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Legislative Proposals, Draft Regulations and Explanatory Notes Relating to the Excise Tax Act

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Legislative Proposals Relating to the Excise Tax Act

1. (1) The portion of subsection 141.01(5) of the *Excise Tax Act* before paragraph (*a*) is replaced by the following:

Method of determining extent of use, etc.

(5) Subject to section 141.02, the methods used by a person in a fiscal year to determine

(2) Subsection (1) is deemed to have come into force on April 1, 2007.

2. (1) The Act is amended by adding the following after section 141.01:

Definitions

141.02 (1) The definitions in this subsection apply in this section.

"adjusted tax credit amount" « *montant de crédit de taxe rajusté* »

"adjusted tax credit amount" means the amount determined, for a fiscal year of a person, by the formula

A × 365/B

where

A is the tax credit amount of the person for the fiscal year, and

B is the number of days in the fiscal year.

"adjusted total tax amount" « *montant total de taxe rajusté* »

"adjusted total tax amount" means the amount determined, for a fiscal year of a person, by the formula

A × 365/B

where

A is the total tax amount of the person for the fiscal year, and

B is the number of days in the fiscal year.

"business input" « *intrant d'entreprise* »

"business input" means an excluded input, an exclusive input or a residual input.

"direct attribution method" « *méthode d'attribution directe* »

"direct attribution method" means a method, conforming to criteria, rules, terms and conditions specified by the Minister, of determining in the most direct manner the operative extent and the procurative extent of property or a service.

"direct input" « *intrant direct* »

"direct input" means property or a service, other than

(*a*) an excluded input;

(*b*) an exclusive input; or

(*c*) a non-attributable input.

"excluded input" « *intrant exclu* »

"excluded input" of a person means

(*a*) property that is for use by the person as capital property;

(*b*) property or a service that is acquired, imported or brought into a participating province by the person for use as an improvement to property described in paragraph (*a*); or

(*c*) a prescribed property or service.

"exclusive input" « *intrant exclusif* »

"exclusive input" of a person means property or a service (other than an excluded input) that is acquired, imported or brought into a participating province by the person for consumption or use directly and exclusively for the purpose of making taxable supplies for consideration or directly and exclusively for purposes other than making taxable supplies for consideration.

"non-attributable input" « *intrant non attribuable* »

"non-attributable input" of a person means property or a service that is

(*a*) not an excluded input or an exclusive input of the person;

(*b*) acquired, imported or brought into a participating province by the person; and

(*c*) not attributable to the making of any particular supply by the person.

"operative extent" « *mesure d'utilisation* »

"operative extent" of property or a service means, as the case may be, the extent to which the consumption or use of the property or service is for the purpose of making taxable supplies for consideration or the extent to which the consumption or use of the property or service is for purposes other than making taxable supplies for consideration.

"procurative extent" « *mesure d'acquisition* »

"procurative extent" of property or a service means, as the case may be, the extent to which the property or service is acquired, imported or brought into a participating province for the purpose of making taxable supplies for consideration or the extent to which the property or service is acquired, imported or brought into a participating province for purposes other than making taxable supplies for consideration.

"qualifying institution" « *institution admissible* »

"qualifying institution" for a particular fiscal year means a person that

(*a*) is a financial institution of a prescribed class throughout the particular fiscal year of the person; and

(*b*) has two fiscal years immediately preceding the particular fiscal year and, for each of those two fiscal years,

(i) the adjusted tax credit amount of the person equals or exceeds the prescribed amount for that prescribed class for the particular fiscal year, and

(ii) the tax credit rate of the person equals or exceeds the prescribed percentage for that prescribed class for the particular fiscal year.

"requested information" « *renseignement demandé* »

"requested information" means any information, additional information or document in respect of an application made by a person under subsection (18) that the Minister requests in writing from the person.

"residual input" « *intrant résiduel* »

"residual input" means a direct input or a non-attributable input.

"specified method" « *méthode déterminée* »

"specified method" means a method, conforming to criteria, rules, terms and conditions specified by the Minister, of determining the operative extent and the procurative extent of property or a service.

"tax credit amount" « *montant de crédit de taxe* »

"tax credit amount" of a person for a fiscal year of the person means

(*a*) where the person has made an election under subsection (9) in respect of the fiscal year, the total of all amounts each of which is an input tax credit for the fiscal year that the person would, in the absence of that subsection, be entitled to claim under this Part in respect of a residual input for which tax in respect of its supply, importation or bringing into a participating province became payable by the person during the fiscal year without having been paid before the fiscal year or was paid by the person during the fiscal year without having become payable;

(*b*) where the person is a qualifying institution for the fiscal year, has not made an election under subsection (7) or (27) in respect of the fiscal year and has not received an authorization from the Minister to use for the fiscal year the particular methods set out in an application made under subsection (18), the total of all amounts each of which is an input tax credit for the fiscal year that the person would, if the person were not a qualifying institution for the fiscal year and did not make an election under subsection (9) in respect of the fiscal year, be entitled to claim under this Part in respect of a residual input for which tax in respect of its supply, importation or bringing into a participating province became payable by the person during the fiscal year without having been paid before the fiscal year or was paid by the person during the fiscal year without having become payable; and

(*c*) in any other case, the total of all amounts each of which is an input tax credit for the fiscal year that the person is entitled to claim under this Part in respect of a residual input for which tax in respect of its supply, importation or bringing into a participating province became payable by the person during the fiscal year without having been paid before the fiscal year or was paid by the person during the fiscal year without having become payable.

"tax credit rate" « *taux de crédit de taxe* »

"tax credit rate" of a person for a fiscal year of the person means the quotient, expressed as a percentage, determined by dividing the tax credit amount of the person for the fiscal year by the total tax amount of the person for the fiscal year.

"total tax amount" « *montant total de taxe* »

"total tax amount" of a person for a fiscal year of the person means the total of all amounts each of which is an amount of tax in respect of a supply, importation or bringing into a participating province of a residual input that became payable by the person during the fiscal year without having been paid before the fiscal year or was paid by the person during the fiscal year without having become payable.

Meaning of "consideration"

(2) In this section, "consideration" does not include nominal consideration.

Financial institution throughout a year

(3) For the purposes of this section, a person is a financial institution of a prescribed class throughout a particular fiscal year of the person if the person is a financial institution of that class at any time in the particular fiscal year.

Mergers and amalgamations

(4) If two or more corporations (each of which is referred to in this subsection as a "predecessor") are merged or amalgamated to form one corporation (in this subsection referred to as the "new corporation"), otherwise than as the result of the acquisition of property of one corporation by another corporation pursuant to the purchase of the property by the other corporation or as the result of the distribution of the property to the other corporation on the winding-up of the corporation, despite section 271 and for the purposes of determining the tax credit amount and the tax credit rate of the new corporation for a fiscal year of the new corporation, the following rules apply:

(*a*) the new corporation is deemed to have had two fiscal years, each of 365 days, immediately preceding the first fiscal year of the new corporation;

(*b*) the tax credit amount of the new corporation for the fiscal year of the new corporation (in this subsection referred to as the "prior year of the new corporation") immediately preceding the first fiscal year of the new corporation is deemed to be equal to the total of all amounts each of which is the adjusted tax credit amount of a predecessor for the last fiscal year, if any, of the predecessor (in this subsection referred to as the "prior year of the predecessor") ending before the time of the merger or amalgamation otherwise than as a result of the merger or amalgamation;

(*c*) the tax credit amount of the new corporation for the fiscal year of the new corporation (in this subsection referred to as the "second prior year of the new corporation") immediately preceding the prior year of the new corporation is deemed to be equal to the total of all amounts each of which is the adjusted tax credit amount of a predecessor for the fiscal year, if any, of the predecessor (in this subsection referred to as the "second prior year of the predecessor") immediately preceding the prior year of the predecessor;

(*d*) the total tax amount of the new corporation for the prior year of the new corporation is deemed to be the total of all amounts, each of which is the adjusted total tax amount of a predecessor for the prior year of the predecessor, if any; and

(*e*) the total tax amount of the new corporation for the second prior year of the new corporation is deemed to be the total of all amounts, each of which is the adjusted total tax amount of a predecessor for the second prior year of the predecessor, if any.

Winding-up

(5) If at any time a particular corporation is wound up and not less than 90% of the issued shares of each class of the capital stock of the particular corporation were, immediately before that time, owned by another corporation, despite section 272 and for the purposes of determining the tax credit amount and the tax credit rate of the other corporation for a fiscal year of the other corporation, the following rules apply:

(*a*) the tax credit amount of the other corporation for the fiscal year of the other corporation (in this subsection referred to as the "specified year of the other corporation") that includes the day on which the particular corporation is wound up is deemed to be equal to the total of

(i) the amount that would, if this subsection did not apply to the winding-up of the particular corporation, be the adjusted tax credit amount of the other corporation for the specified year of the other corporation, and

(ii) the amount that is the adjusted tax credit amount of the particular corporation for the last fiscal year, if any, of the particular corporation (in this subsection referred to as the "prior year of the particular corporation") ending before the day on which the particular corporation is wound up;

(*b*) the tax credit amount of the other corporation for the fiscal year, if any, of the other corporation (in this subsection referred to as the "prior year of the other corporation") immediately preceding the specified year of the other corporation is deemed to be equal to the total of

(i) the amount that would, if this subsection did not apply to the winding-up of the particular corporation, be the adjusted tax credit amount of the other corporation for the prior year of the other corporation, and

(ii) the amount that is the adjusted tax credit amount of the particular corporation for the fiscal year, if any, of the particular corporation (in this subsection referred to as the "second prior year of the particular corporation") immediately preceding the prior year of the particular corporation;

(*c*) the total tax amount of the other corporation for the specified year of the other corporation is deemed to be the total of

(i) the amount that would, if this subsection did not apply to the winding-up of the particular corporation, be the adjusted total tax amount of the other corporation for the specified year of the other corporation, and

(ii) the amount that is the adjusted total tax amount of the particular corporation for the prior year of the particular corporation, if any; and

(*d*) the total tax amount of the other corporation for the prior year of the other corporation, if any, is deemed to be the total of

(i) the amount that would, if this subsection did not apply to the winding-up of the particular corporation, be the adjusted total tax amount of the other corporation for the prior year of the other corporation, and

(ii) the amount that is the adjusted total tax amount of the particular corporation for the second prior year of the particular corporation, if any.

Allocation of exclusive inputs

(6) For the purposes of this Part, the following rules apply in respect of any exclusive input of a financial institution

(*a*) if the exclusive input is acquired, imported or brought into a participating province for consumption or use directly and exclusively for the purpose of making taxable supplies for consideration, the financial institution is deemed to have acquired, imported or brought into the participating province the exclusive input for consumption or use exclusively in the course of commercial activities of the financial institution; and

(*b*) if the exclusive input is acquired, imported or brought into a participating province for consumption or use directly and exclusively for purposes other than making taxable supplies for consideration, the financial institution is deemed to have acquired, imported or brought into the participating province the exclusive input for consumption or use exclusively otherwise than in the course of commercial activities of the financial institution.

Residual inputs — Election for transitional year

(7) If a person is a qualifying institution for the first fiscal year of the person that begins after March 2007, the Minister has assessed the net tax of the person for any reporting period included in any of the four fiscal years immediately preceding that first fiscal year, the notice of assessment, subsequent assessment or reassessment in respect of the reporting period does not reflect any inappropriateness in respect of the methods used by the person for the purpose of determining input tax credits in respect of residual inputs of the person and those methods would be fair and reasonable if used in the same manner by the person in that first fiscal year for the purposes of determining the operative extent and the procurative extent of all residual inputs of the person, the person may elect to use those methods in that same manner for that first fiscal year to determine, for the purposes of this Part, the operative extent and the procurative extent of all residual inputs of the person.

Residual inputs — Prescribed extent of use

(8) For the purposes of this Part, if a financial institution is a qualifying institution for a fiscal year of the financial institution and has not made an election under subsection (7) for the fiscal year, the following rules apply for the fiscal year in respect of each residual input of the financial institution:

(*a*) the extent to which the consumption or use of the residual input is for the purpose of making taxable supplies for consideration is deemed to be equal to the prescribed percentage for the prescribed class of the financial institution;

(*b*) the extent to which the consumption or use of the residual input is for purposes other than making taxable supplies for consideration is deemed to be equal to the difference between 100% and the prescribed percentage for the prescribed class of the financial institution;

(*c*) the extent to which the residual input is acquired, imported or brought into a participating province by the qualifying institution for the purpose of making taxable supplies

for consideration is deemed to be equal to the prescribed percentage for the prescribed class of the financial institution;

(*d*) the extent to which the residual input is acquired, imported or brought into a participating province by the qualifying institution for purposes other than making taxable supplies for consideration is deemed to be equal to the difference between 100% and the prescribed percentage for the prescribed class of the financial institution; and

(*e*) for the purpose of determining an input tax credit in respect of the residual input, the description of B in the formula in subsection 169(1) is deemed to be equal to the prescribed percentage for the prescribed class of the financial institution.

Residual inputs — Elected extent of use

(9) For the purposes of this Part, if a person is a financial institution (other than a qualifying institution) of a prescribed class throughout a particular fiscal year of the person and the tax credit rate of the person for each of the two fiscal years immediately preceding the particular fiscal year equals or exceeds the prescribed percentage for the prescribed class of financial institutions of the person for the particular fiscal year, the person may elect to have the following rules apply for the particular fiscal year in respect of each residual input of the person:

(*a*) the extent to which the consumption or use of the residual input is for the purpose of making taxable supplies for consideration is deemed to be equal to the prescribed percentage for the prescribed class;

(*b*) the extent to which the consumption or use of the residual input is for purposes other than making taxable supplies for consideration is deemed to be equal to the difference between 100% and the prescribed percentage for the prescribed class;

(*c*) the extent to which the residual input is acquired, imported or brought into a participating province by the person for the purpose of making taxable supplies for consideration is deemed to be equal to the prescribed percentage for the prescribed class;

(*d*) the extent to which the residual input is acquired, imported or brought into a participating province by the person for purposes other than making taxable supplies for consideration is deemed to be equal to the difference between 100% and the prescribed percentage for the prescribed class; and

(*e*) for the purpose of determining an input tax credit in respect of the residual input, the description of B in the formula in subsection 169(1) is deemed to be equal to the prescribed percentage for the prescribed class.

Non-attributable inputs — Specified method

(10) For the purposes of this Part, if a financial institution (other than a qualifying institution) has not made an election under subsection (9) in respect of a fiscal year of the financial institution, the financial institution shall use a specified method to determine for the fiscal year the operative extent and the procurative extent of each non-attributable input of the financial institution.

Non-attributable inputs — Exception

(11) For the purposes of this Part, despite subsection (10), if a financial institution (other than a qualifying institution) has not made an election under subsection (9) in respect of a fiscal year of the financial institution and no specified method applies during the fiscal year

to a particular non-attributable input of the financial institution, the financial institution shall use another attribution method to determine for the fiscal year the operative extent and the procurative extent of the particular non-attributable input.

Direct inputs — Direct attribution method

(12) For the purposes of this Part, if a financial institution (other than a qualifying institution) has not made an election under subsection (9) in respect of a fiscal year of the financial institution, the financial institution shall use a direct attribution method to determine for the fiscal year the operative extent and the procurative extent of each direct input of the financial institution.

Direct inputs — Exception

(13) For the purposes of this Part, despite subsection (12), if a financial institution (other than a qualifying institution) has not made an election under subsection (9) in respect of a fiscal year of the financial institution and no direct attribution method applies during the fiscal year to a particular direct input of the financial institution, the financial institution shall use another attribution method to determine in the most direct manner for the fiscal year the operative extent and the procurative extent of the particular direct input.

Excluded inputs — Specified method

(14) For the purposes of this Part, a financial institution shall use a specified method to determine for a fiscal year of the financial institution the operative extent and the procurative extent of each excluded input of the financial institution.

Excluded inputs — Exception

(15) For the purposes of this Part, despite subsection (14), if no specified method applies during a fiscal year of a financial institution to a particular excluded input of the financial institution, the financial institution shall use another attribution method to determine for the fiscal year the operative extent and the procurative extent of the particular excluded input.

Attribution method — Conditions

(16) Any method that a financial institution is required in accordance with any of subsections (10) to (15) to use in respect of a fiscal year of the financial institution shall be

(*a*) fair and reasonable;

(*b*) used consistently by the financial institution throughout the fiscal year; and

(*c*) subject to subsection (17), determined by the financial institution no later than the day on or before which the financial institution is required to file a return under Division V with the Minister for the first reporting period in the fiscal year.

Alteration or substitution of method

(17) Any method used by a financial institution under any of subsections (10) to (15) in respect of a fiscal year of the financial institution shall not, after the day on or before which the financial institution is required to file a return under Division V with the Minister for the first reporting period in the fiscal year, be altered or be substituted with another method by the financial institution for the fiscal year without the written consent of the Minister.

Application for pre-approved method

(18) A person that is, or is reasonably expected to be, a qualifying institution for a fiscal year may apply to the Minister to use particular methods to determine for the fiscal year the operative extent and the procurative extent of each business input of the person.

Form and manner of application

(19) An application made by a person under subsection (18) shall

(*a*) be made in prescribed form containing prescribed information, including the particular method to be used in respect of each direct input, excluded input, exclusive input and non-attributable input of the person; and

(*b*) be filed by the person with the Minister in prescribed manner on or before

(i) the day that is 180 days before the first day of the fiscal year to which the application applies, or

(ii) any later day that the Minister may allow on application by the person.

Authorization

(20) On receipt of an application made under subsection (18), the Minister shall

(*a*) consider the application and authorize or deny the use of the particular methods; and

(*b*) notify the person in writing of the decision on or before

(i) the later of

(A) the day that is 180 days after that receipt, and

(B) the day that is 180 days before the first day of the fiscal year to which the application applies, or

(ii) any later day that the Minister may specify, if the day is set out in a written application filed by the person with the Minister.

Effect of authorization

(21) For the purposes of this Part, if the Minister under subsection (20) authorizes the use of particular methods for a fiscal year of the person,

(*a*) the particular methods shall be used consistently, and as indicated in the application, by the person throughout the fiscal year to determine the operative extent and the procurative extent of each business input of the person; and

(*b*) subsections (6) to (15) and (27) do not apply, for the fiscal year, in respect of any business input of the person.

Reasons for denial

(22) If the Minister denies under subsection (20) the use of the particular methods specified in an application made under subsection (18) and the person has, in respect of the application, complied with the requirements set out in subsection (19) and provided to the Minister all requested information within any reasonable time set out in the written notice requesting the information, the Minister shall notify the person in writing of the reasons for not authorizing the use of the particular methods on or before the particular day that is the later of

(*a*) the day that is 60 days after the day the person last provided any requested information to the Minister; and

(*b*) the day on or before which the notification of the decision is required to be given to the person under subsection (20).

Revocation

(23) An authorization granted under subsection (20) to a person in respect of a fiscal year of the person ceases to have effect on the first day of the fiscal year and, for the purposes of this Part, is deemed never to have been granted, if

(*a*) the Minister revokes the authorization and sends a notice of revocation to the person on or before the day that is 60 days before the day that is the first day of the fiscal year;

(*b*) the person files in prescribed manner with the Minister a notice of revocation in prescribed form containing prescribed information on or before the day that is 60 days before the first day of the fiscal year; or

(*c*) the person is not a qualifying institution for the fiscal year.

Application to be designated a qualifying institution

(24) A person may apply to the Minister, in prescribed form containing prescribed information, to be designated as a qualifying institution for a particular fiscal year of the person if

(*a*) the person is, or is reasonably expected to be, a financial institution of a prescribed class throughout the particular fiscal year; and

(*b*) it is the case that

(i) the person has two fiscal years immediately preceding the particular fiscal year and, for each of those two fiscal years, the adjusted tax credit amount of the person equals or exceeds, or is reasonably expected to equal or exceed, the prescribed amount for that class for the particular fiscal year, or

(ii) an authorization under subsection (20) for the particular fiscal year has ceased to have effect only because of the application of paragraph (23)(*c*).

Effect of approval

(25) On receipt of the application made under subsection (24) in respect of a fiscal year of a person, the Minister shall, with all due dispatch, consider the application and notify the person in writing of the decision and, if the Minister makes the designation, the person is deemed for the purposes of subsection (18) and paragraph (23)(*c*) to be a qualifying institution for the fiscal year.

Revocation of designation as a qualifying institution

(26) A designation made under subsection (25) in respect of a fiscal year of a person ceases to have effect on the first day of the fiscal year and is deemed, for the purposes of this Part, to have never been granted if, on or before the day that is 60 days before the first day of the fiscal year

(*a*) the Minister revokes the designation and sends a notice of revocation to the person; or

(*b*) the person files in prescribed manner with the Minister a notice of revocation of the designation in prescribed form containing prescribed information.

Qualifying institution's own methods

(27) Despite subsections (6), (8), (14) and (15), a qualifying institution for a fiscal year may elect to use particular methods for the fiscal year to determine, for the purposes of this Part, the operative extent and the procurative extent of every business input of the qualifying institution, if

(*a*) the particular methods were specified in an application filed under subsection (18) by the qualifying institution for the fiscal year that

(i) complies with the requirements set out in subsection (19), and

(ii) is the last such application filed by the qualifying institution for the fiscal year;

(*b*) the use of the particular methods was not authorized by the Minister under paragraph (20)(*a*);

(*c*) the qualifying institution has provided all requested information within the time set out in the written notice requesting the information;

(*d*) the Minister has not complied with the notification requirements set out in paragraph (20)(*b*) and subsection (22) in respect of the application; and

(*e*) if the Minister has provided modifications in writing to the particular methods on or before the particular day described in subsection (22), the particular methods with those modifications (in this section referred to as the "modified methods") are not fair and reasonable for the purpose of determining the operative extent and the procurative extent of the business inputs of the qualifying institution for the fiscal year.

Elected method — conditions

(28) If a qualifying institution makes an election under subsection (27), the particular methods shall be

(*a*) fair and reasonable for the purpose of determining the operative extent and the procurative extent of the business inputs of the qualifying institution for the fiscal year; and

(*b*) used consistently, and as indicated in the application referred to in paragraph (27)(*a*), by the qualifying institution throughout the fiscal year

Making of election

(29) An election under subsection (7), (9) or (27) in respect of a fiscal year of a person shall be

(*a*) made in prescribed form containing prescribed information; and

(*b*) filed by the person with the Minister in prescribed manner on or before the day that is

(i) the day on or before which a return under Division V for the first reporting period of the fiscal year is required to be filed, or

(ii) any later day that the Minister may allow on application by the person.

Revocation of election

(30) An election under subsection (7), (9) or (27) in respect of a fiscal year of a person ceases to have effect on the first day of the fiscal year and is deemed, for the purposes of this Part, never to have been made if

(*a*) a notice of revocation of the election in prescribed form containing prescribed information is filed in prescribed manner with the Minister on or before the day on or before which the return under Division V is required to be filed for the first reporting period of the fiscal year;

(*b*) in the case of an election under subsection (7) to use methods for the fiscal year to determine, for the purposes of this Part, the operative extent and the procurative extent of all residual inputs of the person,

(i) the person is not a qualifying institution for the fiscal year, or

(ii) the methods are

(A) not fair and reasonable for the purpose of determining the operative extent and the procurative extent of those residual inputs, or

(B) not used consistently by the financial institution throughout the fiscal year;

(*c*) in the case of an election made under subsection (9),

(i) the person is not a financial institution of a prescribed class throughout the fiscal year, or

(ii) the tax credit rate of the person for each of the two fiscal years immediately preceding the fiscal year does not equal or exceed the prescribed percentage for the prescribed class of financial institutions of the person for the fiscal year; or

(*d*) in the case of an election made under subsection (27),

(i) any of the requirements to make the election that are set out in that subsection is not met, or

(ii) the particular methods referred to in that subsection are

(A) not fair and reasonable for the purpose of determining the operative extent and the procurative extent of the business inputs of the qualifying institution for the fiscal year, or

(B) not used consistently, or as indicated in the application referred to in paragraph (27)(*a*), by the financial institution throughout the fiscal year.

Burden of proof

(31) If a financial institution appeals an assessment under this Part for a reporting period in a fiscal year of the financial institution in respect of an issue relating to the determination, under any of subsections (7), (10) to (15), (21) and (27), of the operative extent or the procurative extent of a business input, the financial institution must establish on a balance of probabilities in any court proceeding relating to the assessment that

(*a*) in the case of the determination, under subsection (7), of the operative extent or the procurative extent of the business input, the methods used by the financial institution to determine the operative extent and the procurative extent of all residual inputs of the financial institution for the fiscal year were

(i) fair and reasonable, and

(ii) used consistently by the financial institution throughout the fiscal year;

(*b*) in the case of the determination, under subsection (10) or (14), of the operative extent or the procurative extent of the business input, the financial institution used a specified method consistently throughout the fiscal year to determine that extent;

(*c*) in the case of the determination, under subsection (11) or (15), of the operative extent or the procurative extent of the business input, no specified method applied to the business input and the other attribution method used by the financial institution to determine that extent was fair and reasonable and used consistently by the financial institution throughout the fiscal year;

(*d*) in the case of the determination, under subsection (12), of the operative extent or the procurative extent of the business input, the financial institution used a direct attribution method consistently throughout the fiscal year to determine that extent;

(*e*) in the case of the determination, under subsection (13), of the operative extent or the procurative extent of the business input, no direct attribution method applied to the business input and the other attribution method used by the financial institution to determine that extent was fair and reasonable and used consistently by the financial institution throughout the fiscal year; and

(*f*) in the case of the determination, under subsection (21), of the operative extent or the procurative extent of the business input, the particular methods referred to in that subsection were used consistently, and as indicated in the application referred to in that subsection, throughout the fiscal year.

(*g*) in the case of the determination, under subsection (27), of the operative extent or the procurative extent of the business input,

(i) the methods specified by the financial institution in the application referred to in that subsection were

(A) fair and reasonable, and

(B) used consistently, and as indicated in the application referred to in paragraph (27)(*a*), by the financial institution throughout the fiscal year, and

(ii) if the Minister has provided modifications to those methods as described in paragraph (27)(*e*), the modified methods are not fair and reasonable for the purpose of determining the operative extent and the procurative extent of the business inputs of the financial institution for the fiscal year.

Ministerial direction

(32) If a financial institution is required to use a method (in this subsection referred to as the "previous method") in accordance with any of subsections (10) to (15) in respect of a fiscal year of the financial institution, the Minister may at any time, by notice in writing, direct the financial institution to use, for the purposes of determining for the fiscal year, and any subsequent fiscal year, the operative extent and the procurative extent of each business input referred to in that subsection, another method that is fair and reasonable and, if the Minister so directs, the other method, and not the previous method, shall apply for those purposes.

Method directed by the Minister — Appeals

(33) If under subsection (32) the Minister directs a financial institution to use a method in respect of a business input for a fiscal year, the Minister assesses the net tax of the financial institution for a reporting period included in the fiscal year and the financial institution appeals the assessment under this Part in respect of an issue relating to the application of that subsection,

(*a*) the Minister shall establish on a balance of probabilities that the method is fair and reasonable; and

(*b*) if the final determination of the courts is that the method is not fair and reasonable, the Minister shall not direct the financial institution under subsection (32) to use another method for the fiscal year in respect of the business input.

(2) Subsections 141.02(1) to (17) and (29), (30) and (32) of the Act, as enacted by subsection (1), apply for the purpose of determining the net tax of a person for any reporting period of the person included in a fiscal year of the person beginning after March 2007, except that, for the purposes of the definition "qualifying institution" in subsection 141.02(1) of the Act and of subsection 141.02(9) of the Act, as enacted by subsection (1), paragraph (*b*) of that definition and subsection 141.02(9) of the Act shall be read as if subsections (1) and 1(1) had come into force on April 1, 2005.

(3) Subsections 141.02(18) to (28) of the Act, as enacted by subsection (1), apply for the purpose of determining the net tax of a person for any reporting period of the person included in a fiscal year of the person beginning after March 2008.

3. (1) The Act is amended by adding the following after section 172:

Pension Plans

Definitions

172.1 (1) The following definitions apply in this section.

"active member" « *participant actif* »

"active member" has the meaning assigned by subsection 8500(1) of the *Income Tax Regulations*.

"employer resource" « *ressource d'employeur* »

"employer resource" of a person means

(*a*) all or part of a labour activity of the person, other than the part of the labour activity consumed or used by the person in the process of creating, developing or bringing into existence property;

(*b*) all or part of property or a service supplied to the person, other than the part of the property or service consumed or used by the person in the process of creating, developing or bringing into existence property;

(*c*) all or part of property created, developed or brought into existence by the person; or

(*d*) any combination of the items referred to in paragraphs (*a*) to (*c*).

"excluded activity" « *activité exclue* »

"excluded activity", in respect of a pension plan, means an activity undertaken exclusively for

(*a*) compliance by a participating employer of the pension plan as an issuer, or prospective issuer, of securities with reporting requirements under a law of Canada or of a province in respect of the regulation of securities;

(*b*) evaluating the feasibility or financial impact on a participating employer of the pension plan of establishing, altering or winding-up the pension plan, other than an activity

that relates to the preparation of an actuarial report in respect of the plan required under a law of Canada or of a province;

(*c*) evaluating the financial impact of the pension plan on the assets and liabilities of a participating employer of the pension plan;

(*d*) negotiating changes to the benefits under the pension plan with a union or similar organization of employees; or

(*e*) prescribed purposes.

"labour activity" « *activité de main-d'œuvre* »

"labour activity" of a person means anything done by an individual who is or agrees to become an employee of the person in the course of, or in relation to, the office or employment of that individual.

"participating employer" « *employeur participant* »

"participating employer" of a pension plan means an employer that has made, or is required to make, contributions to the pension plan in respect of the employer's employees or former employees, or payments under the pension plan to the employer's employees or former employees, and includes an employer prescribed for the purposes of the definition "participating employer" in subsection 147.1(1) of the *Income Tax Act*.

"pension activity" « *activité de pension* »

"pension activity", in respect of a pension plan, means an activity (other than an excluded activity) that relates to

(*a*) the establishment, management or administration of the pension plan or a pension entity of the pension plan; or

(*b*) the management or administration of assets in respect of the pension plan.

"pension entity" « *entité de gestion* »

"pension entity" of a pension plan means an entity in respect of the pension plan that is a trust referred to in paragraph (*a*) of the definition "pension plan" or a corporation referred to in paragraph (*b*) of that definition.

"pension plan" « *régime de pension* »

"pension plan" means a registered pension plan (as defined in subsection 248(1) of the *Income Tax Act*)

(*a*) that governs a trust; or

(*b*) in respect of which a corporation is

(i) incorporated and operated solely for the administration of the registered pension plan, and

(ii) accepted by the Minister, under subparagraph 149(1)(*o.1*)(ii) of the *Income Tax Act*, as a funding medium for the purpose of the registration of the registered pension plan.

"provincial factor" « *facteur provincial* »

"provincial factor" in respect of a pension plan and a participating province, for a fiscal year of a person that is a participating employer of the pension plan, means the amount (expressed as a percentage) determined by the formula

$$A \times B$$

where

A is the tax rate for the participating province on the last day of the fiscal year, and

B is

(*a*) if the person made contributions to the pension plan during the fiscal year that may be deducted by the person under paragraph 20(1)(*q*) of the *Income Tax Act* in computing its income (in this paragraph referred to as "pension contributions") and the number of active members of the pension plan who were employees of the person on the particular day that is the last day of the last calendar year ending on or before the last day of the fiscal year is greater than zero, the amount determined by the formula

$$[(C/D) + (E/F)]/2$$

where

C is the total of all pension contributions made to the pension plan by the person during the fiscal year in respect of employees of the person who were resident in the participating province on the particular day,

D is the total of all pension contributions made to the pension plan by the person during the fiscal year in respect of employees of the person,

E is the number of active members of the pension plan who were, on the particular day, employees of the person and resident in the participating province, and

F is the number of active members of the pension plan who were, on the particular day, employees of the person;

(*b*) if paragraph (*a*) does not apply and the number of active members of the pension plan who were employees of the person on the particular day that is the last day of the last calendar year ending on or before the last day of the fiscal year is greater than zero, the amount determined by the formula

$$G/H$$

where

G is the number of active members of the pension plan who were, on the particular day, employees of the person and resident in the participating province, and

H is the number of active members of the pension plan who were, on the particular day, employees of the person; or

(*c*) in any other case, zero.

Excluded resource

(2) For the purposes of this section, property or a service that is supplied to a particular person that is a participating employer of a pension plan by another person is an excluded resource of the particular person in respect of the pension plan if

(*a*) for each pension entity of the pension plan, no tax would become payable under this Part in respect of the supply if

(i) the supply were made by the other person to the pension entity and not to the particular person, and

(ii) the pension entity and the other person were dealing at arm's length; and

(*b*) where the supply is a supply of tangible personal property made outside Canada, the supply would not be an imported taxable supply (as defined in section 217) if the particular person were a registrant not engaged exclusively in commercial activities.

Time of acquisition

(3) For the purposes of this section, if, at a particular time, a supply of property described in paragraph 142(2)(*a*) or (*b*) is made to a person who is a participating employer of a pension plan and, at a later time, tax under section 212 becomes payable by the person in respect of the property

(*a*) the supply is deemed to have been made to the person at the later time and not at the particular time; and

(*b*) tax is deemed to have been payable in respect of the supply at the later time.

Specified pension entity

(4) If a person is a participating employer of a pension plan and the pension plan has,

(*a*) at all times in a fiscal year of the person, no more than one pension entity, that pension entity is the specified pension entity of the pension plan in respect of the person for the fiscal year; and

(*b*) in the fiscal year, two or more pension entities, the person and one of those pension entities may jointly elect, in prescribed form containing prescribed information, for that pension entity to be the specified pension entity of the pension plan in respect of the person for the fiscal year.

Acquisition of property or a service for supply

(5) If a person that is a registrant and a participating employer of a pension plan acquires property or a service (in this subsection referred to as the "specified resource") for the purpose of making a supply of all or part of the specified resource to a pension entity of the pension plan for consumption, use or supply by the pension entity in the course of pension activities in respect of the pension plan and the specified resource is not an excluded resource of the person in respect of the pension plan, the following rules apply:

(*a*) for the purposes of this Part, the person is deemed to have made a taxable supply of the specified resource or part on the last day of the particular fiscal year of the person in which the person acquired the specified resource;

(*b*) for the purposes of this Part, tax in respect of the taxable supply is deemed to have become payable on the last day of the particular fiscal year and the person is deemed to have collected that tax on that day;

(*c*) for the purposes of this Part, the tax referred to in paragraph (*b*) is deemed to be equal to the amount determined by the formula

$$A + B$$

where

A is the amount determined by the formula

$$C \times D$$

where

C is the fair market value of the specified resource or part at the time it was acquired by the person, and

D is the rate set out in subsection 165(1), and

B is the total of all amounts, each of which is determined for a participating province, by the following formula

$$E \times F$$

where

E is the fair market value of the specified resource or part at the time it was acquired by the person, and

F is the provincial factor in respect of the pension plan and the participating province for the particular fiscal year; and

(*d*) for the purpose of determining an input tax credit of the pension entity under this Part and for the purposes of sections 232.01, 232.02 and 261.01, the pension entity is deemed

(i) to have received a supply of the specified resource or part on the last day of the particular fiscal year,

(ii) to have paid tax in respect of that supply on the that day equal to the amount of tax determined under paragraph (*c*), and

(iii) to have acquired the specified resource or part for consumption, use or supply in the course of its commercial activities to the same extent that the specified resource or part was acquired by the person for the purpose of making a supply of the specified resource or part to the pension entity for consumption, use or supply by the pension entity in the course of pension activities in respect of the pension plan that are commercial activities of the pension entity.

Consumption or use of employer resource for supply

(6) If a person is both a registrant and a participating employer of a pension plan at any time in a particular fiscal year of the person, the person consumes or uses at that time an employer resource of the person for the purpose of making a supply of property or a service (in this subsection referred to as the "pension supply") to a pension entity of the pension plan for consumption, use or supply by the pension entity in the course of pension activities in respect of the pension plan, and the employer resource is not an excluded resource of the person in respect of the pension plan, the following rules apply:

(*a*) for the purposes of this Part, the person is deemed to have made a taxable supply of the employer resource (in this subsection referred to as the "employer resource supply") on the last day of the particular fiscal year;

(*b*) for the purposes of this Part, tax in respect of the employer resource supply is deemed to have become payable on the last day of the particular fiscal year and the person is deemed to have collected that tax on that day;

(*c*) for the purposes of this Part, the tax referred to in paragraph (*b*) is deemed to be equal to the amount determined by the formula

A + B

where

A is the amount determined by the formula

C × D

where

C is

(i) if the employer resource was consumed by the person during the particular fiscal year for the purpose of making the pension supply, the product obtained when the fair market value of the employer resource at the time the person began consuming it in the particular fiscal year is multiplied by the extent to which that consumption (expressed as a percentage of the total consumption of the employer resource by the person during the particular fiscal year) occurred when the person was both a registrant and a participating employer of the pension plan, or

(ii) otherwise, the product obtained when the fair market value of the use of the employer resource during the particular fiscal year as determined on the last day of the particular fiscal year is multiplied by the extent to which the employer resource was used during the particular fiscal year (expressed as a percentage of the total use of the employer resource by the person during the particular fiscal year) for the purpose of making the pension supply when the person was both a registrant and a participating employer of the pension plan, and

D is the rate set out in subsection 165(1), and

B is the total of all amounts, each of which is determined for a participating province, by the following formula

E × F

where

E is the amount determined for C, and

F is the provincial factor in respect of the pension plan and the participating province for the particular fiscal year; and

(*d*) for the purpose of determining an input tax credit of the pension entity under this Part and for the purposes of sections 232.01, 232.02 and 261.01, the pension entity is deemed

(i) to have received a supply of the employer resource on the last day of the particular fiscal year,

(ii) to have paid tax in respect of that supply on that day equal to the amount of tax determined under paragraph (*c*), and

(iii) to have acquired the employer resource for consumption, use or supply in the course of its commercial activities to the same extent that the property or service supplied in the pension supply was acquired by the pension entity for consumption, use or supply by the pension entity in pension activities in respect of the pension plan that are commercial activities of the pension entity.

Consumption or use of employer resource otherwise than for supply

(7) If a person is both a registrant and a participating employer of a pension plan at any time in a particular fiscal year of the person, the person consumes or uses at that time an employer resource of the person in the course of pension activities in respect of the pension plan, the employer resource is not an excluded resource of the person in respect of the pension plan, and subsection (6) does not apply to that consumption or use, the following rules apply:

(*a*) for the purposes of this Part, the person is deemed to have made a taxable supply of the employer resource (in this subsection referred to as the "employer resource supply") on the last day of the particular fiscal year;

(*b*) for the purposes of this Part, tax in respect of the employer resource supply is deemed to have become payable on the last day of the particular fiscal year and the person is deemed to have collected that tax on that day;

(*c*) for the purposes of this Part, the tax referred to in paragraph (*b*) is deemed to be equal to the amount determined by the formula

$$A + B$$

where

A is the amount determined by the formula

$$C \times D$$

where

C is

(i) if the employer resource was consumed by the person during the particular fiscal year in the course of pension activities in respect of the pension plan, the product obtained when the fair market value of the employer resource at the time the person began consuming it in the particular fiscal year is multiplied by the extent to which that consumption (expressed as a percentage of the total consumption of the employer resource by the person during the particular fiscal year) occurred when the person was both a registrant and a participating employer of the pension plan, or

(ii) otherwise, the product obtained when the fair market value of the use of the employer resource during the particular fiscal year as determined on the last day

of the particular fiscal year is multiplied by the extent to which the employer resource was used during the particular fiscal year (expressed as a percentage of the total use of the employer resource by the person during the particular fiscal year) in the course of pension activities in respect of the pension plan when the person was both a registrant and a participating employer of the pension plan, and

D is the rate set out in subsection 165(1), and

B is the total of all amounts, each of which is determined for a participating province, by the following formula

$$E \times F$$

where

E is the amount determined for C, and

F is the provincial factor in respect of the pension plan and the participating province for the particular fiscal year; and

(*d*) for the purposes of determining, under section 261.01, an eligible amount of the specified pension entity of the pension plan in respect of the person for the particular fiscal year, the specified pension entity is deemed to have paid tax on the last day of the particular fiscal year equal to the amount of tax determined under paragraph (*c*).

Provision of information to pension entity

(8) If subsection (5), (6) or (7) applies in respect of a person that is a participating employer of a pension plan, the person shall, in prescribed form and in a manner satisfactory to the Minister, provide prescribed information to the pension entity of the pension plan that is deemed to have paid tax under that subsection.

(2) Subsection (1) applies in respect of fiscal years of a person beginning on or after ANNOUNCEMENT DATE.

4. (1) Subsection 185(1) of the Act is replaced by the following:

Financial services – input tax credits

185. (1) If tax in respect of property or a service acquired, imported or brought into a participating province by a registrant becomes payable by the registrant at a time when the registrant is neither a listed financial institution nor a person that is a financial institution because of paragraph 149(1)(*b*), for the purpose of determining an input tax credit of the registrant in respect of the property or service and for the purposes of Subdivision d, to the extent (determined in accordance with subsections 141.01(2) and 141.02(6)) that the property or service was acquired, imported or brought into the province, as the case may be, for consumption, use or supply in the course of making supplies of financial services that relate to commercial activities of the registrant,

(*a*) if the registrant is a financial institution because of paragraph 149(1)(*c*), the property or service is deemed, despite subsections 141.01(2) and 141.02(6), to have been so acquired, imported or brought into the province for consumption, use or supply in the course of those commercial activities except to the extent that the property or service was so

acquired, imported or brought into the province for consumption, use or supply in the course of activities of the registrant that relate to

(i) credit cards or charge cards issued by the registrant, or

(ii) the making of any advance, the lending of money or the granting of any credit; and

(*b*) in any other case, the property or service is deemed, despite subsections 141.01(2) and 141.02(6), to have been so acquired, imported or brought into the province for consumption, use or supply in the course of those commercial activities.

(2) Subsection (1) is deemed to have come into force on April 1, 2007.

5. (1) The portion of section 217 of the Act before paragraph (*a*) is replaced by the following:

Definitions

217. The following definitions apply in this Division.

"imported taxable supply" « *fourniture taxable importée* »

"imported taxable supply" means

(2) Section 217 of the Act, as amended by subsection (1), is amended by adding the following in alphabetical order:

"Canadian activity" « *activité au Canada* »

"Canadian activity" of a person means an activity of the person carried on, engaged in or conducted in Canada.

"duty" « *tâche* »

"duty" means anything done by an employee in the course of, or in relation to, the office or employment of the employee.

"employee" « *salarié* »

"employee" includes an individual who agrees to become an employee.

