring the repayment of the assistance holdback amount. The assistance holdback amount is the amount that the RDSP would be required, under the *Canada Disability Savings Act*, to repay to the government if a withdrawal were made from the plan, and is generally equal to the total amount of Canada Disability Savings Grants and Canada Disability Savings Bonds paid into the RDSP in the 10 years preceding the withdrawal.

The amendments to section 146.4 of the Act give effect to this measure.

**Definitions “specified year”**

ITA  
146.4(1)

Under current rules, paragraph 146.4(4)(l) and subparagraph 146.4(4)(n)(i) limit the amount of disability assistance payments that can be paid from a registered disability savings plan (RDSP), unless the year in which the payments are made is a “specified year”. Generally, a specified year is:

- the calendar year in which a medical doctor certifies in writing that a beneficiary’s state of health is such that, in the doctor’s opinion, the beneficiary is not likely to survive more than five years; and
- each of the five calendar years following the year of certification.

An assistance holdback amount may, in certain circumstances, still have to be repaid to the government, even if the beneficiary has a shortened life expectancy.

The definition “specified year” is amended to address situations where an RDSP is a specified disability savings plan (see commentary on new subsection 146.4(1.1)). This amendment will effectively allow withdrawals to be made from the plan in the year of certification and each subsequent year without triggering the repayment of the assistance holdback amount.

This amendment comes into effect on royal assent.

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### **Specified disability savings plan**

ITA

146.4(1.1)

Budget 2011 announced a measure to provide beneficiaries with a shortened life expectancy with greater flexibility to access their savings in a Registered Disability Savings Plan (RDSP) by allowing them to make withdrawals without requiring the repayment of the assistance holdback amount.

To implement this measure, a new concept, specified disability savings plan, is being added in new subsection 146.4(1.1). In general terms, under new subsection 146.4(1.1), if

- a medical doctor certifies in writing that the beneficiary of an RDSP is, in his or her professional opinion, unlikely to survive more than five years,
- the holder of the RDSP elects in prescribed form and provides the election, along with the medical certification, to the issuer of the RDSP, and
- the issuer notifies the specified Minister (the Minister of Human Resources and Skills Development) of the election in a manner and format acceptable to that Minister,

the RDSP becomes a specified disability savings plan at the time the notification is received by that Minister.

A specified disability savings plan will not be required to repay an assistance holdback amount.

New subsection 146.4(1.1) comes into effect on royal assent.

### **Ceasing to be a specified disability savings plan**

ITA

146.4 (1.2)

New subsection 146.4(1.2) describes the circumstances in which a plan will cease to be a specified disability savings plan. A plan ceases to be a specified disability savings plan (refer to commentary on subsection 146.4(1.1)) on the earliest of the occurrence of certain events. New subsection 146.4(1.2) describes these events, which generally are:

- under paragraph (a), when the specified Minister (the Minister of Human Resources and Skills Development) receives notification, in a manner and format acceptable to that Minister, from the issuer of the plan that the holder elects that the plan is to cease to be a specified disability savings plan;
- under paragraph (b), when the total of the taxable portions of disability assistance payments made from the plan in the year while it was a specified disability savings plan exceeds \$10,000;
- under paragraph (c), when a contribution, or an amount described in paragraph (a) or (b) of the definition “contribution” in subsection 146.4(1), is paid into the plan;
- under paragraph (d), when the plan is terminated or when the plan ceases to be an RDSP as a result of the application of paragraph 146.4(10)(a);



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- under paragraph (e), when lifetime disability assistance payments have not begun to be paid before the end of the particular calendar year following the year in which the plan last became a specified disability savings plan; and
  - under paragraph (f), when the plan is a “primarily government assisted plan” and the total amount of disability assistance payments made from the plan to the beneficiary in the calendar year is less than the amount determined by the formula set out in paragraph 146.4(4)(l) in respect of the plan for the calendar year.

New subsection 146.4(1.2) comes into effect on royal assent and is applicable to the 2011 and subsequent taxation years. However, as a transitional rule, a beneficiary under a specified disability savings plan in respect of which the required medical certification was obtained before 2012, will be allowed to utilize any unused portion of their 2011 withdrawal limit in 2012.

#### **Specified disability savings plan – waiting period**

ITA

146.4 (1.3)

A holder of a plan that ceases to be a specified disability savings plan pursuant to subsection 146.4(1.2) may be able to make a new election under subsection 146.4(1.1).