"external charge" « *frais externes* »

"external charge" for a specified year of a qualifying taxpayer in respect of an outlay or expense described in any of paragraphs 217.1(2)(*a*) to (*c*) means the amount in respect of the outlay or expense determined by the formula

A - B

where

A is the amount of the outlay or expense that

(*a*) is allowed as a deduction, an allowance or an allocation for a reserve under the *Income Tax Act* in computing the qualifying taxpayer's income for the specified year, or would be so allowed if

(i) the qualifying taxpayer's income were computed in accordance with that Act,

(ii) the qualifying taxpayer carried on a business in Canada, and

(iii) that Act applied to the qualifying taxpayer, and

(*b*) may reasonably be regarded as being applicable to a Canadian activity of the qualifying taxpayer; and

B is the total of all amounts, each of which is included in the amount determined under the description of A and is a permitted deduction for the specified year or a preceding specified year of the qualifying taxpayer.

"loading" « *chargement* »

"loading" means any part of the value of the consideration for a supply of a financial service that is attributable to administrative expenses, an error or profit margin, business handling costs, commissions, communications expenses, claims handling costs, employee compensation or benefits, execution or clearing costs, management fees, marketing or advertising costs, occupancy or equipment expenses, operating expenses, acquisition costs, premium collection costs, processing costs or any other costs or expenses of a person that makes the supply, other than commissions for a specified financial service or the part of the value of the consideration that is equal to

(*a*) if the financial service includes the issuance, renewal, variation or transfer of ownership of an insurance policy but not of any other qualifying instrument, the estimate of the net premium of the insurance policy;

(*b*) if the financial service includes the issuance, renewal, variation or transfer of ownership of a qualifying instrument (other than an insurance policy), the estimate of the default risk premium that is directly associated with the qualifying instrument; and

(*c*) if the financial service includes the issuance, renewal, variation or transfer of ownership of an insurance policy and a qualifying instrument (other than an insurance policy), the amount determined by the formula

A + B

where

A is the estimate of the net premium of the insurance policy, and

B is the estimate of the default risk premium that is directly associated with the qualifying instrument.

"permitted deduction" « *déduction autorisée* »

"permitted deduction" for a specified year of a qualifying taxpayer means an amount that is

(*a*) consideration for a supply of property or a service, or the value of imported goods, upon which tax under this Part (other than section 218.01 or subsection 218.1(1.2)) became payable during the specified year by the qualifying taxpayer;

(*b*) tax referred to in paragraph (*a*) in respect of a supply or importation referred to in that paragraph;

(*c*) a provincial levy that is prescribed for the purposes of section 154 and is in respect of a supply referred to in paragraph (*a*);

(*d*) an amount that is deemed, under subsection 248(18) or (18.1) of the *Income Tax Act*, to be assistance repaid by the qualifying taxpayer in respect of property or a service referred to in paragraph (*a*);

(*e*) consideration for a supply of property or a service (other than a financial service) made to the qualifying taxpayer as part of a transaction or series of transactions in which all participants deal at arm's length with the qualifying taxpayer, unless

(i) that consideration is included in paragraph (*a*), or

(ii) an activity carried on, engaged in or conducted outside Canada, through a qualifying establishment of the qualifying taxpayer or of a person related to the qualifying taxpayer, relates in any manner to the supply;

(*f*) qualifying compensation of an employee of the qualifying taxpayer that is paid in the specified year by the qualifying taxpayer if the employee was primarily in Canada while performing its duties during the specified year;

(*g*) interest that is paid or payable by the qualifying taxpayer as the consideration for a supply of a financial service made to the qualifying taxpayer (other than an amount paid or credited by the qualifying taxpayer, or deemed by Part I of the *Income Tax Act* to have been paid or credited in the specified year by the qualifying taxpayer, to a person as, on account or in lieu of payment of, or in satisfaction of, a management or administration fee or charge (within the meaning of subsection 212(4) of that Act));

(*h*) dividends;

(*i*) consideration (other than interest referred to in paragraph (*g*) or dividends referred to in paragraph (*h*)) for a specified arm's length supply made to the qualifying taxpayer;

(*j*) consideration (other than interest referred to in paragraph (*g*) or dividends referred to in paragraph (*h*)) for a supply (other than a specified derivative supply) of a specified financial service made to the qualifying taxpayer;

(*k*) consideration (other than interest referred to in paragraph (*g*), dividends referred to in paragraph (*h*) or loading) for a specified non-arm's length supply made to the qualifying taxpayer;

(*l*) consideration (other than interest referred to in paragraph (*g*) or dividends referred to in paragraph (*h*)) for a specified derivative supply made to the qualifying taxpayer; or

(*m*) a prescribed amount.

"qualifying compensation" « *rétribution admissible* »

"qualifying compensation" of an employee means any salary, wages and other remuneration of the employee and any other amount that is required to be included as income from an office or employment in computing the income of the employee for the purposes of the *Income Tax Act*.

"qualifying consideration" « *contrepartie admissible* »

"qualifying consideration" for a specified year of a qualifying taxpayer in respect of an outlay made, or expense incurred, outside Canada means the amount in respect of the outlay or expense determined by the formula

A - B

where

A is the amount of the outlay or expense that

(*a*) is allowed as a deduction, an allowance or an allocation for a reserve under the *Income Tax Act* in computing the qualifying taxpayer's income for the specified year, or would be so allowed if

(i) the qualifying taxpayer's income were computed in accordance with that Act,

(ii) the qualifying taxpayer carried on a business in Canada, and

(iii) that Act applied to the qualifying taxpayer, and

(*b*) may reasonably be regarded as being applicable to a Canadian activity of the qualifying taxpayer; and

B is the total of all amounts each of which is included in the amount determined under the description of A and is

(*a*) an amount (other than an amount included in paragraph (*b*)) that is a permitted deduction for the specified year or a preceding specified year of the qualifying taxpayer, or

(*b*) an amount that represents a cost to a qualifying establishment of the qualifying taxpayer in a country other than Canada, or a share of a profit of the qualifying taxpayer that is redistributed from a qualifying establishment of the qualifying taxpayer in Canada to a qualifying establishment of the qualifying taxpayer in a country other than Canada, that is solely attributable to the issuance, renewal, variance or transfer of ownership by the qualifying taxpayer of a financial instrument that is a derivative, provided that all or substantially all of the amount is

(i) an error or profit margin, or employee compensation or benefits, that is reasonably attributable to the issuance, renewal, variance or transfer of ownership, or

(ii) the estimate of the default risk premium that is directly associated with the derivative.

"qualifying establishment" « *établissement admissible* »

"qualifying establishment" means a permanent establishment as defined in subsection 123(1) or a permanent establishment as defined in subsection 132.1(2).

"qualifying instrument" « *instrument admissible* »

"qualifying instrument" means money, a credit card voucher, a charge card voucher or a financial instrument.

"qualifying service" « *service admissible* »

"qualifying service" means a service or duty.

"specified arm's length supply" « *fourniture déterminée entre personnes sans lien de dépendance* »

"specified arm's length supply" means a supply (other than a specified derivative supply) of a financial service (other than a specified financial service) made to a qualifying taxpayer as part of a transaction or series of transactions in which all participants deal at arm's length with the qualifying taxpayer.

"specified derivative supply" « *fourniture déterminée d'instrument dérivé* »

"specified derivative supply" means a supply

(*a*) that is a supply of a financial service of issuing, renewing, varying or transferring the ownership of a financial instrument that is a derivative, or that is a supply made by an agent, salesperson or broker of arranging for the issuance, renewal, variance or transfer of ownership of a financial instrument that is a derivative; and

(*b*) for which all or substantially all of the value of the consideration is attributable to

(i) any error or profit margin, or employee compensation or benefits, reasonably attributable to the supply, and

(ii) amounts that are not loading.

"specified financial service" « *service financier déterminé* »

"specified financial service" means a financial service supplied to a qualifying taxpayer by an agent, salesperson or broker of arranging for the issuance, renewal, variation or transfer of ownership of a financial instrument that is property of a person other than the agent, salesperson or broker.

"specified non-arm's length supply" « *fourniture déterminée entre personnes ayant un lien de dépendance* »

"specified non-arm's length supply" means a supply (other than a specified derivative supply) of a financial service (other than a specified financial service) that includes the issuance, renewal, variation or transfer of ownership of a qualifying instrument, made to a qualifying taxpayer as part of a transaction or series of transactions in which any participant does not deal at arm's length with the qualifying taxpayer.

"specified year" « *année déterminée* »

"specified year" of a qualifying taxpayer means

(*a*) in the case of a qualifying taxpayer that is described in paragraph (*a*) or (*b*) of the definition "taxation year" in subsection 123(1), the taxation year of the qualifying taxpayer;

(*b*) in the case of a qualifying taxpayer that is a registrant but is not described in paragraph (*a*) or (*b*) of the definition "taxation year" in subsection 123(1), the fiscal year of the qualifying taxpayer; and

(*c*) in any other case, the calendar year.

"taxing statute" « *loi fiscale* »

"taxing statute" of a country means a statute of the country, or of a state, province or other political subdivision of the country, that imposes a levy or charge of general application that is an income or profits tax.

"transaction" « *opération* »

"transaction" includes an arrangement or event.

(3) Subsections (1) and (2) apply to any specified year of a person that ends after November 16, 2005, except that, for the purposes of applying the definition "permitted deduction" in section 217 of the Act, as enacted by subsection (2), in respect of an amount of consideration for a specified non-arm's length supply that became due, or was paid without having become due, on or before that day, paragraph (*k*) of that definition shall be read without reference to the words "or loading".

6. (1) The Act is amended by adding the following after section 217:

Qualifying taxpayer

217.1 (1) For the purposes of this Division, a person is a qualifying taxpayer throughout a specified year of the person if

(*a*) the person is a financial institution at any time in the specified year; and

(*b*) the person, at any time in the specified year

(i) is resident in Canada,

(ii) has a qualifying establishment in Canada, or

(iii) where a majority of the persons having beneficial ownership of the person's property in Canada are resident in Canada, carries on, engages in or conducts an activity in Canada.

Outlay made, or expense incurred, outside Canada

(2) For the purposes of this Division, an outlay made, or expense incurred, outside Canada includes any amount representing

(*a*) an outlay made, or expense incurred, by a qualifying taxpayer in respect of

(i) property that is, in whole or in part, transferred outside Canada to the qualifying taxpayer,

(ii) property, the possession or use of which is, in whole or in part, given or made available outside Canada to the qualifying taxpayer, or

(iii) a service that is performed, in whole or in part, outside Canada for the benefit of the qualifying taxpayer or is rendered, in whole or in part, outside Canada to the qualifying taxpayer;

(*b*) an adjustment (within the meaning of subsection 247(2) of the *Income Tax Act*) to an outlay or expense described in paragraph (*a*);

(*c*) an expenditure or purchase in respect of a reportable transaction (as defined in section 233.1 of the *Income Tax Act*) in respect of which a qualifying taxpayer is required under that section to file with the Minister a return in prescribed form containing prescribed information, or would be so required if the qualifying taxpayer carried on a business in Canada and that Act applied to the qualifying taxpayer;

(*d*) in the case of a qualifying taxpayer that is resident in Canada, qualifying compensation of an employee paid in a specified year by the qualifying taxpayer if

(i) in the specified year, a duty is performed by the employee outside Canada (in this subsection referred to as a "duty performed outside Canada") at a qualifying establishment of the qualifying taxpayer or of a person related to the qualifying taxpayer, and

(ii) it is not the case that all or substantially all of the duties performed outside Canada by the employee in the specified year are performed elsewhere than at such qualifying establishments; and

(*e*) in the case of a qualifying taxpayer that is not resident in Canada,

(i) an allocation by the qualifying taxpayer of an outlay or expense as an amount in respect of a business carried on in Canada by the qualifying taxpayer for the purpose of computing the qualifying taxpayer's income under the *Income Tax Act*, or an amount that would be such an allocation if

(A) the qualifying taxpayer's income were computed in accordance with that Act,

(B) anything done by the qualifying taxpayer through a qualifying establishment in Canada of the qualifying taxpayer were the carrying on of a business in Canada by the qualifying taxpayer, and

(C) that Act applied to the qualifying taxpayer,

(ii) an outlay or expense that may reasonably be regarded under the *Income Tax Act* as an amount that is applicable to a qualifying establishment in Canada of the qualifying taxpayer, or that would reasonably be so regarded if the qualifying establishment were a permanent establishment for purposes of that Act, the qualifying taxpayer carried on a business in Canada and that Act applied to the qualifying taxpayer, and

(iii) qualifying compensation of an employee paid in a specified year by the qualifying taxpayer.

Series of transactions

(3) For the purposes of this Division, if there is a reference to a series of transactions, the series is deemed to include any related transactions completed in contemplation of the series.

Internal charge

(4) For the purposes of this Division, any part of an amount in respect of a transaction or dealing between a particular qualifying establishment of a qualifying taxpayer in Canada and another qualifying establishment of the qualifying taxpayer in a particular country other than Canada is an internal charge for a specified year of the qualifying taxpayer if

(*a*) the amount meets the following criteria:

(i) the amount would be allowed as a deduction, an allowance or an allocation for a reserve under the *Income Tax Act* in computing the income of the particular qualifying establishment for the specified year if

(A) that Act applied to the particular qualifying establishment,

(B) the income of the particular qualifying establishment were computed in accordance with that Act, and

(C) for the purposes of that Act,

(I) anything done by the qualifying taxpayer through the particular qualifying establishment were the carrying on of a business in Canada,

(II) the particular qualifying establishment were a permanent establishment, and

(III) the specified year were the particular qualifying establishment's taxation year,

(ii) where the qualifying taxpayer has not specified pursuant to paragraph 217.2(2)(*c*) that subparagraph (iii) is to apply in all cases in determining the internal charges for the specified year and the particular country is a taxing country (as defined in subsection 126(7) of the *Income Tax Act*) that has a tax treaty (as defined in subsection 248(1) of that Act) with Canada, the amount would be required to be included in computing, under a taxing statute of the particular country that applies to the qualifying taxpayer, or that would apply if the other qualifying establishment were a permanent establishment for the purposes of that statute, the other qualifying establishment's income or profits for any period (in this paragraph referred to as a "taxing period") that ends during the specified year if

(A) the taxing statute applied to the other qualifying establishment,

(B) the other qualifying establishment's income or profits were computed in accordance with the taxing statute, and

(C) for the purposes of the taxing statute,

(I) anything done by the qualifying taxpayer through the other qualifying establishment were the carrying on of a business in the particular country, and

(II) the other qualifying establishment were a permanent establishment and had the same taxing periods that the qualifying taxpayer would have under the taxing statute, and

(iii) where subparagraph (ii) does not apply, the amount would be required to be included in computing under the *Income Tax Act* the other qualifying establishment's income for the specified year if

(A) the laws of Canada, and not the laws of the particular country, applied, with any modifications that the circumstances require, in the particular country,

(B) that Act applied to the other qualifying establishment,

(C) the other qualifying establishment's income were computed in accordance with that Act, and

(D) for the purposes of that Act,

(I) anything done by the qualifying taxpayer through the other qualifying establishment were the carrying on of a business in the particular country,

(II) the other qualifying establishment were a permanent establishment, and

(III) the specified year were the other qualifying establishment's taxation year; and

(*b*) the part of the amount is not

(i) an amount determined under the description of A in the formula in the definition "external charge" in section 217 in calculating an external charge of the qualifying taxpayer for the specified year or a preceding specified year of the qualifying taxpayer,

(ii) a permitted deduction of the qualifying taxpayer for the specified year or a preceding specified year of the qualifying taxpayer, other than a permitted deduction of the qualifying taxpayer that is included in determining an amount under the description of B in the formula in the definition "external charge" in section 217 in calculating an external charge of the qualifying taxpayer for the specified year or a preceding specified year of the qualifying taxpayer,

(iii) an amount that represents a cost to the other qualifying establishment, or a share of a profit of the qualifying taxpayer that is redistributed from the particular qualifying establishment to the other qualifying establishment, that is solely attributable to the issuance, renewal, variance or transfer of ownership by the qualifying taxpayer of a financial instrument that is a derivative, provided that all or substantially all of the amount is

(A) an error or profit margin, or employee compensation or benefits, that is reasonably attributable to the issuance, renewal, variance or transfer of ownership, or

(B) the estimate of the default risk premium that is directly associated with the derivative, or

(iv) a prescribed amount.

Separate entities

(5) For the purposes of applying paragraph (4)(*a*) in respect of a particular qualifying establishment of a qualifying taxpayer in a country other than Canada and another qualifying establishment of the qualifying taxpayer in Canada, the following rules apply:

(*a*) the particular qualifying establishment is deemed to be a distinct and separate enterprise from the qualifying taxpayer, engaged in the same or similar activities under the same or similar conditions as the particular qualifying establishment and dealing wholly independently with the other qualifying establishment and with the part (in this subsection referred to as the "remainder of the qualifying taxpayer") of the qualifying taxpayer, if any, that is neither the particular qualifying establishment nor the other qualifying establishment;

(*b*) the other qualifying establishment is deemed to be a distinct and separate enterprise from the qualifying taxpayer, engaged in the same or similar activities under the same or similar conditions as the other qualifying establishment and dealing wholly independently with the particular qualifying establishment and with the remainder of the qualifying taxpayer; and

(*c*) any transactions or dealings between any of the particular qualifying establishment, the other qualifying establishment and the remainder of the qualifying taxpayer are deemed to be supplies made on such terms as would have been agreed upon between parties dealing at arm's length.

Qualifying rule for credits

(6) If an amount (in this subsection referred to as a "qualifying expenditure") of qualifying consideration, or of an external charge, of a qualifying taxpayer in respect of an outlay made, or expense incurred, outside Canada is greater than zero and, during a reporting period of the qualifying taxpayer during which the qualifying taxpayer is a registrant, tax under section 218.01 or subsection 218.1(1.2) in respect of the qualifying expenditure becomes payable by the qualifying taxpayer or is paid by the qualifying taxpayer without having become payable, the following rules apply for the purpose of determining an input tax credit of the qualifying taxpayer:

(*a*) the whole or part of property (in this subsection and subsection (8) referred to as "attributable property") or of a qualifying service (in this subsection and subsection (8) referred to as an "attributable service") to which the qualifying expenditure is attributable is deemed to have been acquired by the qualifying taxpayer at the time at which the outlay was made or the expense was incurred;

(*b*) the tax is deemed to be tax in respect of a supply of the attributable property or attributable service; and

(*c*) the extent to which the qualifying taxpayer acquired the attributable property or attributable service for consumption, use or supply in the course of commercial activities of the qualifying taxpayer is deemed to be the same extent as that to which the whole or part of the outlay or expense, which corresponds to the qualifying expenditure, was made or incurred to consume, use or supply the attributable property or attributable service in the course of commercial activities of the qualifying taxpayer.

Qualifying rule for credits — internal charge

(7) If tax (in this subsection referred to as "internal tax") under section 218.01 or subsection 218.1(1.2) in respect of an internal charge becomes payable by a qualifying taxpayer, or is paid by the qualifying taxpayer without having become payable, and the internal charge is determined based in whole or in part on the inclusion of an outlay made, or an expense incurred, outside Canada by the qualifying taxpayer, the following rules apply for the purpose of determining an input tax credit of the qualifying taxpayer:

(*a*) the whole or part of property (in this subsection and subsection (8) referred to as "internal property") or of a qualifying service (in this subsection and subsection (8) referred to as an "internal service") to which the outlay or expense is attributable is deemed to have been supplied to the qualifying taxpayer at the time the outlay was made or the expense was incurred;

(*b*) the amount of the internal tax that can reasonably be attributed to the outlay or expense is deemed to be tax (in this paragraph referred to as "attributed tax") in respect of the supply of the internal property or the internal service, and the attributed tax is deemed to have become payable at the time the internal tax becomes payable by the qualifying taxpayer or is paid by the qualifying taxpayer without having become payable; and

(*c*) the extent to which the qualifying taxpayer acquired the internal property or internal service for consumption, use or supply in the course of commercial activities of the qualifying taxpayer is deemed to be the same extent as that to which the outlay or expense was made or incurred to consume, use or supply the internal property or internal service in the course of commercial activities of the qualifying taxpayer.

Input tax credits

(8) For the purpose of determining an input tax credit of a qualifying taxpayer under section 169

(*a*) in respect of attributable property or an attributable service, the reference in that section to "property or a service" is to be read as a reference to "attributable property or an attributable service, within the meaning of those terms in paragraph 217.1(6)(*a*)"; and

(*b*) in respect of internal property or an internal service, the reference in that section to "property or a service" is to be read as a reference to "internal property or an internal service, within the meaning of those terms in paragraph 217.1(7)(*a*)".

Election

217.2 (1) A qualifying taxpayer that is resident in Canada may elect to determine tax under section 218.01 in accordance with paragraph 218.01(*a*) and tax under subsection 218.1(1.2) in accordance with paragraph 218.1(1.2)(*a*) for each specified year of the qualifying taxpayer during which the election is in effect.

Form and contents of election

(2) An election made under subsection (1) by a qualifying taxpayer shall

(*a*) be made in prescribed form containing prescribed information;

(*b*) set out the first specified year of the qualifying taxpayer during which the election is to be in effect;

(*c*) specify if subparagraph 217.1(4)(*a*)(iii) is to apply in all cases in determining the internal charges for all specified years of the qualifying taxpayer during which the election is to be in effect; and

(*d*) be filed with the Minister in prescribed manner on or before the day on or before which the qualifying taxpayer's return under section 219 in respect of tax under section 218.01 or subsection 218.1(1.2) for the first specified year is required to be filed.

Effective date

(3) An election made under subsection (1) by a qualifying taxpayer shall become effective on the first day of the specified year set out in the form.

Cessation

(4) An election made under subsection (1) by a qualifying taxpayer ceases to have effect on the earlier of

(*a*) the first day of the specified year of the qualifying taxpayer in which the qualifying taxpayer ceases to be resident in Canada; and

(*b*) the day on which a revocation of the election becomes effective.

Revocation

(5) A qualifying taxpayer that has made an election under subsection (1) may revoke the election, effective on the first day of a specified year of the qualifying taxpayer that begins at least two years after the election became effective, by filing in prescribed manner with the Minister a notice of revocation in prescribed form containing prescribed information not later than the day on which the revocation is to become effective.

Restriction

(6) If a revocation of an election made under subsection (1) becomes effective on a particular date, any subsequent election under that subsection is not a valid election unless the first day of the specified year set out in the subsequent election is at least two years after the day on which the revocation became effective.

(2) Subsection (1) applies to any specified year of a qualifying taxpayer that ends after November 16, 2005.

(3) If a return under section 219 of the Act, as amended by subsection 10(1), in respect of tax under section 218.01 of the Act, as enacted by section 7, or tax under subsection 218.1(1.2) of the Act, as enacted by subsection 8(2), for a specified year of a qualifying taxpayer is required to be filed on or before the day this Act is assented to, the qualifying taxpayer may, despite paragraph 217.2(2)(*d*) of the Act, as enacted by subsection (1), make an election under subsection 217.2(1) of the Act, as enacted by subsection (1), that becomes effective on the first day of the specified year, provided that the qualifying taxpayer files the election with the Minister of National Revenue in prescribed manner on or before the day that is sixty days after the day this Act is assented to.

(4) If a qualifying taxpayer makes an election under subsection 217.2(1) of the Act, as enacted by subsection (1), that is in effect for a specified year of the qualifying taxpayer that ends before the day on which this Act is assented to,

(*a*) if an amount (in this paragraph referred to as the "paid amount") was paid on or before that day by the qualifying taxpayer to the Receiver General as or on account of tax for the specified year under section 218.01 of the Act, as enacted by section 7, or under subsection 218.1(1.2) of the Act, as enacted by subsection 8(2), and, by reason of the election being in effect for the specified year, the total amount of tax payable for the specified year under those provisions is less than the paid amount,

(i) the qualifying taxpayer may request in writing on or before the day that is two years after the day this Act is assented to that the Minister of National Revenue make an assessment, reassessment or additional assessment for the purpose of taking into account that the election was in effect for the specified year, and

(ii) on receipt of a request under subparagraph (i), the Minister shall, with all due dispatch,

(A) consider the request, and

(B) despite section 298 of the Act, as amended by section 21, assess, reassess or make an additional assessment under section 296 of the Act of tax payable by

the qualifying taxpayer for the specified year under section 218.01 of the Act, as enacted by section 7, or under subsection 218.1(1.2) of the Act, as enacted by subsection 8(2), and of any interest, penalty or other obligation of the qualifying taxpayer, but only to the extent that the assessment, reassessment or additional assessment may reasonably be regarded as being for the purpose of taking into account that the election was in effect for the specified year; and

(*b*) despite paragraph 298(1)(*d*) of the Act, as amended by section 21, the Minister of National Revenue may assess, reassess or make an additional assessment under section 296 of the Act of tax payable by the qualifying taxpayer for the specified year under section 218.01 of the Act, as enacted by section 7, or under subsection 218.1(1.2) of the Act, as enacted by subsection 8(2), on or before the day that is seven years after the later of

(i) the day on which the election is filed with the Minister,

(ii) the day on or before which the qualifying taxpayer was required to file the return in which that tax payable was required to be reported, and

(iii) the day that return was filed.

7. (1) The Act is amended by adding the following after section 218:

Imposition of goods and services tax

218.01 Subject to this Part, every qualifying taxpayer shall, for each specified year of the qualifying taxpayer, pay to Her Majesty in right of Canada tax equal to

(*a*) if an election under subsection 217.2(1) is in effect for the specified year, the amount determined by the formula

$$[(A + B) \times (C/D) \times E] + [(A + B) \times ((D - C)/D) \times F]$$

where

A is the total of all amounts, each of which is an internal charge for the specified year that is greater than zero,

B is the total of all amounts, each of which is an external charge for the specified year that is greater than zero,

C is the number of days in the specified year before

(i) if the specified year begins before July 2006, July 2006, and

(ii) in any other case, January 2008,

D is the total number of days in the specified year,

E is

(i) if the specified year begins before July 2006, 7%, and

(ii) in any other case, 6%, and

F is

(i) if the specified year begins before July 2006, 6%, and

(ii) in any other case, 5%; and

(*b*) in any other case, the amount determined by the formula

$$[G \times (H/I) \times J] + [G \times ((I - H)/I) \times K]$$

where

G is the total of all amounts, each of which is qualifying consideration for the specified year that is greater than zero,

H is the number of days in the specified year before

(i) if the specified year begins before July 2006, July 2006, and

(ii) in any other case, January 2008,

I is the total number of days in the specified year,

J is

(i) if the specified year begins before July 2006, 7%, and

(ii) in any other case, 6%, and

K is

(i) if the specified year begins before July 2006, 6%, and

(ii) in any other case, 5%.

(2) Section 218.01 of the Act, as enacted by subsection (1), is replaced by the following:

Imposition of goods and services tax

218.01 Subject to this Part, every qualifying taxpayer shall, for each specified year of the qualifying taxpayer, pay to Her Majesty in right of Canada tax calculated at the rate of 5% on

(*a*) if an election under subsection 217.2(1) is in effect for the specified year, the amount determined by the formula

$$A + B$$

where

A is the total of all amounts, each of which is an internal charge for the specified year that is greater than zero, and

B is the total of all amounts, each of which is an external charge for the specified year that is greater than zero; and

(*b*) in any other case, the total of all amounts, each of which is qualifying consideration for the specified year that is greater than zero.

(3) Subsection (1) applies to any specified year of a qualifying taxpayer that ends after November 16, 2005 and begins before January 2008.

(4) Subsection (2) applies to any specified year of a qualifying taxpayer that begins after December 2007.

8. (1) Paragraphs 218.1(1)(*c*) and (*d*) of the Act are replaced by the following:

(*c*) every person that is the recipient of a supply, included in any of paragraphs (*b.1*) to (*b.3*) of the definition "imported taxable supply" in section 217, of property that is delivered or made available to the person in a particular participating province and that is either resident in that province or is a registrant, and

(*d*) every person that is the recipient of a supply that is included in any of paragraphs (*c.1*), (*d*) or (*e*) of the definition "imported taxable supply" in section 217 and that is made in a particular participating province

(2) Section 218.1 of the Act is amended by adding the following after subsection (1.1):

Tax in a participating province

(1.2) Subject to this Part, every qualifying taxpayer that is resident in a participating province shall, for each specified year of the qualifying taxpayer and for each particular participating province in which the qualifying taxpayer is resident at any time in the specified year, pay to Her Majesty in right of Canada, in addition to the tax payable under section 218.01, tax calculated at the tax rate for the particular participating province on

(*a*) if an election under subsection 217.2(1) is in effect for the specified year, the amount determined by the formula

$$A + B$$

where

A is the total of all amounts, each of which is an amount in respect of an internal charge for the specified year that is greater than zero determined by the formula

$$A_1 \times A_2$$

where

A_1 is the internal charge, and

A_2 is the extent (expressed as a percentage) to which the internal charge is attributable to outlays or expenses that were made or incurred to consume, use or supply the whole or part of property or of a qualifying service, in respect of which the internal charge is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer in the particular participating province, and

B is the total of all amounts, each of which is an amount in respect of an external charge for the specified year that is greater than zero determined by the formula

$$B_1 \times B_2$$

where

B_1 is the external charge, and

B_2 is the extent (expressed as a percentage) to which the whole or part of the outlay or expense, which corresponds to the external charge, was made or incurred to consume, use or supply the whole or part of property or of a qualifying service, in

respect of which the external charge is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer in the particular participating province; and

(*b*) in any other case, the total of all amounts, each of which is an amount in respect of qualifying consideration for the specified year that is greater than zero determined by the formula

$$C \times D$$

where

C is the qualifying consideration, and

D is the extent (expressed as a percentage) to which the whole or part of the outlay or expense, which corresponds to the qualifying consideration, was made or incurred to consume, use or supply the whole or part of property or of a qualifying service, in respect of which the qualifying consideration is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer in the particular participating province.

Qualifying taxpayer resident in a province

(1.3) Despite section 132.1 and for the purposes of subsection (1.2), a qualifying taxpayer is deemed to be resident in a province at any time if, at that time,

(*a*) the qualifying taxpayer has a qualifying establishment in the province; or

(*b*) in the case of a qualifying taxpayer that is resident in Canada, the qualifying taxpayer is

(i) a corporation incorporated or continued under the laws of the province and not continued elsewhere,

(ii) an entity that is a partnership, an unincorporated society, a club, an association or an organization, or a branch of such an entity, in respect of which a majority of the members having management and control of the entity or branch are resident in the province, or

(iii) a trust, carrying on activities as a trust in the province, that has a local office or branch in the province.

(3) The portion of subsection 218.1(2) of the Act before paragraph (*a*) is replaced by the following:

Selected listed financial institutions

(2) If tax under subsection (1) or (1.2) would, in the absence of this subsection, become payable by a person when the person is a selected listed financial institution, that tax is not payable unless it is an amount of tax that

(4) Subsections (1) to (3) apply to any specified year of a person that ends after November 16, 2005, except that for supplies made on or before March 19, 2007, paragraph 218.1(1)(*d*) of the Act, as amended by subsection (1), shall be read without reference to "(*c.1*)".

9. (1) Section 218.2 of the Act is replaced by the following:

When tax payable

218.2 Tax under this Division (other than tax under section 218.01 or subsection 218.1(1.2)) that is calculated on an amount of consideration for a supply that becomes due at any time, or is paid at any time without having become due, becomes payable at that time.

When tax payable

218.3 Tax under section 218.01 and subsection 218.1(1.2) that is determined for a specified year of a qualifying taxpayer becomes payable by the qualifying taxpayer on

(*a*) if the specified year is a taxation year of the qualifying taxpayer for the purposes of the *Income Tax Act* and the qualifying taxpayer is required under Division I of that Act to file a return of income for the specified year, the filing-due date for the specified year for the purposes of that Act; and

(*b*) in any other case, the day that is six months after the end of the specified year.

(2) Subsection (1) applies to any specified year of a qualifying taxpayer that ends after November 16, 2005.

10. (1) Paragraph 219(*a*) of the Act is replaced by the following:

(*a*) if the person is a registrant, the person shall, on or before the day on or before which the person's return under section 238 for the reporting period in which the tax became payable is required to be filed, pay the tax to the Receiver General and

(i) if the person is not a qualifying taxpayer, report the tax in that return, or

(ii) if the person is a qualifying taxpayer, file with the Minister in prescribed manner a return in respect of the tax in prescribed form containing prescribed information; and

(2) Subsection (1) applies in respect of any reporting period that ends after November 16, 2005.

11. (1) Section 220 of the Act is replaced by the following:

Definitions

220. (1) The following definitions apply in this section.

"intangible capital" « *capital incorporel* »

"intangible capital" of a specified person means any of the following that is consumed or used by the specified person in the process of creating, developing or bringing into existence intangible personal property:

(*a*) all or part of a labour activity of the specified person;

(*b*) all or part of property (other than intangible personal property described in paragraph (*a*) of the definition "intangible resource"); or

(*c*) all or part of a service.

"intangible resource" « *ressource incorporelle* »

"intangible resource" of a specified person means

(*a*) all or part of intangible personal property supplied to, or created, developed or brought into existence by, the specified person that is not support capital of the specified person;

(*b*) intangible capital of the specified person; or

(*c*) any combination of the items referred to in paragraphs (*a*) and (*b*).

"labour activity" « *activité de main-d'œuvre* »

"labour activity" of a specified person means anything done by an employee of the specified person in the course of, or in relation to, the office or employment of the employee.

"support capital" « *capital d'appui* »

"support capital" of a specified person means all or part of intangible personal property that is consumed or used by the specified person in the process of creating, developing or bringing into existence property (other than intangible personal property) or in supporting, assisting or furthering a labour activity of the specified person.

"support resource" « *ressource d'appui* »

"support resource" of a specified person means

(*a*) all or part of property (other than intangible personal property) supplied to, or created, developed or brought into existence by, the specified person that is not intangible capital of the specified person;

(*b*) all or part of a service supplied to the specified person that is not intangible capital of the specified person;

(*c*) all or part of a labour activity of the specified person that is not intangible capital of the specified person;

(*d*) support capital of the specified person; or

(*e*) any combination of the items referred to in paragraphs (*a*) to (*d*).

Specified person and specified business

(2) For the purposes of this section,

(*a*) a person is a specified person throughout a taxation year of the person if the person

(i) carries on, at any time in the taxation year, a business through a permanent establishment of the person outside Canada, and

(ii) carries on, at any time in the taxation year, a business through a permanent establishment of the person in Canada; and

(*b*) a business of a person is a specified business of the person throughout a taxation year of the person if the business is carried on, at any time in the taxation year, in Canada through a permanent establishment of the person.

Internal use

(3) For the purposes of this section, internal use of a support resource, or of an intangible resource, of a specified person occurs during a taxation year of the specified person if

(*a*) the specified person at any time in the taxation year uses outside Canada any part of the resource in relation to the carrying on of a specified business of the specified person; or

(*b*) the specified person is permitted under the *Income Tax Act*, or would be so permitted if that Act applied to the specified person, to allocate for the taxation year, as an amount in respect of a specified business of the specified person,

(i) any part of an outlay made, or expense incurred, by the specified person in respect of any part of the resource, or

(ii) any part of an allowance, or allocation for a reserve, in respect of any part of such an outlay or expense.

Dealings between permanent establishments

(4) If internal use of a support resource of a specified person occurs during a taxation year of the specified person, the following rules apply:

(*a*) for the purposes of this Division, the specified person is deemed

(i) to have rendered, during the taxation year, a service of internally using the support resource at a permanent establishment of the specified person outside Canada in the course of carrying on a specified business of the specified person, and to be the person to which the service was rendered,

(ii) to be the recipient of a supply made outside Canada of the service, and

(iii) to be, in the case of a non-resident specified person, resident in Canada;

(*b*) for the purposes of this Division, the supply is deemed not to be a supply of a service that is in respect of

(i) real property situated outside Canada, or

(ii) tangible personal property that is situated outside Canada at the time the service is performed;

(*c*) for the purposes of this Division, the value of the consideration for the supply is deemed to be the total of all amounts, each of which is the fair market value of a part, or of the use of a part, as the case may be, of the support resource referred to in subsection (3)

(i) if the part is only referred to in paragraph (3)(*a*), at the time referred to in that paragraph, and

(ii) otherwise, on the last day of the taxation year;

(*d*) for the purposes of this Division, the consideration for the supply is deemed to have become due and to have been paid, on the last day of the taxation year, by the specified person; and

(*e*) for the purposes of section 217 and of determining an input tax credit of the specified person under this Part, the specified person is deemed to have acquired the service for the same purpose as that for which the part of the support resource referred to in subsection (3) was acquired, consumed or used by the specified person.

Dealings between permanent establishments

(5) If internal use of an intangible resource of a specified person occurs during a taxation year of the specified person, the following rules apply:

(*a*) for the purposes of this Division, the specified person is deemed

(i) to have made available, during the taxation year, at a permanent establishment of the specified person outside Canada intangible personal property in the course of carrying on a specified business of the specified person and to be the person to which the property was made available,

(ii) to be the recipient of a supply made outside Canada of the property, and

(iii) to be, in the case of a non-resident specified person, resident in Canada;

(*b*) for the purposes of this Division, the supply is deemed not to be a supply of property that relates to real property situated outside Canada, to a service to be performed wholly outside Canada or to tangible personal property situated outside Canada;

(*c*) for the purposes of this Division, the value of the consideration for the supply is deemed to be the total of all amounts, each of which is the fair market value of a part, or of the use of a part, as the case may be, of the intangible resource referred to in subsection (3)

(i) if the part is only referred to in paragraph (3)(*a*), at the time referred to in that paragraph, and

(ii) otherwise, on the last day of the taxation year;

(*d*) for the purposes of this Division, the consideration for the supply is deemed to have become due and to have been paid, on the last day of the taxation year, by the specified person; and

(*e*) for the purposes section 217 and of determining an input tax credit of the specified person under this Part, the specified person is deemed to have acquired the property for the same purpose as that for which the part of the intangible resource referred to in subsection (3) was acquired, consumed or used by the specified person.

(2) The portion of paragraph 220(2)(*a*) of the Act before subparagraph (i), as enacted as by subsection (1), is replaced by the following:

(*a*) a person <u>(other than a financial institution)</u> is a specified person throughout a taxation year of the person if the person

(3) Subsection (1) is deemed to have come into force on December 17, 1990.

(4) Subsection (2) applies to any taxation year of a person that ends after November 16, 2005.

12. (1) Section 220.05 of the Act is amended by adding the following after subsection (3):

Pension entities

(3.1) No tax is payable under subsection (1) in respect of property if a person that is a pension entity of a pension plan (as those terms are defined in subsection 172.1(1)) is the

recipient of a particular supply of the property made by a participating employer (as defined in that subsection) of the pension plan and

(*a*) the amount determined for B in the formula in paragraph 172.1(5)(*c*) in respect of a supply of the same property that is deemed to have been made by the participating employer under paragraph 172.1(5)(*a*) is greater than zero; or

(*b*) the amount determined for B in the formula in paragraph 172.1(6)(*c*) in respect of every supply deemed to have been made under paragraph 172.1(6)(*a*) of an employer resource (as defined in subsection 172.1(1)) consumed or used for the purpose of making the particular supply is greater than zero.

(2) Subsection (1) is deemed to have come into force on ANNOUNCEMENT DATE.

13. (1) Section 220.08 of the Act is amended by adding the following after subsection (3):

Pension entities

(3.1) No tax is payable under subsection (1) in respect of a particular supply of property or a service made by a participating employer of a pension plan (as those terms are defined in subsection 172.1(1)) to a person that is a pension entity (as defined in that subsection) of the pension plan if

(*a*) the amount determined for B in the formula in paragraph 172.1(5)(*c*) in respect of a supply of the same property or service that is deemed to have been made by the participating employer under paragraph 172.1(5)(*a*) is greater than zero; or

(*b*) the amount determined for B in the formula in paragraph 172.1(6)(*c*) in respect of every supply deemed to have been made under paragraph 172.1(6)(*a*) of an employer resource (as defined in subsection 172.1(1)) consumed or used for the purpose of making the particular supply is greater than zero.

(2) Subsection (1) is deemed to have come into force on ANNOUNCEMENT DATE.

14. (1) Paragraph (*a*) in the description of A in subsection 225.2(2) of the Act is replaced by the following:

(*a*) all tax (other than a prescribed amount of tax) that became payable under any of subsection 165(1) and sections 212, 218 and 218.01 by the financial institution during the particular reporting period or that was paid by the financial institution during the particular reporting period without having become payable,

(2) Subsection (1) applies to any taxation year of a qualifying taxpayer that ends after November 16, 2005.

15. (1) The Act is amended by adding the following after section 232:

Definitions

232.01 (1) In this section and in section 232.02,

(*a*) "employer resource", "participating employer", "pension entity", "pension plan" and "specified resource" have the same meanings as in section 172.l;

(*b*) "claim period" has the meaning assigned by subsection 259(1); and

(*c*) "eligible amount", "non-qualifying pension entity", "pension rebate amount", "qualifying employer" and "qualifying pension entity" have the same meanings as in section 26l.01.

Tax adjustment note — subsection 172.1(5)

(2) A person may, on a particular day, issue to a pension entity a note in respect of all or part of a specified resource (in this section referred to as a "tax adjustment note"), in prescribed form containing prescribed information and in a manner satisfactory to the Minister, for an amount determined in accordance with subsection (3) if

(*a*) the person is deemed under paragraph 172.1(5)(*b*) to have collected tax, on or before the particular day, in respect of a taxable supply of the specified resource or part deemed to have been made by the person under paragraph 172.1(5)(*a*);

(*b*) a supply of the specified resource or part is deemed to have been received by the pension entity under subparagraph 172.1(5)(*d*)(i) and tax in respect of that supply is deemed to have been paid under subparagraph 172.1(5)(*d*)(ii) by the pension entity; and

(*c*) an amount of tax becomes payable, or is paid without having become payable, to the person (otherwise than by the operation of section 172.1) by the pension entity in respect of a taxable supply of the specified resource or part on or before the particular day.

Amount of tax adjustment note

(3) The amount of a tax adjustment note issued under subsection (2) on a particular day in respect of a specified resource or part shall not exceed the amount determined by the formula

$$(A + B) - C$$

where

A is the lesser of

(*a*) the amount determined for A in the formula in paragraph 172.1(5)(*c*) in respect of the specified resource or part, and

(*b*) the total of all amounts, each of which is an amount of tax under subsection 165(1) that became payable, or was paid without having become payable, to the person (otherwise than by the operation of section 172.1) by the pension entity in respect of a taxable supply of the specified resource or part on or before the particular day;

B is the lesser of

(*a*) the amount determined for B in the formula in paragraph 172.1(5)(*c*) in respect of the specified resource or part, and

(*b*) the total of all amounts, each of which is an amount of tax under subsection 165(2) that became payable, or was paid without having become payable, to the person (otherwise than by the operation of section 172.1) by the pension entity in respect of a taxable supply of the specified resource or part on or before the particular day; and

C is the total of all amounts, each of which is an amount of another tax adjustment note issued under subsection (2) on or before the particular day in respect of the specified resource or part.