New subsection 146.4(1.3) provides that the holder may not make such an election until 24 months after the plan has ceased to be a specified disability savings plan because of subsection 146.4(1.2).

New subsection 146.4(1.1) comes into effect on royal assent.

#### **Specified disability savings plan – waiver**

ITA

146.4(1.4)

Pursuant to new subsection 146.4(1.2), a plan ceases to be a specified disability savings plan on the occurrence of certain events. Further, new subsection 146.4(1.3) imposes a waiting period before the holder of a plan that has ceased to be a specified disability savings plan can make a new election under subsection 146.4(1.1).

New subsection 146.4(1.4) allows the Minister of National Revenue to waive the application of subsection 146.4(1.2) or (1.3). That is, the Minister of National Revenue may preserve specified disability savings plan status despite the application of subsection 146.4(1.2) or may waive the waiting period requirement in subsection 146.4(1.3), if it is just and equitable to do so.

New subsection 146.4(1.1) comes into effect on royal assent.

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**Clause 3****Assessment**

ITA

152(1.01) and (1.2)

Section 152 of the Act contains rules relating to assessments and reassessments of tax, interest and penalties payable by a taxpayer, and to determinations and redeterminations of various other amounts. New subsection 152(1.01) provides generally that, if an individual requests the Minister of National Revenue to make a determination of their eligibility for the disability tax credit under section 118.3 of the Act, the Minister is required to determine whether the individual is eligible and to send a notice of determination to the individual.

Subsection 152(1.2) provides for the application of paragraphs 56(1)(l) and 60(o) and Divisions I and J of the Act relating to objections, assessments and appeals, with such modifications as the circumstances require, to various determinations and redeterminations made under Part I of the Act. Subsection 152(1.2) is amended to include a reference to determinations and redeterminations under new subsection 152(1.01). This gives individuals the right to file a notice of objection with the Minister. The amendment to subsection 152(1.2) also has the effect of providing rights of appeal to the Tax Court of Canada.

These amendments generally apply to taxation years after 2009 in respect of prescribed forms filed with the Minister after royal assent. However, the coming-into-force provision for these amendments provides that for an individual who has, before royal assent, filed the prescribed forms for the disability tax credit in respect of their 2008, 2009, 2010 or 2011 taxation years, the Minister of National Revenue is deemed to have issued a notice of determination if a notice that no tax is payable by the individual for one or more of those years has been issued to the individual. The date of the deemed notice of determination is deemed to be the later of the date of royal assent and the date that the notice that no tax is payable has been issued. The determination may be objected to within 180 days of the date of the deemed notice.

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## Part 2

### Measures Relating to Excise Duties and Sales and Excise Taxes

#### Excise Act, 2001

##### Clause 9

##### Definition “listed international agreement”

EA, 2001

2

The existing definition “listed international agreement” in section 2 of the *Excise Act, 2001* (the Act) means the *Convention on Mutual Administrative Assistance in Tax Matters*, concluded at Strasbourg on January 25, 1988, as amended from time to time. That Convention provides a framework for governments to combat tax avoidance and tax evasion on a global scale by facilitating the exchange of information between national tax administrations.

This defined term is used in subsection 208(1) and paragraph 211(6)(l) of the Act. Subsection 208(1) provides that the Minister of National Revenue may by notice require any person to provide information or any record for any purpose relating to the administration or enforcement of a listed international agreement or of the Act. In addition, under paragraph 211(6)(l), an official may, for the purposes of a provision contained in a listed international agreement, provide, allow the inspection of, or access to confidential information (as the terms official and confidential information are defined in subsection 211(1)).

The definition “listed international agreement” is amended to include any comprehensive tax information exchange agreement that Canada has entered into and that has effect in respect of another country or jurisdiction. The definition is also amended to clarify that the *Convention on Mutual Administrative Assistance in Tax Matters*, concluded at Strasbourg on January 25, 1988, includes any of its amendments made by a protocol or other international instrument, but only as ratified by Canada.

The amendment comes into force on royal assent.

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## Excise Tax Act

### Clause 10

#### Definition “listed international agreement”

ETA  
2(1)

Subsection 2(1) of the *Excise Tax Act* (the Act) defines terms that apply in section 2, Parts I to VIII (other than section 121) and Schedules I to IV of the Act.

The existing definition “listed international agreement” in subsection 2(1) means the *Convention on Mutual Administrative Assistance in Tax Matters*, concluded at Strasbourg on January 25, 1988, as amended from time to time. That Convention provides a framework for governments to combat tax avoidance and tax evasion on a global scale by facilitating the exchange of information between national tax administrations.