Effect of tax adjustment note

(4) If a person issues a tax adjustment note to a pension entity under subsection (2) in respect of all or part of a specified resource, a supply of the specified resource or part is deemed to have been received by the pension entity under subparagraph 172.1(5)(*d*)(i) and tax (in this subsection referred to as "deemed tax") in respect of that supply is deemed to have been paid under subparagraph 172.1(5)(*d*)(ii) by the pension entity, the following rules apply:

(*a*) the amount of the tax adjustment note may be deducted in determining the net tax of the person for its reporting period that includes the day on which the tax adjustment note is issued;

(*b*) the pension entity shall add, in determining its net tax for its reporting period that includes the day on which the tax adjustment note is issued, the amount determined by the formula:

$$A \times (B/C)$$

where

A is the total of all input tax credits that the pension entity is entitled to claim in respect of the deemed tax,

B is the amount of the tax adjustment note, and

C is the amount of the deemed tax;

(*c*) if any part of the amount of the deemed tax is an eligible amount of the pension entity for a particular claim period of the pension entity and the pension entity was a qualifying pension entity on the last day of the particular claim period, the pension entity shall pay to the Receiver General, on or before the last day of its claim period that immediately follows its claim period that includes the day on which the tax adjustment note is issued, the amount determined by the formula

$$A \times B \times (C/D) \times [(E - F)/E]$$

where

A is that part of the amount of the deemed tax,

B is 33%,

C is the amount of the tax adjustment note,

D is the amount of the deemed tax,

E is the pension rebate amount of the pension entity for the particular claim period, and

F is the total determined for B in the formula in subsection 261.01(2) in respect of the pension entity for the particular claim period; and

(*d*) if any part of the amount of the deemed tax is an eligible amount of the pension entity for a claim period of the pension entity for which an election under any of subsections 261.01(5), (6) or (9) was made jointly by the pension entity and all participating employers of the pension plan that were, for the calendar year that includes the last day of the claim

period, qualifying employers of the pension plan, each of those participating employers shall add, in determining its net tax for its reporting period that includes the day on which the tax adjustment note is issued, the amount determined by the formula

$$A \times B \times (C/D) \times (E/F)$$

where

A is that part of the amount of the deemed tax,

B is 33%,

C is the amount of the tax adjustment note,

D is the amount of the deemed tax,

E is the amount of the deduction determined for the participating employer under subsection 261.01(5), paragraph 261.01(6)(*b*) or subsection 261.01(9), as the case may be, for the claim period, and

F is the pension rebate amount of the pension entity for the claim period.

Notification

(5) If a tax adjustment note is issued under subsection (2) to a pension entity of a pension plan and, as a consequence of that issuance, paragraph (4)(*d*) applies to a participating employer of the pension plan, the pension entity shall, in prescribed form containing prescribed information and in a manner satisfactory to the Minister, forthwith notify the participating employer of that issuance.

Joint and several liability

(6) If a participating employer of a pension plan is required to add an amount to its net tax under paragraph (4)(*d*) as a consequence of the issuance of a tax adjustment note under subsection (2) to a pension entity of the pension plan, the participating employer and the pension entity are jointly and severally, or solidarily, liable to pay the amount to the Receiver General.

Assessment

(7) The Minister may assess a person for any amount for which the person is liable under subsection (6) and, if the Minister sends a notice of assessment, sections 296 to 311 apply, with such modifications as the circumstances require.

Liability where participating employer ceases to exist

(8) If a participating employer of a pension plan has ceased to exist on or before the day on which a tax adjustment note is issued under subsection (2) to a pension entity of the pension plan and the participating employer would have been required, had it not ceased to exist, to add an amount to its net tax under paragraph (4)(*d*) as a consequence that issuance, the pension entity shall pay the amount to the Receiver General on or before the last day of its claim period that immediately follows its claim period that includes the day on which the tax adjustment note is issued.

Requirement to maintain records

(9) Despite section 286, every person that issues a tax adjustment note under subsection (2) shall maintain, for a period of six years from the day on which the tax adjustment note was issued, evidence satisfactory to the Minister that the person was entitled to issue the tax adjustment note for the amount for which it was issued.

Tax adjustment note — subsection 172.1(6)

232.02 (1) A person may, on a particular day, issue to a pension entity a note (in this section referred to as a "tax adjustment note") in respect of employer resources consumed or used for the purpose of making a supply (in this section referred to as the "actual pension supply") of property or a service to the pension entity, in prescribed form containing prescribed information and in a manner satisfactory to the Minister, for an amount determined in accordance with subsection (2) if

(*a*) the person is deemed under paragraph 172.1(6)(*b*) to have collected tax, on or before the particular day, in respect of one or more taxable supplies, deemed to have been made by the person under paragraph 172.1(6)(*a*), of the employer resources;

(*b*) a supply of each of those employer resources is deemed to have been received by the pension entity under subparagraph 172.1(6)(*d*)(i) and tax in respect of each of those supplies is deemed to have been paid under subparagraph 172.1(6)(*d*)(ii) by the pension entity; and

(*c*) an amount of tax becomes payable, or is paid without having become payable, to the person (otherwise than by the operation of section 172.1) by the pension entity in respect of the actual pension supply on or before the particular day.

Amount of tax adjustment note

(2) The amount of a tax adjustment note issued under subsection (1) on a particular day in respect of employer resources consumed or used for the purpose of making an actual pension supply shall not exceed the amount determined by the formula

$$(A + B) - C$$

where

A is the lesser of

(*a*) the total of all amounts, each of which is an amount determined for A in the formula in paragraph 172.1(6)(*c*) in determining an amount of tax that is in respect of one of those employer resources and that is deemed under paragraph 172.1(6)(*b*) to have become payable and to have been collected on or before the particular day, and

(*b*) the total of all amounts, each of which is an amount of tax under subsection 165(1) that became payable, or was paid without having become payable, to the person (otherwise than by the operation of section 172.1) by the pension entity in respect of the actual pension supply on or before the particular day;

B is the lesser of

(*a*) the total of all amounts, each of which is an amount determined for B in the formula in paragraph 172.1(6)(*c*) in determining an amount of tax that is in respect of one of those employer resources and that is deemed under paragraph 172.1(6)(*b*) to have become payable and to have been collected on or before the particular day, and

(*b*) the total of all amounts, each of which is an amount of tax under subsection 165(2) that became payable, or was paid without having become payable, to the person (otherwise than by the operation of section 172.1) by the pension entity in respect of the actual pension supply on or before the particular day; and

C is the total of all amounts, each of which is an amount of another tax adjustment note issued under subsection (1) on or before the particular day in respect of employer resources consumed or used for the purpose of making the actual pension supply.

Effect of tax adjustment note

(3) If a person issues a tax adjustment note to a pension entity under subsection (1) in respect of particular employer resources consumed or used for the purpose of making an actual pension supply, a supply of each of those particular employer resources (each of which in this subsection is referred to as a "particular supply") is deemed to have been received by the pension entity under subparagraph 172.1(6)(*d*)(i) and tax (in this subsection referred to as "deemed tax") in respect of each of the particular supplies is deemed to have been paid under subparagraph 172.1(6)(*d*)(ii) by the pension entity, the following rules apply:

(*a*) the amount of the tax adjustment note may be deducted in determining the net tax of the person for its reporting period that includes the day on which the tax adjustment note is issued;

(*b*) the pension entity shall add, in determining its net tax for its reporting period that includes the day on which the tax adjustment note is issued, the amount determined by the formula:

$$A \times (B/C)$$

where

A is the total of all amounts, each of which is the total of all input tax credits that the pension entity is entitled to claim in respect of deemed tax in respect of a particular supply,

B is the amount of the tax adjustment note, and

C is the total of all amounts, each of which is an amount of deemed tax in respect of a particular supply;

(*c*) for each particular claim period of the pension entity for which any part of an amount of deemed tax in respect of a particular supply is an eligible amount of the pension entity and for which the pension entity was a qualifying pension entity on the last day of the particular claim period, the pension entity shall pay to the Receiver General, on or before the last day of its claim period that immediately follows its claim period that includes the day on which the tax adjustment note is issued, the amount determined by the formula

$$A \times B \times (C/D) \times [(E - F)/E]$$

where

A is the total of all amounts, each of which is the part of an amount of deemed tax in respect of a particular supply that is an eligible amount of the pension entity for the particular claim period,

B is 33%,

C is the amount of the tax adjustment note,

D is the total of all amounts, each of which is an amount of deemed tax in respect of a particular supply,

E is the pension rebate amount of the pension entity for the particular claim period, and

F is the total determined for B in the formula in subsection 261.01(2) in respect of the pension entity for the particular claim period; and

(*d*) for each claim period of the pension entity for which any part of an amount of deemed tax in respect of a particular supply is an eligible amount of the pension entity and for which an election under any of subsections 261.01(5), (6) or (9) was made jointly by the pension entity and all participating employers of the pension plan that were, for the calendar year that includes the last day of the claim period, qualifying employers of the pension plan, each of those participating employers shall add, in determining its net tax for its reporting period that includes the day on which the tax adjustment note is issued, the amount determined by the formula

$$A \times B \times (C/D) \times (E/F)$$

where

A is the total of all amounts, each of which is the part of an amount of deemed tax in respect of a particular supply that is an eligible amount of the pension entity for the claim period,

B is 33%,

C is the amount of the tax adjustment note,

D is the total of all amounts, each of which is an amount of deemed tax in respect of a particular supply,

E is the amount of the deduction determined for the participating employer under subsection 261.01(5), paragraph 261.01(6)(*b*) or subsection 261.01(9), as the case may be, for the claim period, and

F is the pension rebate amount of the pension entity for the claim period.

Notification

(4) If a tax adjustment note is issued under subsection (2) to a pension entity of a pension plan and, as a consequence of that issuance, paragraph (3)(*d*) applies to a participating employer of the pension plan, the pension entity shall, in prescribed form containing prescribed information and in a manner satisfactory to the Minister, forthwith notify the participating employer of that issuance.

Joint and several liability

(5) If a participating employer of a pension plan is required to add an amount to its net tax under paragraph (3)(*d*) as a consequence of the issuance of a tax adjustment note under subsection (1) to a pension entity of the pension plan, the participating employer and the pension entity are jointly and severally, or solidarily, liable to pay the amount to the Receiver General.

Assessment

(6) The Minister may assess a person for any amount for which the person is liable under subsection (5) and, if the Minister sends a notice of assessment, sections 296 to 311 apply, with such modifications as the circumstances require.

Liability where participating employer ceases to exist

(7) If a participating employer of a pension plan has ceased to exist on or before the day on which a tax adjustment note is issued under subsection (1) to a pension entity of the pension plan and the participating employer would have been required, had it not ceased to exist, to add an amount to its net tax under paragraph (3)(*d*) as a consequence of that issuance, the pension entity shall pay the amount to the Receiver General on or before the last day of its claim period that immediately follows its claim period that includes the day on which the tax adjustment note is issued.

Requirement to maintain records

(8) Despite section 286, every person that issues a tax adjustment note under subsection (1) shall maintain, for a period of six years from the day on which the tax adjustment note was issued, evidence satisfactory to the Minister that the person was entitled to issue the tax adjustment note for the amount for which it was issued.

(2) Subsection (1) is deemed to have come into force on ANNOUNCEMENT DATE.

16. (1) Paragraph 238(1)(*a*) of the Act is replaced by the following:

(*a*) where the registrant's reporting period is or would, in the absence of subsection 251(1), be the fiscal year,

(i) if the registrant is a listed financial institution described in any of subparagraphs 149(1)(*a*)(i) to (x), within six months after the end of the year,

(ii) if subparagraph (i) does not apply, the registrant is an individual, the fiscal year is a calendar year and, for the purposes of the *Income Tax Act*, the individual carried on a business in the year and the filing-due date of the individual for the year is June 15 of the following year, on or before that day, and

(iii) in any other case, within three months after the end of the year; and

(2) The portion of subsection 238(2.1) of the English version of the Act before paragraph (*a*) is replaced by the following:

Filing by certain selected listed financial institutions

(2.1) Despite paragraph (1)(*b*) and subsection (2), if a selected listed financial institution's reporting period is a fiscal month or fiscal quarter, the financial institution shall

(3) Paragraph 238(2.1)(*b*) of the Act is replaced by the following:

(*b*) file a final return for the period with the Minister within six months after the end of the fiscal year in which the period ends.

(4) Subsections (1) and (3) apply in respect of reporting periods in any fiscal year that begins after 2009.

17. (1) The definition "multi-employer plan" in subsection 261.01(1) of the Act is repealed.

(2) Subsection 261.01(1) of the Act is amended by adding the following in alphabetical order:

"active member" « *participant actif* »

"active member" has the meaning assigned by subsection 8500(1) of the *Income Tax Regulations*.

"eligible amount" « *montant admissible* »

"eligible amount" of a pension entity for a claim period of the pension entity means an amount of tax, other than a recoverable amount in respect of the claim period, that

(*a*) became payable by the pension entity during the claim period, or was paid by the pension entity during the claim period without having become payable, in respect of a supply, importation or bringing into a participating province of property or a service that the pension entity acquired, imported or brought into the participating province, as the case may be, for consumption, use or supply in respect of a pension plan, other than an amount of tax that

(i) is deemed to have been paid by the pension entity under this Part (other than section 191),

(ii) became payable, or was paid without having become payable, by the pension entity at a time when it was entitled to claim a rebate under section 259, or

(iii) was payable under subsection 165(1), or is deemed under section 191 to have been paid, by the pension entity in respect of a taxable supply to the pension entity of a residential complex, an addition to a residential complex or land if, in respect of that supply, the pension entity was entitled to claim a rebate under section 256.2 or would be so entitled after paying the tax payable in respect of that supply; or

(*b*) is deemed to have been paid by the pension entity under section 172.1 during the claim period.

"non-qualifying pension entity" « *entité de gestion non admissible* »

"non-qualifying pension entity" means a pension entity that is not a qualifying pension entity.

"participating employer" « *employeur participant* »

"participating employer" has the meaning assigned by subsection 172.1(1).

"pension contribution" « *cotisation* »

"pension contribution" means a contribution by a person to a pension plan that may be deducted by the person under paragraph 20(1)(*q*) of the *Income Tax Act* in computing its income.

"pension entity" « *entité de gestion* »

"pension entity" has the meaning assigned by subsection 172.1(1).

"pension plan" « *régime de pension* »

"pension plan" has the meaning assigned by subsection 172.1(1).

"pension rebate amount" « *montant de remboursement de pension* »

"pension rebate amount" of a pension entity for a claim period of the pension entity means the amount determined by the formula

$$A \times B$$

where

A is 33%, and

B is the total of all amounts each of which is an eligible amount of the pension entity for the claim period.

"qualifying employer" « *employeur admissible* »

"qualifying employer" of a pension plan for a calendar year means a participating employer of the pension plan that is a registrant and that

(*a*) if pension contributions were made to the pension plan in the immediately preceding calendar year, made pension contributions to the pension plan in that year; and

(*b*) in any other case, was the employer of one or more active members of the pension plan in the immediately preceding calendar year.

"qualifying pension entity" « *entité de gestion admissible* »

"qualifying pension entity" means a pension entity of a pension plan other than a pension plan in respect of which

(*a*) listed financial institutions made 10% or more of the total pension contributions to the pension plan in the last preceding calendar year in which pension contributions were made to the pension plan; or

(*b*) it can reasonably be expected that listed financial institutions will make 10% or more of the total pension contributions to the pension plan in the next calendar year in which pension contributions will be required to be made to the pension plan.

"recoverable amount" « *montant recouvrable* »

"recoverable amount" in respect of a claim period of a person means an amount of tax

(*a*) that is included in determining an input tax credit of the person for the claim period;

(*b*) for which it can reasonably be regarded that the person has obtained or is entitled to obtain a rebate, refund or remission under any other section of this Act or under any other Act of Parliament; or

(*c*) that can reasonably be regarded as having been included in an amount adjusted, refunded or credited to or in favour of the person for which a credit note referred to in

subsection 232(3) has been received by the person or a debit note referred to in that subsection has been issued by the person.

"tax recovery rate" « *taux de recouvrement de taxe* »

"tax recovery rate" of a person for a fiscal year of the person means the lesser of

(*a*) 100%; and

(*b*) the amount (expressed as a percentage) determined by the formula

(A + B) / C

where

A is the total of all amounts, each of which is an input tax credit of the person for a reporting period included in the fiscal year,

B is the total of all amounts, each of which is a rebate to which the person is entitled under section 259 for a claim period included in the fiscal year, and

C is the total of all amounts, each of which is an amount of tax that became payable, or was paid without having become payable, by the person during the fiscal year.

(3) Subsections 261.01(2) to (5) of the Act are replaced by the following:

Rebate for qualifying pension entities

(2) If a pension entity is a qualifying pension entity on the last day of a claim period of the pension entity, the Minister shall pay a rebate to the pension entity for the claim period equal to the amount determined by the formula

A - B

where

A is the pension rebate amount of the pension entity for the claim period, and

B is the total of all amounts, each of which is an amount

(*a*) determined under subsection (5) for a qualifying employer as a consequence of an election made under that subsection for the claim period, or

(*b*) determined under paragraph (6)(*a*) in respect of a qualifying employer as a consequence of an election made under subsection (6) for the claim period.

Application for rebate

(3) A rebate under subsection (2) shall not be paid for a claim period of a pension entity, unless the pension entity files an application for the rebate within two years after the day that is

(*a*) if the pension entity is a registrant, the day on or before which the pension entity is required to file a return under Division V for the claim period; and

(*b*) in any other case, the last day of the claim period.

Limitation

(4) A pension entity shall not make more than one application for a rebate under subsection (2) for any claim period of the pension entity.

Election to share rebate — engaged exclusively in commercial activities

(5) If a pension entity of a pension plan is a qualifying pension entity on the last day of a claim period of the pension entity, the pension entity makes an election for the claim period jointly with all persons that are, for the calendar year that includes the last day of the claim period, qualifying employers of the pension plan and each of those qualifying employers is engaged exclusively in commercial activities throughout the claim period, each of those qualifying employers may deduct in determining its net tax for the reporting period that includes the day on which the election is filed with the Minister an amount determined by the formula

$$A \times B$$

where

A is the pension rebate amount of the pension entity for the claim period, and

B is the percentage specified for the qualifying employer in the election.

Election to share rebate — not engaged exclusively in commercial activities

(6) If a pension entity of a pension plan is a qualifying pension entity on the last day of a claim period of the pension entity, the pension entity makes an election for the claim period jointly with all persons that are, for the calendar year that includes the last day of the claim period, qualifying employers of the pension plan and any of those qualifying employers is not engaged exclusively in commercial activities throughout the claim period, the following rules apply:

(*a*) an amount (in this subsection referred to as a "shared portion") shall be determined for the purposes of this section in respect of each of those qualifying employers by the formula

$$A \times B \times C$$

where

A is the pension rebate amount of the pension entity for the claim period,

B is the percentage specified for the qualifying employer in the election, and

C is

(i) in the case where pension contributions were made to the pension plan in the calendar year that immediately precedes the calendar year that includes the last day of the claim period (in this paragraph referred to as the "preceding calendar year"), the amount determined by the formula

$$D/E$$

where

D is the total of all amounts, each of which is a pension contribution made by the qualifying employer to the pension plan in the preceding calendar year, and

E is the total of all amounts, each of which is a pension contribution made to the pension plan in the preceding calendar year,

(ii) in the case where subparagraph (i) does not apply and one or more qualifying employers of the pension plan was the employer of one or more active members of the pension plan in the preceding calendar year, the amount determined by the formula

F/G

where

F is the total number of employees of the qualifying employer in the preceding calendar year who were active members of the pension plan in that year, and

G is the sum of the total number of employees of each of those qualifying employers in the preceding calendar year who were active members of the pension plan in that year, and

(iii) in any other case, zero; and

(*b*) each of those qualifying employers may deduct in determining its net tax for the reporting period that includes the day on which the election is filed with the Minister an amount determined by the formula

A × B

where

A is the shared portion in respect of the qualifying employer as determined under paragraph (*a*), and

B is the tax recovery rate of the qualifying employer for the fiscal year of the qualifying employer that ended on or before the last day of the claim period.

Engaged exclusively in commercial activities

(7) For the purposes of subsections (5) and (6), a qualifying employer of a pension plan is engaged exclusively in commercial activities throughout a claim period of a pension entity of the pension plan if

(*a*) in the case of a qualifying employer that is a financial institution at any time in the claim period, all of the activities of the qualifying employer for the claim period are commercial activities; and

(*b*) in any other case, all or substantially all of the activities of the qualifying employer for the claim period are commercial activities.

Form and manner of filing

(8) An election made under subsection (5) or (6) by a pension entity of a pension plan and the qualifying employers of the pension plan shall

(*a*) be made in prescribed form containing prescribed information;

(*b*) be filed by the pension entity with the Minister in prescribed manner at the same time the application for the rebate under subsection (2) for the claim period is filed by the pension entity;

(*c*) in the case of an election under subsection (5), indicate the percentage specified for each qualifying employer, the total of which for all qualifying employers shall not exceed 100%; and

(*d*) in the case of an election under subsection (6), indicate for each qualifying employer the percentage specified for the qualifying employer, which shall not exceed 100%.

Non-qualifying pension entities

(9) If a pension entity of a pension plan is a non-qualifying pension entity on the last day of a claim period of the pension entity and the pension entity makes an election for the claim period jointly with all persons that are, for the calendar year that includes the last day of the claim period, qualifying employers of the pension plan, each of those qualifying employers may deduct in determining its net tax for the reporting period that includes the day on which the election is filed with the Minister the amount determined by the formula:

$$A \times B \times C$$

where

A is the pension rebate amount of the pension entity for the claim period;

B is

(*a*) in the case where pension contributions were made to the pension plan in the calendar year (in this subsection referred to as the "preceding calendar year") that immediately precedes the calendar year that includes the last day of the claim period, the amount determined by the formula

$$D/E$$

where

D is the total of all amounts, each of which is a pension contribution made by the qualifying employer to the pension plan in the preceding calendar year, and

E is the total of all amounts, each of which is a pension contribution made to the pension plan in the preceding calendar year,

(*b*) in the case where subparagraph (*a*) does not apply and one or more qualifying employers of the pension plan was the employer of one or more active members of the pension plan in the preceding calendar year, the amount determined by the formula

$$F/G$$

where

F is the total number of employees of the qualifying employer in the preceding calendar year who were active members of the pension plan in that year, and

G is the sum of the total number of employees of each of those qualifying employers in the preceding calendar year who were active members of the pension plan in that year, and

(*c*) in any other case, zero; and

C is the tax recovery rate of the qualifying employer for the fiscal year of the qualifying employer that ended on or before the last day of the claim period.

Form and manner of filing

(10) An election made under subsection (9) for a claim period of a pension entity shall

(*a*) be made in prescribed form containing prescribed information; and

(*b*) be filed by the pension entity with the Minister in prescribed manner within two years after the day that is

(i) if the pension entity is a registrant, the day on or before which the pension entity is required to file a return under Division V for the claim period, and

(ii) in any other case, the last day of the claim period.

Limitation

(11) Not more than one election under subsection (9) shall be filed for a claim period of a pension entity.

Joint and several liability

(12) If, in determining the net tax for a reporting period of a qualifying employer of a pension plan, the qualifying employer deducts an amount under subsection (5), paragraph (6)(*b*) or subsection (9) and either the qualifying employer or the pension entity of the pension plan knows or ought to know that the qualifying employer is not entitled to the amount or that the amount exceeds the amount to which the qualifying employer is entitled, the qualifying employer and the pension entity are jointly and severally, or solidarily, liable to pay the amount or excess to the Receiver General.

(4) Subsections (1) to (3) apply in respect of any claim period of a pension entity beginning on or after ANNOUNCEMENT DATE.

18. (1) The Act is amended by adding the following after section 273.1:

Subdivision b.3

Information Return for Financial Institutions

Definitions

273.2 (1) The following definitions apply in this section and section 284.1.

"actual amount" « *montant réel* »

"actual amount" means any amount that is required to be reported in an information return that a person is required to file under subsection (3) for a fiscal year of the person and that is

(*a*) a tax amount for the fiscal year or a previous fiscal year of the person; or

(*b*) an amount calculated using only tax amounts for the fiscal year or a previous fiscal year of the person, unless all of those tax amounts are required to be reported in the information return.

"tax amount" « *montant de taxe* »

"tax amount" for a fiscal year of a person means an amount that

(*a*) is tax paid or payable (other than tax paid or payable under Division II), or is tax that is deemed under this Part to have been paid or become payable, by the person at any time during the fiscal year;

(*b*) became collectible or was collected, or is deemed under this Part to have become collectible or to have been collected, by the person as or on account of tax under Division II in a reporting period of the person in the fiscal year;

(*c*) is an input tax credit for a reporting period of the person in the fiscal year;

(*d*) is an amount that is required to be added or that may be deducted in determining net tax for a reporting period of the person in the fiscal year; or

(*e*) is required under this Part to be used in calculating or determining any amount described in paragraph (*b*) or (*d*), other than

(i) an amount that is consideration for a supply,

(ii) an amount that is the value of property or a service, or

(iii) a percentage.

Reporting institution

(2) For the purposes of this section and section 284.1, 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

(*a*) the person is a financial institution at any time in the fiscal year;

(*b*) the person is a registrant at any time in the fiscal year; and

(*c*) the total of all amounts each of which is an amount included in computing, for the purposes of the *Income Tax Act*, the person's income, or, if the person is an individual, the person's income from a business, for the last taxation year of the person that ends in the fiscal year, exceeds the amount determined by the formula

$$\$1{,}000{,}000 \times A/365$$

where

A is the number of days in the taxation year.

Information return for reporting institution

(3) A reporting institution shall file an information return with the Minister for a fiscal year of the reporting institution in prescribed form containing prescribed information on or before the day that is six months after the end of the fiscal year.

Estimates

(4) Every reporting institution that is required to report, in an information return filed under subsection (3), an amount (other than an actual amount) that is not reasonably ascertainable at the time on or before which the information return is required to be filed shall provide a reasonable estimate of the amount in the information return.

Ministerial exemption

(5) The Minister may exempt any reporting institution or class of reporting institutions from the requirement, under subsection (3), to provide any prescribed information or may allow any reporting institution or class of reporting institutions to provide a reasonable es-

timate of any actual amount that is required to be reported in an information return under that subsection.

(2) Subsection (1) applies in respect of fiscal years of a person that begin after 2007.

19. The portion of subsection 281(2) of the Act before paragraph (*a*) is replaced by the following:

Effect of extension

(2) If the Minister extends the time within which a return of a person is to be filed or information is to be provided by a person,

20. (1) The Act is amended by adding the following after section 284:

Failure to report actual amounts

284.1 (1) In addition to any other penalty under this Part, every reporting institution that fails to report an actual amount (other than an actual amount for which the reporting institution is allowed to provide a reasonable estimate pursuant to subsection 273.2(5)) when and as required in an information return required to be filed under subsection 273.2(3), or that misstates such an actual amount in the information return, and that does not exercise due diligence in attempting to report the actual amount is liable to a penalty, for each such failure or misstatement, equal to the lesser of $1,000 and 1% of the absolute value of the difference between the actual amount and

(*a*) if the reporting institution failed to report the actual amount when and as required, zero; or

(*b*) if the reporting institution misstated the actual amount, the amount reported by the reporting institution in the information return.

Failure to provide reasonable estimates

(2) In addition to any other penalty under this Part, every reporting institution that fails to provide a reasonable estimate for an amount that is not an actual amount, or for an actual amount for which the reporting institution is allowed to provide a reasonable estimate pursuant to subsection 273.2(5), when and as required in an information return required to be filed under subsection 273.2(3) for a fiscal year and that does not exercise due diligence in attempting to report such a reasonable estimate is liable to a penalty, for each such failure, equal to the lesser of $1,000 and 1% of the total of

(*a*) all amounts, each of which is an amount that became collectible by the reporting institution, or that was collected by the reporting institution, as or on account of tax under Division II in a reporting period in the fiscal year; and

(*b*) all amounts, each of which is an amount that the reporting institution claimed as an input tax credit in a return under Division V filed by the reporting institution for a reporting period in the fiscal year.

Waiving or cancelling penalties

(3) The Minister may waive or cancel all or any portion of a penalty payable under this section.

(2) Subsections 284.1(1) and (2) of the Act, as enacted by subsection (1), apply in respect of any amount required to be reported in an information return required under the Act to be filed on or before a particular day that is on or after June 30, 2010, except that if the particular day is on or before the day on which this Act is assented to, those

subsections only apply if the amount is not reported in an information return filed on or before the day that is six months after the day on which this Act is assented to.

21. (1) Paragraph 298(1)(*d*) of the Act is replaced by the following:

(*d*) in the case of an assessment of tax payable by the person under Division IV,

(i) if the tax is payable under section 218.01 or subsection 218.1(1.2), more than seven years after the later of the day on or before which the person was required to file the return in which that tax was required to be reported and the day the return was filed, and

(ii) in any other case, more than four years after the later of the day on or before which the person was required to file the return in which that tax was required to be reported and the day the return was filed;

(2) Subsection (1) applies in respect of tax that becomes payable after November 16, 2005.

22. (1) Section 301 of the Act is amended by adding the following after subsection 301(1.2):

Input tax allocation

(1.21) If a financial institution to which subsection (1.2) does not apply objects to an assessment and the objection relates in any manner to the application of section 141.02, the notice of objection shall

(*a*) reasonably describe each issue to be decided in respect of that section;

(*b*) specify in respect of each of those issues the relief sought, expressed as the change in any amount that is relevant for the purposes of the assessment; and

(*c*) provide the facts and reasons relied on by the financial institution in respect of each of those issues.

(2) Subsection 301(1.3) of the Act is replaced by the following:

Late compliance

(1.3) Despite subsection (1.2) or (1.21), if a notice of objection filed by a person to which one of those subsections applies does not include the information required by paragraph (1.2)(*b*) or (*c*), or (1.21)(*b*) or (*c*), as the case may be, in respect of an issue to be decided that is described in the notice, the Minister may in writing request the person to provide the information, and those paragraphs shall be deemed to be complied with in respect of the issue if, within 60 days after the request is made, the person submits the information in writing to the Minister.

(3) The portion of subsection 301(1.4) of the Act before paragraph (*b*) is replaced by the following:

Limitation on objections

(1.4) Despite subsection (1.1), if a person to which subsection (1.2) or (1.21) applies has filed a notice of objection to an assessment (in this subsection referred to as the "earlier assessment") and the Minister makes a particular assessment under subsection (3) pursuant to the notice of objection, except where the earlier assessment was made under subsection 274(8) or in accordance with an order of a court vacating, varying or restoring an assessment

or referring an assessment back to the Minister for reconsideration and reassessment, the person may object to the particular assessment in respect of an issue

(*a*) only if the person complied with subsection (1.2) or (1.21) in the notice with respect to that issue; and

23. The portion of subsection 306.1(1) of the Act before paragraph (*b*) is replaced by the following:

Limitation on appeals to the Tax Court

306.1 (1) Despite sections 302 and 306, if a person to which subsection 301(1.2) or (1.21) applies has filed a notice of objection to an assessment, the person may appeal to the Tax Court to have the assessment vacated, or a reassessment made, only with respect to

(*a*) an issue in respect of which the person has complied with subsection 301(1.2) or (1.21) in the notice, or

Draft Input Tax Credit Allocation Methods (GST/HST) Regulations

DRAFT INPUT TAX CREDIT ALLOCATION METHODS (GST/HST) REGULATIONS

Interpretation

1. The definitions in this section apply in these Regulations.

"Act"
« *loi* »

"Act" means the *Excise Tax Act*.

"bank"
« *banque* »

"bank" in respect of a fiscal year does not include a person that is at any time in the fiscal year an insurer.

"insurer"
« *assureur* »

"insurer" in respect of a fiscal year means a person that is an insurer (as defined in subsection 123(1) of the Act) and that carries on at any time in the fiscal year an insurance business as the principal business of the person in Canada.

"securities dealer"
« *courtier en valeurs mobilières* »

"securities dealer" in respect of a fiscal year means a person that

(*a*) carries on at any time in the fiscal year a business as a trader or dealer in, or as a broker or salesperson of, securities as the principal business of the person in Canada;

(*b*) is registered under the laws of Canada or a province to carry on in Canada at any time in the fiscal year a business as a trader or dealer in, or as a broker or salesperson of, securities; and

(*c*) is not a bank or an insurer at any time in the fiscal year.

Prescribed classes

2. The following classes of financial institutions are prescribed for the purposes of the definition "qualifying institution" in subsection 141.02(1) of the Act and for the purposes of subsections 141.02(3), (8), (9), (24) and (30) of the Act:

(*a*) banks;

(*b*) insurers; and

(*c*) securities dealers.

Prescribed amounts

3. The following amounts are prescribed for the purposes of the definition "qualifying institution" in subsection 141.02(1) of the Act and for the purposes of subsection 141.02(24) of the Act:

(*a*) in the case of banks, $500,000;

(*b*) in the case of insurers, $500,000; and

(*c*) in the case of securities dealers, $500,000.

Prescribed percentages

4. The following percentages are prescribed for the purposes of the definition "qualifying institution" in subsection 141.02(1) of the Act and for the purposes of subsections 141.02(8), (9) and (30) of the Act:

(*a*) in the case of banks, 12%;

(*b*) in the case of insurers, 10%; and

(*c*) in the case of securities dealers, 15%.

APPLICATION

5. Sections 1 to 4 of these Regulations are deemed to have come into force on April 1, 2007.

Explanatory Notes

Table of Contents

These explanatory notes are provided to assist in the understanding of the proposed amendments to the *Excise Tax Act* and related regulations. These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

Clause 1

Method of Determining Extent of Use, etc.

ETA
141.01(5)

Section 141.01 of the *Excise Tax Act* (the Act) clarifies and reinforces the requirement to apportion the use of inputs based on the extent to which the inputs are consumed or used, or acquired, imported or brought into a participating province for consumption or use, for the purpose of making taxable supplies for consideration or for other purposes. This apportionment is relevant to the determination of input tax credits. Subsection 141.01(5) essentially provides that the method used by a person to apportion inputs must be fair and reasonable and used consistently throughout a year.

Subsection 141.01(5) is amended so that it applies subject to new section 141.02 of the Act. The latter provides more specific rules regarding the input tax credit allocation methods that are to be used by financial institutions.

The amendment to subsection 141.01(5) is deemed to have come into force on April 1, 2007.

Clause 2

Input Tax Credit Allocation Methods for Financial Institutions

ETA
141.02

New section 141.02 of the Act sets out rules that apply to financial institutions in respect of the requirement to apportion the use of inputs based on the extent to which the inputs are consumed or used, or acquired, imported or brought into a participating province for consumption or use, for the purpose of making taxable supplies for consideration or for other purposes. These specific rules, in addition to the more general existing rules contained in subsection 141.01(5) of the Act, are intended to apply to financial institutions, which include both listed financial institutions described in paragraph 149(1)(*a*) of the Act and *de minimis* financial institutions described in paragraph 149(1)(*b*) or (*c*).

Section 141.02 applies for the purposes of determining the net tax of a person for any reporting period of the person included in fiscal years of the person beginning after March 2007, with the exception of subsections 141.02(18) to (28), which apply for the purposes of determining the net tax of a person for any reporting period of the person included in fiscal years of the person beginning after March 2008, and the exception of subsections 141.02(31) and (33), which come into force on Royal Assent. In addition, special coming-into-force rules apply in the case of the definition “qualifying institution” in subsection 141.02(1) and subsection 141.02(9), which are explained in the notes to those two provisions.

Subsection 141.02(1) – Definitions

New subsection 141.02(1) contains definitions that are used throughout section 141.02.

“adjusted tax credit amount”

The term “adjusted tax credit amount” means a tax credit amount (as defined in this subsection) of a person for a fiscal year of the person that has been adjusted to reflect the fact that a fiscal year of a person may be of a length other than 365 days. The adjusted tax credit amount is intended to reflect what the person’s tax credit amount would have been if the fiscal year were 365 days in length. Where the fiscal year is of a length other than 365 days, the adjusted tax credit amount is the tax credit amount multiplied by the fraction equal to 365 divided by the number of days in the fiscal year. Where the fiscal year contains 365 days, the adjusted tax credit amount equals the tax credit amount.

“adjusted total tax amount”

The term “adjusted total tax amount” means a total tax amount (as defined in this subsection) of a person for a fiscal year of the person that has been adjusted to reflect the fact that a fiscal year of a person may be of a length other than 365 days. The adjusted total tax amount is intended to reflect what the person’s total tax amount would have been if the fiscal year were 365 days in length. Where the fiscal year is of a length other than 365 days, the adjusted total tax amount is the total tax amount multiplied by the fraction equal to 365 divided by the number of days in the fiscal year. Where the fiscal year contains 365 days, the adjusted total tax amount equals the total tax amount.

“business input”

The term “business input” means an excluded input, an exclusive input or a residual input (as those terms are defined in this subsection).

“direct attribution method”

The term “direct attribution method” means a method of determining in the most direct manner the operative extent and the procurative extent (as those terms are defined in this subsection) of an input (i.e., property or a service) of a person. A direct attribution method must conform to criteria, rules, terms and conditions specified by the Minister of National Revenue. Such criteria, rules, terms and conditions could, for example, be contained in an interpretation bulletin issued by the Canada Revenue Agency.

“direct input”

The term “direct input” means property or a service that is not an excluded input, an exclusive input or a non-attributable input (as those three terms are defined in this subsection). Generally, direct inputs are inputs that are not capital property, that can be attributed to the making of specific outputs and that are consumed or used both for the purpose of making taxable supplies for consideration and for purposes other than making taxable supplies for consideration.

“excluded input”

An “excluded input” of a person generally includes property (both personal property and real property) that is used as capital property, in addition to any property or service that is acquired, imported or brought into a participating province by the person for use as improvements to capital property. An excluded input also includes a prescribed property or service, although as of ANNOUNCEMENT DATE no property or services are proposed to be prescribed.

“exclusive input”

An “exclusive input” of a person is property or a service that is acquired, imported or brought into a participating province by the person for consumption or use directly and exclusively for the purpose of making taxable supplies for consideration or directly and exclusively for purposes other than making taxable supplies for consideration. It is important to note that, as defined in subsection 123(1) of the Act, the term “exclusive” means 100% in the case of financial institutions. Specifically carved out from the definition “exclusive input” are excluded inputs, which are defined in this subsection as being capital property, improvements to that capital property and any prescribed property or services. An example of an exclusive input would be an appraisal service that is used solely to provide an exempt financial service of issuing mortgage loans to homebuyers in Canada and is in no way used to provide a taxable supply for consideration.

“non-attributable input”

A “non-attributable input” of a person is property or a service that is acquired, imported or brought into a participating province by the person, that is not attributable to the making of any particular supply by the person and that is neither an excluded input nor an exclusive input (as those terms are defined in this subsection). Non-attributable inputs are therefore inputs that are acquired, imported or brought into a participating province for consumption or use both for the purpose of making taxable supplies for consideration and for purposes other than making taxable supplies for consideration. Furthermore, they are inputs that are not capital personal property, capital real property or improvements to those capital properties, and that cannot be attributed to any specific supply or cost centre that relates to specific supplies. An example of a non-attributable input would be certain overhead expenses related to meetings of a board of directors.

“operative extent”

Generally, the term “operative extent” is related to the purpose for which a property or service has been consumed or used. More specifically, the operative extent of property or a service is the extent to which the consumption or use of the property or service is for the purpose of making taxable supplies for consideration. Alternatively, it can also be the extent to which the consumption or use of the property or service is for purposes other than making taxable supplies for consideration.

“procurative extent”

Generally, the term “procurative extent” is related to the purpose for which a property or service has been acquired, imported or brought into a participating province. More specifically, the procurative extent of property or a service is the extent to which property or a service is acquired, imported or brought into a participating province for the purpose of making taxable supplies for consideration. Alternatively, it can also be the extent to which the property or service is acquired, imported or brought into a participating province for purposes other than making taxable supplies for consideration.

“qualifying institution”

The term “qualifying institution” means a person that, for a particular fiscal year of the person, meets the requirements of paragraphs (*a*) and (*b*) of the definition.

Paragraph (*a*) of the definition requires that the person be, throughout the particular fiscal year, a financial institution of a prescribed class. As of ANNOUNCEMENT DATE, three prescribed classes of financial institutions are proposed: banks, insurers and securities dealers. Under subsection 141.02(3), a person is a financial institution of a prescribed class throughout a particular fiscal year of the person if the person is a financial institution of that class at any time in the particular fiscal year.

Subparagraph (*b*)(i) of the definition requires that the person had, for each of the two fiscal years immediately preceding the particular fiscal year, an adjusted tax credit amount (as defined in this subsection) equal to or exceeding the prescribed amount for the prescribed class of financial institutions of the person for the particular fiscal year. As of ANNOUNCEMENT DATE, the prescribed amount for each of the three prescribed classes of financial institutions is proposed to be $500,000.

Subparagraph (*b*)(ii) of the definition requires that the person had, for each of the two fiscal years immediately preceding the particular fiscal year, a tax credit rate (as defined in this subsection) equal to or exceeding the prescribed percentage for the prescribed class of financial institutions of the person for the particular fiscal year. As of ANNOUNCEMENT DATE, the prescribed percentage is proposed to be 12% for banks, 10% for insurers and 15% for securities dealers.

The definition “qualifying institution” applies for the purposes of determining the net tax of a person for any reporting period of the person included in fiscal years of the person beginning after March 2007. However, for the purpose of determining if a person is a qualifying institution, paragraph (*b*) of the definition is to be read as if section 141.02 and amended subsection 141.01(5) of the Act had come into force on April 1, 2005. As a result, in its first two fiscal years that begin after March 2007, a person must, in order to determine if it will be a qualifying institution throughout any of those fiscal years, calculate its adjusted tax credit amount and tax credit rate for the two preceding fiscal years as if it had been governed by these new rules during that time.

“requested information”

The definition “requested information” applies in respect of an application made by a person under subsection 141.02(18) to the Minister of National Revenue to use particular methods to determine, for a fiscal year of the person, the operative extent and the procurative extent (as those terms are defined in this subsection) in respect of all property and services of the person. It means any information, additional information or document that the Minister requests a person to provide so that the Minister can consider the person’s application under subsection 141.02(18). Essentially, requested information is information that the Minister requests from a person in order for the Minister to make a fully informed decision regarding whether to authorize or deny the person’s application.

“residual input”

The term “residual input” means property or a service that is either a direct input or a non-attributable input (as those terms are defined in this subsection). As a result, a residual input of a person is a property or a service of the person, which is neither an excluded input nor an exclusive input (as those terms are defined in this subsection). Residual inputs are therefore inputs that are acquired, imported or brought into a participating province for consumption or use both for the purpose of making taxable supplies for consideration and for other purposes and that are not capital personal property, capital real property or improvements to those capital properties.

“specified method”

The term “specified method” means a method of determining the operative extent and the procurative extent (as those terms are defined in this subsection) of an input (i.e., property or a service) of a person. A specified method must conform to criteria, rules, terms and conditions specified by the Minister of National Revenue. Such criteria, rules, terms and conditions could, for example, be contained in an interpretation bulletin issued by the Canada Revenue Agency.

“tax credit amount”

The term “tax credit amount” generally means the total of all input tax credits that a person is entitled to claim in respect of that person’s residual inputs (as defined in this subsection) for a particular fiscal year. In the case of the majority of financial institutions (i.e., those financial institutions that for a particular fiscal year use specified methods, direct attribution methods, methods that the person elected to use under subsection 141.02(9) or methods authorized by the Minister of National Revenue under subsection 141.02(20) to determine their input tax credit entitlement in respect of residual inputs), their tax credit amount for the particular fiscal year is the actual total of all input tax credits that the financial institution is entitled to claim in respect of residual inputs for the particular fiscal year.

However, where a person that is a financial institution has determined its input tax credit entitlement in respect of residual inputs for a particular fiscal year using the prescribed percentage method, it must determine its tax credit amount in respect of these residual inputs as if it were instead governed by subsections 141.02(10) to (13), (16) and (17). This means that such a financial institution is required to use a specified method for each non-attributable input under subsection 141.02(10), or where a specified method does not apply to the input, another method as provided in subsection 141.02(11). Similarly, it must use a direct attribution method for each direct input under subsection 141.02(12), or where a direct attribution method does not apply to the input, another method as provided in subsection 141.02(13). Any method used by the financial institution must conform to subsection 141.02(16) and can, pursuant to subsection 141.02(17), be altered or substituted with another method only with the written consent of the Minister. The tax credit amount calculated on the above basis is used to determine if a person is a qualifying institution under subsection 141.02(1) for each particular fiscal year.

Paragraph (*a*) of the definition applies to a financial institution that made an election under subsection 141.02(9) in respect of a fiscal year of the financial institution. This election permits the financial institution to use the prescribed percentage to determine its input tax credit entitlement in respect of residual inputs. Paragraph (*a*) provides that the financial institution’s tax credit amount for that fiscal year is the total of all amounts each of which is an input tax credit in respect of a residual input that, in the absence of subsection 141.02(9), the financial institution would have been entitled to claim in that year for the tax in respect of the residual input that either became payable during that year without having been paid before that year or was paid during that year without having become payable. In other words, paragraph (*a*) provides that the financial institution’s tax credit amount is the amount that would be the tax credit amount of the financial institution if it had not made the election and was therefore required to determine its input tax credit entitlement in respect of residual inputs for that year using the provisions of subsections 141.02(10) to (13), (16) and (17).

Paragraph (*b*) of the definition applies to a financial institution that is a qualifying institution that was required by subsection 141.02(8) to use the prescribed percentage to determine its input tax credit entitlement in respect of residual inputs for a particular fiscal year of the financial institution. Paragraph (*b*) provides that the financial institution’s tax credit amount for that fiscal year is the total of all amounts each of which is an input tax credit in respect of a residual input that the financial institution would have been entitled to claim in that fiscal year for the tax in

respect of the residual input that either became payable during that year without having been paid before that year or was paid during that year without having become payable. This calculation must be made as if the qualifying institution were a financial institution that was not a qualifying institution and that had not made the election under subsection 141.02(9). In other words, paragraph (*b*) provides that the financial institution's tax credit amount is the amount that would be the tax credit amount of the financial institution if the financial institution were not a qualifying institution, had not made the election under subsection 141.02(9) and were therefore required to determine its input tax credit entitlement in respect of residual inputs for that year using the provisions of subsections 141.02(10) to (13), (16) and (17).

Paragraph (*c*) of the definition applies in cases where paragraphs (*a*) and (*b*) do not apply (i.e., where, in a fiscal year, the person determined its input tax credit entitlement for residual inputs using any method other than the prescribed percentage method). Paragraph (*c*) provides that the person's tax credit amount for the fiscal year is the total of all amounts each of which is an input tax credit in respect of a residual input that the person would have been entitled to claim in the fiscal year for the tax in respect of the residual input that either became payable during that year without having been paid before that year or was paid during that year without having become payable. This is the case where that input tax credit entitlement was determined in accordance with subsections 141.02(7), (10) to (13), (16), (17), (21), (27), (28) and (32).

"tax credit rate"

The term "tax credit rate" generally means the percentage of tax that became payable, or was paid without having become payable, by a person during a particular fiscal year in respect of residual inputs that the person is entitled to claim as input tax credits. The tax credit rate of a person for a particular fiscal year is determined by dividing that person's tax credit amount (as defined in this subsection) for the fiscal year by the person's total tax amount (as defined in this subsection) for the fiscal year.

"total tax amount"

The term "total tax amount" generally means the total of the tax that became payable, or was paid without having become payable, by a person in a particular fiscal year of the person in respect of residual inputs of the person.

Subsection 141.02(2) – Meaning of "consideration"

New subsection 141.02(2) provides that supplies for nominal consideration are to be treated the same as supplies for no consideration since it provides that, for the purposes of section 141.02, the term "consideration" does not include nominal consideration. Therefore, if a person acquires, imports or brings into a participating province property or a service for the purpose of making taxable supplies for nominal consideration, that person is considered for the purposes of section 141.02 to have acquired, imported or brought into a participating province that property or service for purposes other than making taxable supplies for consideration and not for the purpose of making taxable supplies for consideration.

Subsection 141.02(3) – Financial institution throughout a year

New subsection 141.02(3) provides that, for the purposes of section 141.02, a person is a financial institution of a prescribed class throughout a fiscal year of the person if the person is a financial institution of that class at any time in the fiscal year. As a result, if a corporation is a financial institution of the prescribed class of insurers at any time in a fiscal year, the financial institution is, for the purposes of section 141.02, considered to be an insurer throughout that fiscal year even if its insurance business ceases to be its principal business in Canada during that fiscal year.

Subsection 141.02(4) – Mergers and amalgamations

New subsection 141.02(4) assists in the determination of whether a corporation (referred to in this provision as the "new corporation"), which is the result of a merger or amalgamation, may in a year subsequent to the merger or amalgamation be a qualifying institution (as defined in subsection 141.02(1)) or be eligible to make an election under subsection 141.02(9). However, subsection 141.02(4) applies only for the purposes of determining the tax credit amount and the total tax amount of the new corporation (which in turn are used to determine the new corporation's tax credit rate) and subsection 142.02(4) does not affect the input tax credit entitlement of any corporation in respect of any period prior to the merger or amalgamation.

New subsection 141.02(4) applies to a new corporation that is the result of a merger or amalgamation in circumstances where section 271 of the Act would apply to that merger or amalgamation. However, new subsection 141.02(4) deems new rules to apply despite any deeming rules in section 271.

Paragraph 141.02(4)(*a*) deems the new corporation to have two fiscal years immediately preceding the first fiscal year of the new corporation (i.e., the fiscal year of the new corporation that begins on the day of the merger or amalgamation), with each of these two fiscal years being 365 days in length.

Paragraph 141.02(4)(*b*) deems the tax credit amount of the new corporation for the deemed prior year of the new corporation (i.e., the deemed year immediately preceding the first fiscal year of the new corporation) to be equal to the total of all amounts each of which is an adjusted tax credit amount of a predecessor corporation (referred to in this provision as a "predecessor") for the prior year of the predecessor. The prior year of a predecessor means the last full fiscal year that is generally a 365-day year ending before the merger or amalgamation and not any final "stub" fiscal year of the predecessor that was less than a full year and that ended at the time of the merger or amalgamation.

Paragraph 141.02(4)(*c*) similarly deems the tax credit amount of the new corporation for the deemed second prior year of the new corporation (i.e., the deemed year immediately preceding the prior year of the new corporation) to be equal to the total of all amounts each of which is an adjusted tax credit amount of a predecessor for the second prior year of the predecessor that is immediately preceding the prior year of the predecessor.

Paragraphs 141.02(4)(*d*) and (*e*) deem the total tax amount of the new corporation for each of its prior year and second prior year to be equal to the total of all amounts, each of which is an adjusted total tax amount of a predecessor for, respectively, the prior year of the predecessor and the second prior year of the predecessor.

Subsection 142.02(5) – Winding-up

New subsection 141.02(5) applies where a subsidiary (referred to in this provision as the "particular corporation") is wound up by its parent corporation (referred to in this provision as the "other corporation") in circumstances where section 272 of the Act applies to the wind-up. Subsection 141.02(5) assists in the determination of whether the parent may in a subsequent year be a qualifying institution (as defined in subsection 141.02(1)) or be eligible to make an election under subsection 141.02(9). However, subsection 141.02(5) applies only for the purposes of determining the tax credit amount and the total tax amount of the parent (which in turn are used to determine the parent's tax credit rate) and this subsection does not affect the input tax credit entitlement of either the parent or the subsidiary in respect of any period prior to the wind-up. The new rules in subsection 141.02(5) apply despite any deeming rules in section 272.

Paragraph 141.02(5)(*a*) deems the tax credit amount of the parent for its fiscal year that includes the wind-up (in this provision referred to as the "specified year") to be the total of the amount that would, if this subsection did not apply to the wind-up, be the adjusted tax credit amount of the parent for the specified year and the amount that is the adjusted tax credit amount of the subsidiary for the prior year of the subsidiary (meaning the last full fiscal year that is generally a 365-day year ending before the wind-up and that is not any final "stub" fiscal year of the predecessor that was less than a full year and ended at the time of the wind-up).

Paragraph 141.02(5)(*b*) similarly deems the tax credit amount of the parent for the prior year of the parent (i.e., the year immediately prior to its specified year) to be equal to the total of the amount that would, if this subsection did not apply to the wind-up, be the adjusted tax credit amount of the parent for that prior year and the amount that is the adjusted tax credit amount of the subsidiary for its second prior year (i.e., the fiscal year of the subsidiary immediately preceding the prior year of the subsidiary).

Paragraph 141.02(5)(*c*) deems the total tax amount of the parent for its specified year to be the total of the amount that would, if this subsection did not apply to the wind-up, be the adjusted total tax amount of the parent for that fiscal year and the amount that is the adjusted total tax amount of the subsidiary for the prior year of the subsidiary.

In the same manner, paragraph 141.02(5)(*d*) deems the total tax amount of the parent for its prior year to be the be the total of the amount that would, if this subsection did not apply to the wind-up, be the adjusted total tax amount of the parent for that prior year and the amount that is the adjusted total tax amount of the subsidiary for the second prior year of the subsidiary.

Subsection 141.02(6) – Allocation of exclusive inputs

New subsection 141.02(6) contains deeming rules that specify how a financial institution is to allocate an exclusive input (defined in new subsection 141.02(1) as property or a service, other than an excluded input, that is acquired, imported or brought into a participating province by a person for consumption or use either directly and exclusively for the purpose of making taxable supplies for consideration or directly and exclusively for purposes other than making taxable supplies for consideration). As defined in subsection 123(1), the term "exclusive" in relation to financial institutions means 100%.

Paragraph 141.02(6)(*a*) provides that, if an exclusive input is acquired, imported or brought into a participating province for consumption or use directly and exclusively (i.e., 100%) for the purpose of making taxable supplies for consideration, the financial institution is deemed to have acquired, imported or brought into the participating province the exclusive input for consumption or use exclusively (i.e., 100%) in the course of commercial activities of the financial institution. As a result, for the purposes of determining an input tax credit in respect of that exclusive input under section 169 of the Act, the description of B in the formula in subsection 169(1) is, subject to any restrictions or subsequent adjustments set out in the Act (e.g., recapture of input tax credits in respect of meals and entertainment expenses), equal to 100%.

Paragraph 141.02(6)(*b*) provides that, if an exclusive input is acquired, imported or brought into a participating province for consumption or use directly and exclusively for purposes other than making taxable supplies for consideration, the financial institution is deemed to have acquired, imported or brought into the participating province the exclusive input for consumption or use exclusively otherwise than in the course of commercial activities of the financial institution. As a result, for the purposes of determining an input tax credit in respect of that exclusive input under section 169, the description of B in the formula in subsection 169(1) is, subject to any subsequent adjustments set out in the Act, equal to 0%.

Subsection 141.02(6) does not apply to exclusive inputs of a qualifying institution in respect of a fiscal year where subsection 141.02(21) applies to that qualifying institution in respect of that fiscal year.

Subsection 141.02(7) – Residual inputs – Election for transitional year

New subsection 141.02(7) provides a transitional election to persons that are qualifying institutions (as defined in subsection 141.02(1)) for their first fiscal year that begins after March 2007. It allows these persons to make an election in respect of that year to use previously audited allocation methods to determine input tax credits in respect of their residual inputs (as defined in subsection 141.02(1)) in that fiscal year. This election is not available in respect of any fiscal year subsequent to that first fiscal year that begins after March 2007.

To be eligible to make this election to use previously audited input tax credit attribution methods, a person must meet the following criteria: the person must be a qualifying institution for its first fiscal year that begins after March 2007; the person must have been audited in at least one of the four fiscal years that immediately precede that first fiscal year; and the Minister of National

Revenue must have accepted the person's use of the input tax credit attribution methods in one of the audited years referred to above (with such acceptance evidenced by the Minister's notice of assessment, subsequent assessment or reassessment in respect of that audited year not reflecting any inappropriateness in respect of the methods used by the person to determine any input tax credits in respect of its residual inputs). Also, it is required that those methods would be fair and reasonable if used in the same manner by the person for the purposes of determining the operative extent and the procurative extent (as those terms are defined in subsection 141.02(1)) in respect of all of the person's residual inputs in that first fiscal year. When these conditions are met, the person may make an election to use those attribution methods to determine both the operative extent and the procurative extent in respect of all of the person's residual inputs for that first fiscal year. If the election is not made, the person will determine its operative extent and procurative extent in respect of its residual inputs in respect of that first fiscal year in accordance with new subsection 141.02(8).

In order to be valid, an election under subsection 141.02(7) must meet the conditions contained in subsection 141.02(29). Once made, an election under subsection 141.02(7) may be revoked provided the requirements contained in subsection 141.02(30) are met.

Subsection 141.02(8) – Residual inputs – Prescribed extent of use

New subsection 141.02(8) provides rules governing input tax credit claims in respect of residual inputs and applies to a financial institution that is a qualifying institution in a particular fiscal year of the financial institution. Where subsection 141.02(8) applies to residual inputs of a financial institution, the extent of use of each residual input of the person for the purpose of making taxable supplies for consideration is deemed to be equal to the prescribed percentage for the prescribed class to which the financial institution belongs. As of ANNOUNCEMENT DATE, the following are proposed to be the prescribed percentages for the three prescribed classes: 12% for banks, 10% for insurers and 15% for securities dealers. As a result, the percentage of tax that may be recovered as an input tax credit, subject to other restrictions that apply under Part IX of the Act, is deemed to be equal to that same prescribed percentage for the prescribed class to which the financial institution belongs.

Subsection 141.02(8) is a default rule that applies to a financial institution that is a qualifying institution in that particular fiscal year only if the financial institution has neither received authorization from the Minister of National Revenue under subsection 141.02(20) to use methods specified in an application filed by the qualifying institution (as provided in subsections 141.02(18) and (19)), nor made a valid election under either subsection (7) or (27), in respect of the particular fiscal year. If those conditions are met, the rules in paragraphs (*a*) to (*e*) apply in respect of each residual input of the qualifying institution for the particular fiscal year.

Paragraph 141.02(8)(*a*) provides that the extent to which the consumption or use of each residual input of the qualifying institution is for the purpose of making taxable supplies for consideration is deemed to be equal to the prescribed percentage for the prescribed class of the qualifying institution.

Paragraph 141.02(8)(*b*) provides that the extent to which the consumption or use of each residual input of the qualifying institution is for purposes other than making taxable supplies for consideration is deemed to be equal to the difference between 100% and the prescribed percentage for the prescribed class of the qualifying institution.

Paragraph 141.02(8)(*c*) provides that the extent to which each residual input of the qualifying institution is acquired, imported or brought into a participating province by the qualifying institution for the purpose of making taxable supplies for consideration is deemed to be equal to the prescribed percentage for the prescribed class of the qualifying institution.

Paragraph 141.02(8)(*d*) provides that the extent to which each residual input of the qualifying institution is acquired, imported or brought into a participating province by the qualifying institution for purposes other than making taxable supplies for consideration is deemed to be equal to the difference between 100% and the prescribed percentage for the prescribed class of the qualifying institution.

Paragraph 141.02(8)(*e*) provides that, for the purposes of determining an input tax credit in respect of a residual input, the description of B in the formula in subsection 169(1) is deemed to be equal to the prescribed percentage for the prescribed class of the qualifying institution. For example, where subsection 141.02(8) applies to residual inputs of a bank, that bank could be able to recover as an input tax credit 12% of the tax payable, or paid without having become payable, during the fiscal year in respect of each residual input. The use of the prescribed percentage in subsection 169(1) would still be subject to other restrictions that apply for claiming input tax credits under Part IX of the Act (e.g., input tax credit restrictions that apply under section 170 of the Act).

Subsection 141.02(9) – Residual inputs – Elected extent of use

New subsection 141.02(9) provides an election for persons that, for a particular fiscal year of the person, meet the conditions in paragraph (*a*) and subparagraph (*b*)(ii) of the definition "qualifying institution" in subsection 141.02(1) but not the condition in subparagraph (*b*)(i) of that definition. In other words, a person is eligible to make an election under subsection 141.02(9) if the person is, throughout that particular fiscal year, a financial institution of a prescribed class and if the tax credit rate of the person for its two fiscal years immediately preceding the particular fiscal year equals or exceeds the prescribed percentage for the prescribed class of financial institutions of the person for the particular fiscal year. If the person's tax credit amount for each of the two fiscal years immediately preceding the particular fiscal year equals or exceeds the prescribed amount for the prescribed class of financial institutions of the person for the particular fiscal year, the person is not eligible to make the election.

Where an eligible person makes an election under subsection 141.02(9) for a particular fiscal year of the person, the extent of consumption or use of each residual input of that person in that year will be deemed to be equal to the prescribed percentage for the prescribed class of financial institutions of the person. Currently, the following are the prescribed percentages for the three prescribed classes: 12% for banks, 10% for insurers and 15% for securities dealers. As a result, the percentage of tax that may be recovered as an input tax credit, subject to other restrictions that apply under Part IX of the Act, is deemed to be equal to that same prescribed percentage for the prescribed class of financial institutions to which the person belongs. Where an eligible person makes the election under subsection 141.02(9) in respect of a particular fiscal year of the person, subsections 141.02(10) to (13) do not apply to the person in respect of that fiscal year. As well, if the election is made by the person, the rules in paragraphs (*a*) to (*e*) apply in respect of each residual input of the person.

Paragraph 141.02(9)(*a*) provides that the extent to which the consumption or use of each residual input of the person is for the purpose of making taxable supplies for consideration is deemed to be equal to the prescribed percentage for the prescribed class of financial institutions of the person.

Paragraph 141.02(9)(*b*) provides that the extent to which the consumption or use of each residual input of the person is for purposes other than making taxable supplies for consideration is deemed to be equal to the difference between 100% and the prescribed percentage for the prescribed class of financial institutions of the person.

Paragraph 141.02(9)(*c*) provides that the extent to which each residual input of the person is acquired, imported or brought into a participating province by the person for the purpose of making taxable supplies for consideration is deemed to be equal to the prescribed percentage for the prescribed class of financial institutions of the person.

Paragraph 141.02(9)(*d*) provides that the extent to which each residual input of the person is acquired, imported or brought into a participating province by the person for purposes other than making taxable supplies for consideration is deemed to be equal to the difference between 100% and the prescribed percentage for the prescribed class of financial institutions of the person.

Paragraph 141.02(9)(*e*) provides that, for the purposes of determining an input tax credit in respect of a residual input, the description of B in the formula in subsection 169(1) is deemed to be equal to the prescribed percentage for the prescribed class of financial institutions of the person. For example, where subsection 141.02(9) applies to residual inputs of a bank, that bank could be able to recover as an input tax credit 12% of the tax payable, or paid without having become payable, during the fiscal year in respect of each residual input. The use of the prescribed percentage in subsection 169(1) would still be subject to other restrictions that apply for claiming input tax credits under Part IX of the Act (e.g., input tax credit restrictions that apply under section 170).

An election made under subsection 141.02(9) must comply with the requirements contained in subsection 141.02(29) and may be revoked under subsection 141.02(30).

Subsection 141.02(9) applies for the purpose of determining the net tax of a person for any reporting period of the person included in fiscal years of the person beginning after March 2007. However, for the purpose of determining if the tax credit rate of the person for each of its two fiscal years immediately preceding the first fiscal year of the person that begins after March 2007 equals or exceeds the prescribed percentage for the prescribed class of financial institutions of the person, subsection 141.02(9) is to be read as if new section 141.02 and amended subsection 141.01(5) had come into force on April 1, 2005. As a result, in its first two fiscal years that begin after March 2007, a financial institution must, in order to determine if it qualifies to make an election under subsection 141.02(9), calculate its tax credit rate for the two preceding fiscal years as if it had been governed by these new rules during that time.

Subsection 141.02(10) – Non-attributable inputs – Specified method

New subsection 141.02(10) concerns the determination of the operative extent and the procurative extent of non-attributable inputs (as defined in subsection 141.02(1)) by certain financial institutions. It applies to a financial institution that, in respect of a particular fiscal year of the financial institution, is not a qualifying institution and has not made an election under subsection 141.02(9). If subsection 141.02(10) applies to a financial institution for a particular fiscal year of the financial institution, the financial institution is required, subject to the exception in subsection 141.02(11), to use a specified method (as defined in subsection 141.02(1)), in a manner consistent with the conditions contained in subsection 141.02(16), to determine, for that fiscal year, the operative extent and the procurative extent of each non-attributable input of the financial institution. The operative extent and the procurative extent will then be used to determine the extent to which the non-attributable input is consumed or used for the purpose of making taxable supplies for consideration. This extent, subject to any adjustments or limitations set out in Part IX of the Act, could then be used to determine the amount of any input tax credit that the financial institution may be entitled to claim under subsection 169(1) in respect of the non-attributable input.

Subsection 141.02(11) – Non-attributable inputs – Exception

New subsection 141.02(11) applies in the case where a financial institution would, for a fiscal year of the financial institution, be required by subsection 141.02(10) to use a specified method to determine the operative extent and the procurative extent of a non-attributable input, but the financial institution cannot do so because no specified method applies to the particular non-attributable input during the fiscal year. This could be the case if the Minister of National Revenue did not specify criteria or rules applicable to the particular type of non-attributable input. Where no specified method applies to a non-attributable input of a financial institution, the financial institution is required to use another method to determine the operative extent and the procurative extent of the non-attributable input. The operative extent and the procurative extent will then be used to determine the extent to which the non-attributable input is consumed or used for the purpose of making taxable supplies for consideration. This extent, subject to any adjustments or limitations set out in Part IX of the Act, could then be used to determine the amount of any input tax credit that the financial institution may be entitled to claim under subsection 169(1) in respect of the non-attributable input. While the financial institution can

choose which method it will use for the purposes of this subsection, the financial institution must choose a method that satisfies the conditions contained in subsection 141.02(16).

Subsection 141.02(12) – Direct inputs – Direct attribution method

New subsection 141.02(12) concerns the determination of the operative extent and the procurative extent of direct inputs (as defined in subsection 141.02(1)) by certain financial institutions. It applies to a financial institution that, in respect of a particular fiscal year of the financial institution, is not a qualifying institution and has not made an election under subsection 141.02(9). If subsection 141.02(12) applies to a financial institution for a particular fiscal year of the financial institution, the financial institution is required, subject to the exception in subsection 141.02(13), to use a direct attribution method (as defined in subsection 141.02(1)), in a manner consistent with the conditions contained in subsection 141.02(16), to determine, for that fiscal year, the operative extent and the procurative extent of each direct input of the financial institution. The operative extent and the procurative extent will then be used to determine the extent to which the direct input is consumed or used for the purpose of making taxable supplies for consideration. This extent, subject to any adjustments or limitations set out in Part IX of the Act, could then be used to determine the amount of any input tax credit that the financial institution may be entitled to claim under subsection 169(1) in respect of the direct input.

Subsection 141.02(13) – Direct inputs – Exception

New subsection 141.02(13) applies in the case where a financial institution would be required by subsection 141.02(12) to use a direct attribution method to determine the operative extent and the procurative extent of a direct input for a fiscal year of the financial institution, but cannot do so because no direct attribution method applies during the fiscal year to the particular direct input. This could be the case if the Minister of National Revenue did not specify criteria or rules applicable to the particular type of direct input. Where no direct attribution method applies to a direct input of a financial institution, the financial institution is required to use another method to determine the operative extent and the procurative extent of the direct input. The operative extent and the procurative extent will then be used to determine the extent to which the direct input is consumed or used for the purpose of making taxable supplies for consideration. This extent, subject to any adjustments or limitations set out in Part IX of the Act, could then be used to determine the amount of any input tax credit that the financial institution may be entitled to claim under subsection 169(1) in respect of the direct input. While the financial institution can choose which method it will use for the purposes of subsection 141.02(13), that method must satisfy the conditions contained in subsection 141.02(16).

Subsection 141.02(14) – Excluded inputs – Specified method

New subsection 141.02(14) concerns the determination of the operative extent and the procurative extent of excluded inputs by financial institutions. As defined in subsection 141.02(1), "excluded inputs" include capital property of the financial institution. Subsection 141.02(14) requires, subject to the exception in subsection 141.02(15), that the financial institution use a specified method, in a manner consistent with the conditions contained in subsection 141.02(16), to determine the operative extent and the procurative extent of each excluded input of the financial institution. The operative extent and the procurative extent will then be used to determine the extent to which the excluded input is consumed or used for the purpose of making taxable supplies for consideration. This extent, subject to any adjustments or limitations set out in Part IX of the Act, could then be used to determine the amount of any input tax credit that the financial institution may be entitled to claim under subsection 169(1) in respect of the excluded input.

Subsection 141.02(14) does not apply to excluded inputs of a qualifying institution in respect of a fiscal year if subsection 141.02(21) applies to that qualifying institution in respect of that fiscal year.

Subsection 141.02(15) – Excluded inputs – Exception

New subsection 141.02(15) applies in the case where a financial institution would be required by subsection 141.02(14) to use a specified method to determine the operative extent and the procurative extent of an excluded input for a fiscal year of the financial institution, but the financial institution cannot do so because no specified method applies to the particular excluded input for the fiscal year. This could be the case if the Minister of National Revenue did not specify criteria or rules applicable to the particular type of excluded input. Where no specified method applies to an excluded input of a financial institution, the financial institution is required to use another method to determine the operative extent and the procurative extent of the excluded input. The operative extent and the procurative extent will then be used to determine the extent to which the excluded input is consumed or used for the purpose of making taxable supplies for consideration. This extent, subject to any adjustments or limitations set out in Part IX of the Act, could then be used to determine the amount of any input tax credit that the financial institution may be entitled to claim under subsection 169(1) in respect of the excluded input. While the financial institution can choose which method it will use for the purposes of this subsection, the financial institution must choose a method that satisfies the conditions contained in subsection 141.02(16).

Subsection 141.02(15) does not apply to excluded inputs of a qualifying institution in respect of a fiscal year if subsection 141.02(21) applies to that qualifying institution in respect of that fiscal year.

Subsection 141.02(16) – Attribution method – Conditions

New subsection 141.02(16) provides conditions that a method used by a financial institution, in accordance with any of subsections 141.02(10) to (15), must meet. Paragraph 141.02(16)(*a*) requires that such a method be fair and reasonable. Paragraph 141.02(16)(*b*) requires that such a method be used consistently throughout the financial institution's fiscal year (i.e., a financial institution cannot change a method partway through its fiscal year). The conditions in paragraphs 141.02(16)(*a*) and (*b*) are the same as those found in subsection 141.01(5), which apply to input tax credit allocation methods in general.

Paragraph 141.02(16)(*c*) requires that the method used for the purposes of any of subsections 141.02(10) to (15) for a particular fiscal year be determined by the financial institution no later than the day on or before which the financial institution is required to file its return for the first reporting period of the fiscal year. For example, if a financial institution is an annual filer and has a fiscal year that is a calendar year, it would be required to determine the method in respect of the January 1- December 31, 2008 fiscal year by March 31, 2009 (the date on which it must file its return for that year). If instead it were a monthly filer, it would be required to determine the method in respect of that fiscal year by February 29, 2008 (the date on or before which it must file its return for the first reporting period in that year).

Subsection 141.02(17) – Alteration or substitution of method

New subsection 141.02(17) provides that the attribution method used by a financial institution for the purposes of any of subsections 141.02(10) to (15) in respect of a fiscal year may not be altered or be substituted with another method for that year at any time after the day the financial institution is required to file its return for the first reporting period of that fiscal year, unless the Minister of National Revenue consents in writing to the alteration or substitution. This rule is consistent with the policy intent underlying subsection 141.01(5) and existing practice that a person, once it has used a method in a year for the purposes of that subsection, cannot subsequently or retroactively alter that method in respect of that year without the consent of the Minister.

Subsection 141.02(18) – Application for pre-approved method

New subsection 141.02(18) allows a person that is a qualifying institution for a particular fiscal year to apply to the Minister of National Revenue to use particular methods to determine for the fiscal year the operative extent and the procurative extent in respect of all business inputs (as those terms are defined in subsection 141.02(1)) of the person. A person can be a qualifying institution for a particular fiscal year if the person falls within the definition "qualifying institution" contained in subsection 141.02(1) or if the person has been designated by the Minister to be a qualifying institution, for the purposes of this subsection, for the fiscal year under new subsection 141.02(25) of the Act.

Subsection 141.02(18) also allows an application, to use particular methods to determine for the fiscal year the operative extent and the procurative extent in respect of all business inputs of a person, in the case where the person is reasonably expected to be a qualifying institution for the particular fiscal year. A person would reasonably be expected to be a qualifying institution for a fiscal year if, for example, the person is a financial institution of a prescribed class, the person's adjusted tax credit amount and tax credit rate for the year that is two years prior to the particular fiscal year, exceeded, respectively the prescribed amount and the prescribed percentage of the person's class of a financial institution, and if, while its adjusted tax credit amount and tax credit rate for the year prior to the particular fiscal year is not yet determined, it is reasonable to assume that they will exceed, respectively, the prescribed amount and the prescribed percentage of the person's class of financial institution.

Even if the Minister has, under subsection 141.02(20), authorized the methods contained in person's application in respect of a fiscal year, the person will not be able to use that pre-approved method if the person subsequently turns out not to be a qualifying institution for the fiscal year, which would occur if the person does not in fact meet all the requirements set out in the definition "qualifying institution" in that fiscal year and is not designated by the Minister of National Revenue under subsection 141.02(25) to be a qualifying institution for the fiscal year.

Subsection 141.02(19) – Form and manner of application

New subsection 141.02(19) provides the requirements that a person must meet to make a valid application under subsection 141.02(18).

Paragraph 141.02(19)(*a*) requires that the application be made in prescribed form and contain prescribed information. Paragraph 141.02(19)(*a*) also requires that the application specify which particular method is proposed to be used for each direct input, each excluded input, each exclusive input and each non-attributable input of the person. As a result, the application must propose methods to cover the entirety of the person's business inputs for the fiscal year in question. However, the provision allows, where appropriate, the person to apply to use different methods in respect of different categories of inputs.

Paragraph 141.02(19)(*b*) requires that the person file its application under subsection 141.02(18) in prescribed manner and that it be filed with the Minister of National Revenue on or before the day that is 180 days before the first day of the fiscal year to which it applies. However, subparagraph 141.02(19)(*b*)(ii) gives the Minister the discretion to allow a person to file the application on a later day on application of the person.

Subsection 141.02(20) – Authorization

New subsection 141.02(20) describes the Minister of National Revenue's authority and obligations in respect of an application made by a person under subsection 141.02(18). It requires the Minister to consider the application and to either authorize or deny the use of the methods specified in the application. Subsection 141.02(20) also requires the Minister to provide notice, in writing, of the decision to the person that has made the application on or before the day that is the later of the day that is 180 days after the Minister receives the application and the day

that is 180 days before the beginning of the fiscal year to which the application applies. This deadline can be extended to a later day that the Minister may specify, provided the person makes a written application setting out this later day and files it with the Minister.

Subsection 141.02(21) – Effect of authorization

New subsection 141.02(21) sets out the consequences that apply if the Minister of National Revenue has, under subsection 141.02(20), authorized the use of particular methods specified in an application made by a person under subsection 141.02(18) for a fiscal year of the person and if the authorization has not, by operation of subsection 141.02(23), been deemed never to have been granted.

Paragraph 141.02(21)(*a*) provides that the methods specified in the application to determine the operative extent and the procurative extent in respect of each business input of the person are to be used consistently, and as indicated in the application, by the person throughout the fiscal year. The operative extent and the procurative extent represents the extent that the business input is consumed or used for the purpose of making taxable supplies for consideration. This extent, subject to any adjustments or limitations set out in Part IX of the Act, could then be used to determine the amount of any input tax credit that the person may be entitled to claim under subsection 169(1) in respect of the business input.

Paragraph 141.02(21)(*b*) provides that subsections 141.02(6) to (15) and (27) do not apply in respect of the business inputs of the person for that fiscal year.

Subsection 141.02(22) – Reasons for denial

New subsection 141.02(22) contains notification provisions that may apply where the Minister of National Revenue has, under subsection 141.02(20), denied the use by a person of methods specified in an application made by the person under subsection 141.02(18). These provisions only apply if the person has complied with the requirements set out in the preamble of this subsection. Specifically, these requirements are that the person has made the application in the form and manner specified by subsection 141.02(19), that the person has provided to the Minister all requested information (defined in subsection 141.02(1) as all information, additional information or document that the Minister requests in respect of the person's application), and that the person has provided the requested information within the time limits set out in the written notice requesting that information.

Where the above requirements have been met, subsection 141.02(22) requires the Minister to notify the person of the Minister's reasons for denying the use of the methods under subsection 141.02(20). This notification must be made on or before the later of the day that is 60 days after the day the person last provided any requested information (as defined in subsection 141.02(1)) to the Minister and the day on or before which the notification of the decision to authorize or deny the use of methods contained in the person's application under subsection 141.02(18) is required to be given to the person under subsection 141.02(20).

Subsection 141.02(23) – Revocation

New subsection 141.02(23) provides for circumstances whereby an authorization granted to a person by the Minister of National Revenue under subsection 141.02(20) in respect of a fiscal year of a person ceases to have effect and is deemed never to have been granted.

Under paragraphs 141.02(23)(*a*) and (*b*), an authorization granted for a particular fiscal year will cease to have effect where, prior to the start of that fiscal year, either the Minister or the person wishes to revoke the authorization and therefore end the effect of that authorization provided in subsection 141.02(21). The Minister may revoke the authorization by sending a notice of revocation to the person on or before the day that is 60 days before the beginning of the fiscal year. Alternatively, the person may revoke the authorization by filing in prescribed manner with the Minister a notice of revocation in prescribed form containing prescribed information, provided that the notice is filed with the Minister on or before the day that is 60 days before the start of the fiscal year.

Under paragraph 141.02(23)(*c*), an authorization will cease to have effect where a person, which made an application under subsection 141.02(18), on the basis that it was reasonably expected to be a qualifying institution for the fiscal year, and which was granted authorization under subsection 141.02(20) to use those methods, is subsequently determined not to be a qualifying institution. This can be the case if a person does not meet the definition "qualifying institution" contained in subsection 141.02(1) for the fiscal year in question and has not been designated by the Minister to be a qualifying institution for the fiscal year under subsection 141.02(25).

When the revocation is made, any authorization granted under subsection 141.02(20) ceases to have effect on the first day of the fiscal year. Where the person is, for the fiscal year, a qualifying institution as defined in subsection 141.02(1), subsections 141.02(6), (8), (14) and (15) will instead apply for the person's business inputs for the fiscal year. Where the person is not, for the fiscal year, a qualifying institution as defined in subsection 141.02(1) (including the case where the person is a qualifying institution for the fiscal year only by virtue of being designated a qualifying institution under subsection 141.02(25), subsections 141.02(6) and (9) to (15) will instead apply for the person's business inputs for the fiscal year.

Subsection 141.02(24) – Application to be designated a qualifying institution

New subsection 141.02(24) allows a person, under certain conditions, to apply to the Minister of National Revenue to be designated as a qualifying institution for a particular fiscal year of the person. If the application is granted by the Minister under subsection 141.02(25), the person will be deemed to be a qualifying institution, though only for the specific purposes set out in subsection 141.02(25).

In order to make an application under subsection 141.02(24), the person must meet the conditions set out in both paragraph 141.02(24)(*a*) and paragraph 141.02(24)(*b*). Paragraph 141.02(24)(*a*) requires the person to be, or to be reasonably expected to be, a financial institution of a prescribed class (i.e., a bank, an insurer or a securities dealer) for the fiscal year. Paragraph 141.02(24)(*b*) requires that the person meet either the requirement set out in subparagraph 141.02(24)(*b*)(i) or the requirement set out in subparagraph 141.02(24)(*b*)(ii). Subparagraph 141.02(24)(*b*)(i) requires that the person's adjusted tax credit amount for each of the two years immediately prior to the particular fiscal year equal or exceed (or be reasonably expected to equal or exceed, where the adjusted tax credit amount is not known at the time of the application) the prescribed amount for the person's prescribed class (currently $500,000 for all classes). Subparagraph 141.02(24)(*b*)(ii) requires that an authorization have previously been granted to the person under subsection 141.02(20) for the fiscal year. Subparagraph 141.02(24)(*b*)(ii) describes the case where a person, which previously applied under subsection 141.02(18) to the Minister to use particular methods for a fiscal year of the person, on the basis that it was reasonably expected to be a qualifying institution for the fiscal year, and was granted authorization under subsection 141.02(20) to use those methods, is subsequently determined not to be a qualifying institution for the fiscal year. In this case, the person could then apply to the Minister to be designated a qualifying institution for the fiscal year so that it would not be prevented by paragraph 141.02(23)(*c*) from using the methods already approved by the Minister.

An application made under subsection 141.02(24) must be made in prescribed form and contain prescribed information.

Subsection 141.02(25) – Effect of approval

New subsection 141.02(25) describes the Minister of National Revenue's responsibilities with respect to an application made under subsection 141.02(24) for designation of a person as a qualifying institution. Subsection 141.02(25) requires the Minister to, with all due dispatch, consider the application, to decide whether or not to exercise the Minister's discretion to designate the applicant to be a qualifying institution for the fiscal year specified in the application, and to then notify the person of the Minister's decision to designate or not.

If the Minister designates a person to be a qualifying institution for a particular fiscal year under this subsection, the person is deemed to be a qualifying institution for the purposes only of subsection 141.02(18) and paragraph 141.02(23)(*c*). This allows the person, once designated, to make an application under subsection 141.02(18) to use particular methods to determine, for the particular fiscal year, the operative extent and the procurative extent of each business input of the person. It also allows the person, if the Minister authorizes the use of those methods under subsection 141.02(20), to use those methods for the fiscal year and to not be subject to subsections 141.02(6) to (15) and (27) for the particular fiscal year. However, designation as a qualifying institution will not subject the person to other provisions applying only to "true" qualifying institutions (i.e., persons that the meet the definition "qualifying institution" in subsection 141.02(1)), such as subsections 141.02(8) and (27). As a result, if a person is, for a particular fiscal year, a designated qualifying institution but not a "true" qualifying institution and if the person does not have an authorization under subsection 141.02(20) in effect for the

particular fiscal year (which could occur if the person did not make an application under subsection 14.02(18), if the Minister did not grant an authorization under subsection 141.02(20) or if an authorization was granted but the authorization was subsequently revoked under subsection 141.02(23)), then the person will be subject to the rules in respect of residual inputs that apply to financial institutions that are not qualifying institutions (i.e., those contained in subsections 141.02(9) to (13)) and not to the rules that apply only to "true" qualifying institutions (i.e., those contained in subsection 141.02(8)).

Subsection 141.02(26) – Revocation of designation as a qualifying institution

New subsection 141.02(26) provides for a revocation of a designation, made under subsection 141.02(25), of a person to be a qualifying institution for a particular fiscal year of the person. This revocation is made by the Minister of National Revenue and may be made at the instigation of the Minister, in which case the Minister must send a notice of revocation to the person no later than 60 days before the beginning of the particular fiscal year. The revocation may also be made at the instigation of the person, if the person files in prescribed manner with the Minister, in prescribed form containing prescribed information, a notice of revocation of the designation, provided this notice of revocation is filed with the Minister no later than 60 days before the beginning of the particular fiscal year. A designation made under subsection 141.02(25) that is revoked under this subsection ceases to have effect on the first day of the fiscal year and is deemed for the purposes of this Part to have never been granted.

Subsection 141.02(27) – Qualifying institution's own method

New subsection 141.02(27) provides an election to a person that is, for a fiscal year of the person, a qualifying institution and that, for the fiscal year, filed an application with the Minister of National Revenue under subsection 141.02(19) that the Minister did not authorize. Subsection 141.02(27) allows, where all the conditions for the election are met, for the person to elect to use the particular methods specified in the application to determine the operative extent and the procurative extent of all business inputs of the person for the fiscal year.

In order to make the election, a person must, for the fiscal year, be a qualifying institution as defined in subsection 141.02(1); it cannot make the election if it is a qualifying institution for the fiscal year only by virtue of being designated a qualifying institution for the fiscal year by the Minister under subsection 141.02(25). Paragraphs 141.02(27)(*a*) to (*e*) set out the other conditions that must be met before a person may make this election.

Paragraph 141.02(27)(*a*) requires that the application that the person filed with the Minister under subsection 141.02(18) comply with all the requirements for a valid application under subsection 141.02(19). In particular, the application must specify the particular methods to be used by the person for the fiscal year for the purpose of determining the operative extent and the procurative extent of all business inputs of the person for the fiscal year. Paragraph 141.02(27)(*a*) also requires that the application under subsection 141.02(18) be the last application filed under that subsection by the person with the Minister for the fiscal year. This means that, where the financial institution has filed more than one pre-approval application for the fiscal year under subsection 141.02(18), the election may be made only in respect of the last application and the particular methods specified in that last application.

Paragraph 141.02(27)(*b*) requires that the Minister not have authorized under subsection 141.02(20)(*a*) the use of the particular methods specified in the application.

Paragraph 141.02(27)(*c*) requires that the person has provided all requested information (defined in subsection 141.02(1) as all information, additional information or document that the Minister requests in respect of the person's application), and that the person has provided the requested information within the time limits set out in any notice made by the Minister requesting this information.