This defined term is used in subsection 99(1) of the Act, which provides that the Minister of National Revenue may by notice require any person to provide any book, record, writing or other document or any information or further information relating to the administration or enforcement of the Act, or of a listed international agreement.

The definition “listed international agreement” is amended to include any comprehensive tax information exchange agreement that Canada has entered into and that has effect in respect of another country or jurisdiction. The definition is also amended to clarify that the *Convention on Mutual Administrative Assistance in Tax Matters*, concluded at Strasbourg on January 25, 1988, includes any of its amendments made by a protocol or other international instrument, but only as ratified by Canada.

The amendment comes into force on royal assent.

### Clause 11

#### Definition “listed international agreement”

ETA  
123(1)

The existing definition “listed international agreement” in subsection 123(1) of the Act means the *Convention on Mutual Administrative Assistance in Tax Matters*, concluded at Strasbourg on January 25, 1988, as amended from time to time. That Convention provides a framework for governments to combat tax avoidance and tax evasion on a global scale by facilitating the exchange of information between national tax administrations.

The defined term is used in subsection 289(1) and paragraph 295(5)(n) of the Act. Subsection 289(1) provides that the Minister of National Revenue may by notice require any person to provide information or any document for any purpose relating to the administration or enforcement of a listed international agreement or of Part IX of the Act. In addition, under paragraph 295(5)(n), an official may, for the

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purposes of a provision contained in a listed international agreement, provide, allow the inspection of, or access to confidential information (as the terms official and confidential information are defined in subsection 295(1)).

The definition “listed international agreement” is amended to include any comprehensive tax information exchange agreement that Canada has entered into and that has effect in respect of another country or jurisdiction. The definition is also amended to clarify that the *Convention on Mutual Administrative Assistance in Tax Matters*, concluded at Strasbourg on January 25, 1988, includes any of its amendments made by a protocol or other international instrument, but only as ratified by Canada.

The amendment comes into force on royal assent.

## **Clause 12**

### **Rebate for Remembrance Day Poppies and Wreaths**

ETA  
259.2

New section 259.2 of the Act provides for a 100-per-cent rebate of the goods and services tax and harmonized sales tax (GST/HST) payable on the acquisition, importation or bringing into a participating province of poppies and wreaths by a Legion entity (as defined in new subsection 259.2(1)).

Section 259.2 applies in respect of tax that becomes payable, or is paid without having become payable, after 2009.

### **Definitions**

ETA  
259.2(1)

New subsection 259.2(1) defines certain expressions used in section 259.2.

#### **“claim period”**

A “claim period” refers to the period for which an application for a rebate under section 259.2 may be made. The expression “claim period” has the same meaning as in subsection 259(1) of the Act. As a result, if a rebate applicant is a GST/HST registrant, the claim period is the registrant’s reporting period. For a non-registrant person, the claim periods of that person are the first two fiscal quarters and the last two fiscal quarters of that person’s fiscal year.

#### **“Legion entity”**

The definition “Legion entity” is relevant in determining which persons are eligible for the rebate under section 259.2. A Legion entity is defined to be the Dominion Command or any provincial command or branch of the Royal Canadian Legion.

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**Rebate for Poppies and Wreaths**

ETA  
259.2(2)

New subsection 259.2(2) provides authority for the Minister of National Revenue to pay a rebate to a Legion entity (as defined in subsection 259.2(1)). The amount of the rebate is equal to the GST/HST payable, or paid without having become payable, in respect of the acquisition, importation or bringing into a participating province of poppies and wreaths by the Legion entity.

**Application for Rebate**

ETA  
259.2(3)

New subsection 259.2(3) provides that a Legion entity (as defined in subsection 259.2(1)) has up to four years after the end of its claim period (as defined in subsection 259.2(1)) in which the GST/HST became payable, or was paid without having become payable, to claim a rebate of that tax.

As a transitional provision, the limitation period under subsection 259.2(3) for filing a rebate application in respect of tax is extended to the day that is four years after the day the legislation enacting section 259.2 receives royal assent, if the limitation period in respect of that rebate would otherwise have expired sooner.

**Limitation**

ETA  
259.2(4)

New subsection 259.2(4) provides that only one application for rebates under section 259.2 can be made for a particular claim period of a Legion entity (as those terms are defined in subsection 259.2(1)).