Paragraph 141.02(27)(*d*) requires that the Minister not have complied with the requirements set out in paragraph 141.02(20)(*b*) and subsection 141.02(22) in respect of the person's application. Paragraph 141.02(20)(*b*) requires the Minister to notify the person in writing of the Minister's decision to deny the use of the particular methods specified in the person's application within the deadline set out in that paragraph. Subsection 141.02(22) requires the Minister to notify the person in writing of the Minister's reasons for denying the use of the particular methods within the deadline set out in that subsection.

Paragraph 141.02(27)(*e*) applies only where the Minister has provided modifications in writing to the particular methods, whereby if the person were to make another application under subsection (18) for the same fiscal year to use the modified methods (i.e., the methods that would result if the person's original particular methods were modified as suggested by the Minister), the Minister would authorize the use of the modified methods for the fiscal year. Paragraph 141.02(27)(*e*) requires that the modified methods not be fair and reasonable for the purpose of determining the operative extent and the procurative extent (as those terms are defined in subsection 141.02(1)) of the business inputs of the person for the fiscal year.

If an election under subsection 141.02(27) is made by a person but it is the case that any of the conditions in paragraphs 141.02(27)(*a*) through (*e*) are not met, then the election under subsection 141.02(27) is deemed by paragraph 141.02(30)(*d*) never to have been made and the person will be required to determine the operative extent and the procurative extent of all the business inputs of the person for the fiscal year in accordance with subsections 141.02(6) to (17).

Subsection 141.02(28) – Elected method – Conditions

New subsection 141.02(28) applies where a person has made an election under subsection 141.02(27) to use particular methods to determine the operative extent and the procurative extent of all business inputs of the person for the fiscal year. Subsection 141.02(28) requires that the particular methods be fair and reasonable for the purpose of determining the operative extent and the procurative extent of every business input of the person for the fiscal year. It also requires that the particular methods be used consistently by the person, and in the manner indicated in the person's application under subsection 141.02(18), throughout the fiscal year.

If the requirements of subsection 141.02(28) are not met, the election under subsection 141.02(27) is deemed by paragraph 141.02(30)(*d*) never to have been made and the person will be required to determine the operative extent and the procurative extent of all the business inputs of the person for the fiscal year in accordance with subsections 141.02(6) to (17).

Subsection 141.02(29) – Making of election

New subsection 141.02(29) contains conditions which apply to an election made under any of subsections 141.02(7), (9) or (27).

Paragraph 141.02(29)(*a*) requires that the election be made in prescribed form and contain prescribed information. Paragraph 141.02(29)(*b*) requires that the form be filed with the Minister of National Revenue in prescribed manner and, except where late filing is allowed by the Minister, that the form be filed on or before the day on or before which the person must file a return under Division V of Part IX of the Act for the first reporting period of the fiscal year in respect of which the election is made. For example, if a bank that is an annual filer and that is eligible to make the election under subsection 141.02(9) were to have a fiscal year which begins on November 1, it would be required to file an election in respect of the November 1, 2008 - October 31, 2009 fiscal year by January 31, 2010 (the date on or before which it must file its return for that year). If instead the bank were a monthly filer, it would be required to file an election in respect of the November 1, 2008 - October 31, 2009 fiscal year by December 31, 2008 (the date on or before which it must file its return for the first reporting period in that year). However, on application by the person, subparagraph 141.02(29)(*b*)(ii) gives the Minister the discretion to accept a late-filed election form.

Subsection 141.02(30) – Revocation of election

New subsection 141.02(30) provides the circumstances under which an election made under any of subsections 141.02(7), (9) or (27) will cease to have effect and be deemed never to have been made. This can happen if the person who made the election revokes it or if the conditions precedent for the election are not met.

Paragraph 141.02(30)(*a*) allows a person to revoke a valid election made under subsection 141.02(7), (9) or (27). It provides that, in order for a revocation of such an election to be validly made, the revocation must be made in prescribed form and contain prescribed information. It must also be filed in prescribed manner with the Minister of National Revenue on or before the day on or before which the person must file a return under Division V of Part IX for the first reporting period of the fiscal year in respect of which the revocation is made. For example, if an insurer that is an annual filer with calendar years as fiscal years and that previously made an election under subsection 141.02(9) now wishes to revoke it, the insurer would be required to file the notice of revocation in respect of the January 1 – December 31, 2009 fiscal year by March 31, 2010 (the date on or before which it must file its return for that year). If instead the insurer were a monthly filer, it would be required to file the notice of revocation in respect of the January 1 - December 31, 2009 fiscal year by February 28, 2009 (the date on or before which it must file its return for the first reporting period in that year).

Paragraph 141.02(30)(*b*) applies in respect of an election made under subsection 141.02(7), which allows qualifying institutions to make an election in respect of their first fiscal year that begins after March 2007 to use a previously audited allocation methods to determine input tax credits in respect of their residual inputs in that fiscal year. Paragraph 141.02(30)(*b*) provides that an election will cease to have effect on the first day of that first fiscal year and deemed never have to have been if the person who made the election is not in fact a qualifying institution for that first fiscal year or if the methods either are not fair and reasonable for the purpose of determining the operative extent and the procurative extent of the residual inputs of the person for the fiscal year or are not used consistently by the person throughout that fiscal year.

Paragraph 141.02(30)(*c*) applies in respect of an election made under subsection 141.02(9), which allows certain persons to elect, for a fiscal year of the person, that the extent of consumption or use of each residual input of the person in the year will be deemed to be equal to the prescribed percentage for the prescribed class of financial institutions of the person. Paragraph 141.02(30)(*c*) provides that an election will cease to have effect on the first day of the fiscal year and be deemed never have to have been made if the requirements for the election are not met. These requirements are that the person be a financial institution of a prescribed class throughout the fiscal year for which the election is made and that the tax credit rate for each of the two fiscal years immediately preceding the fiscal year for which the election is made equal or exceed the prescribed percentage for the prescribed class of financial institutions of the person for the fiscal year for which the election is made.

Paragraph 141.02(30)(*d*) applies in respect of an election made under subsection 141.02(27). This election allows, where all the conditions for the election are met, a person that, for a fiscal year of the person, made an application under subsection 141.02(18) that the Minister did not authorize, to elect to use the particular methods specified in the application to determine the operative extent and the procurative extent of all business inputs of the person for the fiscal year. Subparagraphs 141.02(30)(*d*)(i) and (ii) provide under which circumstances the election under subsection 141.02(27) will cease to have effect on the first day of the fiscal year and be deemed never to be never been made.

Subparagraph 141.02(30)(*d*)(i) provides that the election will cease to have effect and be deemed never to have been made if any of the requirements of the election, as set out in subsection 141.02(27), are not met. These requirements are that the person be a qualifying institution for the year in respect of which the election is made, that the election be in respect of the last application filed by the person for the fiscal year, that the particular methods be specified in the application, that the application comply with the requirements of subsection 141.02(19), that the use of the particular methods not have been authorized by the Minister, that the person have provided the Minister with all required information within the time limit set out in a notice to the person, that the Minister has not complied with the notification requirements set out in subsections 141.02(20) and (22), and that, if the Minister has provided modifications to the person, the modified methods are not fair and reasonable for the purposes of determining the operative extent and the procurative extent of the business inputs of the person for the fiscal year.

Subparagraph 141.02(30)(*d*)(ii) provides that an election made under subsection 141.02(27) will also cease to have effect and be deemed never to have been made if the particular methods, specified in the application made under subsection 141.02(18) by the person for the fiscal year, are not fair and reasonable for the purposes of determining the operative extent and the procurative extent of the business inputs of the person for the fiscal year or are not used consistently, or as indicated in the application, by the person throughout the fiscal year.

Subsection 141.02(31) – Burden of proof

New subsection 141.02(31) contains rules relating to the burden of proof in an appeal under Part IX of the Act in respect of an assessment for a reporting period in a fiscal year of a financial institution. These rules apply if the appeal is in respect of an issue relating to the determination of an operative extent or a procurative extent under any of subsections 141.02(7), (10) to (15), (21) and (27) of a business input of the financial institution. Subsection 141.02(31) provides that the financial institution cannot succeed on such an appeal if it does not establish on the balance of probabilities that it meets the requirements in this subsection.

Paragraph 141.02(31)(*a*) requires the financial institution to establish, in the case where the financial institution has made the election under subsection 141.02(7), on the balance of probabilities, that the methods, used by the financial institution to determine the operative extent and the procurative extent of the financial institution’s residual inputs, are fair and reasonable and were used consistently by the financial institution throughout the fiscal year.

Paragraph 141.02(31)(*b*) requires the financial institution to establish, on the balance of probabilities, that it used a specified method consistently throughout the fiscal year to determine the extent (the operative extent and/or the procurative extent in respect of a non-attributable input or an excluded input) which is at issue in the appeal.

Paragraph 141.02(31)(*c*) applies where the financial institution did not use a specified method and instead used its own method, as provided in subsection 141.02(11) or (15), to determine the extent (the operative extent and/or the procurative extent in respect of a non-attributable input or an excluded input), which is at issue in the appeal. Paragraph 141.02(31)(*c*) requires the financial institution to establish, on the balance of probabilities, that no specified method applied in the circumstances and that the method used by the financial institution to determine the extent is fair and reasonable and was used consistently by the financial institution throughout the fiscal year.

Paragraph 141.02(31)(*d*) requires the financial institution to establish, on the balance of probabilities, that it used a direct attribution method consistently throughout the fiscal year to determine the extent (the operative extent and/or the procurative extent in respect of a direct input), which is at issue in the appeal.

Paragraph 141.02(31)(*e*) applies where the financial institution did not use a direct attribution method and instead used its own method, as provided in subsection 141.02(13), to determine the extent (the operative extent and/or the procurative extent in respect of a direct input), which is at issue in the appeal. Paragraph 141.02(31)(*e*) requires the financial institution to establish, on the balance of probabilities, that no direct attribution method applied in the circumstances and that the other attribution method used by the financial institution to determine the extent is fair and reasonable and was used consistently by the financial institution throughout the fiscal year.

Paragraph 141.02(31)(*f*) applies in the case where a financial institution is a qualifying institution for a particular fiscal year of the financial institution and where the Minister of National Revenue has under subsection 141.02(20) authorized the use of particular methods specified in an application made by the financial institution under subsection 141.02(18) for the particular fiscal year. Paragraph 141.02(31)(*f*) requires the financial institution to establish, on the balance of probabilities, that the particular methods were used consistently, and as indicated in the application, throughout the fiscal year.

Paragraph 141.02(31)(*g*) applies in the case where a financial institution has made an election under subsection 141.02(27) to use the particular methods specified in the financial institution's rejected application under subsection 141.02(18) to determine the operative extent and the procurative extent of all business inputs of the person for a fiscal year of the person. Subparagraph 141.02(31)(*g*)(i) requires the financial institution to establish, on the balance of probabilities, that the particular methods were fair and reasonable and were used consistently, and in the manner indicated in the financial institution's application under subsection 141.02(18), by the financial institution throughout the fiscal year. Subparagraph 141.02(31)(*g*)(ii) requires the financial institution, in the case where the Minister has proposed modifications to the particular methods as described in paragraph 141.02(27)(*e*), to establish, on the balance of probabilities, that the modified methods are not fair and reasonable for the purposes of determining the operative extent and the procurative extent of the business inputs of the person for the fiscal year.

Subsection 141.02(32) – Ministerial direction

New subsection 141.02(32) gives the Minister of National Revenue the authority to direct a financial institution to use another method instead of the method chosen by the financial institution. Subsection 141.02(32) applies in the case where a financial institution has used, for a particular fiscal year, a method for the purposes of any of subsections 141.02(10) to (15), but the Minister determines that the financial institution should instead use another method for the purposes of the subsection in question. For example, the Minister may direct a financial institution to replace the financial institution's method with another method chosen by the Minister if the Minister determines that the financial institution's method is not the most appropriate method for the purposes of the relevant subsection. The Minister may direct the financial institution to use the Minister's method throughout the particular fiscal year and/or throughout any subsequent fiscal year of the financial institution. However, the method chosen by the Minister must be fair and reasonable.

Subsection 141.02(33) – Method directed by the Minister – Appeals

New subsection 141.02(33) provides that if the Minister of National Revenue makes a direction under subsection 141.02(32) that is in effect for a particular reporting period in a fiscal year of the financial institution in respect of a particular business input, then the burden of proof that applies is for the Minister to establish that the directed method is fair and reasonable. In these circumstances, subsection 141.02(31) will not apply in the appeal. As a result, when the determination of an extent of a non-attributable input, a direct input or an excluded input is the subject of a Ministerial direction, the financial institution will not have to prove that it used either a specified method or a direct attribution method, or that the method it used was fair and reasonable method, in determining that extent. If the final determination of the courts is that the method directed by the Minister is not fair and reasonable, the Minister shall not direct the financial institution to use another method for the fiscal year in respect of the business input.

Clause 3

Pension Plans

ETA
172.1

New section 172.1 of the Act sets out the rules for determining when a registrant employer will be deemed to have made a supply to a trust governed by, or to a corporation that administers, a pension plan of the employer and for determining the amount of tax to be remitted by the employer on that deemed supply. Section 172.1 deems the employer to have made a taxable supply of property or services, relating to pension activities of the pension plan, to the trust or corporation, which may permit the employer to claim input tax credits in respect of tax paid on property or services acquired or imported in making the deemed supply. Section 172.1 also deems the employer to have charged and collected tax, which the employer must report and remit, in respect of the deemed supply. The trust or corporation may be able to claim a rebate under amended section 261.01 of the Act, or in some cases, an input tax credit, in respect of tax it is deemed to have paid in respect of the deemed supply.

Section 172.1 applies to fiscal years of an employer beginning on or after ANNOUNCEMENT DATE.

172.1(1) – Definitions

New subsection 172.1(1) defines the following terms for the purposes of section 172.1.

“active member”

The term “active member” has the same meaning as the term “active member” under subsection 8500(1) of the *Income Tax Regulations*. Under subsection 8500(1), an “active member” of a pension plan in a calendar year is a member of the plan to whom benefits accrue under a defined benefit provision of the plan in respect of all or any portion of the year or who makes contributions, or on whose behalf contributions are made, in relation to the year under a money purchase provision of the plan.

“employer resource”

An “employer resource” of a person is generally an input of labour, property or services of the person. Where an employer consumes or uses an employer resource in its pension activities (as that term is defined in this subsection), the employer will generally be deemed to have made a taxable supply of the employer resource under new subsection 172.1(6) or (7).

An employer resource of a person is (*a*) all or part of a labour activity (as defined in this subsection) of the person; (*b*) all or part of property or a service supplied to the person; (*c*) all or part of property created, developed or brought into existence by the person; or (*d*) any combination of the items referred to in (*a*), (*b*) or (*c*). Where all or part of a labour activity, property or a service is consumed or used by the person in the creation, development or bringing into existence of property, the whole or the part of that labour activity, property or service is excluded from employer resource as it is effectively included as an input to property created, developed or brought into existence by the person.

“excluded activity”

An “excluded activity” is generally an activity undertaken by an employer in respect of a pension plan of which the employer is a participating employer (as defined in this subsection), but that is an activity of a type that is normally carried on by an employer for purposes other than for administering a pension plan, such as for securities regulatory or financial reporting purposes. Excluded activities are carved out from the definition “pension activities” in this subsection and, as a result, the acquisition of property or a service, or the consumption or use of employer resources (as defined in this subsection), exclusively in the course of excluded activities, is not subject to the deemed supply rules contained in subsections 172.1(5) to (7). However, while such an acquisition or consumption or use, if exclusively in the course of excluded activities, will not be subject to the deemed supply rules contained in section 172.1, an actual supply of property or service by an employer to a pension entity may be subject to tax under Part IX of the Act.

In order to be an excluded activity, an activity must be undertaken exclusively for the purposes listed in paragraphs (*a*) to (*e*) of the definition. These listed purposes are (*a*) compliance by the participating employer with reporting obligations imposed on it as an issuer, or prospective issuer, of securities under a federal or provincial securities law (e.g., reporting to shareholders the participating employer’s pension liabilities); (*b*) evaluating the feasibility or financial impact on the participating employer of potentially establishing, altering or winding-up the pension plan (though excluded activities do not include carrying out the actual establishment, alteration or winding-up once the decision has been made nor do they include an activity relating to the preparation of an actuarial report in respect of the pension plan that is required under a law of Canada or of a province); (*c*) evaluating the financial impact of the pension plan on the assets and liabilities of the participating employer; and (*d*) negotiating changes to the pension plan benefits, with a union or similar employee organization. In addition, an activity that is undertaken exclusively for prescribed purposes will also be an excluded activity. As of ANNOUNCEMENT DATE, no activities are proposed to be prescribed.

“labour activity”

A “labour activity” of a person is anything done by an individual who is or agrees to become an employee of a person in the course of, or in relation to, the office or employment of that individual. The term “labour activity” is used in the definition “employer resource” in this subsection.

“participating employer”

A “participating employer” of a pension plan is an employer that has made, or is required to make, contributions to the pension plan or payments under the pension plan in respect of the employer’s employees or former employees. A participating employer also includes an employer prescribed under draft subsection 8308(7) of the *Income Tax Regulations*, which generally describes certain cases where an employee of one employer renders services to, and receives remuneration from, another employer. An employer that made pension contributions to a pension plan in the past will remain a participating employer in respect of that pension plan even if it does not currently make contributions.

“pension activity”

A “pension activity” in respect of a pension plan is any activity that is not an excluded activity and that relates to the establishment, management or administration of the pension plan or a pension entity of the pension plan (as those terms are defined in this subsection). Pension activity also includes the management or administration of assets in respect of the pension plan (e.g., the investment of assets held in a trust governed by the pension plan or owned by a corporation that administers the pension plan or any trust or corporation controlled or owned by that trust or corporation). The definition “pension activities” is relevant to subsections 172.1(5) to (7) as the acquisition of property or a service, or the consumption or use of an employer resource, in the course of pension activities is subject to the deemed supply rules contained in those subsections.

“pension entity”

A “pension entity” of a pension plan is either a trust, where the pension plan governs the trust, or a corporation, where the pension plan is administered by the corporation. Essentially, a pension entity is either a trust described in paragraph 149(1)(*o*) of the *Income Tax Act* or a corporation that would be described in paragraph 149(1)(*o.1*) of that Act if that paragraph were read without reference to clause 149(1)(*o.1*)(i)(B).

“pension plan”

The term “pension plan” means a registered pension plan (as defined in subsection 248(1) of the *Income Tax Act*) that governs a trust or a registered pension plan, in respect of which, a corporation is both incorporated and operated solely for the administration of a registered pension plan and accepted by the Minister of National Revenue as a funding medium for the purposes of the registration of the pension plan. Subsection 248(1) of that Act defines a registered pension plan as being a pension plan that has been registered by the Minister for the purposes of that Act and for which registration has not been revoked.

“provincial factor”

The “provincial factor” is used in determining an amount of the provincial component of the Harmonized Sales Tax (HST) in respect of a participating province that a participating employer may be deemed to have collected in respect of a deemed supply under any of subsections 172.1(5) to (7). A provincial factor is particular to each combination of the following: a participating province, a participating employer, a pension plan of the participating employer and a fiscal year of the participating employer. For example, a participating employer may have one provincial factor in respect of a particular participating province for one of its pension plans and for one of its fiscal years, while having another provincial factor in respect of another participating province for the same pension plan and for the same fiscal year.

A provincial factor is determined by multiplying the tax rate for a participating province on the last day of the fiscal year of a participating employer by a fraction representing the participating employer’s pension activities, in respect of a pension plan of the participating employer, that relate to the participating province. Where the participating employer made pension contributions (i.e., contributions that are deductible under paragraph 20(1)(*q*) of the *Income Tax Act*) to the pension plan in the fiscal year, this fraction is the sum of the following two amounts divided by 2:

- the amount determined by dividing the total of all the pension contributions made to the pension plan by the participating employer in respect of employees of the participating employer that are resident in the participating province by the total of all the pension contributions made to the pension plan by the participating employer in respect of employees of the employer; and

- the amount determined by dividing the total of all active members who were employees of the participating employer and who were resident in the participating province by the total of the pension plan’s active members who were employees of the participating employer.

Where the participating employer did not make pension contributions to the pension plan in the fiscal year, this fraction is determined by dividing the total of all active members who were employees of the participating employer and who were resident in the participating province by the total of the pension plan’s active members who were employees of the participating employer.

For the purpose of determining the provincial factor, the residence of employees or active members is determined as of the last day of the last calendar year ending on or before the last day of the fiscal year of the participating employer. If on that day, there were no active members who were employees of the participating employer, the provincial factor is zero.

172.1(2) – Excluded resource

New subsection 172.1(2) sets out rules for determining whether property or a service supplied to a person that is a participating employer of a pension plan (as those terms are defined in subsection 172.1(1)) will be an excluded resource for the purposes of section 172.1. This determination is relevant for subsections 172.1(5) to (7) as the acquisition of property or a service that is an excluded resource will not trigger the deemed supply rules contained in paragraphs 172.1(5)(*a*) to (*d*) nor will the consumption or use of an employer resource (as defined in subsection 172.1(1)) that is an excluded resource trigger the deemed supply rules contained in paragraphs 172.1(6)(*a*) to (*d*) or paragraphs 172.1(7)(*a*) to (*d*).

Subsection 172.1(2) provides that property or a service, supplied to a person that is a participating employer of a pension plan by another person, is an excluded resource of the participating employer in respect of a pension plan if the conditions in paragraphs 172.1(2)(*a*) and (*b*) apply.

Paragraph 172.1(2)(*a*) applies where the supply to the employer is made either in or outside Canada and where no tax would be payable under Part IX of the Act if the supply of the same property or service were made by the other person to each pension entity of the pension plan, rather than to the employer, and if the pension entity and the other person were dealing at arm's length. A supply of property or service could not be an excluded resource if there is any pension entity of the pension plan that would be required to pay tax if it acquired the property or service from the other person in an arm's length transaction. There may be supplies in respect of which the employer would not be required to pay tax but in respect of which a pension entity would be required to pay tax. For example, certain investment management services may be exempt financial services when supplied to an employer, but, when supplied to an investment plan such as a pension entity, would be taxable as they would be excluded from the definition "financial service" in subsection 123(1) by operation of paragraph (*q*) of that definition.

Further, the meaning of the phrase "no tax would become payable under this Part in respect of the supply" is wide in scope and is intended to apply if tax is triggered by way of, for example, self-assessment or change-in-use rules. In order for a supply of property or a service to be an excluded resource, it is necessary that no tax would be directly payable under any of sections 165, 212, 212.1, 218 or 218.1 of the Act on the hypothetical supply to the pension entity, and that the pension entity would not be required to account for tax as a result of a deemed change-in-use of the acquired property or service. For example, if an employer acquired capital property as part of the supply of a business or part of a business, the employer was not required to pay tax on the supply as a result of a joint election under section 167 of the Act and the employer will use the capital property to make exempt supplies, the employer would be required to remit tax under the change-in-use rules contained in sections 195 to 211 of the Act. As a result, it could not be said that no tax would apply if the same supply of property were made to a pension entity, rather than the employer, in these circumstances.

Paragraph 172.1(2)(*b*) applies where the supply to the employer is a supply of tangible personal property made outside Canada and where the supply would not be an imported taxable supply (as defined in section 217 of the Act) if the employer were a registrant not engaged exclusively in commercial activities. As a result, a supply of tangible personal property made outside Canada to the employer and transferred under a drop-shipment certificate will only be an excluded resource if the supply is not described in paragraph (*b*) of the definition "imported taxable supply" for reasons other than the employer not being a registrant or being engaged in commercial activities.

172.1(3) – Time of acquisition

New subsection 172.1(3) creates a special time of acquisition rule that operates solely to determine if a supply of property by a person that is a participating employer of a pension plan would be an excluded resource under subsection 172.1(2) and to determine if the supply is subject to the deemed supply rules contained in subsection 172.1(5). Subsection 172.1(3) provides that where property is supplied to a participating employer outside Canada and, at a later date, tax under section 212 becomes payable in respect of the property when it is imported into Canada, the supply of the property to the participating employer is deemed, for the purposes of section 172.1 only, to have occurred at that later date and tax is deemed to have become payable in respect of the supply at that later date. As a result, where a participating employer acquires property outside Canada for consumption or use in pension activities of the participating employer and, at a later date, the property is imported into Canada and subject to tax under section 212, that property will cease to be an excluded resource of the participating employer and, to the extent that the property is consumed or used in pension activities after the importation, the participating employer may be deemed to have made a taxable supply of the property under subsections 172.1(6) or (7). Similarly, where property is acquired by a participating employer for re-supply to a pension entity of the participating employer's pension plan and where, at a later time, the property is imported into Canada and subject to tax under section 212, the property may be subject to the deemed supply rules contained in subsection 172.1(5) at the time it is imported into Canada.

172.1(4) – Specified pension entity

New subsection 172.1(4) sets out rules for determining the specified pension entity of a pension plan in respect of a participating employer of the pension plan. The determination of a specified pension entity is relevant to subsection 172.1(7) since only a specified pension entity of a pension plan may be deemed to have paid tax to the participating employer of the pension plan under that subsection and be eligible to claim a rebate in respect of that tax under amended section 261.01. Where, at all times in a fiscal year of a participating employer of a pension plan, the pension plan has only one pension entity, that pension entity is the specified pension entity of the pension plan in respect of the participating employer for the fiscal year. Where, in a fiscal year of a participating employer of a pension plan, the pension plan has more

than one pension entity, the participating employer and one of the pension entities may jointly elect, in prescribed form containing prescribed information, for that pension entity to be the specified pension entity of the pension plan in respect of the participating employer for the participating employer's fiscal year. A participating employer may, at one time, have only one specified pension entity for a pension plan but each participating employer of a pension plan may have a different pension entity as its specified pension entity.

172.1(5) – Acquisition of property or a service for supply

New subsection 172.1(5) deems an employer to have made a taxable supply of the whole or part of property or a service, where it acquired that property or service with the intention of re-supplying all or part of it to a pension entity of a pension plan of which the employer is a participating employer. Subsection 172.1(5) deems the employer to have collected tax on the fair market value of the whole or part of the property or service. In determining its net tax, the employer will be required to include the tax in respect of this deemed supply and the pension entity may be entitled to claim a rebate in respect of this tax under amended section 261.01 or, in some cases, to claim an input tax credit.

Subsection 172.1(5) applies where an employer that is a registrant acquires property or a service (referred to in this provision as a "specified resource") for the purpose of making a supply of all or part of the specified resource to a pension entity of a pension plan of which the employer is a participating employer and where the pension entity is acquiring the specified resource for consumption, use or supply by the pension entity in the course of pension activities in respect of the pension plan. However, subsection 172.1(5) does not apply if the specified resource acquired by the employer is an excluded resource. Where subsection 172.1(5) applies in respect of a specified resource, the rules in paragraphs 172.1(5)(*a*) to (*d*) apply.

Paragraph 172.1(5)(*a*) deems, for purposes of Part IX, the employer to have made a taxable supply of the specified resource or part, on the last day of the fiscal year of the employer in which it acquired the specified resource. This deemed supply is a separate supply from any actual supply of the specified resource or part made to the pension entity. Since the employer is deemed to have made a taxable supply of the specified resource or part, the employer is considered to have acquired the specified resource or part for supply in the course of its commercial activities and may be eligible to claim an input tax credit in respect of this acquisition.

For purposes of Part IX, paragraph 172.1(5)(*b*) deems tax, in the amount determined under paragraph 172.1(5)(*c*), to have become payable and the employer to have collected that tax in respect of the deemed taxable supply on the last day of the fiscal year of the employer in which it acquired the specified resource.

For purposes of Part IX, paragraph 172.1(5)(*c*) deems the amount of tax under paragraph 172.1(5)(*b*) to be the total of a federal component of tax (element A) and a provincial component of tax (element B). The federal component of the tax is the amount determined by multiplying the fair market value of the specified resource or part, determined at the time the employer acquired the specified resource, by the tax rate set out in subsection 165(1). The provincial component of the tax is the total of all amounts, each of which is determined for a participating province by multiplying the fair market value of the specified resource or part, determined at the time the employer acquired the specified resource, by the provincial factor (as defined in subsection 172.1(1)) in respect of both the pension plan and the particular participating province for the fiscal year in which the employer acquired the specified resource.

Paragraph 172.1(5)(*d*) provides deeming rules solely for the purpose of determining an input tax credit of the pension entity and for the purposes of sections 232.01, 232.02 and 261.01 of the Act. Paragraph 172.1(5)(*d*) provides that, for those purposes, the pension entity is deemed to have received a supply of the specified resource or part on the last day of the fiscal year of the employer and to have paid tax on that day equal to the amount of tax that the employer is deemed by paragraph 172.1(5)(*b*) to have collected in respect of the supply of the specified resource or part. Furthermore, for input tax credit purposes, the pension entity is deemed to have acquired the specified resource or part for consumption, use or supply in the course of its commercial activities to the same extent that the specified resource or part was acquired by the employer for the purpose of making a supply of the specified resource or part to the pension entity for consumption, use or supply by the pension entity in the course of pension activities in respect of the pension plan that are commercial activities of the pension entity.

172.1(6) – Consumption or use of employer resource for supply

New subsection 172.1(6) deems an employer to have made a taxable supply of an employer resource where the employer resource is consumed or used for the purpose of making a supply of property or a service to a pension entity of a pension plan of which the employer is a participating employer for consumption, use or supply by the pension entity in the course of pension activities. Subsection 172.1(6) deems the employer to have collected tax in respect of the supply of the employer resource. In determining its net tax, the employer will be required to include the tax in respect of this deemed supply and the pension entity may be entitled to claim a rebate in respect of this tax under amended section 261.01 or, in some cases, to claim an input tax credit.

Subsection 172.1(6) applies where an employer that is both a registrant and a participating employer of a pension plan at any time in a fiscal year of the employer consumes or uses, at that time, an employer resource of the employer for the purpose of making a supply of property or a service (referred to in this provision as a “pension supply”) to a pension entity of the pension plan for consumption, use or supply by the pension entity in the course of pension activities in respect of the pension plan. However, subsection 172.1(6) does not apply where the employer resource being consumed or used by the employer is an excluded resource. Where subsection 172.1(6) applies in respect of an employer resource, the rules contained in paragraphs 172.1(6)(*a*) to (*d*) apply.

Paragraph 172.1(6)(*a*) deems, for the purposes of Part IX, the employer to have made a taxable supply of the employer resource (referred to in this provision as the "employer resource supply") on the last day of the fiscal year of the employer in which the consumption or use of the employer resource occurs. Since the employer is deemed to have made a taxable supply of the employer resource, the employer is considered to have consumed or used the employer resource in the course of its commercial activities and may be eligible to claim an input tax credit in respect of the employer resource.

For the purposes of Part IX, paragraph 172.1(6)(*b*) deems tax, in the amount determined under paragraph 172.1(6)(*c*), in respect of the employer resource supply to have become payable and to have been collected on the last day of the fiscal year of the employer in which the employer consumed or used the employer resource.

For the purposes of Part IX, paragraph 172.1(6)(*c*) deems the amount of tax under paragraph 172.1(6)(*b*) in respect of the employer resource supply to be the total of a federal component of tax (element A) and a provincial component of tax (element B).

The federal component of the tax in respect of the employer resource supply is the amount determined by multiplying the following three elements:

- the fair market value of the employer resource;
- the extent to which the consumption or use of the employer resource during the fiscal year for the purpose of making the pension supply occurred when the employer was both a registrant and a participating employer (expressed as a percentage of the total consumption or use of the employer resource during the fiscal year); and
- the tax rate set out in subsection 165(1).

The provincial component of the tax in respect of the employer resource supply is the total of all amounts, each of which is determined for a participating province by multiplying the following three elements:

- the fair market value of the employer resource;
- the extent to which the consumption or use of the employer resource during the fiscal year for the purpose of making the pension supply occurred when the employer was both a registrant and a participating employer (expressed as a percentage of the total consumption or use of the employer resource during the fiscal year); and
- the provincial factor in respect of the pension plan for the particular participating province in respect of the fiscal year.

For the purpose of determining the fair market value of the employer resource, if the employer resource was consumed during the fiscal year for the purpose of making the pension supply, the fair market value of the employer resource is determined at the time the employer began consuming the employer resource in the fiscal year. If the employer resource was used, but not consumed, for the purpose of making the pension supply, the fair market value of the employer resource is the fair market value of the use of the employer resource during the fiscal year as determined on the last day of the fiscal year.

Paragraph 172.1(6)(*d*) provides deeming rules solely for the purpose of determining an input tax credit of the pension entity and for the purposes of sections 232.01, 232.02 and 261.01. Paragraph 172.1(6)(*d*) provides that, for those purposes, the pension entity is deemed to have received a supply of the employer resource on the last day of the fiscal year of the employer and to have paid tax on that day equal to the amount of tax that the employer is deemed under paragraph 172.1(6)(*b*) to have collected in respect of the supply of the employer resource. Furthermore, for input tax credit purposes, the pension entity is deemed to have acquired the employer resource for consumption, use or supply in the course of its commercial activities to the same extent that the property or service, which was supplied in the pension supply by the employer to the pension entity, was acquired by the pension entity for consumption, use or supply by the pension entity in the course of pension activities in respect of the pension plan that are commercial activities of the pension entity.

172.1(7) – Consumption or use of employer resource otherwise than for supply

New subsection 172.1(7) deems an employer to have made a taxable supply of an employer resource where the employer resource is consumed or used in pension activities otherwise than for the purpose of making a supply of property or a service to a pension entity of a pension plan of which the employer is a participating employer. Subsection 172.1(7) deems the employer to have collected tax in respect of the supply of the employer resource. In determining its net tax, the employer will be required to include the tax in respect of this deemed supply and the pension entity may be entitled to claim a rebate in respect of this tax under amended section 261.01.

Subsection 172.1(7) applies where an employer that is both a registrant and a participating employer of a pension plan at any time in a fiscal year of the employer consumes or uses, at that time, an employer resource of the employer in the course of pension activities and subsection 172.1(6) does not apply to the consumption or use (i.e., the consumption or use is not for the purpose of making a supply of property or a service to a pension entity of a pension plan of which the employer is at that time a participating employer). However, subsection 172.1(7) does not apply where the employer resource being consumed or used by the employer is an excluded resource. If subsection 172.1(7) applies in respect of an employer resource, the rules contained in paragraphs 172.1(7)(*a*) to (*d*) apply.

Paragraph 172.1(7)(*a*) deems, for the purposes of Part IX, the employer to have made a taxable supply of the employer resource (referred to in this provision as the "employer resource supply") on the last day of the fiscal year of the employer in which the consumption or use of the employer resource occurs. Since the employer is deemed to have made a taxable supply of the employer resource, the employer will be considered to have consumed or used the employer resource in the course of its commercial activities and may be eligible to claim an input tax credit in respect of the employer resource.

For the purposes of Part IX, paragraph 172.1(7)(*b*) deems tax in respect of the employer resource supply to have become payable, and to have been collected by the employer, on the last day of the fiscal year of the employer in which the employer consumed or used the employer resource.

For the purposes of Part IX, paragraph 172.1(7)(*c*) deems the amount of tax under paragraph 172.1(7)(*b*) in respect of the employer resource supply to be the total of a federal tax component (element A) and a provincial tax component (element B).

The federal component of the tax in respect of an employer resource supply is the amount determined by multiplying the following three elements:

- the fair market value of the employer resource;
- the extent to which the consumption or use of the employer resource in the course of pension activities occurred when the employer was both a registrant and a participating employer (expressed as a percentage of the total consumption or use of the employer resource during the fiscal year); and
- the tax rate set out in subsection 165(1).

The provincial component of the tax in respect of an employer resource supply is the total of all amounts, each of which is determined for a participating province by multiplying the following three elements:

- the fair market value of the employer resource;
- the extent to which the consumption or use of the employer resource in the course of pension activities occurred when the employer was both a registrant and a participating employer (expressed as a percentage of the total consumption or use of the employer resource during the fiscal year); and
- the provincial factor in respect of the pension plan for the particular participating province in respect of the fiscal year.

For the purpose of determining the fair market value of the employer resource, if the employer resource was consumed during the fiscal year in the course of pension activities, the fair market value of the employer resource is determined at the time the employer began consuming the employer resource in the fiscal year. Where the employer resource was used, but not consumed, during the fiscal year in the course of pension activities, the fair market of the employer resource is the fair market value of the use of the employer resource during the fiscal year as determined on the last day of the fiscal year.

Paragraph 172.1(7)(*d*) provides deeming rules for the purposes of determining under section 261.01 an eligible amount of a specified pension entity. Paragraph 172.1(7)(*d*) provides that, for these purposes, the specified pension entity is deemed to have received a supply of the employer resource on the last day of the fiscal year of the employer and to have paid tax on that day equal to the amount of tax that the employer is deemed under paragraph 172.1(7)(*b*) to have collected in respect of the supply of the employer resource.

172.1(8) – Provision of information to pension entity

New subsection 172.1(8) places an information requirement on a participating employer of a pension plan where that participating employer is deemed by any of subsections 172.1(5) to (7) to have made a supply of property or a service. Subsection 172.1(8) requires the participating employer to provide prescribed information, in prescribed form and in a manner satisfactory to the Minister of National Revenue, to the pension entity of the pension plan that is deemed to have paid tax in respect of that supply.

Clause 4

Financial Services – Input Tax Credits

ETA
185(1)

Subsection 185(1) of the Act simplifies the operation of the tax for persons that are not financial institutions and that, in the course of their commercial activities, also provide some financial services that relate to these commercial activities. It deems the inputs relating to these financial services to be for use in the person's commercial activities. As a result, the person is not required to apportion inputs. Subsection 185(1) also applies under certain conditions to persons that are financial institutions solely because of paragraph 149(1)(*c*) of the Act (which generally provides that a person is a financial institution throughout a year if its interest and credit-granting income exceeded $1 million in the preceding year). Subsection 185(1) does not apply to listed financial institutions or to persons that are financial institutions because of paragraph 149(1)(*b*) (which generally provides that a person is a financial institution throughout a year if its income in the preceding year from interest and dividends and separate fees or charges for financial services exceeded both $10 million and 10% of the total of the person's income from such sources and from supplies other than sales of capital property and financial services).

Subsection 185(1) provides that the extent to which properties and services are acquired or imported for consumption, use or supply in the course of making supplies of certain financial services is to be determined in accordance with subsection 141.01(2) of the Act. To that same extent, those properties and services are deemed by subsection 185(1), subject to limitations for financial institutions, to have been acquired, imported or brought into a province for consumption, use or supply in the course of commercial activities.

Subsection 185(1) is amended to also provide that the extent to which properties and services are acquired, imported or brought into a participating province for consumption, use or supply in the course of making supplies of certain financial services is to be determined in accordance with new subsection 141.02(6) of the Act, which applies only to financial institutions. Subsection 141.02(6) deems exclusive inputs (as defined in subsection 141.02(1)) acquired, imported or brought into a participating province for purposes other than making taxable supplies for consideration as being inputs that are so acquired, imported or brought into a participating province for consumption or use exclusively in the course of non-commercial activities (e.g., inputs that are directly and exclusively consumed or used for making supplies of exempt financial services). However, if the conditions set out in subsection 185(1) are met, these exclusive inputs are deemed to have been acquired, imported or brought into a participating province for consumption, use or supply in the course of commercial activities. The amendment to subsection 185(1) affects only those persons that are financial institutions because of paragraph 149(1)(*c*).

The amendments to subsection 185(1) are deemed to have come into force on April 1, 2007.

Clause 5

Imported Supplies of Financial Institutions

ETA
217

Existing section 217 of the Act defines certain supplies made outside Canada, and other supplies on which the recipient, as opposed to the supplier, is required to account for tax, as "imported taxable supplies" for purposes of Division IV of Part IX of the Act. Section 217 is amended to add other definitions that apply for the purposes of Division IV, including new sections 217.1 and 217.2, the self-assessment provisions in new section 218.01 and new subsection 218.1(1.2) of the Act, which apply to financial institutions that are qualifying taxpayers (as described in subsection 217.1(1)).

The amendments to section 217 apply to any taxation year of a qualifying taxpayer that ends after November 16, 2005. However, a transitional rule applies for the purposes of applying section 217 to the taxation year of a qualifying taxpayer that includes November 17, 2005. In this case, paragraph (*k*) of the definition "permitted deduction" in section 217 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 (as defined in section 217) 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 definition "permitted deduction" should continue to be read with reference to the term "loading".

Section 217 is amended to add the following terms for the purposes of Division IV.

“Canadian activity”

Any activity of a person carried on, engaged in or conducted in Canada is a “Canadian activity” of the person. The expression “carried on, engaged in or conducted in Canada” is intended to give the term “Canadian activity” a broad meaning. The definition “Canadian activity” is relevant to limiting the scope of the definitions “external charge” and “qualifying consideration” in this section.

“duty”

A “duty” means anything done by an employee (as defined in this section) in the course of, or in relation to, the office or employment of the employee. If the duties of an employee of a qualifying taxpayer during a taxation year are performed primarily in Canada, the qualifying taxpayer may in certain circumstances be permitted to exclude certain compensation that is paid to that employee by the qualifying taxpayer from the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2).

“employee”

An “employee” includes an individual who agrees to become an employee (as defined in subsection 123(1) of the Act to include an officer). In certain circumstances, compensation paid by a qualifying taxpayer to an employee forms part of the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2).

“external charge”

An “external charge” is generally an outlay or expense that is made by a qualifying taxpayer to acquire property or a service that is used in the qualifying taxpayer’s Canadian activities (as defined in this section). The definition “external charge” is relevant for a qualifying taxpayer that has made the election under new section 217.2 for the purposes of determining its tax under section 218.01 and under subsection 218.1(1.2) for a relevant specified year of the qualifying taxpayer. These provisions require a qualifying taxpayer that has made this election to self-assess tax on the total of all amounts, each of which is an amount of an external charge, or of an internal charge (as described in subsection 217.1(4)), that is greater than zero.

An external charge of a qualifying taxpayer is an amount that must be determined by the qualifying taxpayer for its specified year in respect of each outlay made, or expense incurred, outside Canada that is described in any of paragraphs 217.1(2)(*a*) to (*c*). In general, these three paragraphs include an outlay made, or expense incurred, in respect of property transferred, or qualifying services performed, outside Canada, an adjustment to such an outlay or expense, and an expenditure or purchase in respect of a reportable transaction (as defined in section 233.1 of the *Income Tax Act*). These three paragraphs are explained in greater detail in the description of subsection 217.1(2).

An amount of an external charge for a specified year of a qualifying taxpayer in respect of an outlay made, or expense incurred, is determined by the formula A - B.

The amount of an outlay made, or expense incurred, outside Canada that meets two conditions falls within the description of A of the formula. The first condition provides that the amount of the outlay or expense must be allowable as a deduction, an allowance or an allocation for a reserve under the *Income Tax Act* or that the amount of the outlay or expense would be so allowable if the qualifying taxpayer's income were computed in accordance with that Act, if the qualifying taxpayer carried on a business in Canada and if that Act applied to the qualifying taxpayer. This condition is intended to apply equally to all qualifying taxpayers, regardless of whether they are corporations, partnerships, trusts or individuals and regardless of whether they are required to pay any income tax. The second condition is met if the amount of the outlay or expense may reasonably be regarded as being applicable to a Canadian activity of the qualifying taxpayer. For example, if a qualifying taxpayer that has made an election under section 217.2 purchases a service from one of its non-resident subsidiaries outside Canada, the service is entirely for use by the qualifying taxpayer's Canadian business and the qualifying taxpayer is allowed to deduct the particular expense that is wholly attributed to the Canadian business in computing its income, then the amount of that expense is captured under the description of A of the formula.

The whole or part of the amount that is captured under the description of A may be deducted once under the description of B if that whole or part of the amount is a permitted deduction (as defined in this section) of the qualifying taxpayer for the specified taxation year or a preceding specified taxation year.

"loading"

The portion of the consideration for a supply of a financial service that comes within the definition "loading" generally forms part of the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2). Loading is used in the definitions "permitted deduction" and "specified derivative supply" in this section.

Loading means any part of the value of the consideration for a supply of a financial service that is attributable to the following:

- administrative expenses,
- an error or profit margin,
- business handling costs,
- commissions, other than commissions for a specified financial service (as defined in this section),
- communications expenses,
- claims handling costs,
- employee compensation or benefits,
- execution or clearing costs,
- management fees,
- marketing or advertising costs,
- occupancy or equipment expenses,
- operating expenses,
- acquisition costs,

- premium collection costs,
- processing costs, and
- any other costs or expenses of a person that makes the supply.

However, there are certain risk estimates that may form part of the value of the consideration for a supply of a financial service. If these estimates are part of the value of consideration for the supply, they are specifically excluded from the definition "loading". For example, if the financial service supplied includes the issuance, renewal, variation or transfer of ownership of an insurance policy, but not of any other qualifying instrument (defined in this section as being money, a credit card voucher, a charge card voucher or a financial instrument), the estimate of the net premium of that insurance policy does not represent loading. A net premium generally corresponds to the average cost of a claim, multiplied by the probability that the event being covered will occur. Similarly, if the financial service supplied includes the issuance, renewal, variation or transfer of ownership of a qualifying instrument (other than an insurance policy), the estimate of the default risk premium that is directly associated with that qualifying instrument does not represent loading. In circumstances where the financial service includes the issuance, renewal, variation or transfer of ownership of both an insurance policy and another qualifying instrument, it is the total of the estimates described above that does not represent loading.

Inputs for a supply of a financial service, which are largely administrative in nature, fall within the definition "loading" and, therefore, form part of the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2). However, the part of the consideration for a supply of a financial service that is clearly and fundamentally financial in nature, like the specific estimates described above, generally do not fall within the definition "loading" and, therefore, generally do not form part of the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2).

"permitted deduction"

The term "permitted deduction" describes the amounts that can be deducted in determining an amount of qualifying consideration or an external charge (as those terms are defined in this section) or in determining an internal charge under subsection 217.1(4).

Permitted deduction of a qualifying taxpayer for a specified year of the qualifying taxpayer means an amount that is included in any of paragraphs (*a*) through (*m*) of this definition for the qualifying taxpayer for the specified year.

Paragraph (*a*) describes an amount that is consideration for a supply of property or a service, or the value of imported goods, upon which the Goods and Services Tax / Harmonized Sales Tax (GST/HST) became payable by the qualifying taxpayer (other than GST/HST under section 218.01 or subsection 218.1(1.2)) during the specified year. Similarly, paragraph (*b*) describes an amount that is the GST/HST referred to in paragraph (*a*) that became payable by the qualifying taxpayer during the specified year in respect of the supply or importation referred to in paragraph (*a*). For example, if a non-resident qualifying taxpayer with a Canadian branch acquired a license to use certain software from an American software provider that charged GST/HST to the qualifying taxpayer in respect of the supply of the license and the qualifying

taxpayer allocated the consideration paid for this taxable supply of intangible personal property (including the GST/HST charged) to the Canadian branch, the total of the consideration and GST/HST charged would be a permitted deduction.

Paragraph (*c*) describes an amount that is a prescribed provincial levy for the purposes of section 154 of the Act, and that is payable by the qualifying taxpayer in respect of the taxable supply referred to in paragraph (*a*). This paragraph removes a prescribed provincial levy, which ordinarily would not form part of the consideration for a taxable supply, from the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2).

Paragraph (*d*) describes an amount that is assistance (within the meaning of subsection 248(18) or proposed subsection 248(18.1) of the *Income Tax Act*) repaid by the qualifying taxpayer during the specified year, in respect of property or a service in respect of which tax under Part IX became payable by the qualifying taxpayer. For instance, if a qualifying taxpayer is required to repay a previously received input tax credit, this credit amount would be carved-out as a permitted deduction to ensure that the qualifying taxpayer is not required to self-assess GST/HST on it.

Paragraph (*e*) describes an amount that is consideration for an arm's length supply of property or a service (other than a financial service). However, this carve-out does not apply if either of two sets of circumstances is met. First, if GST/HST (other than GST/HST under section 218.01 or subsection 218.1(1.2)) became payable by the qualifying taxpayer on the consideration for the arm's length supply, this carve-out is not applicable because the consideration for a taxable supply (upon which GST/HST became payable by the qualifying taxpayer) is already included in paragraph (*a*) of the definition. Secondly, if an activity that relates in any manner to the arm's length supply was carried on, engaged in or conducted outside Canada through a qualifying establishment (as defined in this section) of the qualifying taxpayer or of a person related to the qualifying taxpayer, this carve-out is not applicable. For example, if the amount of an outlay or expense is consideration for a cheque-processing service supplied to the qualifying taxpayer by an unrelated non-resident supplier that is not registered for GST/HST purposes, that amount may be initially included in the definition "permitted deduction". If, however, in making the arm's length supply, the unrelated supplier somehow used certain technology or equipment at a qualifying establishment outside Canada of a corporation related to the qualifying taxpayer, this carve-out does not apply and the amount would not be a permitted deduction.

Paragraph (*f*) describes qualifying compensation (as defined in this section) that is paid by the qualifying taxpayer in the specified year to its employee who was primarily in Canada while performing the employee's duties (as defined in this section) during the specified year.

Paragraph (*g*) describes an amount that is interest paid or payable by the qualifying taxpayer as the consideration for a supply of a financial service made to the qualifying taxpayer. However, if that interest represents an amount paid or credited by the qualifying taxpayer, or deemed by Part I of the *Income Tax Act* to have been paid or credited by the qualifying taxpayer, to a person as, on account of or in lieu of payment of, or in satisfaction of, a management or administration fee or charge (within the meaning of subsection 212(4) of that Act), the amount would not be included in paragraph (*g*).

Paragraph (*h*) describes an amount that is dividends. This ensures that dividends do not form part of the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2).

Amounts that are interest referred to in paragraph (*g*) or dividends referred to in paragraph (*h*) are specifically excluded from paragraphs (*i*) to (*l*).

Paragraph (*i*) describes an amount that is consideration for a supply of a financial service (other than a specified derivative supply or a supply of a specified financial service, as those terms are defined in this section) made to the qualifying taxpayer as part of a transaction or series of transactions in which all participants deal at arm's length with the qualifying taxpayer.

Paragraph (*j*) describes an amount that is consideration for a supply of a financial service (other than a specified derivative supply) that is supplied to the qualifying taxpayer by an agent, salesperson or broker. The financial service must be a service of arranging for the issuance, renewal, variation or transfer of ownership of a financial instrument that is property of a person other than the agent, salesperson or broker.

Paragraph (*k*) describes an amount that is consideration for a supply of a financial service (other than a specified derivative supply or a supply of a specified financial service) made to the qualifying taxpayer as part of a transaction or series of transactions in which any participant does not deal at arm's length with the qualifying taxpayer, provided that the supply includes the issuance, renewal, variation or transfer of ownership of a financial instrument. However, only the portion of the consideration, that does not represent loading (e.g., only the portion that is clearly and fundamentally financial in nature) would be a permitted deduction under paragraph (*k*).

Paragraph (*l*) describes an amount that is consideration for a specified derivative supply made to the qualifying taxpayer.

Paragraph (*m*) describes an amount that is a prescribed amount. As of ANNOUNCEMENT DATE, no amounts are proposed to be prescribed.

“qualifying compensation”

Any salary, wages and other remuneration of an employee (as defined in this section) and any other amount that is required to be included as income from an office or employment in computing the income of the employee for purposes of the *Income Tax Act* constitutes “qualifying compensation” of the employee. In certain circumstances, all or part of the qualifying compensation paid by a qualifying taxpayer to an employee forms part of the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2). Generally, qualifying compensation of an employee is included in this tax base, unless the duties of the employee are performed primarily in Canada.

“qualifying consideration”

Section 218.01 requires a qualifying taxpayer to self-assess tax, for each of its specified years for which an election under section 217.2 is not in effect, on the total of all amounts, each of which is an amount of “qualifying consideration” that is greater than zero. Qualifying consideration of a qualifying taxpayer is an amount that must be determined by the qualifying taxpayer for its specified year in respect of each outlay made, or expense incurred, outside Canada (within the meaning of subsection 217.1(2)). The interpretation rule in subsection 217.1(2) sets out various types of amounts that are included in the expression “outlay made, or expense incurred, outside Canada” for the purposes of Division IV of Part IX of the Act. In general, the qualifying consideration in respect of a particular outlay made, or expense incurred, outside Canada is the amount of that outlay or expense that forms part of the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2).

An amount of qualifying consideration for a specified year of a qualifying taxpayer in respect of an outlay made, or expense incurred, outside Canada is determined by the formula A - B. The amount of an outlay made, or expense incurred, outside Canada that meets two conditions falls within the description of A of the formula. The first condition provides that the amount of the outlay or expense must be allowable as a deduction, an allowance or an allocation for a reserve under the *Income Tax Act* or that the amount of the outlay or expense would be so allowable if the qualifying taxpayer’s income were computed in accordance with that Act, if the qualifying taxpayer carried on a business in Canada and if that Act applied to the qualifying taxpayer. This condition is intended to apply equally to all qualifying taxpayers, regardless of whether they are corporations, partnerships, trusts or individuals and regardless of whether they are required to pay any income tax. The second condition is met if the amount of the outlay or expense may reasonably be regarded as being applicable to a Canadian activity (as defined in this section) of the qualifying taxpayer. For example, if a non-resident qualifying taxpayer with a Canadian branch is allowed to deduct a particular expense that is allocated to that branch in computing the qualifying taxpayer’s income, the amount of that expense is captured under the description of A of the formula.

The whole or part of the amount that is captured under the description of A may be deducted once under the description of B if that whole or part of the amount is described in paragraph (*a*) or (*b*) of element B. Paragraph (*a*) describes an amount that is a permitted deduction (as defined in this section) of the qualifying taxpayer for the specified year or a preceding specified year of the qualifying taxpayer. Paragraph (*b*) describes an amount in respect of a financial instrument that is a derivative where that amount represents either a cost to a qualifying establishment of the qualifying taxpayer outside Canada or a share of a profit of the qualifying taxpayer that is redistributed from a qualifying establishment of the qualifying taxpayer in Canada to another qualifying establishment of the qualifying taxpayer outside Canada. The amount described in paragraph (*b*) must be solely attributable to the issuance, renewal, variance or transfer of ownership by the qualifying taxpayer of a financial instrument that is a derivative. As well, all or substantially all of the amount described in paragraph (*b*) must constitute an error or profit margin, or employee compensation or benefits, that is reasonably attributable to the issuance, renewal, variance or transfer of ownership, or the estimate of the default risk premium that is directly associated with the derivative.

“qualifying establishment”

The term “qualifying establishment” is defined as being a permanent establishment as defined in subsection 123(1) (generally, a fixed place of business of a particular person and, in some circumstances, a fixed place of business of another person, through which the particular person makes supplies) or a permanent establishment as defined in subsection 132.1(2) (which, for HST purposes, is based on the definitions in the *Income Tax Act Regulations* that are used for the allocation of taxable income to the provinces).

“qualifying instrument”

“Qualifying instrument” means money, a credit card voucher, a charge card voucher or a financial instrument. This definition is relevant for the definition “loading”. Generally, the part of the consideration for a financial service that includes the issuance, renewal, variation or transfer of ownership of a qualifying instrument is carved out of loading and is not subject to tax under section 218.01. This definition is also relevant to the term “specified non-arm’s length supply”.

“qualifying service”

A “qualifying service” is any duty (as defined in this section) or any service (as defined in subsection 123(1)). The term “qualifying service” is therefore broader than the term “service”. This term is used in subsections 217.1(6) and (7) and 218.1(1.2).

“specified arm’s length supply”

A supply of a financial service (other than a specified derivative supply or the supply of a specified financial service) is a “specified arm’s length supply” if the supply is made to a qualifying taxpayer as part of a transaction or series of transactions in which all participants deal at arm’s length with the qualifying taxpayer. In certain circumstances, a qualifying taxpayer is permitted to exclude the consideration for a specified arm’s length supply from the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2).

“specified derivative supply”

A “specified derivative supply” is a supply of a financial service that is a service of issuing, renewing, varying or transferring the ownership of a financial instrument that is a derivative, or a supply made by an agent, salesperson or broker of arranging for the issuance, renewal, variance or transfer of ownership of a financial instrument that is a derivative, provided that all or substantially all of the value of the consideration for the supply is attributable to the following: any error or profit margin, or employee compensation or benefits, reasonably attributable to the supply, and amounts that are not loading (as defined in this section). The definition “specified derivative supply” is relevant to the definition “permitted deduction” in this section, as consideration for a specified derivative supply is a permitted deduction and may accordingly be carved out from being an external charge or qualifying consideration.

“specified financial service”

A financial service is a “specified financial service” if the financial service is supplied to a qualifying taxpayer by an agent, salesperson or broker, and is a service of arranging for the issuance, renewal, variation or transfer of ownership of a financial instrument that is property of a person other than the agent, salesperson or broker. In certain circumstances, a qualifying taxpayer is permitted to exclude the consideration for a supply of a specified financial service from the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2). For instance, in certain circumstances, commissions (or similar fees) paid by a qualifying taxpayer to a broker who arranges for the transfer of ownership for the qualifying taxpayer of a security owned by a person other than the broker do not form part of the tax base that is subject to self-assessment provisions in section 218.01 and subsection 218.1(1.2).

“specified non-arm’s length supply”

A supply of a financial service (other than a specified financial service) is a “specified non-arm’s length supply” if the supply includes the issuance, renewal, variation or transfer of ownership of a financial instrument and the supply is made to the qualifying taxpayer as part of a transaction or series of transactions in which any participant does not deal at arm’s length with the qualifying taxpayer. However, the term “specified non-arm’s length supply” does not include a specified derivative supply (as defined in this section). In certain circumstances, a qualifying taxpayer is permitted to exclude, from the tax base that is subject to the self-assessment provisions in section 218.01 and subsection 218.1(1.2), the portion of the consideration for a specified non-arm’s length supply that does not come within the ambit of the definition “loading” in this section.

“specified year”

A “specified year” of a qualifying taxpayer depends on whether the qualifying taxpayer is a taxpayer or partnership for income tax purposes and on whether the qualifying taxpayer is registrant or not. If a qualifying taxpayer is described in paragraph (*a*) or (*b*) of the definition “taxation year” in subsection 123(1), the specified year of the qualifying taxpayer is the taxation year as defined in subsection 123(1). If, however, a qualifying taxpayer is not described in either of those paragraphs, but is a registrant for GST/HST purposes, the specified year of the qualifying taxpayer is the fiscal year of the qualifying taxpayer. In any other case, the specified year of a qualifying taxpayer for purposes of the provisions referred to above is the calendar year. For instance, in the case of a trust that is not a registrant for GST/HST purposes, the calendar year would represent the relevant specified year. The definition “specified year” is relevant because the tax imposed under section 218.01 and subsection 218.1(1.2) is to be determined for each specified year of a qualifying taxpayer.

“taxing statute”

The term “taxing statute” of a country means a statute of a country, or of a political subdivision of the country such as a state or province, that imposes a levy, or charge of general application, that is an income or profits tax. A taxing statute would generally be a law of a jurisdiction that has a similar function as the *Income Tax Act*. The term “taxing statute” is relevant to subsection 217.1(4) which describes the term “internal charge”.

“transaction”

The term “transaction” is defined to include an arrangement or event. The definition “transaction” is relevant for purposes of the definitions “permitted deduction”, “specified arm’s length supply” and “specified non-arm’s length supply”, as well as for certain interpretation rules relating to the self-assessment provisions in section 218.01 and subsection 218.1(1.2).

Clause 6

Imported Supplies of Financial Institutions

ETA
217.1

New section 217.1 of the Act provides various interpretation rules that apply in respect of the self-assessment provisions in new section 218.01 and new subsection 218.1(1.2) of the Act, which apply to financial institutions that are qualifying taxpayers (as described in subsection 217.1(1)).

Section 217.1 applies to any specified year (as defined in section 217) of a qualifying taxpayer that ends after November 16, 2005.

Subsection 217.1(1) – Qualifying taxpayer

New subsection 217.1(1) provides an interpretative rule used to determine which persons are "qualifying taxpayers". The self-assessment provisions in section 218.01 and subsection 218.1(1.2) apply only to qualifying taxpayers.

A person is a qualifying taxpayer throughout a specified year of the person if the person is a financial institution at any time in the specified year and if, at any time in the specified year, the person (a) is resident in Canada, (b) has a qualifying establishment (as defined in section 217) in Canada, or (c) in the case where a majority of those persons having beneficial ownership of the person's property in Canada are resident in Canada, carries on, engages in or conducts an activity in Canada.

Subsection 217.1(2) – Outlay made, or expense incurred, outside Canada

For the purposes of Division IV of Part IX of the Act, the various amounts set out in new subsection 217.1(2) are to be treated as being outlays made, or expenses incurred, outside Canada. The interpretation rule under subsection 217.1(2) is relevant because an amount of qualifying consideration or of an external charge (as those terms are defined in section 217) must be determined by a qualifying taxpayer for its specified year in respect of each outlay made, or expense incurred, outside Canada. Subsection 217.1(2) provides that a reference in Division IV to the expression "outlay made, or expense incurred, outside Canada" includes any of the amounts described below.

Under paragraph 217.1(2)(*a*), any outlay made, or expense incurred, by a qualifying taxpayer in respect of property that is (wholly or partially) transferred outside Canada to the qualifying taxpayer, or of which possession or use is (wholly or partially) given or made available outside Canada to the qualifying taxpayer, is considered to be an outlay made, or expense, incurred outside Canada. Similarly, any outlay made, or expense incurred, by a qualifying taxpayer in respect of a service that is (wholly or partially) performed outside Canada for the benefit of the qualifying taxpayer, or that is rendered outside Canada to the qualifying taxpayer, is considered to be an outlay made, or expense incurred, outside Canada.

Any adjustment (within the meaning of subsection 247(2) of the *Income Tax Act*) to an outlay or expense described in paragraph 217.1(2)(*a*) is also considered under paragraph 217.1(2)(*b*) to be an outlay made, or expense incurred, outside Canada. For example, if data processing services are, in whole or in part, performed outside Canada for the benefit of a Canadian qualifying taxpayer by its foreign parent, any expense incurred by the qualifying taxpayer in respect of those services represents an expense incurred outside Canada and any adjustment, in accordance with transfer pricing rules under the *Income Tax Act*, to the expense incurred in respect of those services also represents an expense incurred outside Canada.

Under paragraph 217.1(2)(*c*), the amount representing any expenditure or purchase in respect of a reportable transaction (as defined in section 233.1 of the *Income Tax Act*) in respect of which the qualifying taxpayer is required to file a return with the Minister of National Revenue (or would be so required if the qualifying taxpayer carried on a business in Canada and that Act applied to the qualifying taxpayer) is considered to be an outlay made, or expense incurred, outside Canada. As a result, if a qualifying taxpayer is required to report an amount, as an expenditure or purchase, on the return referred to in section 233.1 of the *Income Tax Act*, the reported amount represents an outlay made, or expense incurred, outside Canada for the purposes of Division IV.

In the case of a qualifying taxpayer that is resident in Canada, under paragraph 217.1(2)(*d*), any qualifying compensation of an employee (as those terms are defined in section 217) paid in a specified year by the resident qualifying taxpayer is considered to be an outlay made, or expense incurred, outside Canada if two conditions are met. The first condition is met if, in the specified year, a duty (as defined in section 217) is performed by the employee outside Canada at a qualifying establishment (as defined in section 217) of the resident qualifying taxpayer or of a person related to that qualifying taxpayer. For example, if the employee of a resident qualifying taxpayer does anything at an office of a branch outside Canada or at an office outside Canada of a related subsidiary, the actions of the employee are sufficient for the first condition to be met. The second condition is met if it is not the case that all or substantially all of those duties performed outside Canada by the employee in the specified year are performed elsewhere than at qualifying establishments of the qualifying taxpayer or of a person related to the qualifying taxpayer. In other words, for the second condition to be met, more than a marginal portion of all those duties performed outside Canada by the employee must be performed at such a qualifying establishment. When both of these conditions are satisfied, any qualifying compensation of the employee paid in a specified by the resident qualifying taxpayer represents an outlay made, or expense incurred, outside Canada for purposes of Division IV.

In the case of a qualifying taxpayer that is not resident in Canada, any qualifying compensation of an employee paid in a specified year by the non-resident qualifying taxpayer, regardless of where the employee performs its duties, is considered to be an outlay made, or expense incurred, outside Canada under subparagraph 217.1(2)(*e*)(iii). In addition to any qualifying compensation paid by a non-resident qualifying taxpayer, the non-resident qualifying taxpayer must include the allocations under subparagraph 217.1(2)(*e*)(i), described below, in the expression "outlay made, or expense incurred, outside Canada":

- any allocation by the non-resident qualifying taxpayer under the *Income Tax Act* of an outlay or expense as an amount in respect of a business carried on in Canada by the non-resident qualifying taxpayer; and
- any amount of an outlay or expense that would be allocated under the *Income Tax Act* as an amount in respect of a business carried on in Canada by the qualifying taxpayer if the qualifying taxpayer's income were computed in accordance with that Act, if anything done by the qualifying taxpayer through a qualifying establishment in Canada of the qualifying taxpayer were the carrying on of a business in Canada by the qualifying taxpayer and if that Act applied to the qualifying taxpayer.

For a non-resident qualifying taxpayer to determine whether the above allocations are considered to be outlays made, or expenses incurred, outside Canada, it should be assumed that the non-resident qualifying taxpayer is required to compute its income in accordance with the *Income Tax Act* and that the determination is being made in the context of an allocation by the non-resident qualifying taxpayer of expenses as amounts in respect of a Canadian business. As a result, whether that Act actually applies to the non-resident qualifying taxpayer is not relevant in determining whether the above allocations represent outlays made, or expenses incurred, outside Canada for the purposes of Division IV.

Also, in the case of a non-resident qualifying taxpayer, under subparagraph 217.1(2)(*e*)(ii), any outlay or expense that may reasonably be regarded (under the *Income Tax Act*) as an amount that is applicable to a qualifying establishment in Canada of the non-resident qualifying taxpayer is considered to be an outlay made, or expense incurred, outside Canada. For the non-resident qualifying taxpayer to determine whether a particular outlay or expense may reasonably be regarded as an amount that is applicable to its qualifying establishment in Canada, it should be assumed that the qualifying establishment of the non-resident qualifying taxpayer is a permanent establishment for purposes of the *Income Tax Act*, that the non-resident qualifying taxpayer carried on a business in Canada and that that Act applied to the qualifying taxpayer.

The various amounts that are set out in subsection 217.1(2) are intended to give the expression "outlay made, or expense incurred, outside Canada" a broad meaning for the purposes of Division IV.

Subsection 217.1(3) – Series of transactions

New subsection 217.1(3) provides that a reference in Division IV of Part IX of the Act to a series of transactions (which is defined in section 217 to include arrangements or events) includes any related transactions completed in contemplation of the series.

Subsection 217.1(4) – Internal charge

New subsection 217.1(4) provides interpretation rules for determining an amount of an internal charge. An internal charge is generally an amount that is treated, for income or profit tax purposes, both as income or profit in a particular country other than Canada and as a deduction from income in Canada. An internal charge is relevant for a qualifying taxpayer that, for a relevant specified year of the qualifying taxpayer, is, at any time in the specified year, resident in Canada (other than a qualifying taxpayer deemed under subsection 132(2) to be resident in Canada) and that has made the election under new section 217.2 for the purposes of determining its tax under section 218.01 and under subsection 218.1(1.2). These provisions require a qualifying taxpayer that has made the election under section 217.2 in respect of the specified year to self-assess tax on the total of all amounts, each of which is an external charge or internal charge for the specified year that is greater than zero.

Specifically, an internal charge is a part of an amount that is in respect of a transaction or dealing between a particular qualifying establishment of a qualifying taxpayer located in Canada and another qualifying establishment of the qualifying taxpayer located in a particular country other than Canada. Only the part of such an amount that is described in paragraph 217.1(4)(*a*) and is not described in paragraph 217.1(4)(*b*) is considered to be an internal charge.

It should be noted that for the purposes of applying subsection 217.1(4) to two qualifying establishments of a qualifying taxpayer, subsection 217.1(5) deems the permanent establishments to be "separate entities" (see notes to subsection 217.1(5)).

An amount is described in paragraph 217.1(4)(*a*) if it meets either the criteria set out in subparagraphs 217.1(4)(*a*)(i) and (ii), or, where subparagraph 217.1(4)(*a*)(ii) does not apply in respect of a particular country and the specified year, the criteria set out in subparagraphs 217.1(4)(*a*)(i) and (iii).

Subparagraph 217.1(4)(*a*)(i) requires that the amount would be allowed as a deduction, an allowance or an allocation for a reserve under the *Income Tax Act*, in computing the income of the particular qualifying establishment in Canada for the specified year if:

- the *Income Tax Act* applied to the particular qualifying establishment;
- the particular qualifying establishment's income were computed in accordance with that Act;
- anything done by the qualifying taxpayer at the particular qualifying establishment were the carrying on of a business in Canada, for the purposes of that Act;
- the particular qualifying establishment were a permanent establishment for the purposes of that Act; and
- the specified year were the particular qualifying establishment's taxation year for the purposes of that Act.

Subparagraph 217.1(4)(*a*)(ii) applies only where the qualifying taxpayer has not specified in its election filed under subsection 217.2(2) that subparagraph 217.1(4)(*a*)(iii) is to apply for the specified year, where the particular country is a taxing country, as defined in subsection 126(7) of the *Income Tax Act* and where the particular country has a tax treaty, as that term is defined in subsection 248(1) of that Act, with Canada. Subsection 126(7) defines a "taxing country" as being a country whose government regularly imposes, in respect of business income, a levy or charge of general application that is, generally, an income or profits tax. Subsection 248(1) defines a "tax treaty" at any time as a comprehensive agreement (i.e., a bilateral international convention or agreement relating to income taxation) for the elimination of double taxation on income between the Canadian government and a foreign government that has the force of law in Canada at that time.

An amount described in subparagraph 217.1(4)(*a*)(ii) is generally an amount that the qualifying taxpayer is required to include in determining its net income or profits for the other qualifying establishment in the particular country under a taxing statute of the particular country. More specifically, subparagraph 217.1(4)(*a*)(ii) describes an amount that a taxing statute of the particular country, which applies to the qualifying taxpayer or would apply if the other qualifying establishment were a permanent establishment for the purposes of the taxing statute, would require the qualifying taxpayer to include in determining the other qualifying establishment's income or profits for any taxing period that ends during the specified year, if certain hypothetical conditions are met. These hypothetical conditions, which may or may not exist, are that the taxing statute applied to the other qualifying establishment, that the other qualifying establishment's income or profits were computed in accordance with the taxing statute and that, for purposes of the taxing statute, anything done by the qualifying taxpayer through the other qualifying establishment were the carrying on of a business in the particular country and the qualifying establishment were a permanent establishment that had the same taxing periods that the qualifying taxpayer would have under the taxing statute.

Subparagraph 217.1(4)(*a*)(iii) applies where the other qualifying establishment is located in a country that is not a taxing country or where the qualifying taxpayer has specified in its election filed under subsection 217.2.(2) for the specified year that that subparagraph is to apply in all cases for the purposes of determining the qualifying taxpayer's external charges for the specified year. Where subparagraph 217.1(4)(*a*)(iii) applies, it describes an amount that generally would be subject to Canadian income tax if the *Income Tax Act* applied to the other qualifying establishment. More specifically, subparagraph 217.1(4)(*a*)(iii) describes an amount that would be required to be included in determining the qualifying taxpayer's income for the specified year if:

- the laws of Canada, rather than those of the particular country, applied, with any modifications that the circumstances require, in the particular country;
- the *Income Tax Act* applied to the other qualifying establishment;
- the other qualifying establishment's income were computed in accordance with that Act;
- anything done by the qualifying taxpayer through the other qualifying establishment were, for the purposes of that Act, the carrying on of a business;

- the other qualifying establishment were a permanent establishment for the purposes of that Act; and
- the specified year were the other qualifying establishment's taxation year for the purposes of that Act.

Paragraph 217.1(4)(*b*) describes parts of amounts described in the preamble to subsection 217.1(4) that are not included in an internal charge under subsection 217.1(4). A part of an amount will fall within paragraph 217.1(4)(*b*) if it is described in any of subparagraphs 217.1(4)(*b*)(i) to (iv).

Subparagraph 217.1(4)(*b*)(i) describes an amount determined under the description of element A in the formula in the definition "external charge" in section 217 in calculating an external charge of the qualifying taxpayer for the specified year or any preceding specified year of the qualifying taxpayer. This ensures that a part of an amount that is subject to tax as an external charge is not also taxed as an internal charge.

Subparagraph 217.1(4)(*b*)(ii) describes a permitted deduction (as defined in section 217) of the qualifying taxpayer for the specified year or any preceding specified year of the qualifying taxpayer, other than a permitted deduction that may be deducted in computing an external charge for the specified year or any preceding year of the qualifying taxpayer.

Subparagraph 217.1(4)(*b*)(iii) describes an amount in respect of a derivative that represents either a cost to the other qualifying establishment or a share of a profit of the qualifying taxpayer that is redistributed from the particular qualifying establishment to the other qualifying establishment. The amount described in subparagraph 217.1(4)(*b*)(iii) must be solely attributable to the issuance, renewal, variance or transfer of ownership by the qualifying taxpayer of a financial instrument that is a derivative. As well, all or substantially all of the amount must be an error or profit margin, or employee compensation or benefits, that is reasonably attributable to the issuance, renewal, variance or transfer of ownership, or the estimate of the default risk premium that is directly associated with the derivative.

Subparagraph 217.1(4)(*b*)(iv) describes a prescribed amount. As of ANNOUNCEMENT DATE, no amounts are proposed to be prescribed.

Subsection 217.1(5) – Separate entities

New subsection 217.1(5) sets out rules that apply for the purpose of paragraph 217.1(4)(*a*). These rules apply to a particular qualifying establishment of a qualifying taxpayer in a country other than Canada and to another qualifying establishment of the qualifying taxpayer in Canada. They effectively treat, for the purposes of applying paragraph 217.1(4)(*a*), the particular qualifying establishment, the other qualifying establishment and the remainder of the qualifying taxpayer (i.e., the part of the qualifying taxpayer, if any, that does not include the particular qualifying establishment and the other qualifying establishment) as being each separate and distinct enterprises from each of the other two components of the qualifying taxpayer and as dealing wholly independently with each of the other two components. Further, any transactions or dealings between any of these three components of the qualifying taxpayer are deemed to be

supplies made on such terms as would have been agreed upon between parties dealing at arm's length. In addition, the particular qualifying establishment is deemed to be an enterprise that is engaged in the same or similar activities under the same or similar conditions as the particular qualifying establishment, and the other qualifying establishment is likewise deemed to be an enterprise that is engaged in the same or similar activities under the same or similar conditions as the other qualifying establishment.

Subsection 217.1(6) – Qualifying rule for credits

New subsection 217.1(6) sets out interpretation rules that are necessary for a qualifying taxpayer to determine whether an input tax credit may be claimed in respect of tax under section 218.01 or subsection 218.1(1.2) in respect of an external charge, or of an amount of qualifying consideration, that becomes payable by the qualifying taxpayer, or is paid by the qualifying taxpayer without having become payable, during a reporting period of the qualifying taxpayer during which the qualifying taxpayer is a registrant.

Where a qualifying taxpayer has not made an election under section 217.2 for the specified year and the qualifying taxpayer makes an outlay, or incurs an expense, outside Canada that results in an amount of qualifying consideration for a specified year of the qualifying taxpayer that is greater than zero, section 218.01 (and, if the qualifying taxpayer is resident in a participating province, subsection 218.1(1.2)) requires the qualifying taxpayer to self-assess tax on that amount of qualifying consideration. Where an election is made by the qualifying taxpayer under section 217.2 for the specified year and the qualifying taxpayer makes an outlay, or incurs an expense, outside Canada that results in an amount of external charge for a specified year of the qualifying taxpayer that is greater than zero, section 218.01 (and, if applicable, subsection 218.1(1.2)) requires the qualifying taxpayer to self-assess tax on that amount of external charge. Each of these 'greater-than-zero' amounts is referred to in this provision as a "qualifying expenditure". Since each qualifying expenditure corresponds to the whole or part of an outlay made, or expense incurred, outside Canada, each qualifying expenditure is attributable to the whole or part of the property or qualifying service in respect of which the whole or part of that outlay or expense was made or incurred. For the purposes of subsection 217.1(6), the whole or part of the property in respect of which the qualifying expenditure is attributable is referred to as the "attributable property" and the whole or part of the qualifying service in respect of which the qualifying expenditure is attributable is referred to as the "attributable service".

In general, to determine whether an input tax credit may be claimed in a specified year in respect of tax under section 218.01 and subsection 218.1(1.2), a qualifying taxpayer would be required to analyze the extent to which the qualifying taxpayer acquired an attributable property or attributable service for the purpose of making a taxable supply or for consumption or use during that specified year in the course of the qualifying taxpayer's commercial activities.

Subsection 217.1(6) provides that the following rules apply for the purpose of determining an input tax credit of a qualifying taxpayer under Part IX if a qualifying expenditure gives rise to tax under either of the self-assessment provisions in section 218.01 or subsection 218.1(1.2):

- the attributable property or attributable service is deemed under paragraph 217.1(6)(*a*) to have been supplied to the qualifying taxpayer at the time at which the outlay or expense (corresponding to the qualifying expenditure) was made or incurred outside Canada;
- the tax under section 218.1 or subsection 218.1(1.2) is deemed under paragraph 217.1(6)(*b*) to be tax in respect of a supply of the attributable property or attributable service; and
- the extent to which the qualifying taxpayer acquired the attributable property or attributable service for consumption, use or supply in the course of its commercial activities is deemed under paragraph 217.1(6)(*c*) to be the same extent as that to which the whole or part of the outlay or expense (corresponding to the qualifying expenditure) was made or incurred to consume, use or supply the attributable property or attributable qualifying service in the course of the commercial activities of the qualifying taxpayer.

Subsection 217.1(7) – Qualifying rule for credits – Internal charge

New subsection 217.1(7) sets out interpretation rules that are necessary for a qualifying taxpayer to determine whether an input tax credit may be claimed in respect of tax under section 218.01 or subsection 218.1(1.2) that becomes payable by the qualifying taxpayer, or is paid by the qualifying taxpayer without having become payable, in respect of an internal charge during a reporting period of the qualifying taxpayer during which the qualifying taxpayer is a registrant.

Where a qualifying taxpayer makes an election under section 217.2 in respect of the specified year and an internal charge for the specified year is greater than zero, section 218.01 (and, if applicable, subsection 218.1(1.2)) requires the qualifying taxpayer to self-assess tax on the amount of the internal charge. Each of these amounts of self-assessed tax is referred to in this provision as “internal tax”. Furthermore, certain amounts of internal tax correspond to the whole or part of an outlay made, or expense incurred, outside Canada and these amounts of internal tax are therefore attributable to the whole or part of the property or qualifying service in respect of which the whole or part of that outlay or expense was made or incurred. For the purposes of subsection 217.1(7), the whole or part of the property in respect of which the qualifying expenditure is attributable is referred to as the “internal property” and the whole or part of the qualifying service in respect of which the qualifying expenditure is attributable is referred to as the “internal service”.

In general, to determine whether an input tax credit may be claimed in a specified year in respect of the amounts of internal tax described above, a qualifying taxpayer would be required to analyze the extent to which the qualifying taxpayer acquired an internal property or internal service for the purpose of making a taxable supply or for consumption or use during that specified year in the course of the qualifying taxpayer’s commercial activities. If an amount of internal tax is not attributable to an outlay made, or expense incurred, outside Canada, no input tax credit is available in respect of that internal tax.

Subsection 217.1(7) provides that the following rules would apply for the purpose of determining an input tax credit of a qualifying taxpayer under Part IX in respect of an amount of internal tax described above:

- the internal property or internal service is deemed under paragraph 217.1(7)(*a*) to have been supplied to the qualifying taxpayer at the time at which the outlay or expense (corresponding to the internal property or internal service) was made or incurred outside Canada;
- the amount of the internal tax that can reasonably be attributed to the outlay or expense is deemed under paragraph 217.1(7)(*b*) to be tax (referred to as "attributed tax") in respect of a supply of the internal property or internal service and that attributed tax is deemed to have become payable at the same time that the internal tax becomes payable, or is paid without becoming payable, by the qualifying taxpayer; and
- the extent to which the qualifying taxpayer acquired the internal property or internal service for consumption, use or supply in the course of its commercial activities is deemed under paragraph 217.1(7)(*c*) to be the same extent as that to which the outlay was made or expense incurred to consume, use or supply the internal property or internal service in the course of the commercial activities of the qualifying taxpayer.

Subsection 217.1(8) – Input tax credits

Consequential to the introduction of the concepts of "attributable property" and "attributable service" in subsection 217.1(6) and of "internal property" and "internal service" in subsection 217.1(7), new subsection 217.1(8) provides that a reference in section 169 of the Act to "property or a service" should be read as a reference to "attributable property or an attributable service" for the purpose of determining an input tax credit of a qualifying taxpayer in respect of attributable property or an attributable service and as a reference to "internal property or an internal service" for the purpose of determining an input tax credit of a qualifying taxpayer in respect of internal property or an internal service.

ETA
217.2

New section 217.2 of the Act provides an election that is only available to qualifying taxpayers resident in Canada. The election under section 217.2 allows a resident qualifying taxpayer to determine its tax under section 218.01 and subsection 218.1(1.2) of the Act for a specified year (as defined in section 217) of the qualifying taxpayer in respect of its internal charges (as described in subsection 217.1(4)) and external charges (as defined in section 217) for the specified year, rather than in respect of its amounts of qualifying consideration (as defined in section 217) for the specified year.

Section 217.2 applies to any specified year of a qualifying taxpayer that ends after November 16, 2005. However, a transitional rule applies for the purposes of making the election under section 217.2 for a specified year of a qualifying taxpayer in the case where a return under section 219 of the Act for the specified year is required to be filed on or before the day on which the Act of Parliament enacting section 217.2 receives Royal Assent. In this case, paragraph 217.2(2)(*d*) should be read as requiring that an election made under subsection 217.2(1) for that specified year be filed with the Minister of National Revenue by the day that is sixty days after Royal Assent, rather than filed on or before the day that the return for that specified year is required to be filed under section 219, as would otherwise be the case.

As well, a transitional provision applies where a qualifying taxpayer previously remitted an amount on account of tax under section 218.01 or subsection 218.1(1.2) for a specified year of the qualifying taxpayer ending before the day on which the Act enacting section 217.2 receives Royal Assent and the qualifying taxpayer subsequently makes the election under subsection 217.2(1) in respect of that specified year. This transitional provision allows the qualifying taxpayer to recover the amount by which that amount previously remitted exceeds the total amount of tax that is actually payable under section 218.01 or subsection 218.1(1.2) for the specified year as a result of making the election for the specified year. Specifically, the provision allows the qualifying taxpayer to request in writing, no later than two years after Royal Assent, that the Minister make an assessment, reassessment or additional assessment for the purpose of taking into account that, as a result of the election under section 217.2 being in effect for the specified year, the qualifying taxpayer remitted an excess amount on account of tax under section 218.01 or subsection 218.1(1.2). Upon receipt of this request, the Minister is required to consider the request and may, despite the normal time limits for assessment contained in amended section 298 of the Act, assess, reassess or make an additional assessment under section 296 of the Act of tax payable by the qualifying taxpayer for the specified year under section 218.01 or subsection 218.1(1.2), as well as of any interest, penalty or other obligation of the qualifying taxpayer, but only to the extent that the assessment, reassessment or additional assessment may reasonably be regarded as being for the purpose of taking into account that the election under section 217.2 was in effect for the specified year.

Another transitional provision allows increased time for assessment by the Minister in cases where the qualifying taxpayer has made the election under subsection 217.2(1) in respect of a specified year of the qualifying taxpayer that ends prior to the day on which the Act enacting section 217.2 receives Royal Assent. This provision provides that, where the qualifying taxpayer has made the election under subsection 217.2(1) in respect of any specified taxation year of the qualifying taxpayer ending before Royal Assent, then, despite the normal seven year time limit contained in amended paragraph 298(1)(*d*), the time limitation for the Minister to assess, reassess or make an additional assessment of tax payable by the qualifying period under section 218.01 or subsection 218.1(1.2) is extended to the day that is seven years after the day the election under subsection 217.2(1) is filed with the Minister, provided that the election filing date is later than both the day on which the return, in which the tax is required to be reported, is filed and the day on which this return is required to be filed. Otherwise, if the election filing date is earlier, the normal limitation periods in amended paragraph 298(1)(*d*) apply.

Subsection 217.2(1) – Election

New subsection 217.2(1) provides the means for a qualifying taxpayer that is resident in Canada to elect to determine, for each specified year of the qualifying taxpayer for which the election is in effect, the tax under section 218.01 in accordance with paragraph 218.01(*a*), rather than paragraph 218.01(*b*), and to determine the tax under subsection 218.1(1.2) in accordance with paragraph 218.1(1.2)(*a*), rather than paragraph 218.1(1.2)(*b*). In order to be effective, an election made under subsection 217.2(1) must comply with the requirements listed in subsection 217.2(2) and not be restricted by the time limitations in subsection 217.2(6). Once made, the election remains in effect until such time as it ceases to have effect by operation of subsection 217.2(4).

Subsection 217.2(2) – Form and contents of election

New subsection 217.2(2) contains conditions that apply to an election made under subsection 217.2(1). Paragraph 217.2(2)(*a*) requires that the election be made in prescribed form and contain prescribed information. Paragraph 217.2(2)(*b*) requires that the election specify the first specified year of the qualifying taxpayer during which the election is to be effective. Paragraph 217.2(2)(*c*) requires that the election specify if subparagraph 217.1(4)(*a*)(iii) is to apply in all cases for the purpose of determining internal charges for all specified years of the qualifying taxpayers during which the election is to be in effect. Where the qualifying taxpayer does not make this specification, the qualifying taxpayer may be required to apply subparagraph 217.1(4)(*a*)(ii) to determine its internal charges in certain situations (see the comments to subsection 217.1(4)). Paragraph 217.2(2)(*d*) requires that the election be filed in prescribed manner with the Minister of National Revenue and that the election be filed on or before the day on or before which the qualifying taxpayer's return under section 219 in respect of the tax under section 218 or subsection 218.1(1.2) for the specified year is required to be filed.

Subsection 217.2(3) – Effective date

New subsection 217.2(3) provides that an election made under subsection 217.2(1) by a qualifying taxpayer becomes effective on the first day of the qualifying taxpayer's specified year that is indicated on the prescribed election form that the qualifying taxpayer files with the Minister of National Revenue.

Subsection 217.2(4) – Cessation

New subsection 217.2(4) provides the circumstances under which an election made under subsection 217.2(1) ceases to have effect. Under subsection 217.2(4), an election ceases to have effect on the earlier of the first day of the specified taxation year of the qualifying taxpayer in which the qualifying taxpayer ceases to be resident in Canada and the day on which a revocation of the election becomes effective under subsection 217.2(5).

Subsection 217.2(5) – Revocation

New subsection 217.2(5) allows a qualifying taxpayer to revoke an election that it made under subsection 217.2(1). Once an election is revoked under subsection 217.2(5), that election ceases to have effect from the time the revocation becomes effective, which is the first day of the specified year of the qualifying taxpayer that it specifies in the revocation. However, a revocation of an election cannot become effective earlier than the day that is the first day of a specified year of the qualifying taxpayer that begins at least two years after the day on which the election became effective (i.e., the day specified in accordance with subsection 217.2(3) in the election filed by the qualifying taxpayer).

In order to revoke an election made under subsection 217.2(1), subsection 217.2(5) requires that the qualifying taxpayer file a notice of revocation in prescribed form containing prescribed information. The notice must be must be filed in prescribed manner with the Minister of National Revenue no later than the day on which the revocation is to become effective.

Subsection 217.2(6) – Restriction

New subsection 217.2(6) provides that where a qualifying taxpayer has made an election under subsection 217.2(1) and the qualifying taxpayer has revoked that election under subsection 217.2(5) with the revocation being effective on a particular day, any subsequent election under subsection 217.2(1) by the qualifying taxpayer cannot become effective under subsection 217.2(3) before the day that is two years after the particular day.

Clause 7

Imposition of Goods and Services Tax

ETA
218.01

New section 218.01 of the Act is a self-assessment provision that applies to a qualifying taxpayer (as described in subsection 217.1(1) of the Act). If an election made under subsection 217.2(1) of the Act is in effect for a specified year (as defined in section 217 of the Act) of the qualifying taxpayer, the qualifying taxpayer is required to determine its tax for the specified year under section 218.01 in accordance with paragraph 218.01(*a*). In general, this paragraph requires the qualifying taxpayer to total all internal charges (as described in subsection 217.1(4)) for the

specified year that are greater than zero and all external charges (as defined in section 217) for the specified year that are greater than zero and then to self-assess tax on that total. If no election under subsection 217.2(1) is in effect for the specified year, the qualifying taxpayer is required to determine its tax for the specified year under section 218.01 in accordance with paragraph 218.01(*b*). In general, this paragraph requires the qualifying taxpayer to total all of the amounts of qualifying consideration for the specified year that are greater than zero and to self-assess tax on that total.

The qualifying taxpayer is required to self-assess tax under section 218.01 at the rate of 5% for any specified year of the qualifying taxpayer that begins after December 2007. Due to the reduction of the rate of the GST and the federal component of the HST from 7% to 6% on July 1, 2006 and from 6% to 5% on January 1, 2008, transitional rules apply for specified years ending after November 16, 2005 and beginning before January 2008 to ensure that tax is imposed at the correct rate. If the specified year of the qualifying taxpayer ends after November 16, 2005 but begins before July 2006, the qualifying taxpayer is required to self-assess tax under section 218.01 at the rate of 7% for the number of days before July 1, 2006 in the specified taxation year and to self-assess tax at the rate of 6% for the remaining number of days in the specified taxation year. If the specified year of the qualifying taxpayer begins after June 2006, the qualifying taxpayer is required to self-assess tax under section 218.01 at the rate of 6% for the number of days before January 1, 2008 in the specified year and to self-assess tax at the rate of 5% for the remaining number of days in the specified year.

Clause 8

Tax in Participating Province

ETA
218.1

Section 218.1 of the Act is amended to include a self-assessment provision in respect of the provincial component of the HST that is applicable to qualifying taxpayers (as described in subsection 217.1(1) of the Act) resident in a participating province. Section 218.1 is also amended to provide a rule that is necessary for a qualifying taxpayer to determine whether the qualifying taxpayer is considered to be resident in a province at any time for the purposes of new subsection 218.1(1.2). In the case of a qualifying taxpayer that is a selected listed financial institution (as described in subsection 225.2(1) of the Act), section 218.1 is further amended to ensure that the exception for selected listed financial institutions under existing subsection 218.1(2) also applies to self-assessment of the provincial component of the HST under subsection 218.1(1.2).

These amendments to section 218.1 apply to any specified year (as defined in section 217 of the Act) of a qualifying taxpayer that ends after November 16, 2005.

Subsection 218.1(1) – Tax in a participating province

Consequential amendments are made to paragraphs 218.1(1)(*c*) and (*d*) to reflect that references to paragraphs in existing section 217 are now paragraphs of the new definition "imported taxable supply" in amended section 217. In the case of supplies made on or before March 19, 2007, amended paragraph 218.1(*d*) is to be read without reference to paragraph (*c.1*) of the definition "imported taxable supply" in section 217.

Subsection 218.1(1.2) – Tax in a participating province

New subsection 218.1(1.2) is a self-assessment provision that applies to qualifying taxpayers that are resident in a participating province. The tax imposed under this subsection is in addition to the tax imposed under section 218.01 and must be determined for each participating province in which the qualifying taxpayer is resident. In general, if an election under subsection 217.1(1) is in effect for a specified year, subsection 218.1(1.2) requires a qualifying taxpayer that is resident in a particular participating province to analyze each amount in respect of an internal charge or an external charge for the specified year that is greater than zero and to self-assess the provincial component of the HST on a certain extent of each of these amounts. Similarly, if no such election is in effect for a specified year, new subsection 218.1(2) requires a qualifying taxpayer that is resident in a participating province to analyze each amount in respect of an amount of qualifying consideration that is greater than zero and to self-assess the provincial component of the HST on a certain extent of each of these amounts.

In the case of an external charge or an amount of qualifying consideration, the relevant extent, expressed as a percentage, is the extent to which the outlay or expense (corresponding to the amount of external charge or qualifying consideration, as the case may be) was made or incurred to consume, use or supply the whole or part of property or a qualifying service (in respect of which the external charge or the amount of qualifying consideration, as the case may be, is attributable) in carrying on, engaging in or conducting an activity of the qualifying taxpayer in the particular participating province. Since each amount in respect of an external charge or of qualifying consideration that is greater than zero corresponds to the whole or part of an outlay made, or expense incurred, outside Canada, each of these amounts is attributable to the whole or part of the property or qualifying service (as defined in section 217) in respect of which the whole or part of that outlay or expense was made or incurred. In the case of an internal charge, the relevant extent, expressed as a percentage, is the extent to which the internal charge is attributable to outlays or expenses that were made or incurred to consume, use or supply the whole or part of property or of a qualifying service, in respect of which the amount in respect of the internal charge is attributable, in carrying on, engaging in or conducting an activity of the qualifying taxpayer in the particular participating province.

Subsection 218.1(1.3) – Qualifying taxpayer resident in a province

The self-assessment provision in subsection 218.1(1.2) is intended to apply only to qualifying taxpayers that are resident in a participating province. New subsection 218.1(1.3) sets out rules for determining when a qualifying taxpayer is considered to be resident in a province for the purpose of subsection 218.1(1.2). These rules apply only for the purpose of subsection 218.1(1.2) and despite section 132.1 of the Act, which provides the general rules for determining when a person is considered to be resident in a province for the purposes of Part IX of the Act.

A qualifying taxpayer is deemed to be resident in a province if the qualifying taxpayer meets the conditions described in paragraph 218.1(1.3)(*a*) or (*b*).

Under paragraph 218.1(1.3)(*a*), a qualifying taxpayer is deemed to be resident in a province if the qualifying taxpayer (regardless of its residency) has a qualifying establishment (as that term is defined in section 217) in the province.

Under paragraph 218.1(1.3)(*b*), which applies only in the case of a qualifying taxpayer that is resident in Canada, a qualifying taxpayer is deemed to be resident in a province under a number of circumstances. If the qualifying taxpayer is a corporation and the corporation is incorporated or continued under the laws of a province and not subsequently continued elsewhere, then that qualifying taxpayer is deemed to be resident in that province. If the qualifying taxpayer is an entity that is either a partnership, an unincorporated society, a club, an association or an organization, or is a branch of such an entity and a majority of the members having management and control of the branch or the entity are resident in a province, then that qualifying taxpayer is considered to be resident in that province. As well, if the qualifying taxpayer is a trust that carries on activities as a trust in a province and has a local office or branch in that province, then that qualifying taxpayer is deemed to be resident in that province.

Subsection 218.1(2) – Selected listed financial institutions

Generally, under subsection 218.1(2), selected listed financial institutions (as described in subsection 225.2(1)) are not required to self-assess tax imposed under subsection 218.1(1)(i.e., the provincial component of the HST) in respect of an imported taxable supply. This exception for selected listed financial institutions applies because these institutions account for the provincial component of the HST on their purchases through adjustments to their net tax calculation under subsection 225.2(2).

Subsection 218.1(2) is amended to ensure that the exception for selected listed financial institutions that applies in respect of the provincial component of the HST imposed under existing subsection 218.1(1) also applies in respect of the provincial component of the HST imposed under new subsection 218.1(1.2).

Clause 9

When Tax Payable

ETA
218.2 and 218.3

Section 218.2 of the Act provides that tax under Division IV of Part IX of the Act calculated on an amount of consideration becomes payable on the day on which that consideration becomes due or is paid without having become due, whichever is earlier. Section 218.2 is amended so that this section does not apply for the purposes of section 218.01 or subsection 218.1(1.2) of the Act.

New section 218.3 of the Act provides that tax under section 218.01 and subsection 218.1(1.2) that is determined for a specified year (as defined in section 217) of a qualifying taxpayer (as described in subsection 217.1(1)) becomes payable by the qualifying taxpayer on:

- in the case where the specified year is a taxation year of the qualifying taxpayer for the purposes of the *Income Tax Ac*t and the qualifying taxpayer is required under Division I of that Act to file a return of income for the specified year, the filing-due date (as defined in subsection 248(1) of the *Income Tax Act*) for the specified year; and
- in any other case, the day that is six months after the end of the specified year.

The amendment to section 218.2 and the new rule under section 218.3 apply to any specified year of a qualifying taxpayer that ends after November 16, 2005.

Clause 10

Filing of Returns and Payment of Tax

ETA
219

Section 219 of the Act provides how and when a person must account for the tax under Division IV of Part IX of the Act.

Section 219 is amended to ensure that each qualifying taxpayer that is liable to pay tax under Division IV in accordance with section 218.01 and subsection 218.1(1.2) of the Act is required to file a return and account for the tax in that return.

If the qualifying taxpayer is a registrant, amended paragraph 219(*a)* requires the qualifying taxpayer to pay to the Receiver General tax under Division IV that becomes payable during a reporting period on or before the day on or before which the qualifying taxpayer is required to file its return under section 238 of the Act for that reporting period, to account for that tax in a return in prescribed form containing prescribed information and to file that return with the Minister of National Revenue on or before that day. If the qualifying taxpayer is a non-registrant existing paragraph 219(*b*) requires the qualifying taxpayer to file a return with the Minister and their self-assessed tax under Division IV (including new section 218.01 and new subsection 218.1(1.2)) has to be paid by the end of the month following the calendar month in which that tax becomes payable.

This amendment applies in respect of any reporting period that ends after November 16, 2005.

Clause 11

Dealings Between Permanent Establishments

ETA
220

Section 220 of the Act sets out the GST/HST rules that relate to dealings between a permanent establishment of a person outside Canada and a permanent establishment of that person in Canada. The deeming rules under section 220 ensure that Canadian branches of international organizations are required to self-assess tax under Division IV of Part IX of the Act on property or services they received from the non-resident branches of the organization in the same way as they would if the property or services were acquired outside Canada from a separate legal entity and imported for consumption, use or supply in Canada.

In general, the clarifying amendments to section 220 require an international organization to self-assess tax on the value of any organizational resource (i.e., any property or service, including labour performed by the organization's employees) that the organization uses outside Canada in relation to carrying on a business in Canada through a permanent establishment of the organization. As was the case before these amendments, this self-assessment requirement is analogous to the requirement that would apply if the organization had obtained a comparable resource outside Canada from a separate legal entity and had imported that resource for consumption, use or supply in Canada.

The amendment to section 220 is deemed to have come into force on December 17, 1990. However, the definition "specified person" in amended subsection 220(1) is further amended, for taxation years that end after November 16, 2005, to exclude a person that is a financial institution. Therefore, in the case of financial institutions, the amendment to section 220 only applies to taxation years that end before November 17, 2005.

Subsection 220(1) – Definitions

Subsection 220(1) defines the following terms, which are used in amended section 220.

“intangible capital”

Any of the following items represents “intangible capital” of a specified person (within the meaning provided in paragraph 220(2)(*a*)) if all or part of the item is consumed or used by the specified person in the process of creating, developing or bringing into existence intangible personal property:

- all or part of a labour activity (as defined in this subsection) of the specified person;
- all or part of property, other than intangible personal property that is captured within the definition “intangible resource” (as defined in this subsection); or
- all or part of a service.

The intangible capital of a specified person is one of various items that forms part of the specified person’s intangible resources (as defined in this subsection).

“intangible resource”

An “intangible resource” of a specified person is any of the following items:

- all or part of intangible personal property supplied to the specified person, or created, developed or brought into existence by the specified person, that is not support capital (as defined in this subsection) of the specified person;
- intangible capital (as defined in this subsection) of the specified person; or
- any combination of the items above.

For example, a trademark that is developed by a specified person represents an intangible resource of the specified person. As well, any tangible personal property, real property, service or anything done by the specified person’s employees that is used in the process of developing that trademark represents an intangible resource of the specified person. Generally, if any internal use of a specified person’s intangible resources occurs during a taxation year, the deeming rules under subsection 220(5) become applicable. Internal use of an intangible resource of a specified person is considered to occur during a taxation year if either of the conditions set out in subsection 220(3) is met.

“labour activity”

Anything done by an employee (as defined in section 217) of a specified person in the course of, or in relation to, the office or employment of that employee is a “labour activity” of the specified person. The term “labour activity” is used in the definitions “intangible capital”, “support capital” and “support resource” in this subsection.

“support capital”

The “support capital” of a specified person is all or part of intangible personal property that is consumed or used by the specified person in the process of creating, developing or bringing into existence property (other than intangible personal property) or in supporting, assisting or furthering a labour activity (as defined in this subsection) of the specified person.

The term “support capital” is used in the definitions “intangible resource” and “support resource” in this subsection.

“support resource”

A “support resource” of a specified person is any of the following items:

- all or part of property (other than intangible personal property) supplied to the specified person, or created, developed or brought into existence by the specified person, that is not intangible capital of the specified person;
- all or part of a service supplied to the specified person that is not intangible capital of the specified person;
- all or part of a labour activity of the specified person that is not intangible capital of the specified person;
- support capital of the specified person; or
- any combination of the items above.

For example, a report produced by the employees of a specified person represents a support resource of the specified person. Any intangible personal property used in the process of creating that report or in assisting the production of that report is also a support resource of the specified person. Generally, if any internal use of a specified person’s support resources occurs during a taxation year, the deeming rules under subsection 220(4) become applicable. Internal use of a support resource of a specified person is considered to occur during a taxation year if either of the conditions set out in subsection 220(3) is met.

Subsection 220(2) – Specified person and specified business

Paragraph 220(2)(*a*) provides that a person is a specified person throughout a taxation year of the person if, at any time in the taxation year, the person carries on a business through a permanent establishment of the person outside Canada and, at any time in the taxation year, carries on a business through a permanent establishment of the person in Canada. In effect, a person that carries on business both in and outside Canada during the person’s taxation year is considered to be a specified person for the purposes of section 220, regardless of whether both these situations occur at the same time in the relevant taxation year. However, for taxation years of a person that end after November 16, 2005, paragraph 220(2)(*a*) is amended to exclude persons that are financial institutions.

Paragraph 220(2)(*b*) provides that a business of a person is a specified business of the person throughout a taxation year of the person if the business is carried on, at any time in the taxation year, in Canada through a permanent establishment of the person. This definition is relevant for purposes of the interpretation rules set out in subsection 220(3), as those rules only apply to a specified person that has a specified business.

Subsection 220(3) – Internal use

Subsection 220(3) sets out rules for determining whether internal use of a support resource, or of an intangible resource, of a specified person occurred during a taxation year of the specified person. If internal use is considered to have occurred during the relevant taxation year, the deeming rules under subsections 220(4) and (5) apply.

For the purposes of amended section 220, internal use of a support resource, or of an intangible resource, of a specified person is considered to have occurred during a taxation year of the specified person if either of two conditions is met. The first condition, set out in paragraph 220(3)(*a*), is met if, at any time in the taxation year, the specified person uses or puts to use outside Canada any part of the support resource or intangible resource in relation to carrying on a specified business of the specified person. The second condition, set out in paragraph 220(3)(*b*), is met if, for the taxation year, the specified person is permitted under the *Income Tax Act* to allocate as an amount in respect of a specified business of the specified person any part of an outlay made, or expense incurred, by the specified person in respect of any part of the support resource or intangible resource, or any part of an allowance, or allocation for a reserve, in respect of any part of that outlay or expense.

For a specified person to determine whether the condition set out in paragraph 220(3)(*b*) is met, it should be assumed that that the specified person is required to compute its income in accordance with the *Income Tax Act* and that the determination is being made in the context of an allocation by the specified person of expenses as amounts in respect of a Canadian business. As a result, whether that Act actually applies to the specified person is not relevant in determining whether that condition is met.

Essentially, if a specified person uses a support resource or an intangible resource in relation to carrying on its specified business or is permitted to allocate in respect of its specified business any part of an expenditure, allowance or allocation for a reserve in respect of a support resource or an intangible resource, the deeming rules in subsection 220(3) apply to the specified person for the purposes of Division IV of Part IX of the Act.

Subsection 220(4) – Dealings between permanent establishments

If a specified person meets either of the conditions set out in subsection 220(3), internal use of a support resource of the specified person occurred during a taxation year of the specified person. Subsection 220(4) provides that a number of rules apply for the purposes of Division IV of Part IX of the Act when internal use of a support resource of the specified person occurred during a taxation year.

First, the specified person is deemed to have rendered, during the relevant taxation year, a service of internally using the support resource at a permanent establishment of the specified person outside Canada in the course of carrying on a specified business of the specified person. Second, the specified person is deemed to be the person to which the service described above was rendered, to be the recipient of a supply made outside Canada of that service and, in the case of a non-resident specified person, to be resident in Canada. Third, the supply made outside Canada is deemed not to be a supply of a service that is in respect of real property situated outside Canada or of tangible personal property that is situated outside Canada at the time the service is performed.

In addition to the deeming rules above, subsection 220(4) provides that the value of the consideration for the supply made outside Canada is deemed to be the total of all amounts, each of which is the fair market value of a part, or the use of a part, as the case may be, of the support resource. Where that part of the supply resource is described in paragraph 220(3)(*a*) and not in paragraph 220(3)(*b*), that fair market value is determined at the time referred to in that paragraph (i.e., the time in the taxation year of the specified person that the specified person used outside Canada the part of the support resource in relation to carrying on a specified business of the specified person). Where instead that part of the supply resource is described in paragraph 220(3)(*b*), that fair market value is determined on the last day of the relevant taxation year. In either case, the specified person is deemed to have paid that consideration on the last day of the relevant taxation year.

Generally, under subparagraph 220(4)(*a*)(i), if internal use of a support resource of a specified person occurred during the specified person's taxation year, the specified person is treated as having rendered a service of internally using that support resource outside Canada in the course of carrying on a business in Canada through a permanent establishment and treated as being the person to which that service was rendered. Accordingly, the service that a specified person is treated as having rendered outside Canada corresponds to a particular support resource. For the purpose of determining an input tax credit of the specified person under Part IX, the specified person is deemed to have acquired that service for the same purpose as that for which the corresponding support resource was acquired, consumed or used by the specified person.

In effect, any time a specified person meets either of the conditions set out in subsection 220(3) in respect of a support resource, the specified person is treated as being the recipient of a supply made outside Canada of a service for which the specified person is treated as having paid fair market value consideration on the last day of the taxation year in respect of which the relevant condition was met. If the supply of a service that the specified person is considered to have received represents a taxable supply, the specified person is required to pay tax on a self-assessment basis under Division IV in the same way that would be required if the specified person had received outside Canada a comparable taxable supply from a third party for consumption, use or supply in Canada.

Subsection 220(5) – Dealings between permanent establishments

If a specified person meets either of the conditions set out in subsection 220(3), internal use of an intangible resource of the specified person occurred during a taxation year of the specified person. Subsection 220(5) provides that a number of rules apply for the purposes of Division IV of Part IX of the Act when internal use of an intangible resource of the specified person is considered to have occurred during a taxation year.

First, the specified person is deemed to have made available, during the relevant taxation year, at a permanent establishment of the specified person outside Canada, intangible personal property in the course of carrying on a specified business of the specified person. Second, the specified person is deemed to be the person to which the intangible personal property described above was made available, to be the recipient of a supply made outside Canada of that intangible personal property and, in the case of a non-resident specified person, to be resident in Canada. Third, the supply made outside Canada is deemed not to be a supply of property that relates to real property situated outside Canada, to a service to be performed wholly outside Canada or to tangible personal property situated outside Canada.

In addition to the deeming rules above, subsection 220(5) provides that the value of the consideration for the supply made outside Canada is deemed to be the total of all amounts, each of which is the fair market value of a part, or the use of a part, as the case may be, of the intangible resource. Where that part of the intangible resource is described in paragraph 220(3)(*a*) and not by paragraph 220(3)(*b*), that fair market value is determined at the time referred to in that paragraph (i.e., the time in the taxation year of the specified person that the specified person used outside Canada the part of the intangible resource in relation to carrying on a specified business of the specified person). Where instead that part of the intangible resource is described in paragraph 220(3)(*b*), that fair market value is determined on the last day of the relevant taxation year. In either case, the specified person is deemed to have paid that consideration on the last day of the relevant taxation year.

Generally, under subparagraph 220(5)(*a*)(i), if internal use of an intangible resource of a specified person occurred during the specified person's taxation year, the specified person is treated as having made intangible personal property available outside Canada in the course of carrying on a business in Canada through a permanent establishment and treated as being the person to which that property was made available. Accordingly, the intangible personal property that a specified person is treated as having made available outside Canada corresponds to a particular intangible resource. For the purpose of determining an input tax credit of the specified person under Part IX, the specified person is deemed to have acquired that intangible personal property for the same purpose as that for which the corresponding intangible resource was acquired, consumed or used by the specified person.

In effect, any time a specified person meets either of the conditions set out in subsection 220(3) in respect of an intangible resource, the specified person is treated as being the recipient of a supply made outside Canada of intangible personal property for which the specified person is treated as having paid fair market value consideration on the last day of the taxation year in respect of which the relevant condition was met. If the supply of intangible personal property that the specified person is considered to have received represents a taxable supply, the specified person is required to pay tax on a self-assessment basis under Division IV in the same way that would be required if the specified person had received outside Canada a comparable taxable supply from a third party for consumption, use or supply in Canada.

Clause 12

Pension Entities

ETA
220.05(3.1)

Existing subsection 220.05(1) of the Act requires a person to self-assess for the provincial component of the HST in respect of tangible personal property brought into a participating province. However, new subsection 220.05(3.1) provides that no tax under subsection 220.05(1) becomes payable on the bringing into a participating province of tangible personal property by a pension entity of a pension plan where the tangible personal property had been supplied to the pension entity by a participating employer of the same pension plan (as those terms are defined in subsection 172.1(1)) and where the amount of the provincial component of the HST determined under paragraph 172.1(5)(*c*) (in respect of a supply made by the participating employer of the same tangible personal property) or under paragraph 172.1(6)(*c*) (in respect of a supply made by the participating employer of an employer resource (as referred to in subsection 172.1(6)) consumed or used to make the supply of the same tangible personal property) is greater than zero.

New subsection 220.05(3.1) is deemed to have come into force on ANNOUNCEMENT DATE.

Clause 13

Pension Entities

ETA
220.08(3.1)

Existing subsection 220.08(1) of the Act provides for self-assessment of the provincial component of the HST in respect of a taxable supply of intangible personal property, or of a service, acquired for consumption, use or supply primarily in the participating provinces. However, new subsection 220.08(3.1) provides that the requirement under subsection 220.08(1) does not apply to a supply of intangible personal property or a service by a participating employer of a pension plan to a pension entity of the same pension plan (as those terms are defined in new subsection 172.1(1)) where the amount of the provincial component of the HST determined under paragraph 172.1(5)(*c*) (in respect of a supply of the same intangible personal property or service) or under paragraph 172.1(6)(*c*) (in respect of a supply of an employer resource (as referred to in subsection 172.1(6)) consumed or used to make the supply of the intangible personal property or service) is greater than zero.

New subsection 220.08(3.1) is deemed to have come into force on ANNOUNCEMENT DATE.

Clause 14

Adjustment to Net Tax

ETA
225.2(2)

Section 225.2 of the Act sets out rules for determining the net tax of selected listed financial institutions. Subsection 225.2(2) requires a financial institution to make an adjustment to its net tax for each reporting period during which it is a selected listed financial institution.

The amendment to paragraph (*a*) of the description of A in subsection 225.2(2) is consequential to the addition of new section 218.01 of the Act. Since it is possible for a selected listed financial institution to be a qualifying taxpayer (as described in subsection 217.1(1) of the Act), paragraph (*a*) of the description of A in subsection 225.2(2) is amended to also include all tax that became payable under new section 218.01 by a qualifying taxpayer during a particular reporting period or that was paid by the qualifying taxpayer during that period without having become payable.

The amendment applies to any taxation year of a qualifying taxpayer that ends after November 16, 2005.

Clause 15

Tax Adjustment Notes

ETA
232.01

New section 232.01 of the Act provides rules that apply where a participating employer of a pension plan (as those terms are defined in subsection 172.1(1) of the Act) is deemed under subsection 172.1(5) to have made a taxable supply of property or a service and has also charged tax on an actual supply of the same property or service to a pension entity (as defined in subsection 172.1(1)) of the pension plan. Section 232.01 allows the employer to issue a note, referred to as a tax adjustment note, to the pension entity in respect of the property or service that the employer is deemed under subsection 172.1(5) to have supplied. This will allow the employer to make a deduction from its net tax in the amount of the tax adjustment note. However, section 232.01 requires the pension entity receiving the tax adjustment note to pay back any input tax credit or rebate under subsection 261.01(2) of the Act that was claimable in respect of the deemed tax to the extent that the deemed tax was effectively reduced by the tax adjustment note. In addition, where the pension entity made an election with the participating employers of the pension plan under subsection 261.01(5), (6) or (9) for the claim period for which the deemed tax is an eligible amount (as defined in subsection 261.01(1)), section 232.01 requires each participating employer to pay back any deduction it claimed in respect of that deemed tax in determining its net tax to the extent that the deemed tax was effectively reduced by the tax adjustment note.

New section 232.01 is deemed to have come into force on ANNOUNCEMENT DATE.

232.01(1) – Definitions

New subsection 232.01(1) provides that certain terms used in sections 232.01 and 232.02 have the same meanings as in sections 172.1, 259 and 261.01. Specifically, subsection 232.01(1) provides that in sections 232.01 and 232.02 the terms “employer resource”, “participating employer”, “pension entity”, “pension plan” and “specified resource” have the same meanings as in section 172.1, that the term “claim period” has the same meaning as in subsection 259(1), and that the terms “eligible amount”, “non-qualifying pension entity”, “pension rebate amount”, “qualifying employer” and “qualifying pension entity” have the same meanings as in section 261.01.

232.01(2) – Tax adjustment note – Subsection 172.1(5)

New subsection 232.01(2) applies where, on or before a particular day, the following circumstances exist:

- an employer that is a participating employer of a pension plan (as those terms are defined in subsection 172.1(1)) is deemed under paragraph 172.1(5)(*a*) to have made a taxable supply of all or part of a specified resource (as referred to in subsection 172.1(5)) and is deemed under paragraph 172.1(5)(*b*) to have collected tax in respect of this deemed supply;
- the pension entity is deemed under subparagraph 172.1(5)(*d*)(i) to have received a supply of all or part of the specified resource and is deemed under subparagraph 172.1(5)(*d*)(ii) to have paid tax in respect of that supply; and
- tax becomes payable, or is paid without having become payable, (otherwise than by operation of section 172.1) by the pension entity to the employer on an actual supply of the specified resource or part made to the pension entity.

Where subsection 232.01(2) applies, the employer may issue a note in respect of the specified resource or part (referred to in this provision as a "tax adjustment note") to the pension entity for an amount determined in accordance with subsection 232.01(3). The issuance of this note will then allow the employer to make an adjustment to its net tax under paragraph 232.01(4)(*a*). A tax adjustment note must be issued in prescribed form, containing prescribed information and in a manner satisfactory to the Minister of National Revenue.

232.01(3) – Amount of tax adjustment note

New subsection 232.01(3) determines the maximum amount of a tax adjustment note that may be issued under subsection 232.01(2) on a particular day in respect of all or part of a specified resource. This amount is determined by the formula A (adjustment for GST or federal component of HST) plus B (adjustment for provincial component of HST) minus C (previous tax adjustment note amounts). More specifically, element A is the lesser of: (a) the federal component of the tax in respect of the specified resource or part, as determined under paragraph 172.1(5)(*c*); and (b) all amounts of tax that became payable, or were paid without having become payable, by the pension entity to the employer (otherwise than by operation of section 172.1), on or before the particular day, in respect of the actual supply of the same specified resource or part. Element B is the lesser of: (a) any provincial component of the tax in respect of the specified resource or part, as determined under paragraph 172.1(5)(*c*); and (b) all amounts of the provincial component of the HST that became payable, or were paid without having become payable, by the pension entity to the employer (otherwise than by operation of section 172.1), on or before the particular day, in respect of the actual supply of the specified resource or part. Element C is the sum of all amounts, each of which is an amount of a tax adjustment note previously issued under subsection 232.01(2) in respect of the specified resource or part.

232.01(4) – Effect of tax adjustment note

New subsection 232.01(4) provides rules that apply where the following circumstances exist:

- an employer issues a tax adjustment note to a pension entity under subsection 232.01(2) in respect of all or part of a specified resource;
- a supply of the specified resource or part is deemed under subparagraph 172.1(5)(*d*)(i) to have been received by the pension entity; and
- in respect of that deemed supply, the pension entity is deemed to have paid tax (referred to in this provision as "deemed tax") under subparagraph 172.1(5)(*d*)(ii).

Paragraph 232.01(4)(*a*) provides that the employer may deduct an amount equal to the amount of the tax adjustment note in determining its net tax for the reporting period of the employer that includes the day on which the tax adjustment note is issued to the pension entity.

Paragraph 232.01(4)(*b*) requires the pension entity to add, in determining its net tax for its claim period in which it receives the tax adjustment note, an amount determined by multiplying the input tax credit claimable by the pension entity in respect of the supply of the specified resource or part by the amount determined by dividing (1) the amount of the tax adjustment note by (2) the amount of the deemed tax. Where the pension entity is not entitled to claim an input tax credit in respect of the deemed tax, the amount will be zero.

Paragraph 232.01(4)(*c*) applies where the pension entity is eligible to claim, for a particular claim period of the pension entity, a rebate under section 261.01, in respect of the deemed tax. Paragraph 232.01(4)(*c*) generally has the effect of requiring the pension entity to repay the rebate that it could claim under subsection 261.01(2) for the particular claim period in respect of the deemed tax to the extent that the deemed tax was effectively reduced by the tax adjustment note. Specifically, paragraph 232.01(4)(*c*) requires the pension entity to pay, for the particular claim period of the pension entity, an amount determined by multiplying the following four amounts:

- the portion of the amount of the deemed tax, that is an eligible amount of the pension entity for the particular claim period (i.e., the amount that could be recovered as a rebate and not as an input tax credit);
- 33%;
- the amount determined by dividing the amount of the tax adjustment note by the total amount of the deemed tax; and
- the amount determined by dividing (A) the difference between the pension rebate amount (as defined in subsection 261.01(1)) for the pension entity for the particular claim period and the amount of element B in the formula in subsection 261.01(2) for the pension entity for the particular claim period; by (B) the pension rebate amount for the pension entity for the particular claim period.

The payment required under paragraph 232.01(4)(*c*) must be made by the pension entity to the Receiver General by the last day of the pension entity's claim period that immediately follows its claim period that includes the day on which the tax adjustment note is issued.

Paragraph 232.01(4)(*d*) applies where the deemed tax is an eligible amount of the pension entity for a particular claim period of the pension entity and an election was made jointly under any of subsections 261.01(5), (6) or (9) for the particular claim period by the pension entity and all the participating employers that were qualifying employers of the pension plan for the particular claim period. Paragraph 232.01(4)(*d*) generally has the effect of requiring a participating employer, which made a deduction in determining its net tax as a result of the election, to add back the amount deducted from its net tax to the extent that the deemed tax was effectively reduced by the tax adjustment note. Specifically, paragraph 232.01(4)(*d*) requires each participating employer of the pension plan for the particular claim period to add an amount to its net tax, determined by multiplying the following four amounts:

- the portion of the amount of the deemed tax that is an eligible amount of the pension entity for the particular claim period;
- 33%;
- the amount determined by dividing the amount of the tax adjustment note by the total amount of the deemed tax; and
- the amount determined by dividing the amount of the net tax adjustment determined under subsection 261.01(5), paragraph 261.01(6)(*b*) or subsection 261.01(9) for the participating employer for the particular claim period by the pension rebate amount for the pension entity for the particular claim period.

The amount determined under paragraph 232.01(4)(*d*) must be added by the participating employer in determining its net tax for its reporting period that includes the day on which the tax adjustment note is issued.

232.01(5) – Notification

New subsection 232.01(5) provides that when a tax adjustment note is issued to a pension entity of a pension plan and, as a consequence of that issuance, one or more participating employers are required under paragraph 232.01(4)(*d*) to add an amount to their net tax, the pension entity is required to forthwith notify each of those participating employers of the issuance of the tax adjustment note. This notification must be made in prescribed form containing prescribed information and in a manner satisfactory to the Minister of National Revenue.

232.01(6) – Joint and several liability

New subsection 232.01(6) applies where a participating employer of the pension plan becomes liable to add an amount to its net tax under paragraph 232.01(4)(*d*) as a consequence of the issuance of a tax adjustment note to a pension entity of a pension plan. Subsection 232.01(6) provides that the pension entity is jointly and severally, or solidarily, liable with the participating employer to pay the amount to the Receiver General.

232.01(7) – Assessment

New subsection 232.01(7) gives the Minister of National Revenue authority to assess a person for an amount that the person is liable for as a result of the operation of the liability provision in subsection 232.01(6). It also provides that, where the Minister sends a notice of assessment to a person, the assessment, objection and appeals provisions in sections 296 to 311 apply, with such modifications as the circumstances require, to the assessment of the person.

232.01(8) – Liability where participating employer ceases to exist

New subsection 232.01(8) applies where a participating employer of a pension plan has ceased to exist on or before the day a tax adjustment note is issued under subsection 232.01(2) to a pension entity of the pension plan. If the participating employer would have been liable, had it not ceased to exist, to add an amount to its net tax under paragraph 232.01(4)(*d*) as a consequence of that issuance, subsection 232.01(8) provides that the pension entity is liable to pay, to the Receiver General, the amount that the participating employer would have been liable to add to its net tax under that paragraph. This payment is required to be made by the pension entity on or before the last day of its claim period that immediately follows its claim period that includes the day on which the tax adjustment note is issued.

232.01(9) – Requirement to maintain records

New subsection 232.01(9) requires that every employer that issues a tax adjustment note under subsection 232.01(2), despite section 286, maintain evidence satisfactory to the Minister of National Revenue in respect of the tax adjustment note in order to establish that the employer was entitled to issue the tax adjustment note for the amount. This requirement is for a period of six years after the day the tax adjustment note is issued.

ETA
232.02

New section 232.02 of the Act is similar to new section 232.01 in that it provides rules relating to tax adjustments notes. Section 232.02 applies where a participating employer of a pension plan is deemed under subsection 172.1(6) to have made one or more taxable supplies of employer resources that were consumed or used for the purpose of making a supply of property or a service (referred to in this provision as an "actual pension supply") to a pension entity of the pension plan and the participating employer has also charged tax on an actual supply of the same property or service made to the pension entity. Section 232.02 allows the employer to issue to the pension entity a note, referred to as a tax adjustment note, in respect of the employer resources that the employer is deemed to have supplied under subsection 172.1(6). This will allow the employer to make a deduction from its net tax in the amount of the tax adjustment note. However, section 232.02 requires the pension entity receiving the tax adjustment note to pay back any input tax credits or rebates under subsection 261.01(2) that were claimable in respect of the deemed tax, to the extent that the deemed tax was effectively reduced by the tax adjustment note. In addition, where the pension entity made an election with the participating employers of the pension plan under subsection 261.01(5), (6) or (9) for a claim period for which the deemed tax is an eligible amount, section 232.02 requires each participating employer to pay back any deduction it claimed in respect of the deemed tax in determining its net tax to the extent that the deemed tax was effectively reduced by the tax adjustment note.

Subsection 232.01(1) provides that, for the purposes of section 232.02, each of the terms listed in that subsection has the meaning assigned to it in section 172.1, 259 or 261.01, as applicable.

New section 232.02 is deemed to have come into force on ANNOUNCEMENT DATE.

232.02(1) – Tax adjustment note – Subsection 172.1(6)

New subsection 232.02(1) applies where, on or before a particular day, the following circumstances exist:

- an employer that is a participating employer of a pension plan is deemed under paragraph 172.1(6)(*a*) to have made one or more taxable supplies of employer resources that were consumed or used for the purpose of making a supply of property or service (referred to in this provision as an "actual pension supply") to a pension entity of the pension plan and is deemed under paragraph 172.1(6)(*b*) to have collected tax in respect of each such deemed supply;
- the pension entity is deemed under subparagraph 172.1(6)(*d*)(i) to have received a supply of each of these employer resources and is deemed under subparagraph 172.1(6)(*d*)(ii) to have paid tax in respect of these supplies; and
- tax becomes payable, or is paid without having become payable, (otherwise than by operation of section 172.1) by the pension entity to the employer in respect of the actual pension supply made to the pension entity.

Where subsection 232.02(1) applies, the employer may issue a note in respect of the employer resources (referred to in this provision as a "tax adjustment note") to the pension entity for an amount determined in accordance with subsection 232.02(2). The issuance of this note allows the employer to make an adjustment to its net tax under paragraph 232.02(3)(*a*). A tax adjustment note must be issued in prescribed form containing prescribed information and in a manner satisfactory to the Minister of National Revenue.

232.02(2) – Amount of tax adjustment note

New subsection 232.02(2) determines the maximum amount of a tax adjustment note that may be issued under subsection 232.02(1) on a particular day in respect of employer resources. This amount is determined by the formula A (adjustment for GST or federal component of HST) plus B (adjustment for provincial component of HST) minus C (previous tax adjustment note amounts). More specifically, element A is the lesser of: (a) the total of all amounts, each of which is an amount of the federal component of the tax in respect of an employer resource consumed or used to make the actual pension supply, as determined under paragraph 172.1(6)(*c*); and (b) the total of all amounts of tax that became payable, or were paid without having become payable, by the pension entity to the employer (otherwise than by operation of section 172.1), on or before the particular day, in respect of the actual pension supply. Element B is the lesser of: (a) the total of all amounts, each of which is an amount of the provincial component of the tax in respect of an employer resource consumed or used to make the actual pension supply, as determined under paragraph 172.1(6)(*c*); and (b) the total of all amounts of the provincial component of the HST that became payable, or were paid without having become payable by the pension entity to the employer (otherwise than by operation of section 172.1), on or before the particular day, in respect of the actual pension supply. Element C is the total of all amounts, each of which is an amount of a tax adjustment note previously issued under subsection 232.02(1) in respect of employee resources consumed or used for the purpose of making the actual pension supply.

232.02(3) – Effect of tax adjustment note

New subsection 232.02(3) provides rules that apply where the following circumstances exist:

- an employer issues a tax adjustment note to a pension entity under subsection 232.02(1) in respect of employer resources that were consumed or used for the purpose of making an actual pension supply to a pension entity;
- the pension entity is deemed under subparagraph 172.1(6)(*d*)(i) to have received one or more supplies of the employer resources; and
- the pension entity is deemed to have paid tax (referred to in this subsection as "deemed tax") in respect of those supplies under subparagraph 172.1(6)(*d*)(ii).

Paragraph 232.02(3)(*a*) provides that the employer may deduct an amount equal to the amount of the tax adjustment note in determining its net tax for the reporting period of the employer that includes the day on which the tax adjustment note is issued.

Paragraph 232.02(3)(*b*) requires the pension entity to add, in determining its net tax for its claim period in which it receives the tax adjustment note, an amount determined by multiplying the following two amounts:

- the total of all amounts, each of which is an input tax credit that is claimable by the pension entity in respect of the employer resources consumed or used in making the actual pension supply; and
- the amount determined by dividing the amount of the tax adjustment note by the total of all amounts, each of which is an amount of deemed tax in respect of an employer resource consumed or used for the purpose of making the actual pension supply.

Where the pension entity is not entitled to claim an input tax credit in respect of the deemed tax in respect of the supplies of employer resources, the amount will be zero.

Paragraph 232.02(3)(*c*) applies where the pension entity is eligible to claim, for a particular claim period of the pension entity, a rebate under section 261.01 in respect of any part of an amount of deemed tax in respect of a deemed supply of an employer resource consumed or used for the purpose of making the actual pension supply. Paragraph 232.02(3)(*c*) generally has the effect of requiring the pension entity to repay the rebate that it could claim under subsection 261.01(2) for the particular claim period in respect of the deemed tax to the extent that the deemed tax was effectively reduced by the tax adjustment note. Specifically, paragraph 232.02(3)(*c*) requires the pension entity to pay, for the particular claim period of the pension entity, an amount determined by multiplying the following four amounts:

- the total of all amounts, each of which is the part of an amount of deemed tax, in respect of a supply of an employer resource consumed or used for the purpose of making the actual pension supply, that is an eligible amount of the pension entity for the particular claim period (i.e., the amount that could be recovered as a rebate and not as an input tax credit);
- 33%;
- the amount determined by dividing the amount of the tax adjustment note by the total of all amounts, each of which is an amount of deemed tax in respect of a supply of an employer resource consumed or used to make the actual pension supply; and
- the amount determined by dividing (A) the difference between (i) the pension rebate amount (as defined in subsection 261.01(1)) for the pension entity for the particular claim period and (ii) the amount determined for element B in the formula in subsection 261.01(2) for the pension entity for the particular claim period; by (B) the pension rebate amount for the pension entity for the particular claim period.

The payment required under paragraph 232.02(3)(*c*) must be made by the pension entity to the Receiver General by the last day of the pension entity's claim period that immediately follows its claim period that includes the day on which the tax adjustment note is issued.

Paragraph 232.02(3)(*d*) applies where the deemed tax in respect of the deemed supplies of employer resources consumed or used for the purpose of making the actual pension supply is an eligible amount of the pension entity for a particular claim period of the pension entity, and where an election was made jointly under any of subsections 261.01(5), (6) or (9) for the particular claim period by the pension entity and all the participating employers that were qualifying employers of the pension plan for the particular claim period. Paragraph 232.02(3)(*d*) generally has the effect of requiring a participating employer, which claimed a deduction in determining its net tax as a result of the election, to add back the amount deducted from its net tax to the extent that the deemed tax was effectively reduced by the tax adjustment note. Specifically, paragraph 232.02(3)(*d*) requires each participating employer of the pension plan for the particular claim period to add an amount to its net tax, determined by multiplying the following four amounts:

- the total of all amounts, each of which is the part of an amount of deemed tax, in respect of a supply of an employer resource consumed or used for the purpose of making the actual pension supply, that is an eligible amount of the pension entity for the particular claim period;
- 33%;
- the amount determined by dividing the amount of the tax adjustment note by the total of all amounts, each of which is an amount of deemed tax in respect of a supply of an employer resource consumed or used for the purpose of making the actual pension supply; and
- the amount determined by dividing the amount of the net tax adjustment determined under either subsection 261.01(5), paragraph 261.01(6)(*b*) or subsection 261.01(9) for the participating employer for the particular claim period by the pension rebate amount of the pension entity for the particular claim period.

The amount determined under paragraph 232.02(3)(*d*) must be added by the participating employer in determining its net tax for its reporting period that includes the day on which the tax adjustment note is issued.

232.02(4) – Notification

New subsection 232.02(4) provides that when a tax adjustment note is issued to a pension entity of a pension plan and, as a consequence of that issuance, one or more participating employers are required under paragraph 232.02(3)(*d*) to add an amount to their net tax, the pension entity is required to forthwith notify each of those participating employers of the issuance of the tax adjustment note. This notification must be made in prescribed form containing prescribed information and in a manner satisfactory to the Minister of National Revenue.

232.02(5) – Joint and several liability

New subsection 232.02(5) applies where, as a consequence of the issuance of a tax adjustment note to a pension entity of a pension plan, a participating employer of the pension plan becomes liable to add an amount to its net tax under paragraph 232.02(3)(*d*). Subsection 232.02(5) provides that the pension entity is jointly and severally, or solidarily, liable with the participating employer to pay the amount to the Receiver General.

232.02(6) – Assessment

New subsection 232.02(6) gives the Minister of National Revenue authority to assess a person for an amount that the person is liable for as a result of the operation of the liability provision in subsection 232.02(5). It also provides that, where the Minister sends a notice of assessment to a person, the assessment, objection and appeals provisions in sections 296 to 311 apply, with such modifications as the circumstances require, to the assessment of the person.

232.02(7) – Liability where participating employer ceases to exist

New subsection 232.02(7) applies where a participating employer of a pension plan has ceased to exist on or before the day a tax adjustment note is issued under subsection 232.02(1) to a pension entity of the pension plan. If the participating employer would have been liable, had it not ceased to exist, to add an amount to its net tax under paragraph 232.02(3)(*d*) as a consequence of that issuance, subsection 232.02(7) provides that the pension entity is liable to pay, to the Receiver General, the amount that the participating employer would have been liable to add to its net tax under paragraph 232.02(3)(*d*). This payment is required to be made by the pension entity on or before the last day of its claim period that immediately follows its claim period that includes the day on which the tax adjustment note is issued.

232.02(8) – Requirement to maintain records

New subsection 232.02(8) requires that every employer that issues a tax adjustment note under subsection 232.02(1), despite section 286, maintain evidence satisfactory to the Minister of National Revenue in respect of the tax adjustment note in order to establish that the employer was entitled to issue the tax adjustment note for the amount. This requirement is for a period of six years after the day the tax adjustment note is issued.

Clause 16

Filing of Returns

ETA
238

Existing section 238 of the Act provides for the filing of GST/HST returns by registrants, as well as by certain non-registered persons, and provides for filing-due dates for those returns. Section 238 is amended to extend the filing-due date for certain financial institutions.

The amendments to section 238 apply in respect of reporting periods in any fiscal year that begins after 2009.

Subclause 16(1)

Filing required

ETA
238(1)

Existing subsection 238(1) requires a registrant to file a GST/HST return with the Minister of National Revenue for each reporting period of the registrant. Generally, where a registrant's reporting period is a fiscal year, existing subparagraph 238(1)(*a*)(i) requires the return to be filed within three months after the end of the fiscal year of the registrant.

Subparagraph 238(1)(*a*)(*i*) is amended to extend the filing-due date of the GST/HST return for registrants that are listed financial institutions. Specifically, subparagraph 238(1)(*a*)(i) is amended to provide that where the registrant is a listed financial institution described in any of the subparagraphs 149(1)(*a*)(i) to (x) and where the registrant's reporting period is a fiscal year, the return is to be filed within six months after the end of the registrant's fiscal year.

The extension of the filing-due date for those listed financial institutions will facilitate compliance with the rules relating to imported supplies under Division IV of Part IX of the Act that apply to financial institutions and to the filing of the information return for financial institutions under section 273.2 of the Act, since these rules are to a significant extent linked to the reporting obligations of those financial institutions under the *Income Tax Act*. Under that Act, the income tax return of those financial institutions is required to be filed within six months after the end of their taxation year.

Subclauses 16(2) and (3)

Filing by certain selected listed financial institutions

ETA
238(2.1)

Existing subsection 238(2.1) requires a selected listed financial institution (as described in subsection 225.2(1)) that is a monthly or quarterly filer to file, for each reporting period, an interim return (GST34) within one month after the end of the reporting period and a final return (GST494) within three months after the end of the fiscal year in which the reporting period ends.

Paragraph 238(2.1)(*b*) is amended to extend the filing date for the final return. Specifically, paragraph 238(2.1)(*b*) is amended to provide that the final return (GST494) is required to be filed by a selected listed financial institution within six months after the end of the fiscal year in which the reporting period ends.

Clause 17

Pension Plan Rebate

ETA
261.01

Existing section 261.01 of the Act provides for a rebate to a trust governed by a multi-employer pension plan, other than a plan with substantial participation from financial institution employers. The rebate is in respect of property and services that are acquired or imported or brought into an HST-participating province for consumption, use or supply in relation to the pension plan.

Section 261.01 is amended in a number of ways. The amendments provide that a rebate under section 261.01 is no longer restricted to trusts, but is now also available to pension corporations that administer registered pension plans. As well, the amendments provide that the rules contained in section 261.01 generally apply to all registered pension plans and not just to multi-employer plans. Further, the scope of the rebate is expanded so that it is no longer limited to amounts of tax payable by a pension entity (i.e., a pension trust or corporation), but is now also available in respect of amounts of tax that a pension entity is deemed to have paid under subsections 172.1(5) to (7) of the Act. Finally, the amendments allow a pension entity of a pension plan and the participating employers of the pension plan to make a joint election to transfer some or all of the pension entity's rebate entitlement to some or all of the employers. These employers would then be able to claim a deduction in determining their net tax in respect of the transferred amount. In the case of a pension plan with substantial participation from financial institution employers, the pension entity of the pension plan continues to be ineligible to claim a rebate under this section. However, the pension entity of the pension plan and the participating employers of the pension plan may make a similar election that allows each

participating employer, in determining its net tax, to claim a deduction in respect of the amount that would be the pension entity's rebate entitlement if it were eligible to claim a rebate under this section.

The amendments to section 261.01 apply in respect of claim periods of a pension entity beginning on or after ANNOUNCEMENT DATE.

Subclause 17(1)

Definitions

ETA
261.01(1)

Existing subsection 261.01(1) contains definitions that apply in section 261.01.
Subsection 261.01(1) is amended to repeal the existing definition "multi-employer plan". This amendment is consequential to other amendments to section 261.01, which provide that the rules contained in section 261.01 apply to all pension plans and not just pension plans that are multi-employer plans.

Subclause 17(2)

Definitions

ETA
261.01(1)

Existing subsection 261.01(1) contains definitions that apply in section 261.01.
Subsection 261.01(1) is amended to add the following definitions.

"active member"

The term "active member" has the same meaning as the term "active member" under subsection 8500(1) of the *Income Tax Regulations*. Under subsection 8500(1), an active member of a pension plan in a calendar year is a member of the plan to whom benefits accrue under a defined benefit provision of the plan in respect of all or any portion of the year or who makes contributions, or on whose behalf contributions are made, in relation to the year under a money purchase provision of the plan.

“eligible amount”

New definition “eligible amount” is used to determine a pension entity’s pension rebate amount (as defined in this subsection) for a claim period (as defined in subsection 259(1) of the Act) of the pension entity so that a rebate can be claimed under subsection 261.01(2) or deductions from net tax may be claimed by qualifying employers under subsection 261.01(5), (6) or (9). In general, an eligible amount is an amount of tax that is not a recoverable amount (as defined in this subsection) and that is described in paragraph (*a*) or paragraph (*b*) of this definition.

Paragraph (*a*) of the definition “eligible amount” describes amounts of tax that, during a claim period, became payable by the person or was paid by the person without having become payable, in respect of a pension plan, subject to certain exceptions. The first exception is for tax that the person is deemed to have paid under Part IX, such as tax resulting from a change-in-use of capital property or in respect of employee allowances and reimbursements. However, tax deemed under section 191 of the Act to have been paid in respect of a residential complex is not included in this exception. The second exception is for any amount of tax that becomes payable by the person when it is entitled to claim a public service body rebate under section 259. The third exception is for amounts of tax that are either payable by the person under subsection 165(1) or deemed to have been paid by the person under section 191 and in respect of which the person is entitled to claim a new residential rental property rebate under section 256.2 of the Act.

Paragraph (*b*) of that definition describes amounts of tax that the person is deemed to have paid under any of subsections 172.1(5) to (7) to a participating employer of a pension plan. To be an eligible amount of the person for a claim period of the person, the amount must be deemed under one of subsections 172.1(5) to (7) to have been paid by the person during the claim period.

“non-qualifying pension entity”

A “non-qualifying pension entity” is a pension entity of a pension plan that is not a qualifying pension entity (as defined in this subsection). The definition “non-qualifying pension entity” is relevant to subsection 261.01(9) because a non-qualifying pension entity is not eligible to claim a rebate under subsection 261.01(2), but a portion of tax actually paid or deemed to have been paid by a non-qualifying pension entity may be recovered by participating employers of the non-qualifying pension entity’s pension plan under subsection 261.01(9).

“participating employer”

The term “participating employer” has the meaning assigned by subsection 172.1(1).

“pension contribution”

A “pension contribution” means a contribution by a person to a pension plan that may be deducted by the person under paragraph 20(1)(*q*) of the *Income Tax Act* in computing its income.

“pension entity”

The term “pension entity” has the meaning assigned by subsection 172.1(1).

“pension plan”

The term “pension plan” has the meaning assigned by subsection 172.1(1).

“pension rebate amount”

A “pension rebate amount” of a pension entity for a claim period (as defined in subsection 259(1)) of the pension entity is the amount of a rebate that either a qualifying pension entity (as defined in this subsection) may be entitled to claim as a rebate for the claim period under subsection 261.01(2) or in respect of which a deduction from net tax may be claimed by participating employers under any of subsections 261.01(5), (6) or (9). A pension rebate amount of a pension entity for a claim period of the pension entity is determined by multiplying the total of all eligible amounts (as defined in this subsection) of the pension entity for the claim period by 33 per cent.

“qualifying employer”

A “qualifying employer” of a pension plan for a calendar year means a participating employer of the pension plan that is a registrant and that made pension contributions (as defined in this subsection) to the pension plan in the immediately preceding calendar year. Where no contributions were made to the pension plan in the immediately preceding calendar year by any participating employer, a qualifying employer of the pension plan for the calendar year means a participating employer of the pension plan that is a registrant and that was the employer of one or more active members (as that term is defined in this subsection) of the pension plan in the immediately preceding calendar year.

“qualifying pension entity”

A “qualifying pension entity” is a pension entity of a pension plan, other than a pension plan in respect of which (*a*) listed financial institutions (as defined in subsection 123(1)) made 10% or more of the total pension contributions (as defined in this subsection) to the pension plan in the last preceding calendar year in which pension contributions were made; or (*b*) it can reasonably be expected that listed financial institutions will make 10% or more of the total pension contributions to the pension plan in the next calendar year in which pension contributions will be required to be made to the pension plan. The definition “qualifying pension entity” is relevant to subsections 261.01(2), (5) and (6), since only a qualifying pension entity can claim a rebate under subsection 261.01(2) or be a party to an election under subsection 261.01(5) or (6).

“recoverable amount”

A “recoverable amount” in respect of a claim period of a person is generally an amount of tax that is included in determining an input tax credit for the claim period. It is also an amount in respect of which it can reasonably be regarded that the person has obtained or is entitled to claim another rebate, refund or remission, or an amount that can reasonably be regarded as having been included in an amount adjusted, refunded or credited in accordance with subsection 232(3) of the Act. An amount of tax that is a recoverable amount is excluded from being an eligible amount (as defined in this subsection).

“tax recovery rate”

A “tax recovery rate” of a person for a fiscal year is generally the percentage of tax paid by a person during a fiscal year of the person that is recovered in the year as an input tax credit or a public service body rebate under section 259. It is obtained by dividing the total of all amounts, each of which is either an input tax credit of the person for the fiscal year or a rebate to which the person is entitled under section 259 for a claim period included in the fiscal year, by the total of all amounts, each of which is an amount of tax that became payable or was paid by the person during the fiscal year. However, a person’s tax recovery rate cannot exceed 100%. A person’s tax recovery rate is relevant to subsections 261.01(6) and (9) because the tax recovery rate limits the tax adjustment that may be made by a participating employer under either of those subsections.

Subclause 17(3)

Pension Plan Rebate

ETA
261.01(2)-(12)

261.01(2) – Rebate for qualifying pension entities

Existing subsection 261.01(2) provides authority for the Minister of National Revenue to pay to a trust governed by a multi-employer plan a rebate equal to 33 per cent of the otherwise unrecoverable tax paid or payable by the trust after 1998 in respect of expenses relating to the pension plan. Subsection 261.01(2) is amended so that it now provides authority for the Minister to pay a rebate to a qualifying pension entity, which, as defined in subsection 261.01(1), includes pension corporations and pension trusts of most single- or multi-employer pension plans. Subsection 261.01(2) provides that the Minister shall pay a rebate to a pension entity (as defined in subsection 172.1(1)) for a claim period (as defined in subsection 259(1)) of the pension entity, provided the pension entity is, on the last day of the claim period, a qualifying pension entity. The pension entity’s rebate for the claim period is equal to the pension rebate amount (as defined in subsection 261.01(1)) for the claim period, minus all amounts, each of which is an amount that is included in the pension rebate amount for the claim period and that is an amount determined under either subsection 261.01(5) or paragraph 261.01(6)(*a*) for a qualifying employer (i.e., an amount that the qualifying pension entity and all the pension plan’s qualifying employers have

jointly elected to be subtracted from the qualifying pension entity's rebate entitlement so that a qualifying employer may claim an adjustment to its net tax in respect of the amount). In order to claim a rebate under subsection 261.01(2), the qualifying pension entity must comply with subsections 261.01(3) and (4).

261.01(3) – Application for rebate

Existing subsection 261.01(3) lists amounts of tax that are excluded from the rebate under existing subsection 261.01(2). These exclusions are now included in the definition "eligible amount" in amended subsection 261.01(1).

Subsection 261.01(3) is also amended to include the time limits contained in existing subsection 261.01(4). Pursuant to amended subsection 261.01(3), a rebate for a claim period of a qualifying pension entity must be claimed within two years after the filing due date for the qualifying pension entity's GST return for that claim period if the qualifying pension entity is a registrant, or within two years after the end of the claim period in any other case. As a result, if tax were to become payable by a GST-registered qualifying pension entity in its first monthly claim period in respect of a particular purchase and the qualifying pension entity does not include that tax in its rebate application filed in the following month, the qualifying pension entity would be able to claim a rebate in respect of that purchase in an application filed in a subsequent claim period provided the application is filed within two years after the end of that following month.

261.01(4) – Limitation

Existing subsection 261.01(4) contains time limits for the claiming of a rebate under existing subsection 261.01(2). These time limits are now included in amended subsection 261.01(3).

Subsection 261.01(4) is also amended to include the limitation contained in existing subsection 261.01(5). Subsection 261.01(4) provides that a pension entity cannot make more than one application for a rebate under subsection 261.01(2) for any claim period of the pension entity.

261.01(5) – Election to share rebate – Engaged exclusively in commercial activities

Existing subsection 261.01(5) contains limitations in respect of the claiming of a rebate under existing subsection 261.01(2). These limitations are now included in amended subsection 261.01(4).

Amended subsection 261.01(5) provides an election that permits a qualifying pension entity of a pension plan to transfer all or part of its pension rebate amount for a claim period of the qualifying pension entity to all or some of the qualifying employers of the pension plan if all of those qualifying employers are engaged exclusively in commercial activities throughout that claim period. Subsection 261.01(7) provides an interpretation rule for determining if a qualifying employer is engaged exclusively in commercial activities for the purposes of subsection 261.01(5). In order to be valid, the election must be made jointly by the qualifying pension entity and every qualifying employer of the pension plan for the claim period. As well, the election must comply with the requirements listed in new subsection 261.01(8).

Where the election is made, each qualifying employer may deduct, in determining its net tax for its reporting period that includes the day on which the election is filed, an amount that is determined by multiplying the qualifying pension entity's pension rebate amount for the claim period by the percentage specified for the qualifying employer in the election form. That percentage may be zero per cent where the electing parties do not wish the employer to receive a share of the qualifying pension entity's rebate entitlement. Each amount determined under this subsection for a qualifying employer for the claim period is subtracted from the qualifying pension entity's rebate entitlement for the claim period under subsection 261.01(2).

261.01(6) – Election to share rebate – Not engaged exclusively in commercial activities

New subsection 261.01(6) is similar to amended subsection 261.01(5) in that it provides for a joint election to permit a qualifying pension entity of a pension plan to transfer all or part of its pension rebate amount for a claim period of the qualifying pension entity to all or some of the qualifying employers of the pension plan. However, the election under subsection 261.01(6) is only available if a qualifying employer of the pension plan is not engaged exclusively in commercial activities throughout the claim period. Subsection 261.01(7) provides an interpretation rule for determining if a qualifying employer is engaged exclusively in commercial activities for the purposes of subsection 261.01(6). In order to be valid, the election must be made jointly by the qualifying pension entity and every qualifying employer of the pension plan for the claim period. As well, the election must comply with the requirements listed in subsection 261.01(8).

If the election is made for a claim period of a qualifying pension entity, paragraph 261.01(6)(*a*) requires that an amount, referred to as the "shared portion", be determined in respect of each qualifying employer. This shared portion in respect of a qualifying employer is determined by multiplying the following three amounts:

- the qualifying pension entity's pension rebate amount for the claim period;
- the percentage specified for the qualifying employer (which may vary from zero per cent to 100 per cent); and
- the qualifying employer's degree of participation in the pension plan (expressed as a percentage).

If pension contributions (as defined in subsection 261.01(1)) were made to the pension plan in the particular calendar year that immediately precedes the calendar year that includes the last day of the claim period, the qualifying employer's degree of participation (expressed as a percentage) in the pension plan is determined by dividing the total pension contributions made by the qualifying employer to the pension plan in the particular calendar year by the total pension contributions that were made to the pension plan in the particular calendar year. If no pension contributions were made to the pension plan in that particular calendar year and one or more qualifying employers of the pension plan was the employer of one or more active members (as defined in subsection 8500(1) of the *Income Tax Regulations*) of the pension plan in the preceding calendar year, this percentage is determined by dividing the total number of employees of the qualifying employer who were active members of the pension plan in the particular calendar year by the sum of the total number of employees of each of those qualifying employers who were active members of the pension plan in the particular calendar year. If an active member is an employee of two qualifying employers in the particular calendar year, that employee is counted twice in the denominator. If no pension contributions were made to the pension plan in that particular calendar year and no employer had employees who were active members of the pension plan in that year, there will be no shared portion amount in respect of any qualifying employer. Each shared portion amount determined for a qualifying employer under paragraph 261.01(6)(*a*) for the claim period is subtracted from the qualifying pension entity's rebate entitlement for the claim period under subsection 261.01(2).

Paragraph 261.01(6)(*b*) determines the amount that may be deducted by each qualifying employer in determining its net tax for its reporting period that includes the day on which the election is filed. This amount is determined by multiplying the shared portion in respect of the qualifying employer for the claim period of the qualifying pension entity by the tax recovery rate (as defined in subsection 261.01(1)) of the qualifying employer for the fiscal year of the qualifying employer that ended on or before the last day of the claim period.

<u>261.01(7)</u> – Engaged exclusively in commercial activities

New subsection 261.01(7) provides an interpretation rule for the purposes of subsections 261.01(5) and (6). For these purposes, it provides that where a qualifying employer is, at any time in a claim period, a financial institution, the qualifying employer is engaged exclusively in commercial activities throughout the claim period only if all of its activities for the claim period are commercial activities. Where, on the other hand, a qualifying employer is not a financial institution throughout the claim period, the qualifying employer is engaged exclusively in commercial activities throughout the claim period for these purposes if all or substantially all of its activities for the claim period are commercial activities.

261.01(8) – Form and manner of filing

New subsection 261.01(8) contains requirements in respect of the joint elections provided for under amended subsection 261.01(5) and new subsection 261.01(6) relating to the sharing of a qualifying pension entity's pension rebate amount for a claim period of the qualifying pension entity. It requires that these elections be made in prescribed form, contain prescribed information and be filed with the Minister of National Revenue in prescribed manner by the qualifying pension entity at the time the qualifying pension entity's application for the pension plan rebate under amended subsection 261.01(2) for the claim period is filed by the qualifying pension entity.

Further, in the case of an election under subsection 261.01(5), the election must indicate the percentage specified for each qualifying employer (i.e., the percentage of the qualifying pension entity's pension rebate amount that will be claimed by the qualifying employer as an adjustment to its net tax and that will not be paid to the qualifying pension entity). The total of all of the percentages specified cannot exceed 100 per cent.

In the case of an election under subsection 261.01(6), the election must indicate, for each qualifying employer, the percentage specified for that qualifying employer (i.e., the percentage of the maximum portion of the qualifying pension entity's pension rebate amount in respect of which the qualifying employer is claiming as an adjustment to its net tax). The percentage specified for each qualifying employer cannot exceed 100 per cent.

261.01(9) – Non-qualifying pension entities

New subsection 261.01(9) generally allows a non-qualifying pension entity (as defined in subsection 261.01(1)) of a pension plan and all of the qualifying employers of the pension plan to make a joint election so that some or all of those qualifying employers may, in determining their net tax, claim a deduction in respect of a pension rebate amount of the non-qualifying pension entity of the pension plan. Non-qualifying pension entities are not permitted to claim a rebate under subsection 261.01(2). However, by making the election under subsection 261.01(9), qualifying employers of a financial institution-affiliated pension plan can achieve a similar result as qualifying employers of a non-financial institution-affiliated pension plan that have made the election under subsection 261.01(6).

The election under subsection 261.01(9) may be made for a claim period of a pension entity where the pension entity is a non-qualifying pension entity on the last day of the claim period. The election for the claim period must be made jointly by the pension entity and by all persons that are, for the calendar year that includes the last day of the claim period, qualifying employers of the pension plan. As well, the election must comply with the requirements listed in subsections 261.01(10) and (11).

If the election is made for a claim period of a non-qualifying pension entity, each qualifying employer may deduct, in determining its net tax for its reporting period that includes the day on which the election is filed, the amount determined by multiplying the following three amounts:

- the non-qualifying pension entity's pension rebate amount for the claim period;
- the qualifying employer's degree of participation in the pension plan (expressed as a percentage); and
- the tax recovery rate of the qualifying employer for the fiscal year of the qualifying employer that ended on or before the last day of the claim period.

To determine a qualifying employer's degree of participation (expressed as a percentage) in the pension plan in the case where pension contributions were made to the pension plan in the particular calendar year that immediately precedes the calendar year that includes the last day of the claim period, the percentage is the amount determined by dividing the total pension contributions made by the qualifying employer to the pension plan in the particular calendar year by the total pension contributions that were made to the pension plan in the particular calendar year. Where no pension contributions were made to the pension plan in that particular calendar year and one or more qualifying employers of the pension plan was the employer of one or more active members of the pension plan in the preceding calendar year, the percentage is the amount determined by dividing the total number of employees of the qualifying employer who were active members of the pension plan in the particular calendar year by the sum of the total number of employees of each of those qualifying employers who were active members of the pension plan in the particular calendar year. If an active member is an employee of two qualifying employers in the particular calendar year, that employee is counted twice in the denominator. If no pension contributions were made to the pension plan in that particular calendar year and no employer had employees who were active members of the pension plan in that year, the percentage in respect of each qualifying employer is zero.

261.01(10) – Form and manner of filing

New subsection 261.01(10) contains requirements in respect of the joint election provided for under new subsection 261.01(9) relating to the sharing of a non-qualifying pension entity's pension rebate amount for a claim period of the non-qualifying pension entity. It requires that the application be made in prescribed form containing prescribed information and be filed in prescribed manner with the Minister of National Revenue within two years after the day that is, if the non-qualifying pension entity is a registrant, the day on or before which the non-qualifying pension entity is required to file its return for the claim period, or, if the non-qualifying pension entity is not a registrant, the last day of the claim period.

261.01(11) – Limitation

New subsection 261.01(11) provides that not more than one election under subsection 261.01(9) shall be filed for any claim period of a pension entity.

261.01(12) – Joint and several liability

New subsection 261.01(12) applies where a qualifying employer deducts an amount under subsection 261.01(5), paragraph 261.01(6)(*b*) or subsection 261.01(9) in determining its net tax for a reporting period of the qualifying employer and where either the qualifying employer or the pension entity knows or ought to know that the qualifying employer is not entitled to the amount or that the amount exceeds the amount to which the qualifying employer is entitled. Subsection 261.01(12) provides that, in these circumstances, the qualifying employer and the pension entity are jointly and severally, or solidarily, liable to pay the amount or excess to the Receiver General.

Clause 18

Information Return for Financial Institutions

ETA
273.2

Like other GST/HST registrants, financial institutions are required to file a GST/HST return (GST34 return) for each of their reporting periods. Financial institutions that are selected listed financial institutions (SLFIs), as described in subsection 225.2(1) of the Act, are required to file a GST494 return in addition to (in the case of monthly and quarterly filers) or in lieu of (in the case of annual filers) their GST34 return.

In addition to these GST/HST returns, an annual GST/HST information return is introduced for financial institutions under new section 273.2 of the Act. Generally, the information return under section 273.2 is required to be filed by GST/HST registrants that are financial institutions, which include both listed financial institutions described in paragraph 149(1)(*a*) of the Act and *de minimis* financial institutions described in paragraph 149(1)(*b*) or (*c*). More specifically, the criteria for determining which financial institutions are required to file the information return are set out in new subsection 273.2(2). The information return is required to be filed within six months after the end of the fiscal year.

New section 284.1 of the Act provides that penalties are applicable for a failure to report or a misstatement of any amount required to be reported in the information return filed under section 273.2. Special coming-into-force rules apply for penalties under section 284.1, which are explained in the notes to that provision.

New section 273.2 applies in respect of fiscal years of a person that begin after 2007.

Subsection 273.2(1) – Definitions

New subsection 273.2(1) contains definitions that are used throughout sections 273.2 and 284.1.

“actual amount”

An “actual amount” is any amount that is required to be reported by a person in an information return under subsection 273.2(3) and that is a tax amount (as defined in this subsection) for the current fiscal year or a previous fiscal year of the person or any amount calculated using only tax amounts for the current or a previous fiscal year. However, an actual amount does not include an amount required to be reported in an information return that is calculated using only tax amounts that are also required to be reported in that return.

For example, assume that an insurance company that is an annual filer with a calendar year as its fiscal year files its information return for the 2011 fiscal year. The information return may require the company to provide the following details of the input tax credits (ITCs) claimed by the company in its return for the 2011 year:

- the company claimed $15 million as ITCs in respect of tax paid or payable during the 2011 fiscal year in the return;
- the company claimed $10 million as ITCs in respect of tax paid or payable during its 2010 fiscal year in the return; and
- the company claimed a total amount of $25 million as ITCs in the return.

In this case, all three of these amounts are examples of tax amounts (as defined in this subsection), but the $25 million amount is not an actual amount as it is a total of other amounts that are tax amounts ($15 million and $10 million) that are also required to be reported on the information return.

“tax amount”

A “tax amount” is used to determine whether a particular amount that is required to be reported in an information return is an actual amount. Generally, a tax amount is any amount that is in respect of GST/HST.

Specifically, the term “tax amount” includes an amount that is tax paid or payable, but not an amount of tax paid or payable under Division II of Part IX of the Act unless that amount is described below. The term “tax amount” also includes any amount that is collected or collectible by a person as or on account of tax under Division II, including any such amount that is deemed under Part IX to be collected or collectible by the person. The term “tax amount” also includes any amount that is required to be added or deducted in determining net tax for any reporting period in a fiscal year of a person. For example, in determining its net tax, an SLFI is required to add any positive amount or deduct any negative amount determined under the SLFI attribution rules in subsection 225.2(2) of the Act. Such a positive or negative amount would be a tax amount. Finally, the term “tax amount” includes an amount that is used in calculating or determining an amount of tax collected or collectible by a person (including an amount of tax that is deemed to have been collected) or an amount added or deducted in determining net tax (e.g., element “F” of the SLFI attribution formula in subsection 225.2(2)), unless such an amount is consideration for a supply, the value of property or an amount expressed as a percentage.

Subsection 273.2(2) – Reporting institution

For the purposes of sections 273.2 and 284.1, a person, other than a prescribed person or a person of a prescribed class, is a reporting institution throughout a fiscal year if the person meets the following three conditions:

- the person is a financial institution at any time in the fiscal year;
- the person is a registrant at any time in the fiscal year; and
- the total of all amounts, each of which is 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 that ends in the fiscal year exceeds $1 million (determined on a prorated basis for short taxation years).

For example, a registrant that is a *de minimis* financial institution (i.e., a financial institution described in paragraph 149(1)(*b*) or (*c*)) at any time during the 2013 fiscal year is a reporting institution for that fiscal year if its total income for income tax purposes for the taxation year that ends in that fiscal year exceeds $1 million.

As of ANNOUNCEMENT DATE, no persons or classes are proposed to be prescribed.

Subsection 273.2(3) – Information return for reporting institution

New subsection 273.2(3) requires a reporting institution to file an information return for a fiscal year with the Minister of National Revenue in prescribed form containing prescribed information. The information return must be filed in prescribed manner within six months after the end of the reporting institution's fiscal year.

Subsection 273.2(4) – Estimates

New subsection 273.2(4) applies to a reporting institution that is required to file an information return under subsection 273.2(3). It provides that if a reporting institution that is required to report an amount in the return, the amount is not an actual amount and the amount is not reasonably ascertainable on or before the time the information return is required to be filed, the reporting institution shall provide a reasonable estimate of the amount in the information return.

Subsection 273.2(5) – Ministerial exemption

New subsection 273.2(5) gives the Minister of National Revenue the authority to exempt any reporting institution or class of reporting institutions from the requirement under subsection 273.2(3) to provide any information that must otherwise be reported in an information return. Subsection 273.2(5) also gives the Minister the authority to allow a reporting institution or class of reporting institutions to provide a reasonable estimate for any actual amount that is required under subsection 273.2(3) to be reported in an information return.

Clause 19

Effect of Extension

ETA
281(2)

Existing subsection 281(2) of the Act outlines the effects of an extension for filing a return granted by the Minister of National Revenue under subsection 281(1).

Subsection 281(2) is amended so that the effects of an extension set out in that subsection apply not only in the situation where the Minister extends the time for filing a return under Part IX of the Act but also where the Minister extends the time for providing any information (e.g., information required to be reported on an information return). The extension of time for filing a return or providing information may affect the calculation of interest payable under section 280 of the Act and any penalty payable under section 280.1 of the Act. An extension could also have an impact on the application of penalties under other provisions of the Act, including penalties imposed under section 284.1 of the Act.

The amendments to subsection 281(2) come into force on Royal Assent.

Clause 20

Failure to Provide Information on an Information Return

ETA
284.1

New section 284.1 of the Act specifies the penalties that apply to a reporting institution (as described in subsection 273.2(2) of the Act) in respect of reporting requirements imposed under section 273.2. This section imposes penalties in addition to any other penalties imposed under the Act.

Subsection 284.1(1) – Failure to report actual amounts

New subsection 284.1(1) imposes a penalty on a reporting institution that is required to report an actual amount (as defined in subsection 273.2(1)) in an information return that is required to be filed under subsection 273.2(3). It applies to a reporting institution that, without having exercised due diligence, fails to report or misstates an actual amount on the information return. The penalty is imposed for each such failure or misstatement, and is equal to the lesser of $1,000 and 1% of the difference between the actual amount and zero in the case of a failure to report or the amount reported in the information return in the case of a misstatement.

Subsection 284.1(1) applies in respect of any actual amount required to be reported in an information return that is required to be filed on or before a particular day that is on or after June 30, 2010. If the particular day is on or before the day on which the Act of Parliament enacting this subsection receives Royal Assent, this subsection only applies if the amount is not reported in an information return that is filed within six months of Royal Assent.

Subsection 284.1(2) – Failure to provide reasonable estimates

New subsection 284.1(2) imposes a penalty on a reporting institution that fails to provide a reasonable estimate of an amount that is required to be reported in an information return for a fiscal year of the reporting institution and that is not an actual amount or is an actual amount for which the reporting institution is allowed to provide a reasonable estimate under subsection 273.2(5). The penalty applies only where a reporting institution has not exercised due diligence in providing a reasonable estimate for such an amount. The penalty is imposed for each such failure, and is equal to the lesser of $1,000 and 1% of the total of (a) the tax collected or collectible in that fiscal year under Division II of Part IX of the Act, and (b) the input tax credits claimed by the reporting institution for any reporting period in that fiscal year.

Subsection 284.1(2) applies in respect of any amount required to be reported in an information return that is required to be filed on or before a particular day that is on or after June 30, 2010. If the particular day is on or before the day on which the Act of Parliament enacting this subsection receives Royal Assent, this subsection only applies if the amount is not reported in an information return that is filed within six months of Royal Assent.

Subsection 284.1(3) – Waiving or cancelling penalties

New subsection 284.1(3) gives the Minister of National Revenue the authority to waive or cancel all or any portion of a penalty payable under section 284.1. Subsection 284.1(3) comes into force on Royal Assent.

Clause 21

Period for Assessment

ETA
298(1)

Existing section 298 of the Act sets out the limitation periods for assessments and reassessments under Part IX of the Act. In particular, subsection 298(1) sets out limitation periods with respect to assessments under section 296 of the Act for net tax or certain other amounts payable under various provisions of Part IX. Existing paragraph 298(1)(*d*) provides that, in the case of an assessment of tax payable by a person under Division IV of Part IX, the assessment shall not be made more than four years after the later of the day on or before which the return was required to be filed under section 219 of the Act and the day the return was filed.

Paragraph 298(1)(*d*) is amended to provide a seven-year limitation period for assessments and reassessments of tax that is payable by a person under either section 218.01 or subsection 218.1(1.2) of the Act. This seven-year limitation period commences on the later of the day on or before which the person was required to file the return in which the tax was required to be reported and the day the return was filed. In the case of other amounts of tax payable by a person under Division IV, the existing four-year limitation period provided under existing paragraph 298(1)(*d*) remains unchanged.

The extension of the limitation period, for assessments and reassessments of tax payable under either section 218.01 or subsection 218.1(1.2), to seven years will result in a similar extension of the time limitation for requesting a waiver of the seven-year limitation period under subsection 298(7) for these assessments and reassessments.

The amendment to paragraph 298(1)(*d*) applies in respect of tax that becomes payable after November 16, 2005.

Clause 22

Notice of Objection

ETA
301

Section 301 of the Act deals with objections and appeals to assessments under Part IX of the Act. Section 301 is amended to provide new rules that apply to objections and appeals of financial institutions (other than financial institutions subject to existing subsection 301(1.2)) if they object to an assessment that relates in any manner to the application of section 141.02 of the Act. The amendments to section 301 come into force on Royal Assent.

Subclause 22(1)

Input Tax Allocation

ETA
301(1.21)

New subsection 301(1.21) applies to a financial institution, other than a financial institution to which existing subsection 301(1.2) applies, that objects to an assessment that relates in any manner to the application of section 141.02. It requires the financial institution, in its notice of objection, to specify each issue in controversy in respect of section 141.02, and the facts and reasons relied on and to provide an estimate of the relief sought (expressed as the change in any amount that is relevant for the purposes of the assessment), such as an increase in allowable input tax credits, should the objection be successful.

Subclause 22(2)

Late Compliance

ETA
301(1.3)

Existing subsection 301(1.3) allows the Minister of National Revenue to request that a person provide information required by paragraphs 301(1.2)(*b*) or (*c*) with respect to an issue if the information was not provided in the notice of objection. Subsection 301(1.3) is amended to also allow the Minister to request a financial institution to provide information required by new paragraphs 301(1.21)(*b*) or (*c*) with respect to an issue if the information was not provided in the notice of objection.

Subclause 22(3)

Limitation on Objections

ETA
301(1.4)

Existing subsection 301(1.4) of the Act precludes appellants from raising new issues or revising the relief sought with respect to an issue in an objection to an assessment made under subsection 301(3) in respect of which the appellant is a person to which subsection 301(1.2) applies. Subsection 301(1.4) is amended so that it also precludes an appellant from raising new issues or revising the relief sought with respect to an issue in an objection to an assessment made under subsection 301(3) in respect of which the appellant is a person to which new subsection 301(1.21) applies. This preclusion, in respect of persons to which subsection 301(1.2) or 301(1.21) applies, does not apply in certain circumstances: for example, it does not apply when the assessment is made pursuant to a notice of objection to another assessment made under subsection 274(8) of the Act.

Clause 23

Limitation on Appeals to the Tax Court

ETA
306.1(1)

Existing subsection 306.1(1) of the Act contains limitations that preclude persons from appealing an assessment to the Tax Court of Canada in certain cases. Existing subsection 306.1(1) precludes specified persons (as defined in subsection 301(1) of the Act) from appealing an assessment to the Tax Court of Canada if the issue to be decided was not specified in the notice of objection to the assessment in the manner required by subsection 301(1.2). The specified persons are also precluded from revising the relief sought with respect to an issue.

In addition to specified persons, subsection 306.1(1) is amended to also preclude the financial institutions referred to in subsection 301(1.21) from appealing an assessment to the Tax Court of Canada if the issue to be decided was not specified in the notice of objection to the assessment in the manner required by new subsection 301(1.21). These financial institutions are also precluded from revising the relief sought with respect to an issue.

The amendments to subsection 306.1(1) come into force on Royal Assent.

Draft Input Tax Credit Allocation Methods (GST/HST) Regulations

The *Input Tax Credit Allocation Methods (GST/HST) Regulations* (the "Regulations") prescribe classes of financial institutions, as well as amounts and percentages in respect of financial institutions of prescribed classes, for the purposes of section 141.02 of the *Excise Tax Act* (the "Act").

The *Input Tax Credit Allocation Methods (GST/HST) Regulations* are deemed to have come into force on April 1, 2007.

1 – Definitions

Section 1 of the Regulations adds new definitions that are used throughout the Regulations.

"Act"

New definition "Act" means the *Excise Tax Act*.

"bank"

New definition "bank" has the same meaning as the definition "bank" in subsection 123(1) of the Act except that it does not include an insurer (as defined in this section of the Regulations). If a person is a bank (as defined in subsection 123(1)) at any time in a fiscal year and also falls within the definition "insurer", that person will be an insurer and not a bank throughout that fiscal year for the purposes of these Regulations and for section 141.02 of the Act.

"insurer"

New definition "insurer" has a more restrictive meaning than the definition "insurer" in subsection 123(1). To be an insurer under this section, a person must not only be an insurer (as defined in subsection 123(1)) but must also in fact carry on an insurance business as the principal business of the person in Canada. As a result, a person, such as a foreign bank that is authorized to carry on an insurance business in its home jurisdiction but does not in fact carry on an insurance business in Canada, will not be an insurer for the purposes of these Regulations, although it might be an insurer as defined in subsection 123(1).

“securities dealer”

Under this new definition, a securities dealer in respect of a fiscal year is a person that:

- carries on a business as a trader or dealer in, or as a broker or salesperson of, securities;
- has that business as its principal business in Canada during that fiscal year; and
- is registered under the laws of either Canada or a province to carry on that business.

However, a person will be excluded from the definition “securities dealer” if that person is, at any time in the same fiscal year, either a bank or an insurer (as those terms are defined in this section of the Regulations).

2 – Prescribed classes

Section 2 of the Regulations sets outs the prescribed classes of financial institutions for the purposes of section 141.02 of the Act. The prescribed classes of financial institutions are banks, insurers and securities dealers (as those terms are defined in section 1 of the Regulations).

3 – Prescribed amounts

Section 3 of the Regulations sets out, for the purposes of section 141.02, the prescribed amounts in respect of financial institutions of a prescribed class. The prescribed amount is $500,000 in respect of each of the three prescribed classes of financial institutions (banks, insurers and securities dealers).

4 – Prescribed percentages

Section 4 of the Regulations sets out, for the purposes of section 141.02, the prescribed percentages in respect of financial institutions of a prescribed class. The prescribed percentages in respect of the three prescribed classes of financial institutions are 12% for banks, 10% for insurers and 15% for securities dealers.